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THAILAND

Newsletter

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Thailand: The Office of Trade Competition Commission clarifies SME Credit Term Regulation

Background

A new law that limits the maximum length of credit terms that can be requested from small and medium sized enterprises ("SMEs") was issued in a Notification on 18 June 2021 (the "Regulation") by the Office of Trade Competition Commission (the "OTCC"). This Notification became effective from 19 June 2021 (an overview of the Regulation can be found at this [LINK](#)). This Newsletter will provide an update on the practical implementation of the Regulation since it became effective. The 180-day grace period for compliance ends on 16 December 2021. The OTCC has confirmed certain principles and dispelled many myths about the Regulation.

OTCC clarifications

a. Clarification of the definition of an SME

Under the Regulation, both the annual sales figures and the number of employees are indicators as to whether an entity is an SME. The Regulation itself uses the term "or", meaning that if an entity has a small number of employees or has low sales figures, such entity will be deemed as an SME. A common question based on the wording in the Regulation has been: what if an entity is high-tech and non-labor-intensive, for example would an entity that has a low number of highly skilled employees, but huge sales figures be an SME? Common understanding dictates that an entity with high sales figures would not be considered an SME. However, the OTCC has confirmed that the Regulation will treat such an entity as an SME. An entity with a large labor force but a low sales figure will also be treated as an SME as well.

b. Proof of status of an SME

The OTCC has confirmed that they will be lenient towards SMEs when proving SME status. Official documents regarding annual sales and corporate hiring will continue to be accepted as a proper proof of status, and the OTCC has extended the form of acceptable evidence to

include self-declaration by the SME. This means a simple, unverified letter of declaration will be sufficient to mandate buyers to provide the credit term privilege under the Regulation to the sellers that qualify as SMEs. In practice, the buyer retains the right to file a claim if the declaration later turns out to be false.

c. Methodology on credit term commencement

The OTCC has confirmed that the commencement of credit terms under the Regulation of 30 or 45 days, as applicable to each entity, will be triggered upon the correct and complete delivery of products or services and submission of all necessary transactional documents (such as invoices, packing list, etc., as agreed between the parties) to the buyer. The OTCC has unofficially confirmed that other methodologies that trigger the start of a credit term will not be accepted, and any deviation from the method discussed above will only be permitted in rare instances approved by the OTCC on a case-by-case basis. This, in effect, means that historical protocols such as monthly invoice submission deadlines, monthly payment dates, etc., which may prejudice SMEs and result in violation with strict payment periods under the Regulation will no longer be acceptable.

d. Timely compliance with the Regulation

The Regulation provides a grace period of 180 days from the effective date on 19 June 2021 for operators to comply with credit term limitations. The grace period will end on 16 December 2021. The OTCC has urged all operators to be compliant by such date. The tone of the OTCC has become increasingly stern as their belief is that the 180-day grace period is more than sufficient for companies to ensure compliance with the requirements under the Regulation.

Conclusion

Operators that have ongoing or planned service, supply, or other relationships with third parties should be aware that if such transactions are with SMEs, as defined and as further clarified by the OTCC, credit term limitations must be implemented by 16 December 2021 if those respective agreements between such parties are not compliant with the Regulation. The OTCC has indicated that operators must be compliant once the grace period lapses. The current tone of the OTCC also indicates that any excuse or explanation for delays in compliance may not be acceptable.

If you have any questions in relation to the issues raised in this briefing, please contact the authors in the left-hand column.

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