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Fair trade practices regarding credit terms for Small and Medium-sized Enterprises (SMEs) who sell products or services

In June 2021, the Trade Competition Commission of Thailand ('TCCT') (formerly known as the Office of Trade Competition Commission ('OTCC')), by virtue of the Trade Competition Act B.E. 2560 (2017) ('Act'), issued the Announcement of the Trade Competition Commission Re: Guidelines on fair trade practices regarding credit terms for Small and Medium-sized Enterprises ('SMEs') who sell products or services ('Announcement'). The Announcement was officially effective on December 16, 2021.

From this Announcement, business operators will see changes that aim to reduce the inequalities in bargaining power and refine standards for the appropriate duration of credit terms for the SME vendors. Therefore, in this issue, we would like to summarize the key points the Announcement as below.

What qualifies as an SME?

The Announcement defines SMEs as any business operating a certain type of business under specific conditions as follows:

- I. manufacture of products, with no more than 200 employees, or an annual revenue of no more than Baht 500 million per year; or
- II. provision of services, wholesale trade, or retail trade, with no more than 100 employees, or an annual revenue of no more than Baht 300 million per year.

How can SME vendors prove their status?

To preserve their rights under this Announcement, SME vendors must prove their status by presenting either of the following evidence to buyers:

- I. any documents showing the current number of employees, such as a form detailing social security fund contributions and a receipt of payment; or
- II. any documents showing the annual revenue in the latest year, such as financial statements submitted to the Department of Business Development.

It is important to note that the number of employees refers only to those employed under an employment contract, and not a hire of work contract or labor outsourcing contract. If the SMEs rely on annual revenue, all kinds of revenues of the SME vendors, not only the direct revenues from main business operations, must be taken into account. This includes interest from deposits and revenue from sale of residues.

What are the maximum credit terms?

Once the SME vendor has presented evidence to prove its status, the duration of credit terms which the buyer will provide to or agree with the SME vendor in writing must not exceed either 30 or 45 days as follows:

I. 45 days for general products/services

Applicable to trading, manufacturing, and services not related to agriculture. For example, hardware stores or logistic service providers.

II. 30 days for agricultural products/services

Applicable to manufacturing, trading, and services related to agricultural goods/products. For example, livestock farms, feed mills, and simple processed agricultural products such as dried fruit or meat.

Nevertheless, the Announcement also allows a vendor and a buyer to set credit terms longer than the above limit as long as there is a justifiable business, marketing, or economic reason for doing so. This must only be on a case-by-case basis, and several factors must be given serious consideration before implementing a longer credit term.

When does the credit term start?

The credit term will begin from the following dates:

I. In case of normal sale or service transactions

The date of complete delivery of both (a) the products or services in conformity with the agreed terms and conditions, and (b) the accurate relating documents.

II. In case of consignment

The date of sale of products in full amount, or at the rate as agreed upon in normal trade practice.

What are the consequences on non-compliance?

Non-compliance with the Announcement of the buyer may cause an administrative penalty of up to **10 percent of annual revenue** generated by the buyer in the year of the violation, and the director(s), manager(s), or person(s) responsible for the operations of such juristic buyer may also subject to certain penalties as set forth in the Act.

Please note that as long as the vendor can prove its SMEs status, as the buyer, every business operator must comply with this Announcement regardless of whether the buyer also has SMEs status. All business operators must take this Announcement into consideration and adopt the appropriate credit terms into their practice when dealing with SME vendors.

How can KPMG Legal in Thailand assist you?

- We can provide legal advice on the TCCT maximum credit terms, including the legal requirements for both vendors and buyers.
- We can advocate SME vendors to notify and provide evidence for SMEs qualification to their customers to reduce credit terms to 30 or 45 days.
- We can help the buyers draft and/or review an agreement, notification letter, procedure, etc. to notify/manage credit terms of SME vendors.

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