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Electronic Commerce in ASEAN

ASEAN – Regulation and Policies Addressing the E-commerce Boom

COVID-19, which was declared a global pandemic since March 2020 had not only accelerated the adoption of digital solutions, but also created lifestyle changes including consumer-spending habits.

As third-waves and fourth-waves of the COVID-19 pandemic continue in many countries in 2021, lockdowns have forced consumers to continue to remain indoors. Research papers and data have shown that since 2020, there had been an unprecedented growth of electronic commerce (“**E-commerce**”).

From a seller’s perspective, COVID-19 has similarly given new impetus for first-time sellers to shift to online channels to maintain their businesses and expand their reach to consumers.

The growth of E-commerce during the pandemic, builds upon its previous expansion in ASEAN as one of the fastest growing sectors pre-pandemic, spearheaded by large players such as Lazada, Shopee and Tokopedia.

In some of the ASEAN jurisdictions with existing E-commerce laws and regulations, policymakers and governments may have refined those laws further, whereas others are now catching up with putting new E-commerce laws and policies in place.

This publication addresses the current legal and regulatory framework for E-commerce in each of the ASEAN countries including a discussion on (i) governing legislation; (ii) regulatory authority; (iii) licensing and market entry requirements; (iv) payment solutions and consumer centric matters concerning (v) product liability; (vi) data protection and (vii) consumer protection.



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BRUNEI

Governing legislation/framework	There is no legislation on E-commerce activities in Brunei. Common law rules apply to all commerce activities. The Brunei Darussalam Central Bank (which replaces the Authority Monetary of Brunei Darussalam) provides by-laws and notices pursuant to their inherent powers under the Authority Monetary Brunei Darussalam Order 2010.
Regulatory authority	The Brunei Darussalam Central Bank regulates the requirements for payment systems.
Licensing & market entry requirements	Generally, there are no restrictions on the types of E-commerce entities that could be set up in Brunei. Internet Content Providers (“ICPs”) in Brunei are regulated by the Broadcasting Act.
Foreign equity restrictions	A foreign entity is not prohibited from setting up a company in Brunei. However, certain restrictions apply to foreign direct investment in particular sectors (i.e., oil and gas).
Payment solutions, foreign exchange administration and merchant acquiring services	<ul style="list-style-type: none">• Payment solutions: Currently only credit cards are the only mode of E-commerce payment in Brunei.• Foreign exchange administration: There are no restrictions for local currency to be used for E-commerce platforms.• Merchant acquiring services: There is no specific legislation on merchant acquiring services. However, the Brunei Darussalam Central Bank pursuant to the Authority Monetary Brunei Darussalam Order 2010, has issued a Notice No. PSO/N-1/2020/1 on “Requirements for Payment Systems”. In this Notice, “merchant acquiring services” is defined as any service of accepting and processing a payment transaction for a merchant under a contract between the provider of the service and the merchant, which results in a transfer of money to the merchant pursuant to the payment transaction, regardless of whether the provider of the service comes into possession of any money in respect of the payment transaction.
Product liability	There is no single system of product liability law in Brunei. The terms of contract entered into between parties will govern the transaction.
Data protection	It is advisable for parties to insert a confidentiality clause in their website and transactions given that there is no data protection law in Brunei governing privacy policy and its requirements.
Consumer protection	The only protection given to consumers is a protection for Fair Trading under the Consumer Protection (Fair Trading) Order, 2011. Unfair Practice means “it is an unfair practice for a supplier, in relation to a consumer transaction:- (a) to do or say anything, or omit to do or say anything, if as a result, a consumer might reasonably be deceived or misled; (b) make a false claim; (c) to take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer is not in a position to protect his own interests or is not reasonably able to understand the characters, nature, language or effect of the transaction”.



CAMBODIA

Governing legislation/framework	<p>The laws that would apply are as follows:</p> <ul style="list-style-type: none"> • Law on E-commerce (2019) • Sub-Decree No. 134 on Classification, Formalities, and Procedures on Granting of Permit or License to Intermediary and E-commerce Service Provider, and Exemptions, dated 24 August 2020 • Prakas (Ministerial Declaration) No. 290 on Granting of Permit of License to E-commerce Service Providers, dated 9 October 2020.
Regulatory authority	<p>Under the Law on E-commerce, the Ministry of Commerce and Ministry of Posts and Telecommunications are the competent authorities governing on the E-commerce sector. The Ministry of Commerce is in charge of issuing the E-commerce permit/license to the service providers, while the Ministry of Posts and Telecommunications regulates the technological side of the sector, such as the security and safety procedures regarding the storing of data and information, and the issuance of online service certificate.</p>
Licensing & market entry requirements	<ul style="list-style-type: none"> • Under the Law on E-Commerce, the following persons are permitted to operate E-commerce in Cambodia: <ul style="list-style-type: none"> ◦ natural person; ◦ sole proprietorship; ◦ legal person; and ◦ branch of foreign company. • The E-commerce licensing requirement is regulated as follows: <ul style="list-style-type: none"> ◦ natural person and sole proprietorship are required to obtain the E-commerce permit. ◦ legal person and branch of foreign company are required to obtain the E-commerce license. <p>In applying for the E-commerce permit/license, the applicant is also required to obtain the Online Service Certificate from the Ministry of Posts and Telecommunications.</p>
Foreign equity restrictions	<p>Foreign entities can set up a company operating E-commerce in Cambodia and there are no foreign equity restrictions on such company.</p>
Payment solutions, foreign exchange administration and merchant acquiring services	<ul style="list-style-type: none"> • Payment solutions: there are numerous payment solutions on E-commerce platforms in Cambodia, including cashless/e-wallet, cash on demand, and credit card. In June 2020, the government officially launched the Bakong System (see response below) to incentivise the use of electronic money in payments by the public. • Foreign exchange administration: to the best of our knowledge, as of the date of this response, there is no regulation issued on whether the local currency (Khmer Riel) can be used for E-commerce platforms which do not have a local presence in Cambodia. • Merchant acquiring services: to the best of our knowledge, we are not aware of any specific laws or regulations on merchant acquiring services as currently there is a regulatory framework on third-party payment processors.
Product liability	<ul style="list-style-type: none"> • The Law on Consumer Protection (2019) (“CPL”) provides protection of consumers in Cambodia. It is applicable to all persons conducting business (for profit or not) which provide or offer goods or services, in all sectors, to consumers in Cambodia. The Law sets out a number of prohibited activities including false, misleading, and/or baited advertisement and misrepresentation regarding the quality of the offer products, as well as supplier’s liability for any health and safety impact of consumers caused by the supplier’s “unfair” practices. The law also grants the consumers the right to complain and claim compensation for any violation of their rights. • The Law on Management of Quality and Safety of Products, Goods, and Services (2000) (“LMQS”) requires entities, including manufacturers, importers, exporters, merchants, service providers, and advertisers, to submit their products, goods, and/or services to the relevant authorities for quality check and inspection. The LMQS also put civil and/or criminal liabilities on the abovementioned entities for any falsified, tampered and/or modified products post-inspection, as well as any contaminated or counterfeited products.
Data protection	<p>The Law on E-commerce provides general requirements on data processing and storing for E-commerce service providers. It should be noted that there is no specific law or regulation governing data protection in Cambodia. Generally, under the Law on E-Commerce, the E-commerce service providers are required to obtain express consent for any usage or storage of the other person’s personal data and information. In addition, the service provider storing such personal information, shall use all means to ensure that the information is safely protected in all reasonable circumstances.</p>
Consumer protection	<p>The Law on E-Commerce and CPL provide that the E-commerce service providers (except those operating in securities and insurance sectors) are required to provide consumers with correct, clear, and sufficient information, which contain the following points at the minimum:</p> <ul style="list-style-type: none"> • person’s name or legal corporate name, registered business address, and electronic means of contract or phone number; • form of contact, which is fast, convenient, and effective between the consumer and seller; • terms and conditions, and the cost of the goods or services related to the business transactions, especially the terms and conditions, payment methods, and details related to removal or cancellation of purchase order, stoppage, delivery, and replacement of goods and refund; and • goods and services which are put on sale. <p>Such information shall be in Khmer language.</p>

Governing legislation/ framework	<p>The laws that would apply are as follows:</p> <ul style="list-style-type: none"> • Civil Code No. 55/NA dated 6 December 2018 • The Decree on Electronic Commerce No. 296/GOV dated 12 April 2021 • Law on Electronic Signature No. 59/NA dated 12 December 2018 • Law on Electronic Transaction No. 20/NA dated 7 December 2012 • Decision on Wholesale and Retail Business No. 1005/MOIC. ITD dated 22 May 2015 • Law on Consumer Protection No. 02/NA dated 30 June 2010 • Law on Electronic Data Protection No. 25/NA dated 12 May 2017 • Law on Payment System No. 32/NA dated 7 November 2017.
Regulatory authority	E-commerce generally comes under the purview of the Ministry of Industry and Commerce and Ministry of Post and Telecommunications. The Bank of Lao PDR regulates payment systems and currency use in transactions.
Licensing & market entry requirements	<p>There are three types of E-commerce business specified in the Decree on Electronic Commerce:</p> <ul style="list-style-type: none"> • trading through own electronic channel; • trading on the electronic market; • service provision for electronic market. <p>A business operation license for electronic commerce from the Ministry of Industry is required to engage in E-commerce business. As part of the supporting documents for this application, the following certificates must be secured:</p> <ul style="list-style-type: none"> • Enterprise Registration Certificate; • Certificate on technical standards of the E-commerce channel; and • Certificate to use electronic payment system services.
Foreign equity restrictions	<p>Under the Decree on Electronic Commerce, a foreign individual or legal entity can operate service provision for electronic market but can hold only up to 90% shares in the enterprise, which must have registered capital of at least LAK10 billion.</p> <p>The Decree on Electronic Commerce does not specify equity restrictions for a business trading through its own electronic channel or trading on the electronic market, for which the general foreign equity participation and capitalisation requirements under the Decision on Retail and Wholesale Business may apply, as follows:</p> <ul style="list-style-type: none"> • Foreign equity up to 50% : at least LAK4 billion to less than LAK10 billion • Foreign equity up to 70%: LAK10 billion to less than LAK20 billion • Foreign equity up to 100%: LAK20 billion and above.
Payment solutions, foreign exchange administration and merchant acquiring services	<ul style="list-style-type: none"> • Payment solutions: The Law on Payment System and its relevant regulations recognises the use of payment instruments other than cash such as card, fund transfer and electronic money, provided that the payment system or service provider has been licensed to operate its business by the Bank of Lao PDR. • Foreign exchange administration: The Law on Foreign Currency Management does not contemplate the use of LAK for settlement in other jurisdictions. Payments in LAK remitted outside will be subject to foreign exchange regulations by the Bank of Lao PDR. • Merchant acquiring services: Entities that provide acquiring services are regulated under the Decision on Payment Service Provision No. 288/BOL dated 17 March 2020.
Product liability	The Law on Consumer Protection provides for the rights and obligations of consumers and suppliers. A consumer has the right to claim compensation for damages from the seller for goods and services with poor quality and below standard that has a negative impact to life, health and property of the consumer. Further, the seller is obliged to deliver products that are in compliance with Law on Standards, other relevant laws or standards that are accepted from common practice.
Data protection	<ul style="list-style-type: none"> • User agreement terms and conditions: There is no specific requirement for user agreement terms and conditions under the Decree on Electronic Commerce or the Law on Personal Data Protection. The E-commerce site shall however ensure that it obtains consent of data subject when it collects/ processes data of its customers, according to the Law on Personal Data Protection. • Privacy policy: There is no specific privacy policy requirements. However, E-commerce sites are required to adopt appropriate measures and safeguards in the operations of its data activities, according to the Law on Personal Data Protection. • Data analytics: E-commerce platforms can use data to conduct data analytics for marketing and advertisement purposes, provided that consent of the data subject is obtained and the processing is completed in the manner that is in compliance with the Law on Personal Data Protection.

Consumer protection

Traders in electronic channels are required to provide the following information under the Decree on Electronic Commerce:

- business operator's information such as name, address, contact information, enterprise registration certificate, business operation license;
- specifications of the goods or services;
- price of the goods or services;
- modes and timeframe for delivery;
- payment forms and periods;
- customer satisfaction information, including comments;
- terms and conditions of the E-commerce transaction such as source of goods and services, refund policy, warranty.

The data shall be stored, printable, and retrievable in the customer's electronic information system that may later be accessed.

Under the Law on Consumer Protection, when dealing with goods and services with potential harm to purchasers, business operators must publicly provide the following information to purchasers:

- risks to life or health from consumption of relevant goods or services
- the details on the goods or services under re-examination process on their quality or standard; as well as informing purchasers of the result of re-examination process
- notifying purchasers of information on harmful effect from consumption of goods or services, acquired after the sale, within reasonable time, and the business should take appropriate measure to protect purchasers.



INDONESIA

Governing legislation/ framework	<p>E-commerce is mainly regulated under Law No. 7 of 2014 on Trade as further implemented by Government Regulation No. 80 of 2019 on Trade Through Electronic System, and Ministry of Trade Regulation No. 50 of 2020 on Provisions on Business Licensing, Advertising, Guidance, and Supervision of Businesses in Trade Through Electronic System ("E-commerce Law").</p> <p>Other applicable laws are on consumer protection, and information and electronic transaction.</p>
Regulatory authority	<p>E-commerce in Indonesia is under the purview of the Ministry of Trade.</p>
Licensing & market entry requirements	<ul style="list-style-type: none"> • Types of Entities: E-commerce business actors in Indonesia are divided into (i) merchants that conduct commercial transactions using electronic systems, (ii) E-commerce Providers that provide electronic services and/or communication facilities to facilitate E-commerce transactions, and (iii) Intermediary Service Providers ("ISPs") that provide electronic communication facilities other than telecommunication, functioning only as intermediaries of electronic communication between senders and recipients; ("E-commerce Business Actors"). E-commerce Business Actors encompasses domestic and foreign persons/entities. <p>Domestic E-commerce Business Actors can be set up by (i) individuals, (ii) business entities (e.g. civil partnerships, limited partnerships, sole traders, firms, etc) or (iii) legal entities (i.e. limited liability companies, cooperation (<i>koperasi</i>), foundations, associations (<i>perkumpulan berbadan hukum</i>) or an individual company (<i>perseroan perseorangan</i>).</p> <p>For foreign E-commerce Provider, they must appoint or establish a trade representative office if within one year period, has (i) concluded more than 1,000 transactions with consumers; and/or (ii) delivered more than 1,000 packages to consumers.</p> <ul style="list-style-type: none"> • Licenses: <ul style="list-style-type: none"> (i) E-Commerce Business License (<i>Surat Izin Usaha Perdagangan Melalui Sistem Elektronik</i> or "SIUPMSE") is the main business license issued by the Online Single Submission Agency ("OSS Agency") on behalf of Ministry of Trade. Certain type of ISPs may apply for exemptions from the obligation to have SIUPMSE. To obtain SIUPMSE, the relevant entity must first obtain NIB (<i>Nomor Induk Berusaha</i>/ Business Identification Number) issued by OSS Agency, immediately after incorporation of such entity. (ii) Business License for the Representatives of Foreign Trade Companies (<i>Surat Izin Usaha Perwakilan Perusahaan Perdagangan Asing</i> or SIUP3A) for trade representative office appointed or established by foreign E-commerce Provider. (iii) Registration of domestic E-Commerce Provider, which is required for any foreign merchant.
Foreign equity restrictions	<p>Foreign entities can set up E-commerce companies and be majority foreign owned – depending on the type of E-commerce Business Actor that may fall under different business classification, i.e. E-commerce retailer classification for merchants, or web portal and/or digital platform with commercial purposes classification for E-commerce providers, or hosting for ISPs.</p> <p>Foreign equity participation is largely driven by Positive Investment List regulated under Presidential Regulation No. 10 of 2021 on Investment Business Activity, which may restrict foreign equity ownership in each business classification.</p>
Payment solutions, foreign exchange administration and merchant acquiring services	<ul style="list-style-type: none"> • Payment solutions: According to E-commerce Law, the banking system or other electronic payment systems can be used for E-commerce payments, in addition to conventional payment methods. In practice, various payment solutions, both electronic and conventional, are available on Indonesian E-commerce platforms, such as e-wallets, credit/debit card, bank transfers, escrow account, and cash on delivery. However, the Government through Bank Indonesia issued a Bank Indonesia Regulation No. 20/6/PBI/2018 on Electronic Money, specifically prohibiting payments using virtual currency, a digital money that is issued by party other than Indonesian monetary authority (e.g. Bitcoin, Dogecoin, etc). • Foreign exchange administration: In principle local currency (Indonesian Rupiah/IDR) can be used for both offering and settlement. However, it is not a common practice for settlement using IDR for foreign E-commerce Provider (or platform) that do not have local presence (or domain) in Indonesia. While the use of Indonesian Rupiah is mandatory pursuant to Law No. 7 of 2011 on Currency, further regulated under Bank Indonesia Regulation No. 17/3/PBI/2015 of 2015 on The Obligation to Use Indonesian Rupiah within the Territory of Indonesia ("Currency Law"), there are certain exceptions where the mandatory use of IDR is exempted for international trade activity including foreign transactions. • Merchant acquiring services: Merchant acquiring services is regulated under Bank of Indonesia Regulation No. 18/40/PBI/2016 of 2016 on Operations of Payment Transaction Process.
Product liability	<p>Product liability is regulated under Law No.8 of 1999 on Consumer Protection ("Consumer Protection Law"), which applies in respect to all goods and/or services provided to consumers.</p>

<p>Data protection</p>	<p>The following information shall, at least, be stipulated in the user agreement for the use of E-commerce website:</p> <ul style="list-style-type: none"> • identity of electronic system operator (<i>penyelenggara sistem elektronik</i>); • object of transaction; • worthiness or safety of the electronic system used; • guideline to use the website; • terms of contract; • procedure to conclude an agreement; • privacy policy and/or personal data protection; and • contact centre phone number. <p>The privacy policy shall at least comply with the following protection standard that personal data:</p> <ul style="list-style-type: none"> • must be obtained truthfully and legally from the owner of the personal data concerned, accompanied by the existence of choices and guarantees for the safeguarding and prevention of loss; • must be owned for one or more purposes that are described in a specific and valid manner, as well as cannot be further processed in a way that is not in accordance with the said purposes; • must be proper, relevant, and not too broad in relation to the purpose of their processing as previously conveyed to data owners; • must be accurate and must always be up-to-date by way of giving opportunities to data owners to update their personal data; • must be processed in accordance with the purpose of its acquisition and allocation, as well as cannot be possessed longer than the required time; • must be processed in accordance with the rights of data owner; • cannot be sent to another country or area outside of Indonesia, except if the said country and area has been declared as having the same protection level and standard as Indonesia; and • parties who stores the personal data must possess a proper security system to prevent leaks or any unlawful utilisation or processing of such personal data, as well as be responsible for unexpected losses or damages to the same. <p>Use of data is generally consent based. Such use covering data acquisition and collection, process and analysis, storage, correction and update, display, announcement, transfer, dissemination or disclosure; and/or erasure or removal.</p> <p>Terms and conditions, agreement, policy, consent, or notice, must be provided in Bahasa Indonesia.</p>
<p>Consumer protection</p>	<p>In general, the information shall cover information on the terms of offering and/or acceptance, and the traded goods and/or services.</p> <p>Under the E-commerce Law, electronic offering shall at least include the following information:</p> <ul style="list-style-type: none"> • specifications of goods and/or services; • price of goods and/or services offered; • terms in the agreement; • payment mechanism and system, and payment term; • mechanism and system of delivery of goods and/or services; • unexpected risks and conditions; and • limitation of liability if the unexpected risk occurs. <p>In addition to the above information, the offer shall be made clearly within a period, and the terms and conditions for acceptance of such offer by electronic means must be clearly stipulated.</p> <p>Further with regard to information of goods and/or services, under Consumer Protection Law, business operators are mandated with a set of obligations, including among others, the obligation to provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as provide an explanation for the usage, repair and maintenance.</p>



MALAYSIA

Governing legislation/framework	There is no single/omnibus legislation on E-commerce activities in Malaysia. The laws that would apply include those on consumer protection, sale of goods and services, trade description and personal data protection.
Regulatory authority	E-commerce generally comes under the purview of the Ministry of Domestic Trade and Consumer Affairs (“ MDTCA ”).
Licensing & market entry requirements	The MDTCA regulates wholesale and retail trade, and services which are not regulated by other regulatory authorities in Malaysia (“ Unregulated Services ”). The MDTCA has published Guidelines on Foreign Participation in the Distributive Trade Services in Malaysia (“ Guidelines ”) which regulate foreign participation in the distributive trade sector in Malaysia. Companies with 50% or more foreign equity and intending to participate in the distributive trade sector or the Unregulated Services sector are required to obtain the approval of the MDTCA.
Foreign equity restrictions	Please note our response above.
Payment solutions, foreign exchange administration and merchant acquiring services	<ul style="list-style-type: none"> • Payment solutions: The payment solutions space is vibrant and dynamic with numerous e-wallet and e-money players offering a variety of services to consumers. In February 2021, the Government also announced under the MyDigital blueprint (see response below) that it will go cashless by 2022 where all ministries and government agencies will adopt cashless payment solutions as the preferred payment option for government services. • Foreign exchange administration: The Central Bank of Malaysia (“Central Bank”) has issued several foreign exchange notices (“FX Notices”), which permit certain transactions which would otherwise be prohibited under the Financial Services Act 2013 (“FSA”). This which comes under the purview of the Central Bank. The FX Notice permits a resident to make payment in ringgit to a non-resident in Malaysia. A non-resident however is not allowed to receive payment in ringgit outside of Malaysia. • Merchant acquiring services: The FSA defines “merchant acquiring services” as “<i>the business of an operator of a payment system (ie any system or arrangement for the transfer, clearing or settlement of funds or securities) that enters into a contract with a merchant for the purpose of accepting payment instruments for the payment of goods or services.</i>” Persons who carry on merchant acquiring services in Malaysia must be registered under the FSA.
Product liability	The Consumer Protection Act 1999 (“ CPA ”) provides for the protection of consumers in Malaysia. It applies in respect of all goods and services that are offered or supplied to one or more consumers in trade including any trade transaction conducted through electronic means. The CPA sets out mandatory statutory requirements including implied guarantees on the supply of goods and services, the consumer’s right of redress against suppliers and manufacturers, prohibition against unsafe goods, liability for defective product and prohibition against unfair contract terms with consumers.
Data protection	<p>The Personal Data Protection Act 2010 (“PDPA”) would apply to the processing of personal data (defined to cover personally identifiable information) by merchants or the E-commerce platform.</p> <p>A data user (a term referring to data controllers under the EU GDPR) must comply with 7 processing principles including the General Principle and Notice & Choice Principle.</p> <p>The processing principles are generally consent-based. Data can be used for analytics for marketing and advertising provided that the data user obtains consent (there are exceptions to consent which may apply depending on the circumstances) and clearly provides for this in the privacy notice.</p> <p>In addition, the Notice & Choice Principle requires a privacy notice to be provided to data subjects providing 8 mandatory matters on the processing, including processing purpose and third party disclosures. The privacy notice must be provided in both English and Bahasa Malaysia.</p>
Consumer protection	<p>The MDTCA enforces the Consumer Protection (Electronic Trade Transactions) Regulations 2012 (“Regulations”) – subsidiary legislation under the Consumer Protection Act 1999. The Regulations prescribe the mandatory information that must be displayed on the website by online sellers. The Regulations state that any person who operates a business for the purpose of supply of goods or services through a website or on an online marketplace must disclose the following information on the website or online marketplace. Failure to comply with this requirement is punishable as a criminal offence:</p> <ul style="list-style-type: none"> • name of the company or the business or person operating the business and registration number of the business or company; • the e-mail address and telephone number, or address of the person operating the business; • a description of the main characteristics of the goods or services; • the full price of the goods or services including transportation costs, taxes and any other costs (the Regulation does not state that the price must be in Ringgit Malaysia); • the method of payment; • the terms and conditions; and • the estimated time of delivery of the goods or services to the buyer. <p>An “online market place” is defined as a website where goods or services are marketed by third parties for the purpose of trade.</p>



MYANMAR

Governing legislation/framework	There is the E-commerce Operations Guidelines 2020 (" Draft E-commerce Guideline ") which is currently in draft form for E-commerce business activities in Myanmar. Other laws that apply include the Consumer Protection Law, Telecommunication Law, Electronic Transaction Law, Competition Law, Trademark Law, Myanmar Companies Law and Foreign Exchange Management Law which each have their respective scope that covers E-commerce activities.
Regulatory authority	E-commerce generally comes under the purview of the Department of Trade under Ministry of Commerce.
Licensing & market entry requirements	<p>We note that the Draft E-commerce Guideline has not been passed or gazetted into law, however we are providing information on the basic regulatory framework envisaged thereunder.</p> <p>The type of E-commerce activities that fall under the scope of the Draft E-commerce Guideline are as follows:</p> <ul style="list-style-type: none"> • Platform Operators: An entity which can manage a cyberspace or a virtual place is eligible to conduct independent E-commerce activities. • E-commerce Operators: Any E-commerce operator selling goods or providing services to consumers via an E-commerce platform run by Platform Operators. • Other Operators: Any other E-commerce operators selling or rendering their goods or services through their own websites. <p>The types of licenses required for setting up E-commerce business as follows:</p> <ul style="list-style-type: none"> • Company Registration Certificate as per the Myanmar Companies Law 2017 • Application Service license as per Telecommunication Law 2013 • E-commerce registration as per Draft E-commerce Guideline.
Foreign equity restrictions	There are no provisions in the Draft E-commerce Guideline regarding foreign equity restrictions.
Payment solutions, foreign exchange administration and merchant acquiring services	<p>The Draft E-commerce Guideline does not provide specific solutions for payment.</p> <p>Many Myanmar based E-commerce platforms utilise cash on delivery as a primary mode of payment pre-COVID. However, increasingly there has been reliance on e-wallets (mobile financial services) or a variety of mobile banking transfer mechanisms (with limited credit card usage in Myanmar).</p> <p>With regard to merchant acquiring services, the Central Bank of Myanmar ("CBM") issued Notification 7/2020 being the Merchant Acquiring Services Directive ("Notification 7") which regulate payment transactions processing services in Myanmar, requiring such a service provider to first obtain a license from CBM and within a regulatory framework of activities set out in Notification 7.</p>
Product liability	The Consumer Protection Law 2019 is the main law that consumers may rely on to seek remedies for damages for defective goods purchased from E-commerce platforms.
Data protection	<p>There are no specific user agreement terms and conditions in Draft E-commerce Guideline which are required to be adopted or applied by E-commerce websites. The Draft E-commerce Guideline only provides that the contractual terms and conditions shall be fair and transparent to consumers and mutual consent has to be obtained when entering into a contract and the contract shall be void if the terms and conditions are not fair to consumers. Therefore these would be based on the Myanmar Contracts Act 1872 and Myanmar Sales of Goods Act 1930.</p> <p>E-commerce operators shall keep confidential the personal data of consumers such as personal details, bank details, economic status and purchase record and such personal data of the consumer shall only be used for E-commerce transactions.</p> <p>Personal data is further protected in Myanmar based on recent amendments made to the Electronic Transactions Law 2004 in February 2021, creating a rudimentary or basic framework for personal data protection. A new Section 27A sets out duties and responsibilities of a "Person Responsible for the Management of Personal Information" (as defined therein) in the treatment, utilisation and disclosure of personal data. Unlawful disclosures or data breaches are punishable with imprisonment for a term of one to three years or fines between MMK 5 million to MMK 10 million, or both (<i>Sections 38A and 38B</i>).</p>
Consumer protection	<p>For E-commerce business, the E-commerce operators shall:</p> <ul style="list-style-type: none"> • provide clear and true information to the consumers and ensure that the information is easily accessible; • provide their business's registered name, address, email address or other electronic contact details or phone number in advertisements and websites; and • membership registration information.



PHILIPPINES

Governing legislation/framework	<p>The Philippine legal framework for E-commerce consists of various laws governing retail trade, consumer protection laws and regulations, i.e., data protection, intellectual property rights law, most of which were passed years before the growth of the E-commerce industry but are currently being applied to regulate it.</p>
Regulatory authority	<p>Depending on the industry and nature of the activities that an entity is engaged in, the following are the agencies that are generally responsible for the regulation of transactions made through E-commerce:</p> <ul style="list-style-type: none"> • Department of Trade and Industry (“DTI”) • Securities and Exchange Commission (“SEC”) • Bangko Sentral ng Pilipinas (“BSP”) • Intellectual Property Office of the Philippines (“IPOPHL”) • Department of Health (“DOH”) • Food and Drug Administration (“FDA”) • Department of Agriculture (“DA”) • National Privacy Commission (“NPC”) • Bureau of Internal Revenue (“BIR”)
Licensing & market entry requirements	<p>A sole proprietorship, partnership, corporation, and cooperative, may engage in E-commerce in the Philippines.</p> <p>Before a business entity can enter the Philippine market and engage in E-commerce activities, it has to secure incorporation or registration certification applicable to the specific type of entity. Further, it shall also secure a business permit from the respective local government unit, and register with the BIR and with various labour regulatory agencies.</p> <p>Depending on the industry, an entity may be required to secure special permits and licences to be able to legally operate or trade its goods and services, e.g., food and drugs must be cleared and certified by the FDA prior to their introduction to the market.</p>
Foreign equity restrictions	<p>Foreign equity restrictions vary depending on the industry or business activity in accordance with the Foreign Investments Act of 1991 (“FIA”). Pursuant to FIA, the Philippine government issues, on a periodical basis, a Foreign Investment Negative List (FINL) where industry restrictions in terms of maximum capital investment may be found.</p> <p>Generally, foreigners may own at most 40% of the equity in domestic market enterprises. However, if the enterprise injects a minimum paid-up capital of USD200,000, the 40% equity cap can be lifted to allow foreigners to fully own the domestic market enterprise.</p> <p>With regard to retail trading, foreigners can own corporations engaged in retail trading, whether through traditional means or E-commerce, if the following is satisfied:</p> <ul style="list-style-type: none"> • if the minimum paid-up capital is equal to or more than the peso equivalent of USD2.5 million, the retail corporation may be 100% owned by foreigners; and • enterprises selling high-end or luxury products with a paid-up capital of the peso equivalent of USD250,000 per store may also be wholly owned by foreigners.
Payment solutions, foreign exchange administration and merchant acquiring services	<ul style="list-style-type: none"> • Payment solutions: There are a wide range of payment solutions and options made available to facilitate E-commerce transactions. There are: <ul style="list-style-type: none"> ◦ e-wallets and e-money which are regulated digital wallets approved and registered with the BSP ◦ online banking which allows bank-to-bank transfers ◦ payment gateways which refer to the process of authenticating and processing payments in online transactions, e.g., Paymaya ◦ cash on delivery ◦ credit and debit cards <p>Note that cashless payment channels available in the Philippines should be registered with the BSP. A license to operate must first be secured before one can validly operate an entity offering payment gateways and/or processing of cashless payments.</p> • Foreign exchange administration: The exponential growth and use of the internet has made cross-national merchant or E-commerce transactions possible. As an indirect consequence, the various payment gateways and processing allow the quick conversion of currencies from one to another. Thus, it is now possible to use local currency in E-commerce platforms notwithstanding the absence of an entity’s physical or local presence in the Philippines. Note, however, that there might be “doing business” implications if an E-commerce platform does business and operates in the Philippines without being validly licensed, i.e., without establishing a presence in the country. • Merchant acquiring services: The BSP is the primary agency that regulates credit and/or debit card operations including merchant acquiring services or the process by which an entity accepts and facilitates processing of credit transactions/ payments for a merchant. The National Payment Systems Act, together with the various BSP issuances relevant to it, primarily governs these merchant acquiring processes. Briefly, before a payment system may operate in the Philippines, it must secure prior authority from the BSP, which assumes that the entity is already incorporated or registered with the SEC.

Product liability	<p>The Consumer Act of the Philippines and its implementing rules and regulations, as amended, govern the protection of consumers in the Philippines. It applies to all consumer products and services, whether sold or merely offered or advertised, except food, drugs, devices, cosmetics and hazardous substances and agricultural products, which are under the jurisdiction of the concerned agencies. The Consumer Act of the Philippines sets out the various rights accorded to consumers, such as protection against deceptive, unfair and unconscionable sales acts and practices, and minimum standards a product manufacturer, importer, or supplier or seller should comply with, such as observance of truth and accuracy in advertising.</p> <p>Product liabilities involving food and drugs/medicine are governed by the Food, Drug and Cosmetic Act of the Philippines, as amended, and its implementing rules and regulations. The law provides for the prohibited acts in the manufacture, sale, offer for sale or transfer of any food and drug, as well as the requirement for registration of each food and drug that would be introduced and circulated in the Philippine market.</p>
Data protection	<p>The Data Privacy Act of 2012 (DPA) would apply to the processing of personal data by merchants or the E-commerce platform if they are located or established in the Philippines, if the processing of personal data is done in the Philippines, or if the processing relates to the personal data of a citizen or resident of the Philippines.</p> <p>A personal information controller (“PIC”) and personal information processor (“PIP”) must comply with the principles of transparency, legitimate purpose and proportionality in the processing and collection of personal data. In relation to the principle of transparency, the PIC, in the form of a privacy policy or notice, should apprise the data subjects the description of the personal data to be processed, purposes for processing (including direct marketing and profiling), basis of processing, scope and method of processing, recipients to whom the personal data may be disclosed, existence of rights of data subjects, and contact details of the PIC’s Data Protection Officer.</p> <p>However, data processing under the DPA is generally consent-based, thus there is a need to seek the consent of the data subjects prior to the collection of their personal data, or as soon as practicable and reasonable. Being a mere notice, a privacy policy does not equate to consent per se. When the processing of personal data is based on consent, the PIC must obtain the consent in relation to the declared purposes for processing, which consent must be evidenced by written, electronic or recorded means.</p> <p>E-commerce platforms may use the personal data they collect to conduct data analytics for marketing and advertisement purposes, provided the data subjects consented to these particular purposes.</p>
Consumer protection	<p>There is no specific law on the protection of consumers transacting online or through E-commerce.</p> <p>In 2008, the DTI, DOH and DA issued Joint DTI-DOH-DA Administrative Order No. 01, or the <i>Rules and Regulations for Consumer Protection in a Transaction covered by the Consumer Act of the Philippines through Electronic Means under the E-Commerce Act</i>. The joint administrative order essentially requires retailers, sellers, distributors, suppliers or manufacturers engaged in E-commerce with consumers to adopt fair and reasonable business practices and reiterate their obligation to comply with existing consumer protection laws and regulations.</p> <p>Under the joint administrative order, business operators engaged in E-commerce shall provide its consumers and purchasers with at least three types of information: (i) about the retailers, sellers, distributors, suppliers or manufacturers engaged in E-commerce; (ii) about the products or services; and (iii) about the consumer transaction.</p> <p>The information about the retailers, sellers, distributors, suppliers or manufacturers engaged in E-commerce may include:</p> <ul style="list-style-type: none"> • their registration details with DTI or SEC; • name/s of their owners, directors or officers; • their principal geographical address; • their contact details; and • other relevant local or foreign government registration/license numbers, such as Tax Identification Number. <p>The information about the products or services shall contain the following:</p> <ul style="list-style-type: none"> • fair, accurate, clear and easily accessible information describing the products or services offered for sale; • fair, accurate, clear and easily accessible information sufficient to enable consumers to make informed decision whether or not to enter into the transaction; and • such other information that allows the consumers to maintain an adequate record of the information about the products and services offered for sale. <p>The information about the consumer transaction may include:</p> <ul style="list-style-type: none"> • sufficient, clear, accurate and easily accessible information about the terms, conditions and costs of the transaction; • price tag of the product or service and the applicable currency; as well as any applicable costs like delivery, shipping charges, taxes, among others; • payment mechanisms that are reliable, easy to use and offer security that is appropriate for the transaction and details of payment terms; • terms of delivery; and • details about any available warranties and guarantees, among others.



SINGAPORE

Governing legislation/framework	<p>There is no single/omnibus legislation on E-commerce activities in Singapore. Applicable laws that would apply include those in regards to consumer protection, sale of goods and services, trade description and personal data protection.</p> <p>In June 2020, Enterprise Singapore and the Singapore Standards Council set out the first national standard for E-commerce transactions, Technical Reference 76 (“TR 76”).</p>
Regulatory authority	<p>The Infocomm Media Development Authority regulates Singapore’s infocomm and media sectors.</p>
Licensing & market entry requirements	<p>Generally, there are no restrictions on the types of E-commerce entities that could be set up in Singapore.</p> <p>Internet Content Providers (“ICPs”) in Singapore are regulated by an automatic class licence pursuant to the Broadcasting (Class Licence) Notification. ICPs must comply with the Internet Code of Practice.</p> <p>An E-commerce entity may be subject to additional licensing if it engages in certain activities (i.e., e-retailing of second hand goods).</p>
Foreign equity restrictions	<p>A foreign entity is not prohibited from setting up a company in Singapore. However, certain restrictions apply to foreign direct investment in particular sectors (i.e., media and broadcasting).</p>
Payment solutions, foreign exchange administration and merchant acquiring services	<ul style="list-style-type: none"> • Payment solutions: Singapore’s mature E-commerce payment infrastructure has led to the availability of multiple forms (i.e., credit card, digital wallet, bank transfer) of payment solutions on E-commerce platforms. • Foreign exchange administration: Since 1978, all exchange controls in Singapore have been abolished. Accordingly, local currency may be used for E-commerce platforms based outside Singapore. • Merchant acquiring services: Providers of “merchant acquisition service” must be regulated under the Payment Services Act 2019 (“PSA”). The PSA defines “merchant acquisition service” to mean any service of accepting and processing a payment transaction for a merchant under a contract between the provider of the service and the merchant, which results in a transfer of money to the merchant pursuant to the payment transaction, regardless whether the provider of the service comes into possession of any money in respect of the payment transaction, in a case where – (a) the merchant carries on business in Singapore, or is incorporated, formed or registered in Singapore; or (b) the contract between the provider of the service and the merchant is entered into in Singapore.
Product liability	<p>There is no single system of product liability law in Singapore.</p> <p>Generally, the Sale of Goods Act (Cap. 393), Supply of Goods Act (Cap. 394), and Unfair Contract Terms Act (Cap. 396) work together by implying basic standard terms into contracts for the sale of goods – i.e., that goods are of satisfactory quality.</p> <p>Consumers may also rely on the Consumer Protection (Fair Trading) Act (Cap. 52A), which protects consumers against unfair practices and gives consumers additional rights in respect of goods that do not conform to contract. Consumers will have a right of action against sellers that perform unfair practices (i.e., acts that deceive or mislead consumers).</p> <p>Sector specific product liability laws include:</p> <ul style="list-style-type: none"> • Food & Beverage: The Sale of Food Act (Cap. 283) sets out minimum standards to ensure that food for sale is safe and suitable for human consumption. • Medicines: The Health Products Act (Cap. 122D) regulates the manufacture, import, supply, presentation and advertisement of health products in Singapore. It comprises of standards for the formulation, composition, design specification, quality, safety, efficacy and presentation of health products.
Data protection	<p>The Personal Data Protection Act 2012 (“PDPA”) regulates the collection, use and disclosure of personal data by organisations (including any individual, company, or body of persons, i.e., E-commerce websites).</p> <p>E-commerce platforms are required to incorporate terms of the PDPA in their policies (i.e., user agreement / privacy policy). This includes, <i>inter alia</i>, that the organisation must:</p> <ul style="list-style-type: none"> • obtain the prior consent of the individual before the collection, use of, and disclosure of the personal data; • use the personal data only for limited purposes of which the individual has been notified; • provide the individual access to and correct errors in his personal data; • protect personal data in its possession; • cease to retain personal data when no longer necessary; and • not transfer personal data outside of Singapore (except in accordance with the PDPA). <p>In addition, individuals may opt out of marketing messages addressed to their Singapore telephone number via the Do Not Call Registry.</p>

Consumer protection

Pursuant to TR 76, e-marketplaces & e-retailers should ensure that relevant information relating to its organisation, its products and/or services, and the transaction is presented accurately.

Such information, *inter alia*, includes:

- legal name, registration number and place of registration;
- points of contact for any enquiry;
- safety and health-related concerns;
- guarantees and warranties, including the validity period of warranty;
- payment policies and delivery options; and
- after-sales services, refund policy, withdrawal and cancellation policy and returns and exchange policy.

Suppliers of controlled goods (as defined in the Consumer Protection (Safety Requirements) Regulations) registered with Enterprise Singapore must ensure that their goods are affixed with the SAFETY Mark before they are sold in Singapore.



THAILAND

Governing legislation/framework	<p>The laws that would apply are as follows:</p> <ul style="list-style-type: none"> • The Commercial Registration Act B.E. 2499 (1956) • The Notification of the Ministry of Commerce Re: Requiring Business Operators to Register Businesses (No.11) B.E. 2553 (2010) dated 10 November 2010 • Direct Sale and Direct Marketing Act B.E. 2545 (2002), as amended, (“DSA”).
Regulatory authority	<p>E-commerce generally comes under the purview of the Department of Business Development (“DBD”, the Ministry of Commerce) and the Office of the Consumer Protection Board (“OCPB”).</p>
Licensing & market entry requirements	<ul style="list-style-type: none"> • E-Commerce Registration: Pursuant to the Business Registration Act B.E. 2499 (1956) and the Notification of the Ministry of Commerce Re: Requiring Business Operators to Register Businesses (No. 11) B.E. 2553 (2010) dated 10 November 2010, a business operator of certain businesses is required to register its business as an E-commerce to the DBD, the Ministry of Commerce, including: <ul style="list-style-type: none"> ◦ selling goods or services by an electronic means via the internet; ◦ providing internet services (ISP); ◦ letting on hire space on computer servers (Web Hosting) ;and ◦ operating as an electronic marketplace portal for sale of goods and services via the internet (e-marketplace). <p>E-commerce registration is required to operate E-commerce business in Thailand.</p> • Direct Market License: The DSA defines direct marketing as all types of marketing and sales of goods or services by communicating directly to customers at a distance to have customers purchase goods or services. An entity conducting such a business must register with the OCPB. Applicants are required to provide a guarantee to the registrar (the OCPB) in the amount prescribed by the Ministerial Regulation and must not have had their direct marketing registration revoked within a period of five years prior to the application submission date. <p>There are certain exemptions for the registration requirement including a small or medium enterprise being registered under the Small and Medium Enterprises Promotion Act B.E. 2543 (2000).</p>
Foreign equity restrictions	<ul style="list-style-type: none"> • According to Foreign Business Act B.E. 2542 (1999), as amended (“FBA”), a foreigner means: <ul style="list-style-type: none"> ◦ a natural person who is not a Thai national; ◦ a juristic person not registered in Thailand; ◦ a juristic person registered in Thailand, with at least 50% of its share capital (or at least 50% of the capital invested in it) held by the person(s) set out above; ◦ a limited partnership or a registered ordinary partnership, the managing partner or manager of which is not a Thai national; or ◦ a juristic person registered in Thailand, with at least 50% of its share capital (or at least 50% of the capital invested in it) held by any one or more of the natural persons and/or entities set out above. • The FBA limits foreigners in certain businesses whereby foreigners who operate in the restricted business activity under the FBA is required to obtain the Foreign Business License (“FBL”) or the Foreign Business Certificate (“FBC”), as the case may be, before commencement of business operation. • For the E-commerce business as a provision of a platform where the merchants and users sell and purchase products and services, it is likely be considered as “service business” under List 3 (21) of the FBA which the foreigner may be required to obtain FBL from the DBD. According to List 3 (21) of the FBA, service business under the FBA has been interpreted by the official as an “all catching” provision for any business activity which is not the manufacture of goods or another activity listed in the FBA. However, the matching platform/e-marketplace may be eligible to obtain some privileges from the Board of Investment so the E-commerce business may apply for the promotion and later obtain FBC from the DBD for the e-marketplace business. • If the foreign business operator conducts wholesale or retail business having or offering the products for sale according to List 3 (14) or (15), the foreigner is also required to obtain FBL or FBC from the DBD prior to conducting business in Thailand. Exemptions for the FBL or FBC may apply if the minimum registered capital of the foreign business operator reaches THB 100 million for retail or wholesale activities (non-aggregate).
Payment solutions, foreign exchange administration and merchant acquiring services	<ul style="list-style-type: none"> • Payment solutions: Payment solutions are widely allowed in Thailand. Business operators can apply any type of payment solutions in their businesses i.e. bank transfer, digital wallet, e-wallets, cash on demand, and cards. The Thai Government has also launched “PromptPay” scheme which allows registered users to transfer money between consumers and businesses using their mobile phone number or citizen ID. • Foreign exchange administration: The Bank of Thailand (“BOT”) is the main regulator controlling any outward remittance of Thai baht money. Thai baht money is allowed to be remitted to a non-resident outside of Thailand. However, certain transactions are restricted by its characteristics or the amount of transactions and an approval or lodgement of report is required to the BOT prior to the remittance the THB money. • Merchant acquiring services: The Payment System Act B.E. 2560 (2017) (“PSA”) and its sub-regulation defines an “acquiring services” as “a service of receiving payment via electronic card by sending or receiving an electronic card payment transaction to a payment card network which will subsequently switch and forward it to the electronic card issuer”. The acquiring business provider will make the payment of goods or services to a merchant, a service provider, or another payment facilitator, who has a mutual service agreement regarding electronic card payment as agreed upon conditions”. As such, approval of BOT is required for any person who engages in an acquiring service in Thailand prior to commencing their business.

Product liability	<p>The Consumer Protection Act B.E. 2522 (1979) (“CPA”) is the main legislation regulating all goods and services including electronics, food and medicine provided in Thailand. Generally, sale, advertisement, and label of electronics, food and medicine must be complied with the requirements and prohibition provided under the CPA. Furthermore, each of products as stated above is also regulated by its specific laws including:</p> <ul style="list-style-type: none"> • Industrial Product Standards Act, B.E. 2511 (1968), as amended, is the legislation regulating any industrial product including electronics products provided that the manufacturing or importation of industrial product must meet the standards provided under this act prior to sell in Thailand. • Drug Act B.E. 2510 (1967), as amended, also provides any requirements and restrictions on the sale, labels, or advertisement of drugs in Thailand. • Food Act B.E. 2522 (1979), as amended provides the requirements and restriction on the place that used for cooking for sale. However, this Act is still silent on the sale of food via electronic means. <p>Furthermore, in case the electronics, food or medicine cause damage to customers, the business operator who manufacture, import, or sell such product will also be subject to the Product Liability Act B.E. 2551 (2008) and /or the CPA.</p>
Data protection	<ul style="list-style-type: none"> • The Personal Data Protection Act B.E. 2562 (2019) (“PDPA”) would apply to the processing (collection, use, disclosure) of personal data collected by merchants or the E-commerce platform. The merchant, who has the power to make decisions regarding collection, use or disclosure of Personal Data is regarded as the “Data Controller”. • The PDPA seeks to ensure that the collection, usage and disclosure of the Personal data via E-commerce website has a legal basis. For E-commerce business, the processing of personal data is done on three legal basis which are: <ul style="list-style-type: none"> o contractual basis, o legitimate interest basis; and o consent basis. • In case the personal data is processed for marketing or advertising purposes, the consent from the data subject is required. • Please note that certain personal data such as racial, ethnic origin, political opinions, cult, religious or philosophical beliefs, sexual behaviour, criminal records, health data, disability, trade union information, genetic data, biometric data, or of any data which may affect the data subject in the same manner is regarded as sensitive personal data. The data subject must provide consent for processing the sensitive personal data which must be explicit and distinguishable from a consent request for processing other personal data. • Only necessary personal data shall be collected, and the data subject must be informed of the following: <ul style="list-style-type: none"> o how personal data is to be collected; o the legal basis and purpose for which the personal data is collected, used or disclosed; o the persons or entities whom the personal data may be disclosed or transferred to; o the retention period of personal data; o the contact details of the merchant or merchant’s representative or Data Protection Officer; and o the rights of the data subject, which include the right to withdraw consent, right of access, right to data portability, right to object, right to erasure, right to restriction of processing, right to rectification, and right to complain.
Consumer protection	<ul style="list-style-type: none"> • There are three main legislations which generally govern E-commerce related and consumer protection issues which are: <ul style="list-style-type: none"> o The CPA; o DSA; and o Prices of Goods and Services Act B.E. 2542 (1999) as amended. • The Central Committee on Prices of Goods and Services under the Ministry of Commerce also issued Notification No. 70 B.E. 2563 RE: Displaying of Price and Details of Goods and Services Sold via E-Commerce System or Online, as the secondary legislation issued under the Prices of Goods and Services Act B.E. 2542 (1999), requiring business operators selling products or services via E-commerce or online to display price, service fee, type, kind, characteristics, size, weight and details of the products or services sold in a clear, complete, expressive and easy to read manner. The price and the service fee can be shown per unit in any language, but Arabic numerals (e.g., 0, 1, 2) are required and the description or any other details to be shown along with the price or the service fee must be in Thai. • The CPA provides that the purchaser (the consumer) has the right to receive correct and sufficient information and description as to the quality of goods or services and the advertisement of the goods or services may not contain a statement which is unfair to consumers, that is, notwithstanding such statement concerns with the origin, condition, quality or description of goods or services as well as the delivery, procurement or use of goods or services. • An advertisement under the CPA covers everything that is made for trading purposes and the online product listings are considered as a form of advertisement. According to the CPA, an advertisement conducted in Thailand, regardless of nationality of consumers receiving an advertisement, shall not contain any statement which is unfair to consumers or any statement which may produce adverse effects on society at large, be it a statement as to origins, conditions, qualities or characteristics of goods or services as well as the delivery, procurement or use of goods or services. <p>The CPA specifies that the statements which are unfair to consumers or any statement which may produce adverse effects on society at large are as follows:-</p> <ul style="list-style-type: none"> o a false or exaggerated statement; o a statement causing fundamental misunderstanding as to the goods or services, whether it is made through the use or reference to technical reports, statistics or anything which is false or exaggerated or not; o a statement directly or indirectly supporting violation of law or morals or conducive to cultural depreciation of the nation; o a statement causing disunity or prejudicial to unity of the people; and o other statements as prescribed in the Ministerial Regulation. <ul style="list-style-type: none"> • Failure to comply with these requirements is punishable as a criminal offence. • Other product or service specific laws may also be applicable depending on the products or services sold.



VIETNAM

Governing legislation/framework	<p>The use of E-commerce in Vietnam is regulated by multiple laws and regulations including but not limited to:</p> <ul style="list-style-type: none">• Law No.51/2005/QH11 on E-transaction• Law No.36/2005/QH11 on Commercial• Law No.61/2020/QH14 on Investment (“Law on Investment”)• Decree 52/2013/ND-CP on E-commerce (“Decree 52”)• Decree 09/2018/ND-CP (“Decree 09”)
Regulatory authority	<p>The Ministry of Industry and Trade of Vietnam is the main governmental body that is responsible for E-commerce matters.</p>
Licensing & market entry requirements	<p>Under the Law on Investment, foreign investors need to obtain investment registration certification from provincial Department of Planning and Investment.</p> <p>Under Decree 09, a foreign-invested business entity shall be required to obtain a business license from the provincial Department of Industry and Trade to provide E-commerce services.</p>
Foreign equity restrictions	<p>Generally, there are no restrictions for foreign entities to set up companies in Vietnam to provide E-commerce services. However, several conditions must be satisfied by the foreign entity such as obtaining the necessary licenses/approval prior to conducting E-commerce services in Vietnam.</p>
Payment solutions, foreign exchange administration and merchant acquiring services	<ul style="list-style-type: none">• Payment solutions: There is a wide range of options for payment on an E-commerce platform, which includes cash, cashless payment, credit card, e-wallets.• Merchant acquiring services: Merchant acquiring services is mainly regulated by Circular No.39/2014/TT-NHNN issued by the State Bank of Vietnam on 11 December 2014 providing guidelines for the intermediary payment services.
Product liability	<p>The Law No.59/2010/QH12 on protection of consumer’s rights is the main law that provides protection for consumers in general. This Law regulates the rights and obligations of consumers, the liability of organisations or individuals trading goods and/or services to consumers, the liability of social organisations in protecting the interests of consumers; resolving disputes between consumers and organisations or individuals trading goods and/or services, the liability of the State on the protection of consumers’ interests.</p>
Data protection	<ul style="list-style-type: none">• Pursuant to Decree 52, trading conditions that shall be published on E-commerce website include:<ul style="list-style-type: none">◦ conditions or restrictions on the provision of goods or services, such as limits on time or geographic scope (if any);◦ return policies, including return term and method, or exchange of goods purchased, method of getting refunds and cost of this return;◦ product warranty policy (if any);◦ service standards, service provision process, charge tariff and other terms related to the provision of services, including conditions and restrictions (if any); and◦ the seller’s obligations and customer’s obligations in transactions.• Privacy policy: When conducting E-commerce business activities, traders, organisations or individuals that collect personal information of consumers must comply with relevant regulations on protection of personal information. Further, traders and organisations that collect and use personal information of consumers on their E-commerce websites must obtain prior consent of consumers having such information (except in several cases in which prior consent is not required by law).• Information collected on E-commerce websites can be used for purposes and within scopes already notified. Thus E-commerce platforms can use data to conduct data analytics for marketing and advertisement if such purposes have been notified to consumers.
Consumer protection	<p>E-commerce websites must fully display the following information to protect purchasers:</p> <ul style="list-style-type: none">• website ownership: number, date and place of issuance of the business registration certificate of the trader or the number, date of issuance and issuer of the organisation’s establishment decision or individual’s personal tax identification number, telephone number or another online contact method;• goods or services: information of goods and services need to be provided so that customers can correctly identify features of goods or services in order to avoid misunderstanding when deciding to make a proposal for conclusion of contract;• price;• general trading conditions;• shipment and delivery: method of delivery of goods or provision of services, estimated time limit for the delivery of goods or provision of services, geographical limits of the delivery of goods or provision of services (if any); and• payment methods: Traders, organisations or individuals shall disclose all payment methods applicable to goods or services introduced on the website, together with clear and accurate explanations so that customers can understand and choose the appropriate payment method.

KEY DEVELOPMENTS IN THE PAST YEAR



CAMBODIA

In October 2020, the National Bank of Cambodia officially launched the Bakong System, a backbone payment system using blockchain technology to facilitate the processes of fund transfer and payments. Consumers, via Bakong System, can make peer-to-peer transactions through the electronic system quickly, conveniently, and effectively. Moreover, the Bakong System connects financial institutions and payment service providers under a single payment platform which will allow for fund transfers to be processed on real-time basis without the need of a centralised clearing house.

The Bakong System aims to promote cashless transactions, financial inclusion, and the usage of local currency in Cambodia, in order to transform the country into a digital economy.



MALAYSIA

In February 2021, the Government issued the National Digital Economy Blueprint ("MyDigital Blueprint") which is aimed at accelerating the country's transformation into a technologically-advanced economy by 2030. The initiatives in MyDigital include enhancing digital literacy, strengthening the country's digital infrastructure and attracting hyper-scale data centres.

The MyDigital Blueprint is expected to incentivise and accelerate micro, small and medium enterprises to switch to e-commerce.



PHILIPPINES

In the latter part of 2020, the Philippine Congress sought to pass the Internet Transactions Act, which would establish the E-commerce Bureau tasked with coordinating the formulation of policies to increase the number of online merchants and consumers, and acting as a virtual one-stop shop for consumer complaints on internet transactions. The Bill, if passed, would be the first Philippine law to deal chiefly with the sale or exchange of digital products, such as internet retail of consumer goods, ride hailing services for personal transport, delivery of food and merchandise, and financial services offered through digital online platforms. The Bill would also be the first piece of legislation to legally define an "online E-commerce platform".

The Philippine Senate has recently passed a Bill that will amend the Retail Trade Law. The Bill seeks to relax the minimum paid-up capital for foreign retail enterprises that wish to establish 100% foreign-owned retail trading business in the Philippines. From USD2.5 million, the minimum paid-up capital will be lowered to PHP50 million (approximately USD1 million) if the Bill is passed into law.



SINGAPORE

A study by JP Morgan on the 2020 E-commerce payments trends has revealed a steady double-digit growth rate in Singapore's business-to-consumer E-commerce market since 2017.

With almost half (47%) of all E-commerce transactions being completed on a mobile device in Singapore, mobile commerce has been growing stronger than the overall E-commerce market. The mobile commerce market is projected to expand at a compound annual growth rate of 13.6 percent to 2023, to become a SGD6.52 billion (USD4.8 billion) market.



LAOS

The Decree on Electronic Commerce No.296/GOV dated 12 April 2021 was published in the Lao Official Gazette on 20 May 2021 and came into effect on 6 June 2021.



INDONESIA

There are significant developments on E-commerce from the past year, especially in response to the pandemic and recently enacted omnibus law, such as:

- **Licensing and E-advertisement Regulation in E-commerce Industry**

A recently enacted Ministry of Trade Regulation No. 50 of 2020 sets more clear and detailed provisions for E-commerce business and licensing, including e-advertisement.

All types of E-commerce Business Actors must have SIUPMSE, except for certain ISPs, to conduct any trading and its supporting activities via online, including social media or messaging application. The implementation of this licensing generalisation, however, is arduous especially to social media/messaging application user, and micro and small enterprises conducted by individuals.

- **Supervision of Drugs and Food Trade on E-commerce**

On 7 April 2020, *Badan Pengawas Obat dan Makanan* (BPOM/ Indonesian Food and Drug Authority) enacted a detailed and stringent regulation to supervise the distribution of food and drug online under BPOM Regulation No. 8 of 2020.

Its key provisions stipulate, among others, prohibition to sell drug and processed food for certain medical purpose via social media, daily deals or classified ads, limitation of type of drugs distributed online, requirement to have distribution permits for processed food distributed online, and technical requirement of electronic system used for distribution of drug and processed food for certain medical purpose.

- **Use of Intangible Taxable Goods and/or Taxable Services is subject to Value Added Tax**

As of 1 July 2020, any use of intangible taxable goods and/or taxable services coming from outside Indonesia to be used within Indonesian territory, shall be subjected to value added tax, according to Ministry of Finance Regulation No. 48/PMK.03/2020.

Such use includes the use of or right to use digital goods and services, intellectual property rights, e.g. copyrights, trademark, industrial design right, tool/equipment and information/know-how for industrial, commercial or science, additional or complement use of the above, i.e. receipt of the above use or rights via satellite, optical cable/fiber, and use or right to use radio communication spectrum.



THAILAND

There is no material development in the main legislations in E-commerce sector in Thailand. However, due to the COVID-19 pandemic that causes people mostly to do their activities from their home, the growth of E-commerce in Thailand is significant. In this respect, the regulators are urging the merchants and E-commerce platforms to comply with the laws especially in the personal data protection and the advertisement aspects to protect the consumers at large.

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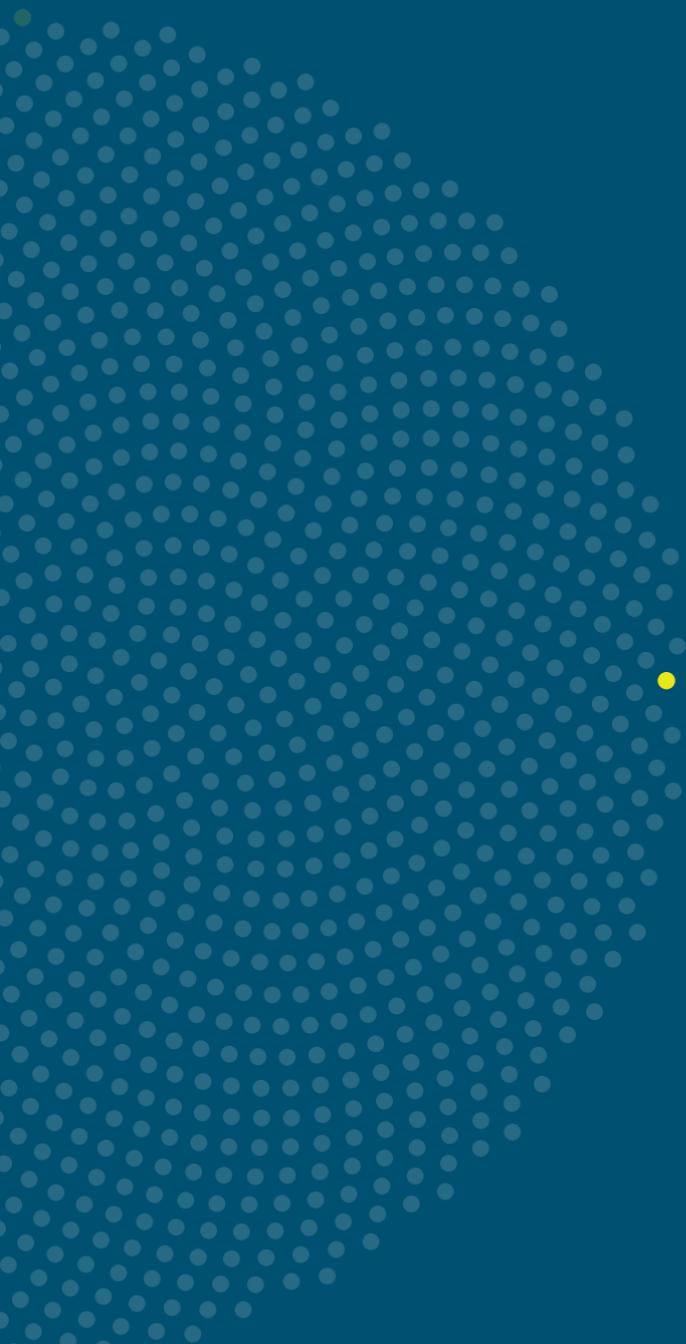
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