



Legal Alert

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Setting out Credit Terms when doing Businesses with SMEs Suppliers

The Trade Competition Commission has announced the Notification of the Trade Competition Commission on Guidelines for Determining Fair Trade Practices regarding Credit Terms for Sellers of Goods and Services that are Small and Medium Enterprises (SMEs) ("**Notification**"), aiming to promote fair trade practice when doing businesses with SMEs suppliers. This Notification has been published on the Government Gazette on 18 June 2021 and will be effective from 16 December 2021.

Key considerations when purchasing goods or services from sellers who are SMEs

Setting Credit Term: When purchasing from SMEs, business operators cannot set credit terms longer than 45 days for general trading, manufacturing, and services, and 30 days specifically for agricultural products or processed agricultural products with simple production process, unless there is a justifiable reason regarding the businesses, marketing, or economic perspectives.

Under this Notification, credit terms shall start upon completion of the delivery of goods or services as agreed upon by the parties. In consignment business, the credit terms shall be upon completion of sale by the consignee at the agreed amount and in accordance with normal trade practices.

Payment Process: The business operators must clearly show the payment process which is in accordance with normal trade practice. SMEs seller or service provider that would like to obtain benefits on limitation of credit terms under this Notification must declare its status of being an SMEs by providing evidence regarding the numbers of employees being hired or annual income to the business operators who are purchasing goods or services from the SMEs.

Other Acts that could Constitute an Unfair Trade Practices: Under the Notification, unreasonably delay in payment by the business operators or changes of credit terms or terms and conditions of contracts unreasonably or without giving prior notice to the SMEs for a period of not less than 60 days, or any other acts that unfairly force the SMEs to bear unnecessary burdens are also considered as an unfair trade practice.

Who is Affected by the Notification?

Business operators who engaged in trading, manufacturing, services, or consignments businesses with the Thai SMEs are subject the credit terms guidelines set out under the Notification. Failing to comply with the guidelines could potentially be seen as conducting unfair trade practice, and could be subject to administrative fine as applicable under the Trade Competition Act.

Pre-existing credit terms with the Thai SMEs are not exempted from the Notification when it comes into force. Once this Notification is effective, on 16 December 2021, if the SMEs request for a shorter credit terms according to this Notification and could satisfy the self-declaration process of being an SMEs, the business operators must change the agreed credit terms to be in accordance with a period under this Notification.

Deloitte's Observation

Prior to the enforcement of the Notification in December 2021, business operators engaging in the sales and service transactions with suppliers who are Thai SMEs should prepare to comply with the credit terms guidelines in order to minimize the risks of conducting an unfair trade practice which might lead to penalties under the Trade Competition Act .

Any business operators that have active, pending or prospect sales or service agreements with the SMEs should also consider reassessing and rearranging the agreements to ensure they comply with the new guidelines. Though the SMEs are required to declare and prove its status upon requesting to apply the credit terms under this Notification, the business operators should be ready when requests are coming in. Business process could be prepared in advance by initial assessing whether current suppliers could potentially be SMEs or not. This could help the business operators in managing the cash flow when many SMEs suppliers request for credit terms shorter than the previously agreed ones.

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