

Decree No. 85/2021/ND-CP amending Decree No. 52/2013/ND-CP on e-commerce

On 25 September 2021, the Government of Vietnam issued Decree No. 85/2021/ND-CP amending Decree No. 52/2013/ND-CP dated 16 May 2013 on e-commerce (“**Decree 85**”). Decree 85 will take effect on 1 January 2022.

Below is a summary of highlighted changes made by Decree 85.

Cross-border e-commerce activities of foreign entities are now in scope of Decree 85

Decree 85 adds a separate section governing the cross-border e-commerce activities of foreign entities, including those having websites to provide e-commerce services in Vietnam and those selling goods in Vietnam’s e-commerce websites.

A foreign entity is considered as having a website to provide e-commerce services in Vietnam if its website is either (i) set up under a Vietnam’s domain name (.vn) or (ii) displayed in Vietnamese language or (iii) having over 100,000 transactions from Vietnam per year. Accordingly, the foreign entity must register its e-commerce activities in Vietnam with the Ministry of Trade and Industry (“MOIT”) and must establish its representative office in Vietnam or appoint someone to act as their authorized representative in Vietnam. This requirement must be done within 12 months from 1 January 2022.

Whilst, a foreign entity selling goods in Vietnam’s e-commerce websites must (i) have a trading (import) permit granted by the MOIT or (ii) arrange for the import of goods as entrusted by the buyers or (iii) appoint its commercial agents in Vietnam for the import of goods into Vietnam. The Vietnam’s e-commerce website providers shall be responsible for verifying the foreign entity’s identity and its satisfaction of one of these requirements.

Clearer definition of e-commerce services subject to statutory registration

Decree 85 defines “e-commerce service” as an e-commerce activity whereby a business entity sets up its e-commerce website for others to carry out commercial promotion activities or sale of goods or services therein. E-commerce service providers do not include those providing e-commerce website design services and not directly engaging in the business, operation or coordination of activities on such websites.

A website may be regarded as providing e-commerce services if it (i) allows its members to open booths for displaying or promoting their goods or services, (ii) allows its members to create accounts for conclusion of transactions with their customers, or (iii) has a specific trading section allowing its members to post their listing goods or services. Such website is required to register with the MOIT.

Notably, a social network platform may also fall under the e-commerce services if it has one of the above characteristics and its members pay fee directly or indirectly for such activities. Accordingly, such social network platform is also subject to registration with the MOIT.

Narrowing e-commerce websites set up by business entities for promotion or sale of their own products or service subject to statutory notification

At present, a business entity setting up its e-commerce website to serve for its own commercial promotion activities or sale of its goods or services does not fall into the definition of “e-commerce service” and hence is not subject to registration, but notification to the MOIT. Decree 85 narrows down the website subject to notification requirement to only those which have online ordering function.

Transparency of information about goods and services listed in e-commerce websites

For goods and services listed in e-commerce websites, Decree 85 requires sellers to provide sufficient information so that buyers can accurately determine particulars of such goods or services and avoid misunderstanding when making decision to buy such products or services. Such information published in e-commerce websites must strictly follow the regulations on product labelling.

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