

E-Commerce in Malaysia: What You Need to Know



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1. With the enforcement of the Movement Control Order 3.0 (**MCO 3.0**) to curb the spread of COVID-19 in Malaysia, more and more businesses are being affected at a national level and continue to look for alternative means to operate during this unprecedented time.
2. The closure of certain brick-and-mortar stores presents an opportunity for businesses to innovate in order to remain afloat. Accordingly, to bridge the gap between businesses and their customers, companies are increasingly expanding their presence through online platforms, either via an online marketplace (e.g. Shopee or Lazada) or as a standalone online trader. To help facilitate businesses navigate the closure of physical premises, the government of Malaysia has also formally recognised that online trade, or more widely known as electronic commerce (e-commerce) is an essential service and can be carried out throughout the enforcement of MCO 3.0.
3. When considering whether to venture into this space, there are several legal aspects that should be borne in mind by business owners which may vary from running physical operations.

4. Business registration

- (a) Similar to setting up a conventional business, online businesses are required to register themselves with the Companies Commission of Malaysia (**SSM**), which is an agency that comes under the purview of the Ministry of Domestic Trade and Consumer Affairs.
- (b) In a 2017 statement issued by Datuk Zahrah Abd Wahab Fenner, the former chief executive officer of SSM, it was provided that all online traders who carry out businesses via a marketplace or e-commerce companies must be registered with SSM and that failure to do so would result in actions being taken in accordance with the Registration of Businesses Act 1956 (**ROBA**), with financial penalties being imposed up to RM50,000 in the event of any non-compliance.¹
- (c) The foregoing statement is consistent with s 5 of the ROBA, whereby all businesses are required to be registered with SSM. In fact, the ROBA widely defines the term “business” to include every form of trade, commerce, craftsmanship, calling, profession or other activity carried on for the purposes of gain, excluding any office or employment or any charitable undertaking or any occupation as specified under the ROBA;² therefore, making the ROBA applicable to e-commerce

¹ <https://smeinfo.com.my/starting-your-business/going-online>

² Section 2 of the ROBA

activities. Note, however, that the ROBA does not apply to, among others, any business which is exclusively owned and carried on by any company registered under the Companies Act 1965 (now repealed by the Companies Act 2016) (**CA**).³

- (d) Pursuant to the Guidelines for Registration of New Business issued by SSM, businesses that may be registered under the ROBA are those operating in West Malaysia which includes the whole of Peninsular Malaysia and the Federal Territories of Putrajaya and Kuala Lumpur. Businesses may also be registered as either a sole proprietorship or as a partnership of up to 20 partners. To qualify for registration with SSM, businesses must be owned by a Malaysian citizen or permanent resident of Malaysia who is at least 18 years of age. Furthermore, any person responsible in respect of any business is required to separately register all of its business names, where applicable.⁴
- (e) At this juncture, it is also worth noting that simply offering goods or services online to Malaysians by foreign traders who operate outside of Malaysia (i.e. cross-border e-commerce) would not necessarily warrant for registration or incorporation of the foreign trader with SSM.

5. Advertising

- (a) Online businesses rely greatly on the influence of online advertising to drive sales, as the latter is an integral tool used to promote products and services in the absence of in-store experiences or physical displays. While there is no single legislation which regulates online advertisements per se, the Communications and Multimedia Content Forum of Malaysia (**CMCF**)⁵ established the Malaysian Communications and Multimedia Content Code (**Content Code**),⁶ which puts in place guidelines and procedures for good practice and standards of content disseminated to audiences by service providers in the communications and multimedia industry in Malaysia. In particular, the Content Code is applicable only in so far as advertisements are communicated or disseminated through an electronic medium in Malaysia, which includes online advertising activities as opposed to traditional forms of print media. The Content Code places the responsibility to observe the advertising parameters thereunder onto “advertisers”, which is described as any person who utilises an electronic medium to advertise their product and services.⁷

³ Section 4 of the ROBA

⁴ Rule 4 of the Registration of Businesses Rules 1957

⁵ The CMCF was established as an industry forum pursuant to s 94 of the Communications and Multimedia Act 1998 to govern content and address content related issues.

⁶ The second edition of the Content Code was registered on 14 February 2020 and is accessible at <http://cmcf.my/download-code>

⁷ Sections 1.1 and 1.2, Part 3 of the Content Code

- (b) The Content Code prescribes, among others, that all online advertisements should be legal, decent, honest and truthful, and that such advertisements should also respect the principles of fair competition generally accepted in business.⁸ For instance, when stating the price of products, the same must be done in a clear manner and advertisers should ensure that prices match the products illustrated. Furthermore, if the price of one product is dependent on the purchase of another, the extent of any commitment by consumers should be made clear and that the availability of benefit likely to be obtained by consumers should not be exaggerated.⁹
- (c) More importantly, when using the word “guarantee” in advertisements, such connotation should not be used in any way that could diminish consumers’ legal rights. Substantial limitations should be clearly spelt out in the advertisement, and that prior to any commitment, consumers should be able to obtain the full terms of the guarantee from advertisers. Advertisers should inform consumers about the nature and extent of any additional rights provided by the guarantee, over and above those stipulated by law, and should make clear how to obtain redress.¹⁰
- (d) When choosing to advertise products online, there are certain products and services which are deemed as unacceptable in character pursuant to the Content Code. In this regard, advertisers should avoid promoting products and services that may be viewed as contrary to public interest, such as cigarettes, tobacco products and its accessories, sexually explicit content and any form of gambling, including betting and gambling tips (among others).¹¹
- (e) Note also that it is an offence under the Trade Descriptions Act 2011 (**TDA**) to publish any false or misleading statements in any advertisement in relation to any goods or services, which includes any form of advertising published by electronic means.¹² An advertisement may be regarded as false or misleading in the event it causes consumers to obtain goods and services supplied in an erroneous manner as a result of relying on the same.

6. Legal relations and consumer protection

- (a) The Electronic Commerce Act 2006 (**ECA**) recognises the creation of online business relationships. Pursuant to s 7 of the ECA, a contract formed by means of an electronic message¹³ is

⁸ Section 3.1, Part 3 of the Content Code
⁹ Section 4.1 (x), Part 3 of the Content Code
¹⁰ Section 4.1 (xiii), Part 3 of the Content Code
¹¹ Section 4.1 (xviii), Part 3 of the Content Code
¹² Section 2 of the TDA, definition of “advertisement”, read together with s 18 of the TDA
¹³ The ECA defines “electronic message” as any information generated, sent, received or stored by electronic means

legally valid, binding and enforceable against the contracting parties (provided always that the elements of a valid contract are met). To facilitate the creation of such contracts, s 9 of the ECA further recognises the use of electronic signatures in commercial transactions,¹⁴ which are signatures executed via electronic means in accordance with the ECA or digital signatures created pursuant to the requirements under the Digital Signatures Act 1997.

- (b) Online traders also bear the responsibility to ensure compliance with the Consumer Protection Act 1999 (**CPA**), which, among others, provides that, no person shall make false or misleading representations, as to the quality and quantity of the goods provided or misleading indication as to the prices for such goods or services offered.¹⁵ Furthermore, it is an offence to prepare consumer terms and conditions in a manner which would result in an unjust advantage to the supplier or unjust disadvantage to the consumer¹⁶ (e.g. an abuse of the online trader's bargaining power, for instance); or to enter into consumer terms and conditions which are substantively unfair to the consumer¹⁷ (e.g. inserting terms which exclude or restrict an online trader's liability for negligence).
- (c) The Consumer Protection (Electronic Trade Transactions) Regulations 2012 (**CPR**), issued pursuant to the CPA, also make it a requirement that any person who operates a business through a website or via an online marketplace must disclose the following information on its website:¹⁸
 - (i) The name of the person who operates a business for the purpose of supply of goods or services through a website or in an online marketplace, or the name of the business, or the name of the company.
 - (ii) The registration number of the business or company, if applicable.
 - (iii) The e-mail address and telephone number, or address of the person who operates a business for the purpose of supply of goods or services through a website or in an online marketplace.
 - (iv) A description of the main characteristics of the goods or services.

¹⁴ Please note that not all documents can be signed electronically, as certain documents are expressly carved out under the ECA.

¹⁵ Section 10 of the CPA

¹⁶ Section 24C of the CPA

¹⁷ Section 24D of the CPA

¹⁸ Regulation 3 of the CPR

- (v) The full price of the goods or services including transportation costs, taxes and any other costs.
- (vi) The method of payment.
- (vii) The terms and conditions.
- (viii) The estimated time of delivery of the goods or services to the buyer.

(Note that providing any false or misleading information in respect of the above is an offence.)

- (d) Additionally, online traders must provide the appropriate means to enable a buyer to rectify any errors prior to the confirmation of any order made; and shall acknowledge receipt of the order to the buyer without undue delay.¹⁹

Conclusion

E-commerce has paved the way to enable business viability and continuity in a time where social and commercial interactions are experiencing unexpected challenges. With the government recognising the importance of catering to business and consumer needs during a nationwide lockdown, there is a growing reliance placed upon e-commerce services in order for day-to-day activities to be carried out. If there was ever a time for businesses to expand and re-strategise, they should seize the opportunity to move operations online now. In doing so, businesses should be aware of the legal obligations involved and seek legal advice where necessary.

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