

Vietnam: Updated regulations affecting e-commerce platforms

28 October 2021

In brief

On 25 September 2021, the government passed Decree No. 85/2021/ND-CP ("**Decree No. 85**") amending several provisions of Decree No. 52/2021/ND-CP on e-commerce ("**Amended Decree No. 52**"). The amendments and supplements under Decree No. 85, effective on 1 January 2022, focus on the provision of cross-border e-commerce services in Vietnam.

Contact Information

Yee Chung Seck
Partner
Ho Chi Minh City

Manh Hung Tran
Partner
Hanoi

Key takeaways

- Foreign E-Commerce Service Providers (as defined below) must (i) register their e-commerce activities and (ii) set up a representative office in Vietnam **or** appoint an authorized representative in Vietnam.
- Social networks that make their members directly or indirectly pay a fee to carry out certain activities will be regulated as e-commerce platforms.
- The list of five companies holding a dominant position in the e-commerce service market in Vietnam will be issued by the Ministry of Industry and Trade (MOIT). A foreign investor having control over one or more companies on such list will have to seek an appraisal opinion on national security for its investment from the Ministry of Public Security (MPS).

In more detail

1. Scope of application and governed subjects:

Under Article 1 of Amended Decree No. 52, e-commerce operations in: financial, banking, credit, insurance and lottery services; purchase, sale and exchange of currencies, gold, foreign exchange and other means of payment; and betting or reward game services, distribution and publication services for digital information content products, radio and television services that are already covered by sectorial laws shall not be subject to the governing scope of Amended Decree No. 52.

Under Article 2 of Amended Decree No. 52, the following types of traders, organizations and individuals are considered as engaging in e-commerce activities in Vietnam and will be subject to Vietnamese e-commerce regulations:

- a. Vietnamese traders, organizations or individuals
- b. Foreign individuals residing in Vietnam
- c. Foreign traders and organizations engaged in e-commerce operations in Vietnam that include:
 - i. Foreign traders and organizations having an e-commerce service website in Vietnam whose operations are conducted under one of the following forms ("**Foreign E-Commerce Service Provider**"):
 - E-commerce websites under Vietnam domain names
 - E-commerce websites that have Vietnamese as a display language
 - E-commerce websites that have more than 100,000 transactions that originated from Vietnam within a year



ii. Foreign traders and organizations selling goods on Vietnamese e-commerce platforms

The number of transactions that originated from Vietnam within a year will be calculated based on:

- a. Voluntary report of the relevant trader
- b. Official data from Vietnam's competent state agencies, including customs authorities, state agencies in charge of the internet and state agencies in charge of banking and taxation
- c. Available and public reports and information, the authenticity of which is justified by the relevant state agencies

In addition to the specific obligations applicable to each type of governed subject listed under Amended Decree No. 52, the governed subjects will have to abide by the provisions of laws on information safety, cybersecurity and other relevant laws.¹

2. Definition and forms of e-commerce services:

In line with previous working drafts, "e-commerce service" is now defined as an e-commerce operation where a trader or an organization providing e-commerce services ("**E-Commerce Service Provider**") sets up an e-commerce website to provide the environment for other traders, organizations or individuals to carry out commercial promotion, sell goods or provide services.²

E-Commerce Service Providers exclude traders and organizations that only design websites and applications but do not directly participate in the business, operation or coordination activities of such websites and applications.

In addition to the existing forms of e-commerce platforms, **social networks** will be regulated as e-commerce platforms if they make their members directly or indirectly pay a fee to carry out the following activities³:

- Opening sales booths for displaying/promoting goods and services.
- Opening accounts to effect the contracting process with customers.
- Post their listings of goods/services under specific trading categories/tabs.

3. Obligations imposed on Foreign E-Commerce Service Providers

Under Article 67a of Amended Decree No. 52, Foreign E-Commerce Service Providers must:

- a. Register their e-commerce activities.
- b. Set up a representative office in Vietnam **or** appoint an authorized representative in Vietnam. The scope of authorization of the representative office or authorized representative must allow them to fulfill the following responsibilities of the Foreign E-Commerce Service Providers:⁴
 - Coordinate with state agencies in preventing transactions in goods and services in violation of Vietnam laws.
 - Perform the obligations for consumer rights protection and quality of products and goods in accordance with Vietnam laws.
 - Report the statistics on their operations in the preceding year before 15 January every year to the MOIT.

From the effective date of Amended Decree No. 52, Foreign E-Commerce Service Providers will have 12 months to comply with these obligations.⁵

4. Obligations of [onshore] e-commerce service providers

¹ Article 26.5, Amended Decree No. 52.

² Article 3.16, Amended Decree No. 52.

³ Article 35.2(d), Amended Decree No. 52.

⁴ Article 67a.5, Amended Decree No. 52.

⁵ Article 3.2(c), Decree No. 85.



E-Commerce Service Providers have, but are not limited to, the following key obligations:

- a. To register the website used to provide e-commerce platform services and announce the following information about the website owner on the website homepage⁶ ("**Identifiable Information**"):
 - Names and head offices' addresses.
 - Information on their business registration certificate or establishment decision. For an individual owner, their personal tax identification number must be provided.
 - Telephone number or an online contact method to receive customer's complaints on the quality of goods and services.
- b. To request that local and foreign sellers active on their e-commerce platform to provide the same identifiable information mentioned above⁷. For foreign sellers, their proper names must be transcribed into Vietnamese or written in Latin characters.
- c. To take timely remedial actions when detecting or receiving reports about any business acts in violation of laws on their e-commerce platforms.
- d. To provide assistance to state agencies in investigating and tackling business acts in violation of laws and resolving disputes and claims⁸. Such assistance covers, among other things, the provision of information on persons who appear to be or are committing, any violations of laws on their e-commerce platforms, to the competent state agencies upon detecting or receiving such information.

For e-commerce platforms that have online ordering functions, the service providers must further:⁹

- a. Appoint a contact point to receive requests from and provide online information to state agencies in respect of those showing signs of violation of law. Such contact point will provide the required information within 24 hours from the time of receiving such requests.
- b. Act for foreign sellers on their e-commerce platform to resolve consumers' claims in connection with the goods and services provided by the foreign sellers.
- c. Be responsible for notifying foreign sellers of their tax obligations when they participate in the e-commerce platform in accordance with Vietnam laws.
- d. Be a contact point to receive and resolve consumers' claims in cases where the concerned transaction has more than two participants.
- e. Store information on orders placed on the e-commerce platform in accordance with the laws on accounting.
- f. Jointly compensate for damage in case the breach of their obligations under Articles 36.8 and 36.9 of Amended Decree No. 52 causes damage.

Vietnamese e-commerce service providers allowing foreign sellers to operate on their e-commerce platforms bear more responsibilities in this regard, specifically:

- a. To authenticate the identities of foreign sellers.
- b. To request foreign sellers to exercise the export and import rights applicable to foreign traders who have no presence in Vietnam in accordance with laws.

⁶ Article 36.1, Amended Decree No. 52.

⁷ Article 36.3, Amended Decree No. 52.

⁸ Article 36.9, Amended Decree No. 52.

⁹ Article 36.11, Amended Decree No. 52.



- c. To organize the implementation of import activities as entrusted by purchasers in respect of the goods traded by foreign sellers on the e-commerce platforms.
- d. To request foreign sellers to appoint their commercial agents in Vietnam.

5. Market access conditions for foreign investors in the field of e-commerce

Foreign investors can invest in e-commerce business in Vietnam in one of the following ways:¹⁰

- a. Establishment of an economic organization
- b. Capital contribution or purchase of shares or stakes

The investment of a foreign investor that controls one or more companies in a group of five companies holding a dominant position in the e-commerce service market in Vietnam as listed by the MOIT requires an appraisal opinion on national security from the MPS.¹¹ The five dominant companies are selected based on the number of visits, the number of sellers, the number of transactions and total transaction value.¹² Exception to the requirement on seeking the MPS's appraisal opinion is given to foreign investors investing in small and medium-sized start-ups.¹³

By control over a company providing e-commerce services, Amended Decree No. 52 means one of the following cases:¹⁴

- a. Its foreign investor owns more than 50% of the enterprise's (a) charter capital or (b) voting shares.
- b. Its investor has the right to directly or indirectly decide to appoint, relieve from duty or discharge the majority of or all the members of the board of directors, the chair of the board of members, the director or general director of the enterprise.
- c. Its investor has the right to decide important matters during the enterprise's business operation that include choosing its technology system, business establishment form, business lines, business areas, forms of doing business; adjusting the business scope and lines; and selecting the form, method to mobilize, distribute and use the enterprise's capital.

Within the period of 12 months from the effective date of Amended Decree No. 52, foreign investors subject to the above market conditions must carry out relevant procedures as prescribed therein.

We hope the above is informative. For further information and to discuss what this development might mean for you, please contact us.

¹⁰ Article 67c.2(a), Amended Decree No. 52.

¹¹ Article 67c.2(b), Amended Decree No. 52.

¹² Article 67c.4, Amended Decree No. 52.

¹³ Article 67c.6, Amended Decree No. 52.

¹⁴ Article 67c.3, Amended Decree No. 52.



Contact Us



Yee Chung Seck

Partner

yeechung.seck@bakermckenzie.com



Manh Hung Tran

Partner

tmh@bmvn.com.vn

© 2021 Baker & McKenzie. **Ownership:** This site (Site) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms, including Baker & McKenzie LLP). Use of this site does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion:** All information on this Site is of general comment and for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulation and practice are subject to change. The information on this Site is not offered as legal or any other advice on any particular matter, whether it be legal, procedural or otherwise. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any information provided in this Site. Baker McKenzie, the editors and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this Site. **Attorney Advertising:** This Site may qualify as "Attorney Advertising" requiring notice in some jurisdictions. To the extent that this Site may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. All rights reserved. The content of the this Site is protected under international copyright conventions. Reproduction of the content of this Site without express written authorization is strictly prohibited.

