

How Vietnam's Decree 85/2021 is Reshaping the E-commerce Industry?

Vietnam's e-commerce sector has witnessed explosive growth in recent years, surpassing expectations with remarkable momentum. This has unlocked a vast and promising market for foreign businesses, presenting an opportunity to reach millions of Vietnamese consumers and penetrate new market segments

However, the landscape is shifting with the introduction of new regulations under Decree No. 85/2021/ND-CP, amending and supplementing Decree No. 52/2013/ND-CP. These new regulations have significant implications for the e-commerce operations of [foreign businesses in Vietnam](#), necessitating adjustments to business strategies and compliance with the updated requirements.

What's new under Decree No. 85/2021?

Decree 85/2021/ND-CP, amending Decree 52/2013/ND-CP on e-commerce, has significantly transformed Vietnam's e-commerce landscape. The decree bolsters [the regulatory framework](#) by mandating e-commerce platform registration with the Ministry of Industry and Trade (MOIT) and stricter reporting standards.

Consumer protection is a cornerstone of the new regulations, with platforms required to provide transparent product information and efficiently handle customer complaints. Moreover, the decree imposes stringent data privacy and security measures to safeguard user information.

Addressing the growing concern of cross-border e-commerce, the decree mandates foreign platforms operating in Vietnam to adhere to local regulations, including tax obligations. To combat the proliferation of counterfeit goods, platforms must now verify product authenticity and collaborate with authorities in [enforcement efforts](#).

What differences in the regulations under Decree 85/2021 as compared to Decree 52/2013?

To fully grasp the impact of Decree 85/2021, it's essential to compare it with the previous regulations outlined in Decree 52/2013.

Regulation	Old Regulations (Decree 52/2013)	New Regulations (Decree 85/2021)
Scope of Application	Did not exclude any specific sectors.	Excludes sectors with specialized laws on e-commerce, including financial, banking, credit, insurance, lottery, money trading, gold trading, foreign exchange, and digital content services. Businesses must carefully determine if their sector has specialized e-commerce regulations
Definition of E-commerce Service Providers	Did not clearly define who are considered providers of e-commerce services.	Adds a clear definition, stating e-commerce service providers exclude those only offering website design services and not directly participating in business operations or coordination on the website.
Entities Participating in E-commerce Activities	Covered only infrastructure providers as participants in e-commerce activities.	Expands to include traders or entities providing technical infrastructure, logistics, and other support services, though it is not clearly defined what "other support services" entail.
Foreign Entities Subject to E-commerce Regulations	Applied to foreign entities with a physical presence in Vietnam (investment, branch, representative office) or those with websites using Vietnamese domain names.	Expands to include foreign entities with e-commerce websites (1) in Vietnamese domain names, (2) displayed in Vietnamese language, or (3) having over 100,000 transactions originating from Vietnam annually.
Control of Activities of Foreign Entities in Vietnam	No requirement for foreign entities to have an office or representative in Vietnam.	Requires foreign entities to register their e-commerce activities, establish a representative office, or appoint an authorized representative in Vietnam. This must be completed by the end of 2022. Additionally, foreign sellers on Vietnamese e-commerce platforms may need to appoint a commercial agent in Vietnam.
Market Access Conditions for Foreign Investors	Did not specify e-commerce services as a conditional business for foreign investors.	Confirms e-commerce services as a conditional business, requiring foreign investors to establish or invest in a company in Vietnam. National security appraisal by the Ministry of Public Security is required if controlling a leading enterprise in Vietnam, defined

		as owning more than 50% of charter capital or voting shares and having decision-making power over key business matters.
Notification of Sale E-commerce Website	Required notification to the Ministry of Industry and Trade (MOIT) for any sale e-commerce website.	Only required if the website includes online ordering and check-out functions. Websites only promoting products/services without these functions are exempt from notification.
Responsibilities of Sale E-commerce Website Owners	General responsibilities without detailed requirements.	Additional responsibilities include: - Publishing links to terms and conditions, delivery and shipping info, and payment methods on the homepage. - Publishing goods information as displayed on labels. - Publishing certificates or licenses proving compliance with applicable business line conditions. - Allocating liability of logistics providers regarding goods documentation during delivery.
Social Networks as E-commerce Trading Platforms	Not specified under the old decree.	A social network can be considered an e-commerce trading platform if it allows: (1) participants to open shops to display and introduce goods/services, (2) participants to open accounts to enter into contracts with customers, or (3) has a shopping section where participants post sale information, and if participants directly or indirectly pay fees for these activities.
Responsibilities of Providers of E-commerce Trading Platforms	General responsibilities without specific additional obligations.	Additional responsibilities for platforms with online ordering functions include: - Designating a contact point to receive requests and provide information to regulatory authorities within 24 hours. - Representing foreign sellers in consumer complaints and notifying tax obligations to be fulfilled by foreign sellers. - Acting as the contact point for complaints involving multiple parties. - Storing order information according to accounting laws. - Compensating for damages from violations.
Procedures for E-contract Authentication Services	Required obtaining a license from the Ministry of Industry and Trade (MOIT).	Changed to a registration process, resulting in a confirmation of registration and listing on the E-commerce Management Portal as a registered service provider. The registration result includes a confirmation on registration and the provider's name updated on the list of registered e-contract certification service providers published on the E-commerce Management Portal.

Final thoughts

While these changes pose challenges, they also present immense opportunities for businesses to tap into Vietnam's burgeoning [e-commerce market](#). This move reflects the Vietnamese government's unwavering commitment to fostering a vibrant, transparent, and sustainable e-commerce ecosystem that safeguards consumers and promotes legitimate business practices.

To ensure business operations comply with the law, avoid potential legal risks, and achieve success in the dynamic e-commerce market, businesses need the support of experienced lawyers and experts with in-depth knowledge of e-commerce law.

KENFOX IP & Law Office proudly offers comprehensive legal and consulting services to e-commerce businesses operating in Vietnam. With our team of experienced lawyers who possess in-depth knowledge of Vietnamese law, we are committed to assisting you in achieving full compliance with the new regulations and maximizing your business potential.

QUAN, Nguyen Vu | Partner, IP Attorney
PHAN, Do Thi | Special Counsel
HONG, Hoang Thi Tuyet | Senior Trademark Attorney

Contact

KENFOX IP & Law Office

Building No. 6, Lane 12/93, Chinh Kinh Street, Nhan Chinh Ward, Thanh Xuan District, Hanoi, Vietnam

Tel: +84 24 3724 5656

Email: info@kenfoxlaw.com / kenfox@kenfoxlaw.com