



**Newsletter No. 198 (EN)**

**E-Commerce in Thailand**

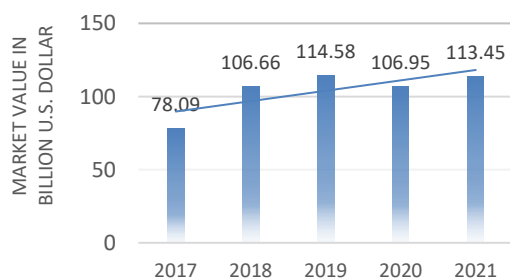
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## I. Introduction

The Thai government's efforts to promote the expansion of information and communications technology have resulted in good access to the Internet for a large part of the population. As a result, opportunities to participate in e-commerce have developed. In addition, the expansion of 4G and 5G networks and the spread of smartphones play a key role in the growth of e-commerce. Thai citizens now make a disproportionately high number of purchases through via smartphone ("**M-Commerce**"), which accounts for 67% of Thailand's overall e-commerce sales, ranking 6<sup>th</sup> in the Asia Pacific region.<sup>1</sup>

As illustrated in Tab-1 below, Thailand's E-commerce market value is predicted to reach a total volume of USD 113.45 billion by 2021, a 45.3% increase compared to 2017.<sup>2</sup> In Southeast Asia, Thailand held the top spot for the market value of the business-to-consumer (B2C) e-commerce sector which is worth more than USD 27.7 billion by 2021.<sup>3</sup>



|Tab-1 E-commerce market value Thailand 2017-2020, with a forecast for 2021 (in Billion U.S. dollar)  
Source: Statista

With this background, e-commerce has become an interesting opportunity for many foreign investors. This newsletter provides insights and a better understanding of the legal framework in this regard.

### 1. Forms of online trading

#### a) "E-Commerce"

Electronic commerce or e-commerce refers to the processing of business transactions by means of data transmission, usually via the Internet, either between companies and consumers ("Business-To-Consumer" – "**B2C**") or between two companies ("Business-To-Business" – "**B2B**"). Both forms are commonly referred to as "**E-Commerce**".

A study on Thai online shop data shows that the average growth rate of net e-commerce sales for the top 100 Thai online stores (including online shops and e-marketplaces) in 2021 is 18% compared to 2020.<sup>4</sup> The market volume of the top 5 Thai online stores has increased by 200% since 2018.<sup>5</sup> Electronics & Media has the highest online share among all product categories, followed by toys, food and personal care, fashion, furniture and appliances.

#### b) "Electronic marketplace"

Another phenomenon of e-commerce are the so-called "E-Marketplaces" or electronic marketplaces ("**EMP**"). These are virtual marketplaces, i.e. virtual places created by information and communication systems for the coordination of services. As a rule, goods are offered and sold by third parties, whereby the underlying purchase contract is concluded directly between the buyer and

<sup>1</sup> Statista, Mobile commerce sales as a share of e-commerce APAC 2021-2025, by country

<sup>2</sup> Statista, E-commerce market value in Thailand from 2017 to 2020, with a forecast for 2021 (in trillion Thai baht).

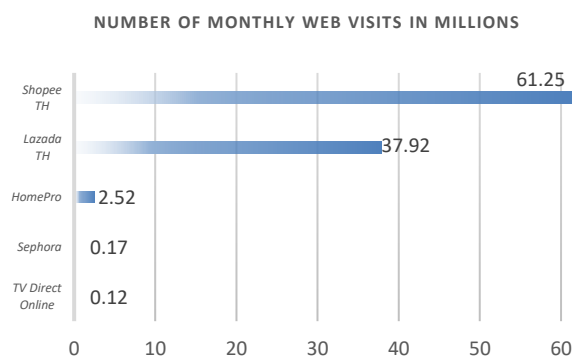
<sup>3</sup> J.P. Morgan. "E-commerce Payments Trends: Thailand" (2019).

<sup>4</sup> ecommerceDB, "eCommerce in Thailand 2021-with data on the top 100 stores" (2021).

<sup>5</sup> ibid.

the seller (not the EMP operator), and the seller takes care of shipping the goods and the rest of the transaction. The EMP operator usually charges a fee or commission for providing the sales platform.

Prominent examples of international EMPs are “Shopee”, “Lazada”, and “HomePro” as illustrated in Tab-2 below:



[Tab-2 Most popular international B2C EMPs in Thailand as of the 3<sup>rd</sup> quarter of 2021, by monthly web visits (millions)

Source: ecommerceDB

### c) Social Commerce

“Social commerce” is also playing an increasingly important role in Thailand. This involves the sale of goods and services via social networks (such as “Facebook”, “Line” and “Instagram”).

## 2. Advantages and disadvantages

### a) “Online-Shop”

Setting up an online store has some advantages over using a third-party platform (EMP), among others:

- (1) A direct link can be established between the manufacturer and the (end) customer without being dependent on intermediaries.
- (2) The manufacturer has direct access to customer data (including addresses, usage behaviour, etc.) and can use this directly, e.g. for marketing, advertising, customer service and warranty purposes.

- (3) The own product can be offered exclusively and is not lost among a multitude of other offers.
- (4) Without intermediaries or third-party platforms (EMP), the profit margin increases, as the corresponding fees from intermediaries/third-party platform operators are eliminated.

The disadvantages of operating an online store are:

- (1) There is no access to an existing customer pool.
- (2) Customer confidence must first be won (e.g. through stand-out products, marketing measures, etc.).
- (3) Setting up an online store is relatively time-consuming and costly (installation of technical equipment/interfaces, customer service, setting up and connecting to payment and delivery systems, etc.).

The requirements for opening your own online store to sell goods in Thailand include:

- (1) Establishment of a (subsidiary) company registered in Thailand, if necessary, also with own production.
- (2) Creation of a website on which only own products are offered.
- (3) If goods are sold which **are not produced by the company in Thailand**, a share capital of THB 100 million (approx. USD 2.85 million) must be paid in, or otherwise a so-called Foreign Business License must be applied for (see also section II 1. (d) below).
- (4) Establishment or use of online payment systems such as PayPal, Line Pay, Union Pay etc. are associated with corresponding costs (e.g. setup and transaction fees).
- (5) To obtain the Direct Sales and Direct Marketing License from the Board of Consumer Protection.
- (6) To apply an **“E-Commerce” certificate** for the companies that selling

goods and services over the Internet, or operating as an EMP for sale of goods via the Internet. It is normally applied from the Business Registration Office in the area where the principal business office is located.

## b) “Electronic marketplace” (EMP)

Using an EMP has some advantages over setting up an online store, among others:

- (1) It is possible to benefit from existing structures, in particular high customer traffic, central marketing programs, etc.
- (2) The setup is usually relatively simple, and distribution can take place at short notice.
- (3) There is no need to establish a separate company in Thailand.

However, the disadvantages are:

- (1) For the use of the EMP, various costs are incurred, such as product-dependent commission for each sale. For example, Lazada levies payment fee and commission fee per order (6% of the unit price, VAT included).<sup>6</sup>
- (2) Customer data remains in the possession of the marketplace.
- (3) The own goods are offered directly next to competing products.

To successfully register with Lazada, foreign companies must meet the following requirements, among others:

- (1) The foreign company must be properly registered in its home country.
- (2) The products must be offered in accordance with Thai law (especially consumer protection regulations), e.g. prohibited sale of firearms, arti-

facts, tobacco, gambling, national protected sanction production.

## c) “Social Commerce”

Activities in the area of social commerce are often in the legal gray area (e.g. distribution of gray imports) and play at the best case a subordinate role in the area of the targeted development of e-commerce for foreign investors. “Social commerce” is therefore negligible in the context of this newsletter.

## II. Legal Framework

### 1. Legal Framework of Investment

In principle, Thai foreign investment law is quite restrictive and requires foreign investors to **apply for a foreign business license if they hold a majority stake** in a Thai company.

However, in order to increase foreign direct investment, Thailand promotes promising economic sectors. The aim is to attract foreign investors and strengthen the domestic economy. In particular, the Thai Board of Investment provides incentives for this purpose.

#### a) Foreign Business Act

Foreign investors must comply with the provisions of the Foreign Business Act B.E. 2542 (1999) (“**FBA**”). Accordingly, the following persons are restricted from doing business in Thailand:

- natural persons without Thai citizenship;
- legal entities that are not registered in Thailand; and
- legal entities that are registered in Thailand but have at least 50% of their capital owned or invested by foreign nationals or foreign legal entities (regardless of the number of partners, associates, or members).

<sup>6</sup> Lazada Fees Overview:

<https://sellercenter.lazada.com.my/seller/helpcenter/lazada-fees-overview-6637.html?spm=a2a16.helpcenter-psc-search.article.1.504b32fe51zvPJ>

The aforementioned restrictions shall exceptionally not apply if

- a Foreign Business License (“**FBL**”) has been issued for the business activity concerned, which allows such activities to be carried out;
- the business falls under an exception of the FBA, or
- the business activity is excluded from the scope of the FBA.

The FBA divides business activities into different categories (*lists 1, 2 and 3 of the FBA*). Without an FBL, foreigners can only operate in areas that are not regulated in these lists (e.g. export and production).

## b) Investment promotion of the Board of Investment (BOI)

One way for a foreign investor to hold 100% of the shares in a company in Thailand is through the investment promotion of the Board of Investment (“**BOI**”). The BOI offers various investment incentives for certain business sectors which the government considers to be beneficial for the development of the Thai economy. These include investments to activities relevant to the development of software, digital platforms, or digital content, whether in the context of “E-Commerce” or other digital services.<sup>7</sup> In order to focus more on the growth of the Thai IT workforce, previous BOI promotion activities under Section 5.8 involving software development, e-commerce, and digital services were cancelled and integrated into Section 5.10.

### aa) Investment Incentives

The BOI subsidy for the development of digital platforms, or digital content in the field of “E-Commerce” is subject to the

incentive category “A2”, which provide tax incentives as below:

- CIT (corporate income tax) exemption, capped for 8 years;

**the cap of CIT exemption** for a project will be calculated annually for the following expenditures, item by item:

- o salary expenses for Thai IT personnel newly employed.
- o Training expenses for Thai IT personnel.
- o Expenses to acquire prescribed certificate of quality system standards.

These must be actual expenses, incurred after applying for promotion, and be in the same fiscal year of exercising CIT rights and benefits.

- exemption of import duties on the following items:
  - o machinery; computer, server;
  - o raw materials used in Research & Development; and
  - o raw materials used in production for export.

It also provides non-tax incentives as below:

- Foreigners are allowed to hold 100% of the company shares (*100% foreign owned company*);
- possibility **to acquire land**;
- easier facilitated obtaining of visas and work permits for skilled foreign workers and experts;
- permit to take out or remit money (profits after tax) abroad in foreign currency.

<sup>7</sup> Section 5.10, List of Activities Eligible for Investment Promotion, Announcement of the Board of Investment No. Sor. 4/2564.

## bb) Conditions for an “Electronic Marketplace” (EMP)

The following conditions shall be satisfied to obtain the BOI promotion and develop EMPs:

- 1) To enjoy up to 8 years CIT exemption. For each year the BOI company wants to enjoy CIT exemption, the BOI company must prove that its expenses on newly employed local IT staff is minimum **THB 1,500,000** per year (approx. USD 43,000) (for each BOI approved project).

Once the application submitted to the BOI, the company can start the hiring process and the BOI will count the salary expenses from the first person employed from that date. The company does not have to start employing from the date of application acceptance. If the company prefer to wait until the BOI application finally approved before starting employment, that is also fine.

- 2) Each prospective project must involve activities to develop new software, digital platform, or digital content in Thailand.

Where a company has an already developed product before applying for BOI promotion, the product must be further developed or improved in Thailand. The applicant should provide the information comparing the old and new productions as minimum details as below:

- i. Product name
- ii. Feature or function of the software or digital platform
- iii. Structure of software, digital platform, or digital content
- iv. Tools and computer language used in the development

- 3) CIT (corporate income tax) exemptions are applied only to the revenue derived from sales or services that directly link to the BOI-promoted EMP development.

- 4) CIT cap is determined on the actual spending in the year that the BOI promotion application was submitted as below:

- CIT cap at 100% salaries expenditures for Thai IT employees newly hired.
- CIT cap at 200% expenditures on training of Thai IT staff and relevant HR development with educational institutions, such as Work-integrated Learning (WiL).
- CIT cap at 100% expenditures to acquire international standards equivalent to ISO 29110 and CMMI level 2.
- Additional promotions under the conditions for competitiveness enhancement and SMEs are not applicable.

## cc) Restrictions for “Electronic Marketplaces” (EMPs)

The BOI’s administrative practice has become increasingly restrictive in the recent past. Now BOI investment promotions may be granted for the activities to develop an EMP that provide online service for the exchange of goods, services or information between the users and developers. However, a further provision of following activities will not be covered under the BOI’s tax exemption promotions as below:

- × Trading of goods through a platform, regardless of the retail and wholesale of all types of products.

- × Trading of services, transportation, and credit extension through a platform.
- × Website development.
- × Providing service for data analysis without the development of algorithms, tools, or engines in the data analysis.
- × Language conversion or addition to accommodate software usage or platform usage.
- × Development or improvement of user interface of software or platform.
- × Development of computer graphic or visual effect of movies, theaters, advertisements, documentaries.
- × Video editing.
- × Audio editing for sound effects.

For example, a company may receive tax exemptions promotions from the BOI for its activities of EMP development in Thailand, but those tax exemptions will not cover its activities of goods trading and delivery service through the EMP.

#### dd) Application Procedure

The application process is investor-friendly and can be completed within a short period of time, as the BOI strives to attract investment to Thailand. The procedure is basically as follows:

- Submission of the application and required supporting documents.
- Appointment with the BOI for project presentation (within ten days after acceptance of the application).
- Presentation of the project to the BOI.
- Evaluation of the project by the BOI.

- Notification of promotion award within seven business days of the evaluation meeting.
- Acceptance of the promotion by the applicant (within one month after receipt of the notification).
- Notification of the establishment of the company to the BOI (within six months after acceptance of the promotion).
- Issuance of the promotion certificate within ten working days after the notification of the establishment of the company.

#### c) Foreign Business Licence

Foreign investors providing services beyond the activities relevant to the substantial development of EMPs, such as:

- Retail/wholesale of all types of products via the Internet; and/or
- delivery services,

**must apply for a separate FBL for each activity based on the FBA.**

##### aa) Retail/wholesale

Retail/wholesale activities are subject to List 3 to the FBA (3(14) and 3(15)). A permit for List 3 activities is issued by the Thai Ministry of Commerce with the approval of the Foreign Business Committee. This committee is a regulatory body consisting of 19 representatives from ministries and business associations.

Experience shows that an FBL for List 3 activities is only granted if there is sufficient evidence that the type of business activity applied for is not in competition with Thai companies. This is generally not the case for retail and wholesale trade, unless it concerns B2B sales of high-tech goods. Consequently, FBL applications in these areas of activity are often rejected.

## bb) Delivery services

Domestic delivery services are subject to List 2 to the FBA (Chapter 1(2)). A permit for List 2 activities is issued by the Thai Ministry of Commerce with the approval of the Council of Thai Ministry of Commerce. However, the permitted company shall also satisfy following conditions:

- no less than 40% of its shares shall be held by Thai nationals or Thai juristic persons;
- the Thai shareholding can be reduced from minimum 40% to a minimum 25% with the approval of the Council of Thai Ministry of Commerce, while at least 2/5 of the total number of directors shall be Thai nationals.

## d) Exceptions (minimum capital requirements)

The requirement of an FBL for retail or wholesale trade may exceptionally be waived if a share capital in the amount of THB 100 million (approx. USD 2.85 million) per activity is paid in. If, for example, the company intends to engage in both retail and wholesale trade, a paid-up share capital of THB 200 million (approx. USD 5.7 million) is required.

No FBL is required for the sale of goods from own production in Thailand. However, if after-sales services are made for this purpose, an FBL for the service sector must be applied for, which is usually granted to foreign companies.

## 2. Official approvals

Depending on the design of the online business, additional permits may need to be obtained:

### a) “E-Commerce” Certificate

Based on the *Regulation from the Ministry of Commerce Re: Entrepreneurs who shall obtain the E-Commerce Certificate (No. 11) B.E. 2553*

(2010) and the *Commercial Registration Act B.E. 2499 (1956)*, companies selling goods and services over the Internet, or operating as an EMP for sale of goods via the Internet shall apply for an **“E-Commerce” certificate** within 30 days of commencing operations.

Companies active in e-commerce may also consider applying for a “Registered Trademark” and/or “Verified Trademark”. This is essentially a mark that the website has been properly registered with the Ministry of Commerce (“**Registered Trademark**”), which can be implemented in the form of a source code on the company’s own website, or that the company is considered a reliable business partner (“**Verified Trademark**”). To obtain a “Verified Trademark”, the company must, among other things:

- have held a “Registered Mark” for at least six months; or
- have held an “E-Commerce” certificate for at least two years.

Upon submission of complete application documents, the E-Commerce certificate can usually be issued within one day. The (optional) issuance of the “Registered Mark” can be done on the same day.

In case of selling goods and services via the Internet without an E-Commerce certificate, a fine of THB 2,000 (approx. USD 60) per day may be imposed.

### b) Direct Marketing License

Companies that engage in direct marketing (both online shops and EMPs) must also obtain a direct marketing license under the *Direct Sales and Direct Marketing Act B.E. 2545 (2002)*. A guarantee must be submitted to the register (the Office of the Consumer Protection Board) at the same time. This is intended to provide a certain level of consumer protection, as consumers do not have the opportunity to view the traded products in advance and determine any deviations



from the advertised product in the context of e-commerce. Direct marketing permits are usually issued within 60 days of complete application submission.

Direct marketing without a permit is punishable by imprisonment of up to one year or a fine of up to THB 100,000 (approx. USD 2,800) and THB 10,000 (approx. USD 280) for each day of direct marketing without a permit.

### c) Goods Delivery Permit

In the case of deliveries of goods not sold by the company, a permit must always be obtained from the Department of Land Transportation (*Land Transport Act B.E. 2522 (1979)*). Goods delivery permits are issued exclusively to Thai companies (i.e. more than 50% of the company shares are held by Thais). Exceptions to the permit requirement exist in the case that the goods are delivered exclusively by motorcycle. In this case only the FBL has to be observed. If delivery services of third parties are used, the requirement to obtain a goods delivery permit for the own company does not apply either, however, the delivery may not be openly identified as a service of the company, as otherwise an FBL would be required again.

### 3. Consumer protection and product liability regulations

In addition to the requirements of investment law and the need to obtain certain permits, consumer protection and product liability regulations must also be observed. These result in detail from:

- the Civil and Commercial Code;
- the Product Liability Act B.E. 2551 (2008); and
- the Consumer Protection Act B.E. 2522 (1979).
- Prices of Goods and Services Act B.E. 2542 (1999) as amended.

### III. Summary

In principle, the requirements of Thai investment law apply to foreign investors for e-commerce business as well. However, the BOI provides exceptions and offers investment incentives. Nevertheless, these currently apply only to activities relevant to the development of software, digital platforms, or digital content, whether in the context of EMPs or other digital services.

Experience shows, however, that most e-commerce business models do not fully comply with BOI incentives. For example: if goods are also requested to be delivered an additional licenses may be required.

In view of the rapidly growing market for online trade, it is advisable to set up the structure correctly from the beginning, as the restrictive regulations are often used by Thai competitors to make life more difficult for foreign competitors.

*We hope that the information provided in this brochure was helpful for you.  
If you have any further questions please do not hesitate to contact us.*

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