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Decree Revising Legal Provisions and Regulations on E-Commerce Activities to Take Effect on 1 January 2022

On 25 September 2021, the Government issued Decree No. 85/2021/ND-CP ("**Decree 85/2021**") amending Decree No. 52/2013/ND-CP dated 16 May 2013 on e-commerce ("**Decree 52/2013**"). Decree 85/2021 shall take effective from 1 January 2022.

The key features of Decree 85/2021 are set out below.

Facebook, Instagram, etc. are regulated as e-commerce trading floors in Vietnam upon meeting certain conditions

Decree 85/2021 is not a new regulation in relation to forms of operation of e-commerce trading floors. A similar provision is found in Article 6 of Circular 47/2014/TT-BCT dated 5 December 2014 of the Ministry of Industry and Trade.

Decree 85/2021 revises Article 35.2 of Decree 52/2013 ("**Article 35.2**") on of e-commerce trading floor operating forms. Decree 85/2021 amends Article 35.2 by clarifying that social networks such as Facebook and Instagram may be regulated as e-commerce trading floor if they meet certain conditions. Decree 85/2021 stipulates that:

- a. A website that allows its members to open booths for displaying/promoting their goods or services;
- b. A website that allows its members to open accounts to carry out the conclusion of contracts with customers;
- c. A website that has specific trading categories or tabs that allow its members to post listings of goods and services;
- d. A social network that operates in one of the forms specified in Points a, b, c of this Clause and makes its members directly or indirectly pay fees for carrying out such activities."

Accordingly, social networks such as Facebook and Instagram which fulfil the conditions in (d) above shall be regulated as e-commerce trading floors in Vietnam. Consequently, the applicable social networks shall be required to (i) establish and register their websites for providing e-commerce services with Vietnam's Ministry of Industry and Trade, (ii) publish operating regulations of their respective e-commerce trading floors, and (iii) request that traders/sellers provide their information (KYC), etc. Vietnamese competent authorities may issue further detailed guidelines on this regulation soon.

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Foreign traders' and entities' e-commerce activities in Vietnam

Decree 85/2021 adds a new Section 5 into Decree 53/2013 ("**New Section 5**") which regulates the e-commerce activities of foreign traders and entities in Vietnam. This includes setting out their obligations in Vietnam, such as (i) registering with the relevant agencies and setting up a representative office in Vietnam or appointing an authorised representative in Vietnam; (ii) compliance with customs laws and regulations when importing or exporting goods that are traded via e-commerce, and (iii) compliance with laws and regulations relating to investment and national security, where applicable.

New Section 5 provides:

- (i) Foreign traders or entities are defined as providers of e-commerce services in Vietnam if their website is subject to one of the following forms:
 - a. *An e-commerce website set up under Vietnam's domain name;*
 - b. *An e-commerce website displayed in Vietnamese language;*
 - c. *An e-commerce website that has more than 100.000 transactions originated in Vietnam within a year.*
- (ii) Foreign traders or entities who provide e-commerce services in Vietnam shall be required to register their providing e-commerce services and to set up a representative office in Vietnam or to appoint an authorised representative in Vietnam.
- (iii) Importing and exporting goods which are traded via e-commerce activities shall be required to comply with customs laws and regulations in Vietnam.
- (iv) Foreign traders or entities who provide e-commerce services in Vietnam shall be obligated to:
 - a. *Cooperate with regulatory authorities to prevent transactions of goods and services in violation of the law of Vietnam;*
 - b. *Fulfil the obligation to protect consumers' interests as well as quality of goods and services as prescribed by the law of Vietnam;*
 - c. *Submit reports to regulatory authorities.*

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- (v) Providing e-commerce services is considered as one of the conditional business lines for foreign investors in Vietnam. In particular:
 - a. Foreign investors who perform e-commerce activities in Vietnam shall be required to comply with regulations in Clause 1 and Clause 2 of Article 21 of the Law on Investment (i.e., establishment of a new economic entity or investment for capital contribution or purchasing shares/contributed capital).
 - b. Foreign investors who control one or more enterprises in the list of top two leading e-commerce enterprises in Vietnam (which is announced by the Ministry of Industry and Trade) shall be subject to "assessments of national security" by the Ministry of Public Security."

Logistics services now classified as e-commerce activity

Decree 85/2021 has added logistics services as a new category of e-commerce activities. Accordingly, logistics service providers shall officially become classified as entities carrying out e-commerce activities. Consequently, logistics service providers are now required to provide invoices when conducting business via e-commerce trading floors. This obligation of the logistics service providers has been added in Article 1.14 of Decree 85/2021.

Sellers to provide information on goods and services on e-commerce websites

Decree 85/2021 sets out the responsibilities of sellers that advertise their goods/services on e-commerce websites. These include the following:

- (i) With respect to goods/services which are published on the e-commerce website, sellers are obligated to provide necessary information for customers to accurately determine the properties of goods/services, and to avoid misunderstanding when making an order;
- (ii) Information about goods published on websites must include the required labelling of goods as prescribed by the legal regulations on labelling of goods, except distinguishing characteristics of each product, such as date of manufacture, expiry date, lot number, chassis number, engine number; and
- (iii) With respect to goods/services which are subject to the list of conditional business and investment areas, sellers/providers are required to fulfil relevant conditions and publish information relating to the licenses and certificate of eligibility or another document type as prescribed by relevant laws on business conditions for trading of such goods/services.

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Additional requirement on publishing policies for inspection of goods

Pursuant to Decree 85/2021, businesspersons/entities engaged in e-commerce activities are required to publish on their websites policies in relation to inspecting the goods advertised for sale. This is in addition to the existing obligation to publish policies on returning such goods. Accordingly, beginning 1 January 2021, the Government has made it a compulsory general trading condition for businesspersons/entities engaged in e-commerce activities to publish on their websites their respective policies on inspecting goods.

It must be noted, however, that Decree 85/2021 does not provide specific details and requirements on what should be included in the policies on inspecting goods.

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

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