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THAILAND

Newsletter

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Thailand: The Trade Competition Commission of Thailand Narrows Down the Classification of SMEs under the SME Credit Term Regulation

The Trade Competition Commission of Thailand (TCCT) issued a sweeping regulation on 18 June 2021 to limit the length of credit terms that service receivers and buyers can request from their service providers and vendors which qualify as small and medium sized enterprises (SMEs). Under the regulation the credit term is limited to a maximum of 30 or 45 days, depending on the types of products and services being offered. This is to alleviate cashflow problems historically faced by numerous SME service providers and vendors. This law has had a significant impact on many service receivers and buyers in Thailand, as historically credit terms tended to be much longer than the new limits prescribed by the TCCT. In fact, Thailand has one of the longest credit terms on average in the region. The impact has been compounded by the fact that most service receivers and buyers in Thailand also have monthly invoice and documentation submission deadlines in addition to monthly payment release dates, all of which may circumvent the new regulation. A review of the regulation was therefore required.

One of the contentious issues under this new law is the use of the term “or” in the definition of SMEs. Under the original regulation, there are two methodologies to classify an operator as an SME. In the case of a manufacturer, the entity must not have more than 200 employees or more than 500 million Baht of annual sales. For a service provider, wholesale, or retail businesses, the entity must not have more than 100 employees or more than 300 million Baht of annual sales. The word “or” is used in both methodologies, meaning that it could theoretically be argued that low-headcount, high-productivity operators such as IT companies, trading houses, brokerage firms, and the likes, could claim SME status even if their annual sales figure is very high. On the flip side, it could also be argued that labor-intensive, low-sale operations such as those in the agricultural sector may also claim SME status even if they have a large workforce, if their sales figure remains low. It was commented that these classifications have possibly unintended consequences.



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The TCCT has taken up this issue and responded by issuing an overriding announcement on 17 August 2022 to switch the conjunction from “or” to “and”, therefore ending the debate on this point. Now it is clear that a service provider or vendor must have both a low headcount and a low annual sales figure to qualify as an SME under the law. The direct impact of this overriding announcement is the narrowing down of the classifications of SMEs under the law, therefore reducing the practical impact of this law on the service receivers and buyers.

Service receivers and buyers may now renegotiate their credit terms with certain vendors and service providers who now fall outside the classifications. It is recommended that such u-turn in practice should be undertaken with care and consideration. In particular, the service receivers and buyers are recommended to wait for the existing contractual arrangements which carry a shorter credit term to lapse, instead of forcing the ex-SME vendors and service providers to extend their credit term under an ongoing contractual performance, to reduce the risk of investigation by the TCCT.

Any service receivers and buyers who have yet to review their credit terms, monthly invoice and documentation submission deadlines and payment release dates should do so as soon as possible and revise their practices with the service providers and vendors to avoid investigation by the TCCT as well.

If you have any questions in relation to the topic raised in this briefing, please contact the authors listed in the left-hand column.

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