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1. Introduction

Although the e-commerce market has grown rapidly in Vietnam due to, among other factors, the COVID-19 pandemic, Decree No. 52/2013/ND-CP (**Decree 52**) on e-commerce, which is the key conventional legislation, has proven to be insufficient and unclear in terms of regulations applicable to foreign e-commerce service providers that do not have a presence in Vietnam. In response to this, on September 25, 2021, the Ministry of Industry and Trade of Vietnam (the **MOIT**) enacted Decree No. 85/2021/ND-CP, which amends and supplements some of the regulations of Decree 52 (**New Amending Decree**). The New Amending Decree came into effect on 1 January 2022.

The main amendments of the New Amending Decree that are noticeable to foreign investors are as follows, and this newsletter provides a brief overview of those amendments.

- (i) Foreign e-commerce service providers that do not have a presence in Vietnam were determined to fall within the scope of Foreign Website Owners (please see the definition below), and the regulations on such providers have been expanded and restructured.
- (ii) If e-commerce service providers have a presence in Vietnam, the same regulations continue to apply to both foreign and local providers. However, the notification obligation does not apply to websites that only publish information on such company's goods and/or services.
- (iii) Additional responsibilities were imposed on foreign sellers offering and selling goods on e-commerce websites that are established by third parties and are subject to Vietnamese regulations (**Foreign Sellers**).
- (iv) Regulations on investment by foreign investors in the e-commerce service sector have been enhanced.

2. Regulations on Foreign Website Owners

Under Decree 52, regulations applied only where e-commerce service providers had a presence in Vietnam or operated an e-commerce website with a Vietnamese domain name, and no regulations were imposed on foreign organizations and traders (including an individual whose business is registered under foreign law) who did not have a presence in Vietnam or did not operate an e-commerce website with Vietnamese domain name. However, the New Amending Decree provides that even in the case of an e-commerce service provider that does not have a presence in Vietnam, if it qualifies as a Foreign Website Owner, it will be subject to certain regulations (Article 67a of the New Amending Decree). The Foreign

Website Owners referred to herein are foreign organizations and traders without a presence in Vietnam who operate any of the e-commerce websites below and allow third parties to promote or sell goods and/or services or conduct any other commercial activities on such website,¹ and who provide e-commerce services in the Vietnamese market.

- (i) E-commerce websites with a Vietnamese domain name;
- (ii) E-commerce websites displayed in the Vietnamese language; and
- (iii) E-commerce websites on which 100,000 or more transactions from Vietnam are conducted per year.

If a foreign organization or trader qualifies as a Foreign Website Owner, such organization or trader will bear the obligations below:

- (i) obligation to register the creation of a website that provides e-commerce services;
- (ii) obligation to establish a representative office or appoint an authorized representative in Vietnam;
- (iii) obligation to cause a representative office or authorized representative to prevent illegal transactions, etc. and to cooperate with the MOIT as necessary; and
- (iv) obligation to submit an annual management status report to the MOIT.

3. Regulations on Foreign Invested Enterprises that Were Established in Vietnam

Under Decree 52, if a website that only publishes information of such company's goods and/or services is created (i.e., a website without an online ordering function), such company is subject to an obligation to submit notification to the MOIT. However, the New Amending Decree abolishes such obligation, and in the case of a website which only publishes information of such company's goods and/or services and has no online ordering function, notification to the MOIT is not required (although other applicable regulations still must be complied with). This is because approximately half of the websites on which the notification obligation is imposed under Decree 52 are used only to publish information, and it was determined that it was unnecessary for such websites to be subject to e-commerce regulations.

Accordingly, when a foreign invested company promotes or sells its goods and/or services on its e-commerce website, the same regulations as those applicable to local entities will continue to apply (i.e., in the same manner as Decree 52). In particular, if such websites are created with online ordering function, notification to the MOIT of their creation will be required, and if third parties are allowed to conduct commercial activities (such as promotion or sale of goods and/or services) on the e-commerce websites, it also is necessary to register the creation of such websites with the MOIT.

4. Regulations on Foreign Sellers

Under Decree 52, there were no regulations on Foreign Sellers that do not operate e-commerce websites in Vietnam by themselves, and only sell and provide goods and/or services on an e-commerce website in Vietnam that was created by a third party. Even under the New Amending Decree, these regulations do

¹ If providers only sell a company's goods and/or services on the website, they do not qualify as Foreign Website Owners and are not subject to regulations thereon.

not apply directly to Foreign Sellers. However, the New Amending Decree provides the following regulations on traders and organizations that manage e-commerce platforms on which Foreign Sellers conduct activities (platformers), and Foreign Sellers are indirectly subject to the regulations applicable to e-commerce platformers as a result of their activities on such platforms (Article 67b of the New Amending Decree).

The details of the obligations borne by e-commerce platformers are as follows:

- (i) to verify identities of the Foreign Sellers; and
- (ii) to perform any of the following actions:
 - to request that the Foreign Sellers being foreign traders register their contact information, as well as any export/import rights, with the competent authority, and comply with any applicable reporting obligations, etc. that are applicable to foreign traders that have no presence in Vietnam;
 - execute an import entrustment agreement with a buyer and implement import procedures on behalf of a buyer; or
 - to request that the Foreign Sellers select a commercial agent in Vietnam.

5. Enhancing Regulations on Investment in the E-Commerce Sector by Foreign Investors


For purposes of improving quality and efficiency of foreign investments, enhancing technology standards, promoting joint ventures, increasing alliances and technology transfers between domestic and foreign invested enterprises, and ensuring national security and defense against cybersecurity issues, the New Amending Decree stipulates that e-commerce business is a conditional business sector applicable to foreign investors for their market access (Article 67c of the New Amending Decree). According to the same Article, foreign investors who invest in the e-commerce sector must do so either in the form of establishing an economic organization or a share purchase or contribution, and investments in forms which are not so common in this sector, such as business cooperation contracts (BCCs; contracts executed between multiple parties to jointly conduct business without establishing a corporation), are no longer permitted.

In addition, if foreign investors acquire “control” over one or more enterprises within the group specified in the list announced by the MOIT (which shows the top five enterprises in the e-commerce sector, selected after taking into account transaction volume, amount, and other e-commerce factors), a regulation was introduced to require that foreign investors obtain appraisal opinions on national security from the Ministry of Public Security of Vietnam (which gives its opinion to business license issuing agencies on whether to approve related investments) before commencing its operation in this sector. Under Decree 52, acquisition of the business license after execution of an investment is a general practice. However, under the above regulation of the New Amending Decree, when a foreign investor invests in an applicable enterprise, it is necessary to have a prospect of business license acquisition, including obtaining opinions from the Ministry of Public Security of Vietnam in advance, which is expected to make execution of investments difficult or affect investment schedules.

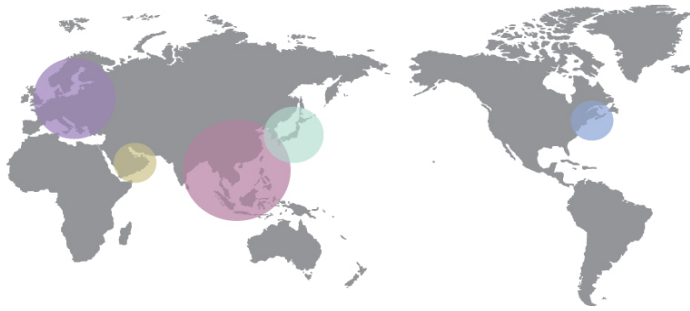
Pursuant to the laws regarding support of small and medium-sized enterprises, the above regulation does not apply to investment in creative small and medium-sized enterprises.

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