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Philippines

Regulating E-Commerce: The Internet Transactions Act and its Implementing Rules

2023 年 12 月に制定されたインターネット取引法の施行規則が 2024 年 5 月に発行された。同法はフィリピンの電子商取引の健全な発展と運営を促進することを目的としており、当事者の一方がフィリピンに所在する取引やフィリピン国内からアクセスできる電子商取引のプラットフォームに対して広く適用されるため、外国の電子商取引事業者も適用を受けることになる。同法は、18 ヶ月の猶予期間が設けられているものの、適用ある電子商取引事業者に対して登録義務を課すなど具体的な対応が求められることからその概要を紹介する。

Background

On 24 May 2024, the Philippine Department of Trade and Industry ("**DTI**") issued the implementing rules and regulations ("**IRR**") of the Internet Transactions Act of 2023 (the "**ITA**"). The ITA was enacted on 5 December 2023 and aims to promote the growth of the e-commerce industry in the Philippines by building trust and providing safeguards for consumers and merchants engaged in internet transactions.

Prior to the passage of the ITA, administrative guidelines for online businesses were jointly issued by the DTI and other government agencies back in March 2022, signaling that authorities have since recognized the importance of the e-commerce industry and the increasing need to further regulate online commercial transactions. While it appears that the ITA draws on such guidelines in some aspects, it also introduces additional regulatory and enforcement measures that strengthen and unify the legal framework applicable to the e-commerce industry.

Highlights of the ITA and its IRR

a) Scope and coverage

The ITA has extra-territorial application and applies to all business-to-business or business-to-consumer e-commerce transactions (whether for the sale or purchase of digital or non-digital goods or services) where at least one of the parties is situated in the Philippines, or the digital platform[1] (including e-marketplaces[2]), e-retailer[3] or online merchant[4] is availing of the Philippine market or has minimum contacts therein.

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[1] Refers to information and communication technology-enabled mechanisms that connect and integrate producers and users in online environment. These include, but are not limited to, mobile application platforms, online delivery platforms, social media platforms and travel platforms.
[2] Refers to digital platforms whose business is to connect online consumers with online merchants, facilitate and conclude the sales, process the payment, facilitate the shipment, or provide logistics and post-purchase support within such platforms, and otherwise retain oversight over the consummation of such transaction.
[3] Refers to persons (natural or juridical) selling goods or services directly to online consumers through its own website, webpage or application.
[4] Refers to persons selling non-financial goods or services to online consumers through an e-marketplace or third-party digital

The IRR defines "availing of the Philippine market" as any action that leads or indicates an intention to transact with persons or businesses located in the Philippines, such as advertising directed to the Philippine market, soliciting or receiving orders, making deliveries, or providing technical or customer support to customers in the Philippines.

Further, "minimum contacts", which refers to any interaction with potential or actual customers within the Philippines regardless of residence or citizenship of such customers, is deemed established under the IRR if users in the Philippines are allowed to access and use the digital platform to exchange information, goods or services while in the Philippines.

b) Obligations and liabilities of parties

Apart from the obligation to comply with data protection and other relevant laws, digital platforms, e-retailers and online merchants falling within the scope of the ITA are subject to the following responsibilities:

Digital Platforms

Digital platforms, including e-marketplaces, should among others:

(i) require online merchants to properly identify their goods and services (e.g., as to name and brand, price, description and condition, etc.);

(ii) prohibit the sale and advertisement of regulated goods and services that do not have the necessary licenses and permits;

(iii) maintain an updated list of online merchants, since it may be required to provide specific information on such merchants through subpoenas issued during investigation of complaints by government authorities; and

(iv) have in place effective and responsive internal redress mechanisms for online consumers and merchants, wherein users or information that violate relevant laws can be reported.

In addition to the foregoing, before listing online merchants on their platform, e-marketplaces should (as far as practicable) require all merchants, whether local or foreign, to first register by submitting business registration documents, and relevant information such as address and contact details. Subject to certain exceptions[5], such information should be published by e-marketplaces on their platform for transparency, unless other means are established to facilitate communication between online merchants and customers or a link to DTI's online business database[6] is provided.

E-retailers and online merchants

On the other hand, e-retailers and online merchants, should among others:

(i) ensure that goods meet the condition as described and conform with advertising and functionality, or that services are completed in accordance with the contract or as advertised;

(ii) ensure that prices are appropriately disclosed, with complete information as to costs (e.g., delivery charges); and

(iii) issue sales invoices (paper or electronic form) to online consumers.

platform. An e-retailer offering the same goods or services outside its own website and through a third-party digital platform shall also be considered an online merchant.

[5] Exceptions on information to be published are government identification cards or business registration documents, among others.

[6] Refers to the online business database to be established by the DTI's E-commerce Bureau within 1 year from the effectivity of the ITA.

As a special rule, an e-retailer should also publish on its homepage information as to its business name, address, and contact details, and establish accessible and efficient redress mechanisms for handling complaints of online consumers.

Extent of liability

Without prejudice to other penalties imposable, in case of civil or administrative complaints relating to internet transactions, the e-retailer or online merchant is the party primarily liable to the online consumer. However, a digital platform may be held subsidiarily liable for damages when there is a failure on its part to observe ordinary diligence in complying with its obligations under the ITA, or in cases such as failure (after notice) to expeditiously remove or disable access to infringing goods or services. Further, if the failure to expeditiously remove or disable access involves goods or services that are prohibited by law, or imminently unsafe or dangerous, the liability of the digital platform will be solidary.

Statute of limitations; exhaustion of administrative remedies

An online consumer has 2 years from the time the cause of action arose to claim damages or seek the imposition of administrative penalties under the ITA. However, an online consumer must first exhaust the internal redress mechanisms of the digital platform or e-retailer prior to filing any complaint before the courts or the DTI. It should be noted that the internal redress mechanism is deemed exhausted if a complaint remains unresolved after 7 calendar days from the filing thereof.

c) Enforcement and other measures

An E-commerce Bureau is created under the DTI whose functions include implementing and monitoring compliance with the ITA and its IRR, and investigating and recommending the filing of appropriate cases for violations of the ITA.

Online business database and dispute resolution

The DTI is tasked with developing an online dispute resolution platform to facilitate alternative modes of dispute resolution in resolving complaints and an online business database of digital platforms, e-retailers and online merchants engaged in e-commerce in the Philippines. The online dispute resolution platform is already operational[7], while the DTI has 1 year from the effectivity of the ITA to develop the online business database.

Compliance and take-down orders

Some of the enforcement measures that may be exercised by the DTI include the authority (through the DTI Secretary) to issue compliance orders, as well as takedown orders directing the digital platform, e-retailer or online merchant to remove a listing or offer on a webpage or platform found after investigation or verification to be prohibited (e.g., selling counterfeit goods) or the subject of a cease and desist order, among others.

Other regulatory government agencies may also request a takedown order to remove an online listing or offer in violation of laws or regulations under their jurisdiction. Takedown orders shall remain in effect for a maximum of 30 days, unless extended or made permanent by court order.

Blacklisting

The DTI may also establish a publicly accessible blacklist of websites, online applications, or accounts that violate a compliance order or are subject to a takedown order or cease and desist order. The blacklist shall be furnished to digital platforms and financial regulators. The DTI, at its own initiative or upon request, shall promptly remove an entry from such list after compliance or correction measures are satisfactorily addressed.

[7] Please refer to https://podrs.dti.gov.ph/#/home

Administrative fines

The DTI may also impose administrative fines as penalty for violations of the ITA, such as for (i) deceptive, unfair or unconscionable sales practices done through the internet (which fines shall be in addition to penalties imposed under the Consumer Act of the Philippines), (ii) willful or unreasonable refusal to comply with a takedown order, or (iii) failure of digital platforms or e-retailers to have in place internal redress mechanisms.

The amount of fines payable depends on the nature and frequency of the offenses and is detailed in the IRR. In any case, the penalty of administrative fines is without prejudice to damages and other liabilities that may be imposed under applicable laws.

d) Transitory period

All affected digital platforms, e-retailers and online merchants are given 18 months from the effectivity of ITA (i.e., until 20 June 2025) to comply with the requirements under the law. In the meantime, the implementation and enforcement of other applicable laws (e.g., consumer protection and data protection laws) will not be stayed during the transitory period.

Conclusion

The ITA plays a critical role in improving the standards of the Philippine e-commerce industry and addressing the gaps in existing legislation, which may have considered more traditional business models. As the responsibilities and accountability of parties to internet transactions are clarified, affected digital platforms, e-retailers and online merchants should assess their current online business practices and comply with the ITA before the transitory period ends.

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Malaysia

The Amended Occupational Safety and Health Act 1994

マレーシアでは、2024 年 6 月 1 日付けで工場機械法が廃止されたのと同時に労働安全衛生法が改正された。改正前は、製造業、卸売り・小売り業、金融業、保険業、不動産サービス業など特定の事業者に適用が限定されていたものが、今般の改正により適用対象が原則全事業者に拡大された。労働安全衛生コーディネーターの選任など新たに事業者に課せられる義務もあり、同改正法を遵守した職場づくりが求められることになる。

Introduction

The legal framework in respect of occupational safety and health of workers in Malaysia was previously regulated under, amongst others, the Occupational Safety and Health Act 1994 ("**OSHA 1994**") and the Factories and Machinery Act 1967 ("**FMA 1967**"). However, effective from 1 June 2024,[1] the FMA 1967 was repealed, and the OSHA 1994 was amended by the Occupational Safety and Health (Amendment) Act 2022 ("**2022 OSHA Amendments**").

Salient Amendments to the OSHA 1994

1. Extension of the application of OSHA 1994 to all places of work

   Prior to the 2022 OSHA Amendments, the OSHA 1994 only applied to specific industries prescribed under the First Schedule of the OSHA 1994, including manufacturing, wholesale and retail trades, finance, insurance, real estate and business services. At the same time, the then OSHA 1994 was complemented by the FMA 1967 which regulated factories' machinery and the safety and health of persons in factories.

   Following the repeal of the FMA 1967, any registration made, approval, certificate of fitness or certificate of competency given or issued under the FMA 1967 are dealt with under the OSHA 1994. Further, the 2022 OSHA Amendments have widened the scope of application of the OSHA 1994, to all places of work throughout Malaysia, except for employers of domestic servants, domestic servants, armed forces and work on board ships governed under *inter alia* the Merchant Shipping Ordinance 1952.

2. Extension of the application of OSHA 1994 to all places of work

   Under Section 29 of the OSHA 1994, an occupier of a place of work in the industries that are specified by the Minister of Human Resources,[2] must employ a competent person to act as a safety and health officer.

   Following the 2022 OSHA Amendments, for places of work that do not require a safety and health officer pursuant to Section 29 of the OSHA 1994, there is a new Section 29A of the OSHA 1994 which requires an employer of 5 or more employees at the workplace, to appoint one of its employees as an occupational safety and health coordinator.

   The statutory role of occupational safety and health coordinator is to coordinate occupational safety and health issues at the place of work. The role is less extensive than that of the safety and health officer who must be appointed exclusively to ensure the observance at the place of work of the OSHA 1994 and the promotion of a safe conduct of work at the place of work.

3. Introduction of a new definition – "principal" and duties imposed on the principal

   The amended OSHA 1994 defines "principal" as *"any person who in the course of or for the purposes of his trade, business, profession or undertaking contracts with a contractor for the execution by or under the*

[1] The Minister of Human Resources had by Gazette Notifications P.U.(B) 127/2024 and P.U.(B) 128/2024 dated 2 April 2024, appointed 1 June 2024 as the date of the Factories and Machinery (Repeal) Act 2022 and Occupational Safety and Health (Amendment) Act 2022 coming into operation respectively.

[2] The relevant class or description of industries in which a safety and health officer shall be employed is set out in the Occupational Safety and Health (Safety and Health Officer) Order 1997.

contractor of the whole or any part of any work undertaken by the principal".

Under the new Section 18A of the OSHA 1994, a principal has a duty to take, so far as is practicable, such necessary measures to ensure the safety and health of the following persons when at work:

(a) any contractor engaged by the principal;

(b) any subcontractor or indirect subcontractor;

(c) any employee employed by such contractor or subcontractor,

if the aforesaid persons are working under the direction of the principal.

Section 18A(3) of the OSHA 1994 sets out a list of non-exhaustive measures to ensure the relevant persons' safety and health, including the provision of necessary information, instruction, training and supervision to ensure, so far as is practicable, the safety and health of the persons at work, the development and implementation of procedures for dealing with emergencies that may arise while the persons are at work.

Other than the aforesaid persons, Section 18A(4) of the OSHA 1994 also imposes an additional duty on the principal to take, so far as is practicable, necessary measures to ensure the safety and health of persons who may be affected by any undertaking carried on by him or her at the place of work.

4. Imposition of additional duties on employers, self-employed persons and/or principals

The amended OSHA 1994 has a new Section 18B which requires every employer, self-employed person and principal to conduct a risk assessment in relation to the safety and health risks posed to any person who may be affected by his or her undertaking at the place of work. "Risk assessment" is defined under Section 18B(3) of the OSHA 1994 to mean *"the process of evaluating the risks to safety and health arising from hazards at work and determining the appropriate measures for risk control"*.

Where a risk assessment indicates that risk control is required to eliminate or reduce the safety and health risk, the relevant employer, self-employed person and principal must implement such control.

Further, every employer is also imposed with a new duty under Section 15(2)(f) of the OSHA 1994 to develop and implement procedures for dealing with emergencies that may arise.

5. Introduction of employees' right to remove themselves from "imminent danger"

"Imminent danger" is a new term defined at the new Section 26A(3) of the OSHA 1994 to mean *"a serious risk of death or serious bodily injury to any person that is caused by any plant, substance, condition, activity, process, practice, procedure or place of work hazard"*.

If an employee has reasonable justification to believe there exists an imminent danger at his place of work, the new Section 26A(1) of the OSHA 1994 confers a right upon the employee to remove himself or herself from the danger or the work if the employer fails to take any action to remove the danger.

Section 26A(2) of the OSHA 1994 further clarifies that an employee who removes himself or herself from the said danger will be protected against undue consequences and will not be discriminated against.

Conclusion

In view of the expansion of the scope of application of the OSHA 1994 to all places of work in Malaysia (save for some limited workplaces), all the relevant employers, self-employed persons, principals and employees should take note of the 2022 OSHA Amendments and their duties, rights and obligations thereunder in ensuring a safe and healthy work environment at their respective workplaces.

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