



Dear Readers,

Welcome to a new edition of our newsletter.

1. E-Commerce Guidelines

On 5 September 2023, the Ministry of Commerce under the SAC published fairly lengthy “E-Commerce Guidelines”. Please contact us if you wish to receive an English translation (for a fee).

The guidelines are a separate document from the Online Sales Business Registration Order which the Ministry of Commerce issued on 21 July 2023, although the topics partly overlap. The forms and fees for registering e-commerce businesses are still not out yet.

The guidelines are partly general in nature, simply quoting the law or laying out good business practices. In other parts, they are detailed and tell market participants very specifically what to do.

Despite being called “guidelines,” the Ministry of Commerce considers them to be binding. Para. 97 states: “An e-commerce business operator failing to comply with the relevant legal provisions contained in the sections of these guidelines shall be taken action against in accordance with the laws in force.”

Please find below a summary of the guidelines.

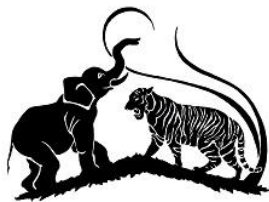
(a) Definitions

Among others, the guidelines define:

“**E-commerce**” as the sale of goods or services over the internet or other information networks, including sales promotion, marketing, logistics, ordering, and delivery;

“**e-commerce business operator**” as a person operating or being authorised to operate by way of e-commerce, including e-commerce platform entrepreneurs, entrepreneurs selling on an e-commerce platform, and sellers through social media platforms such as WeChat, Paypal, Alipay, Instagram and Twitter; and

“**e-commerce platform entrepreneur**” as a person responsible for enabling sales through e-commerce by two or more entrepreneurs on an e-commerce platform.



(b) Compliance

The guidelines reiterate that e-commerce business operators have to register with the Ministry of Commerce (although forms and fees are not out yet).

Furthermore, they specify in three appendices which (i) laws, (ii) license, registration and certification requirements, and (iii) product-specific laws e-commerce business operators have to observe.

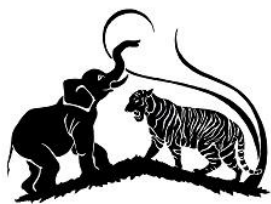
Additionally, the guidelines oblige e-commerce business operators to publish identifying and other information constantly in real time in a conspicuous place by placing a link or QR code on the website or social media site. This information comprises the registered name, registration information, contact details, contact person for enquiries, business registration or relevant license information (if applicable), dispute resolution methods, and information about the business organisation (if applicable).

(c) Electronic contracts

The guidelines explain in detail the elements that in the opinion of the guidelines' authors are needed to create a valid electronic contract in e-commerce. They present three acceptable contract forms, and suggest that a seller may not validly accept a buyer's proposal to buy unless this proposal is made through any of the three forms:

- **Click-wrap or click-through or web-wrap contract form:** Consumers must scroll down to the bottom of the page to read the terms and conditions. Before completing the transaction, consumers can confirm the purchase contract by clicking on an icon with "I agree" or "I accept" or a similar text to confirm the terms.
- **Browse-wrap contract form:** The user does not specifically have to state that he agrees to the terms and conditions. They are included in the software or website and the use of the software and website indicates that the consumer has automatically agreed to the terms of the purchase contract.
- When trading through social networking platforms, making an agreement between the seller and the buyer in some way (for example, accepting or rejecting through a message).

The guidelines provide sample contract forms in an appendix.



(d) Consumer protection

(aa) Disclosure notice

Information for consumers shall be clear, accurate, consistent, simple, easy to find, and visible, and written in Burmese, or English, or Burmese and another language.

Among others, this section contains a long and comprehensive list of “transaction information” that shall be communicated in advance so that consumers may make an informed decision, such as additional charges, shipping options, payment methods, recurring fees, ways to terminate subscriptions, cooling-off period, etc.

(bb) Fraud and misrepresentation

The guidelines prohibit certain practices, such as incorrectly stating prices that exceed the costs of the goods or services, including deceptive practices such as mandatory surcharges that are added to the asking price (drip pricing), false reference price, false best price claim, and non-existent discounts.

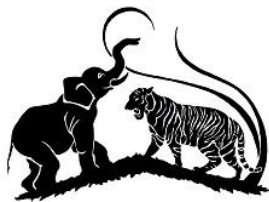
(cc) Delivery of goods

Among others, the guidelines provide that if the agreed delivery date is exceeded by more than 15 days, the consumer may terminate the contract and request a full refund of any payment unless the contract provides otherwise.

(dd) Returning goods, refunds, and exchanges

E-commerce business operators shall establish clear, fair and transparent policies or mechanisms to handle complaints and to accommodate compensation arrangements for damages in order to resolve issues such as returns, refunds, and exchanges.

In principle, e-commerce business operators shall bear all costs associated with the return of defective goods and refund any payments made in advance, and shall make arrangements to ensure that consumers may request a full refund of all costs if goods are damaged or lost during delivery.



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Consumers, on the other hand, may return goods that do not match the ones that they ordered only within the period provided in the contract, and shall generally not be entitled to exchanges, refunds and replacements after the delivery of the goods unless for valid reasons.

If there is no separate agreement between the e-commerce business operator and the delivery service provider, any loss of goods, damage to the package and wrong delivery shall be the sole responsibility of the delivery service provider after the e-commerce business operator entrusted the ordered goods to the delivery service provider for delivery to the buyer.

(ee) Marketing and advertising

The e-commerce guidelines contain a fairly detailed section on marketing and advertising.

Among others, they prohibit advertising a free trial period or an initial low price if consumers are not sufficiently informed in advance of (and given the opportunity to agree to or disagree with) recurring charges that will apply if they do not cancel.

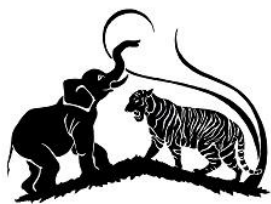
When using disguised native advertising (native ads) that has a similar form and function as the media content to be published (e.g., promotion ads and paid ads published on Facebook), the e-commerce business operator shall make this apparent in certain specified ways.

Likewise, the guidelines contain provisions aimed at ensuring that paid endorsements from influencers and celebrities are recognisable as such.

The guidelines contain furthermore restrictions on advertising aimed at the elderly and children (and persons of unsound mind).

(ff) Spam/unsolicited messages

This section contains a fairly detailed list of dos and don'ts to make spam and unsolicited messages more tolerable.



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Among others, commercial electronic messages may only be sent with prior consent of the consumer (opt-in approach), unless the consumer had impliedly agreed to it.

Furthermore, among others, e-commerce business operators shall keep their list of message recipients complete and up-to-date and check it every 6 months; record the time, purpose and form of consents received in writing and keep an audio file of consents received orally; and put in place unsubscribe options (which must identify the e-commerce business operator and provide contact details) and delete recipients who unsubscribed from their system.

A consent from a consumer to receive commercial electronic messages seems to be valid for 2 years.

(gg) Education

To inform consumers of their rights and responsibilities and increase their knowledge about online consumer procedures, e-commerce business operators shall include on their websites a link where they can read about consumer education programmes or programmes being conducted by the government.

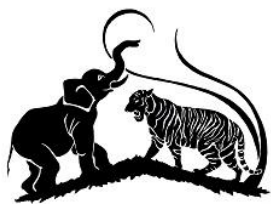
(e) Dispute resolution

The section about dispute resolution is fairly generic.

Among others, it states that disputes with consumers shall be resolved in accordance with the Consumer Protection Law (which in practice in particular means that consumers may file an online complaint with the Department of Consumer Affairs).

Furthermore, among others, para. 58 provides:

“E-commerce platform entrepreneurs and e-commerce business operators shall consider establishing internal complaints handling mechanisms, as settling domestic and international consumer complaints directly with the official rather than resolving them in the courts plays an important role in consumer dispute and redress systems. Likewise, the mechanism should be incorporated into the consumer satisfaction measurement system (consumer satisfaction system) and other conflict management systems.”



(f) Online ratings and reviews by consumers

This section is very detailed and contains many dos and don'ts aimed at ensuring that ratings and reviews are not tampered with.

Among others, e-commerce business operators may not, in essence, make use of ratings and reviews that are not from actual consumers who used the product, and prevent consumers from making true but negative ratings and reviews. They shall be transparent about how they handle ratings and reviews, informing the public about, among others, the release schedule, the level and aggregate scoring criteria, and the reasons for accepting or refusing to distribute certain reviews.

Incentivised ratings and reviews are regulated, but not prohibited.

The guidelines are silent on how e-commerce business operators should deal with negative and untrue ratings and reviews.

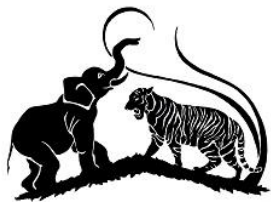
(g) Payment terms and conditions and payment service providers

E-commerce business operators shall retain proof of purchase and payment records for at least 3 years. Online payment service providers shall upon request provide users with a record of their transactions for the last 3 free of charge.

Payment service providers shall pay compensation for any loss due to unauthorised payments or security breaches that was not caused by an error on the part of the online user. Furthermore, they shall use their best efforts to correct errors reported to them by online users, and shall immediately take measures to prevent further losses from occurring upon discovery of an unauthorised payment or being notified of a payment without the user's consent.

(h) Protection of privacy and personal data

This section in particular lists and explains "basic principles of conduct," which are: limitation on collection of data, collecting good quality data, use only for specified purposes, restrictions on use, protection in terms of security, being honest and open, individual participation, accountability of the data controller, consent of the data subject, and right of consumers to inform regulatory authorities about non-compliance.



In terms of individual participation, individuals have, among others, the right to obtain their data from the data controller, and the right to obtain confirmation whether or not the data controller is in possession of such data.

(i) The role of intellectual property rights and the responsibilities of e-commerce business operators

The section mainly concerns e-commerce platforms.

(aa) Compliance with intellectual property rights

An e-commerce platform entrepreneur failing to take necessary action to remove goods or services sold on the platform, in spite of knowing or there being good reasons to know that they infringe an intellectual property right, shall be as liable as the operator selling on the platform.

If the holder of intellectual property rights files a complaint with evidence that his rights have been infringed, the e-commerce platform shall, in order to prevent the infringing goods or services from being traded, take immediate action in accordance with its own intellectual property rights regulations or by adopting necessary measures. The platform shall make available a complaint form.

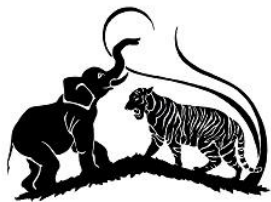
The platform shall report any complaint to the seller. If the seller does not respond to or rebut the complaint within 7 days, the good or service shall be removed from the platform.

Rebuttals shall be forwarded to the intellectual property rights holder who may seize the courts or authorities to resolve the issue.

Any goods or services deemed to be materially infringing any intellectual property right shall be immediately removed from the e-commerce platform. Furthermore, infringing (copying) the overall design/pattern/packaging of goods or services on an e-commerce platform or on other platforms shall not be tolerated.

(bb) Responsibilities of e-commerce platform entrepreneurs

Among others, e-commerce platform entrepreneurs shall keep an up-to-date list of the sellers' data and verify that the data is correct, if necessary with the help of relevant government departments.



They shall adopt measures to detect in advance goods and services that are sold illegally and establish a notification system to receive notifications from users.

The terms of use shall be fair (there is a prohibition “to charge unfair and unreasonable fees to sellers”) and displayed at a conspicuous place on the platform. E-commerce platform entrepreneurs shall devise policies on content moderation and communicate them.

(cc) Responsibilities of e-commerce platform entrepreneurs and other e-commerce business operators

E-commerce business operators shall implement necessary technical measures to ensure network security and smooth operation, prevent online illegal activities or crimes, effectively handle online security incidents, and ensure safety of e-commerce transactions.

Information about goods, services and transactions shall be kept securely for at least 3 years from the date of completion of the transaction. This information shall be provided if so requested by a court or authority in accordance with the law.

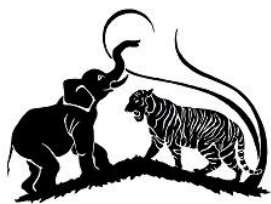
(dd) Persons with disabilities

The design of e-commerce platforms and online payment systems shall take into account the needs of persons with disabilities, which includes the following: Designing e-commerce platforms in accordance with Web Content Accessibility Guidelines of the World Wide Web Consortium; adding automated identification technologies, smart card systems, voice and interactive systems, and automatic billing services as needed; and adding educational sections.

(j) Cyber security

Among others, e-commerce business operators shall provide consumers with information about security and authentication mechanisms. The steps of the process (mechanism) shall be carried out in clear and easy Burmese or English to help users determine the amount of risk.

2. DICA advises directors and shareholders how to avoid being expelled from the company without one’s knowledge



In this regard, DICA published the following notification on its webpage on 6 September 2023:

Notification

1. On August 1, 2018, the Myanmar Companies Law 2017 came into force, and the Directorate of Investment and Company Administration has implemented the electronic company registration system (MyCo) in accordance with the provisions of the law. In so doing, it has been found that some of the directors and members have reported cases in which they were expelled from the company without their knowledge.
2. Therefore, in order to prevent cases where stakeholders are expelled from the company without their knowledge, they are encouraged to follow the steps below:
 - (a) Maintaining the register of members and directors to be kept in the company pursuant to sections 90, 95 and 189(a) Myanmar Companies Law;
 - (b) every director and member may open a MyCo account and obtain “company authority” from the company in which he participates;
 - (c) directors and members may register their contact information such as email address, personal telephone number, etc. in the MyCO registration system so that the company registrar may contact them as necessary.

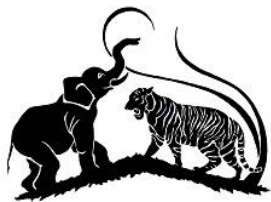
Directorate of Investment and Company Administration

[Published on DICA’s webpage on 6 September 2023.]

2. Filings concerning foreign employees of MIC companies to be made both online and offline

On 28 August 2023, the MIC announced that MIC companies have to make filings concerning the appointment of new foreign staff, the resignation of foreign staff, and the increase of the number of foreign staff both online and as a hard copy.

Date: August 2023



Notification regarding the right to appoint foreign experts in the Investment Monitoring System Part 2

1. The Directorate of Investment and Company Administration is implementing Part 2 of the Investment Monitoring System for the purpose of giving approval and making records, so that an investor may apply online for conducting operations after obtaining a permit in accordance with the Myanmar Investment Law and Rules, and department officials may review and respond to online requests and allow what is being asked for.
2. It is hereby notified that from 1 September 2023, applications shall be submitted during the trial period both at <http://103.89.50.35> and as hard copy for permission to appoint foreign experts mentioned in the proposal approved by the Myanmar Investment Commission according to section 51(a) Myanmar Investment Law and rule 206 Myanmar Investment Rules, permission to increase the number of staff, and resignations of foreign experts whose appointment was permitted by the Commission.
3. If you wish to inquire about difficulties encountered in relation to applications in the online system, you can contact us either in person or at 01-657892, 01-657893, and imsworkpermit.team@gmail.com.

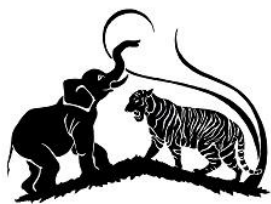
Myanmar Investment Commission

[Published on DICA's webpage on 28 August 2023.]

We hope that you have found this information useful.

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Managing Director

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Director



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About Lincoln Legal Services (Myanmar) Limited

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