

New Decree on E-commerce - For a Deeper and Stronger Regulation of E-commerce in Vietnam

July 2013

In line with the trend worldwide, e-commerce has seen tremendous growth in Vietnam in recent years, boosted by a high rate of mobile and internet penetration in the country and its young and tech-savvy population.

To establish a more mature legal framework for online shoppers and e-businesses, newly-issued Decree 52/2013/ND-CP dated 16 May 2013 on e-commerce ("Decree 52") recently came into effect on 1 July 2013. Decree 52 comes as a replacement for Decree 57/2006/ND-CP ("Decree 57") which was issued in 2006. Though that very first regulation did deal with limited aspects of online transactions, it did not include much detail on online transactions and responsibilities of website operators in electronic commerce.

The need for stronger regulation was recently even more accentuated when a number of fraudulent e-commerce practices and internet scams that included sales of illegitimate vouchers and coupons through group coupon sites and virtual multi-level selling rallied Vietnamese online shoppers and regulators. It soon became obvious that the former Decree 57 had left loopholes disadvantaging consumers and leaving disputes unable to be solved.

The key issues to be aware of under the new Decree include:

- Online shopping and online sales websites are only subject to notification to the Ministry of Industry and Trade ("MoIT"); online auction websites and other multi-user sales/promotional platforms require registration;
- Foreign website operators that have no investment in Vietnam and are not using a .vn-domain are not captured by the regulation;
- The Decree sets out requirements for contract terms and conditions, data protection and online payment systems (including information to be provided on these matters on the website);

- Although not entirely clear on the point, the Decree supports the view that foreign-invested enterprises that have been licensed to distribute to end-customers (without a retail outlet) may offer their products online;
- The Decree is effective as of 1 July 2013 (including the requirements to publish certain information on websites); however, existing website operators have 90 days to notify or register their operations

On 15 July 2013, the Government also adopted the long-awaited new Decree 72/2013/ND-CP on management and use of the Internet ("Decree 72") which addresses a number of additional requirements for certain commercial players on the Internet. We will provide a separate newsflash on the key changes brought about by Decree 72 shortly.

1. E-COMMERCE ACTIVITIES

1.1 Scope of application of Decree 52 for e-commerce activities

The Decree applies to all traders, organizations and individuals involved in e-commerce activities in Vietnam, including both Vietnamese and, in certain cases, foreign individuals and organizations.

Under the former regulation, individuals were not permitted to operate an e-commerce website and individuals were only permitted to offer sales of goods or provide or offer services on e-commerce exchange sites.

As to foreign organizations and individuals, these are only subject to the regulation where they reside in Vietnam or operate through a foreign-invested enterprise or other form of investment in Vietnam (such as branches, representative offices) or where the foreign national operates a website under a Vietnamese domain.

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney Advertising.

© Hogan Lovells 2013. All rights reserved. HKGLIB01-#1050055

Despite this, the Decree grants authority to the MoIT and the Ministry of Information and Communications (“MoIC”) to adopt separate guidelines for foreign traders, organizations or individuals that carry out cross-border e-commerce with Vietnamese customers but do not fall within the above scope. It is not clear whether or when such guidelines will be issued.

1.2 Definition and types of e-commerce activities

E-commerce activities are defined as carrying out a part or the entire process of commercial activities by electronic means connected to the Internet, a mobile telecommunications network or other open networks.

Whereas the former regulation only distinguished two types of e-commerce activities (namely e-commerce websites and e-commerce trading floors), Decree 52 expands the forms of e-commerce activities to include the following:

- a. E-commerce websites for sales activities: defined as websites where operators deal directly with customers and that are established by traders, organizations or individuals for the sale or promotion of products or services offered by them directly.
- b. Websites providing e-commerce services: defined as websites that are developed by traders or organizations to provide an environment for the commercial activities carried out by other traders, organizations or individuals through such platform:
 - i. E-commerce trading floors;
 - ii. Online auction websites;
 - iii. Online promotion websites; and
 - iv. Other types of websites as may be stipulated by the MoIT



2. PROCEDURAL OBLIGATIONS WHEN ESTABLISHING E-COMMERCE WEBSITES

2.1 Sales e-commerce websites

Importantly, enterprises or individuals that intend to set up e-commerce websites for online sales are only required to notify the MoIT through its online notification tool on the MoIT’s Management Portal for e-commerce activities (see section 4. below with further details on the Management Portal).

Given the current restrictive licensing practice for foreign-invested retailers in Vietnam, an issue of debate has been to what extent foreign-invested companies that are licensed for trading and distribution may sell their products online or operate an online order process. Regrettably, Decree 52 offers little guidance on the matter. However, it is promising that the Decree requires only a notification of the sales website to the regulator rather than a review or approval process. This suggests that online sales are seen as simply another distribution channel rather than a stand-alone commercial activity.

When operating an online shop or sales website, the operator is further required to comply with various new conditions on information that must be made available, the requirements set forth in Decree 52 for entering into contracts, and certain restrictions aimed at consumer protection (as discussed in section 3. below).

2.2 Websites providing e-commerce services

However, the formal requirements for websites that offer online platforms for other traders, auction platforms, etc. are stricter. Given that these environments act as intermediaries and multipliers of online transactions, the regulator has deemed it necessary for the operators to register with and be certified by the MoIT. They also are subject to annual reporting obligations.

3. CONSUMER PROTECTION IN E-COMMERCE TRANSACTIONS

A key area of the new Decree is to improve consumer protection in online transactions.

3.1 Online contracts

The Decree adds clarity on the legal value of “e-documents” and contractual commitments entered into in e-commerce transactions. Operators of e-commerce

websites are now required to have and publish terms and conditions. These should be drawn up carefully to assure that they meet the requirements for contracts entered into online and to avoid that a transaction may be challenged. Of note, e-signatures may be used when agreed by the parties (or required by the terms and conditions) but alternative means of exchanging electronic documents may also be used. The Decree provides that the seller is required to confirm acceptance of an offer made online within 12 hours from having received the offer, unless other terms are agreed.

3.2 Protection of personal information

Moreover, the Decree provides that in e-commerce transactions all operators must comply with its provisions on protecting individual information and payment safety. The relevant data protection policies must be published on the website. Prior consent is required before collecting any personal information.

The Decree also addresses the permitted use of personal information and requirements for the safety and security of stored personal information. All operators of e-commerce sites that collect consumers' personal information directly, or where they authorize a third party to collect such information, are responsible to protect personal information.

3.3 Safety of online payments

Owners of e-commerce websites offering online payment functions and providers of intermediary services for online payments are responsible for ensuring the safety and security of customers' payment transactions. Owners of e-commerce websites must also publish policies on the secure treatment of customer's payment information on their website.



4. EVALUATION OF E-COMMERCE WEBSITES

4.1 E-commerce credit evaluation and certification activity

Traders or organizations that provide website certification or credit evaluation of e-commerce websites must register with the MoIT, in addition to complying with specific conditions.

4.2 Management portal of e-commerce activities

The MoIT has been tasked with operating a Management Portal for e-commerce activities. The portal is intended to provide greater transparency and foster consumer protection. For example, e-commerce websites which have been notified or registered with MoIT are to be listed. More importantly, websites which have violated regulations will also be published.

5. CONCLUSION

The issuance of the new Decree is a step in the right direction and its provisions will add clarity to online transactions. It would have been useful to differentiate regulations for B2B and B2C transactions and also to clarify which C2C transactions are fully excluded from the scope of the regulation. A key protective measure for consumers in online transactions in many developed jurisdictions is their right to terminate a contract entered into online within a certain timeframe and without penalty. No comparable protection has been built into the regulation.

Nevertheless, the Decree improves on the status quo and is important in the path towards establishing a more reliable and transparent e-commerce environment.

For further information and assistance, please contact a person mentioned below or the person with whom you usually deal with at Hogan Lovells:

Christian Schaefer, Consultant
christian.schaefer@hoganlovells.com
+84 83 829 5100

My Doan, Associate
my.doan@hoganlovells.com
+84 83 829 5100