

The Ministry of Commerce (MOC) has issued a list of standards and rules applicable to e-commerce operators, the Digital Commerce Operational Guidelines 2021 ("the Guidelines").

BANGLADESH: NEW RULES FOR E-COMMERCE MARKETPLACES. NEED TO REGISTER, DELIVER WITHIN 5 OR 10 DAYS

The Ministry of Commerce (MOC) has issued a list of standards and rules applicable to e-commerce operators, the Digital Commerce Operational Guidelines 2021 ("the Guidelines"). The digital commerce sector is booming in Bangladesh, estimated at growth of 70% to 80% during the pandemic, and with over 2,500 sites selling products online targeting Bangladesh, not counting traditional stores with an online facility. But there have been serious problems as well. Several high-profile court cases and even criminal proceedings have caught headlines in Bangladesh in recent months with allegations going from taking advance payments and never delivering to a wide range of other consumer rights issues.

Partly in response to these problems, the MOC issued these Guidelines with reference to the earlier National Digital Commerce Policy 2018 (as amended in 2020). The purpose of the Guidelines is to "protect the interests of consumers and sellers". But the main operation is to inject more accountability, liability, and transparency into digital business, all while recognizing it is a source of new business and employment.

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Highlights of this note

- ▶ Are these Guidelines legally binding?
- ▶ To whom do the Guidelines apply? To the sellers only or also to the online platforms that facilitate third party sellers?
- ▶ Delivery should be within 5 to 10 days
- ▶ Various consumer rights in e-commerce
- ▶ Prohibitions and requirements
- ▶ Registration of all marketplaces
- ▶ Records and processing payments by online marketplaces
- ▶ What are the sanctions for not complying?
- ▶ Some recommendations

In this Client Briefing Note, we analyze some of the key rules moved forward by the Guidelines.

Are these Guidelines legally binding?

Most rules in the Guidelines appear meant to be binding in nature, but there are also some more general statements on policy. Some rules are definitely binding not because the Guidelines are binding per se, but because they merely refer to existing binding laws. For example, the Guidelines re-confirm that financial services may not be offered without the central bank, Bangladesh Bank's approval as per existing laws.

Then, there are rules that are written in binding language, but there does not seem to be a special or explicit sanction to enforce this rule as such. For example, the 5/10 day delivery obligation (see below) or the 10 day payment clearance (see below).

Finally, some rules are mere statements of a desired future policy, such as the mention that at some point, all operators would have to obtain a business registration, while this is presently perhaps not possible for overseas operators without a Bangladesh presence.

To whom do the Guidelines apply? To the sellers only or also to the online platforms that facilitate third party sellers?

There are rules targeting sellers and there are -less- rules targeting the platforms or "marketplace", as the Guidelines call them (both in Bengali and in English, by the way). The most important rules targeting the "marketplaces" is that payments must be processed within 10 days, that a registration in Bangladesh is required and that a complaint mechanism must be provided (see on both below).

Delivery should be within 5 to 10 days

The timeline for delivery of goods and services has been set out in the Guidelines. Product deliveries within the same city should be made within 5 days if payment has been made, and deliveries to a different city should be done within 10 days. The threshold of delivery timeline was not mentioned in the National E-commerce Policy 2018, it is a new addition. For goods used regularly or perishable goods, delivery should be sooner, and the buyer must be made aware of the same. If there is some kind of force majeure preventing the seller from delivering within that threshold, then the money has to

be returned first to the buyer, the Guidelines state.

The Guidelines say they apply "to Bangladesh" but, given the fundamental global nature of e-commerce, there is no explicit reason to believe that this delivery time only applies to Bangladeshi local sellers with local goods. Imported goods ordered from sites such as Amazon are permitted in Bangladesh provided proper taxes are paid on import.

The Guidelines do not state if customers and sellers can deviate on the timeline by contract, but the Guidelines do note that extensions are possible. We believe that if the terms and conditions are clear, and the delivery timelines are explicitly agreed in the contract between seller and buyer, it is unlikely that the 5/10 day period poses a huge legal problem.

Various consumer rights in e-commerce

The Guidelines state that the product or service should be described clearly and transparently, including a product description, features, conditions for returns and exchanges of products, delivery times, etc. If there is any special software or cookies on the e-commerce portal, consumers need to be notified



beforehand. If any personal information needs to be collected during the buying and selling of any products or services, the seller must obtain prior consent by informing buyers where that information will be stored and how it will be processed and used. A check box option for acceptance of the terms and conditions can be included to obtain buyers' prior consent. The Guidelines also state that terms and conditions must be available in Bengali language on the marketplace.

Prohibitions and requirements

Products and services offered through e-commerce must adhere to a wide range of normally applicable rules and regulations, such as:

- To sell medicine, approval must be obtained from the relevant authorities;
- Betting or gambling of any kind is not permitted;
- Any type of financial services or digital vouchers require prior approval from Bangladesh Bank;
- MLM (multi-level marketing) businesses are not allowed to be conducted through an e-commerce platform.

- Raffles or prizes require prior approval from commercial authorities.

Registration of all marketplaces

Business registration of market places that are Bangladesh businesses is already a fact. For example, "Daraz" is one of the countries' largest local e-commerce marketplaces and is registered as a normal local company. The problem of registration exists primarily for the foreign marketplaces. Aside from a foreign marketplace actually opening a branch or a subsidiary (conducting business in Bangladesh), it is not clear if and how a foreign or global marketplace doing business with Bangladesh can register in Bangladesh at this point in time. The Guidelines set forth that gradually, a unique business identification number will be made mandatory for all "market places", also the foreign ones. The system is to ensure that marketplaces take the necessary contact details and register sellers, rather than sellers getting their own business registration. So, the foreign marketplaces that conduct business in Bangladesh must in time be registered in Bangladesh and must obtain the necessary approvals from the concerned authorities, the

Guidelines state. This evolution can be associated with the push for VAT registration in Bangladesh by foreign online businesses such as Google and Facebook.

It is also noteworthy that the National Digital E-Commerce Policy 2018 stated that foreign e-commerce providers, investors in Bangladesh, can only conduct business in Bangladesh with a local partner, but no details were provided. In the National Digital Commerce Policy 2020 this was actually amended to state that foreign investors in this area would instead "need to comply with existing laws and regulations" (3.6.7 of the National Digital Commerce Policy 2020).

Records and processing payments by online marketplaces

The Guidelines state that for transparency, all details of transactions conducted via e-commerce sites need to be preserved for at least six years from the transaction date, and e-commerce business owners must provide that information immediately if requested by any appropriate governmental authority.

Furthermore, marketplaces are required to pay third-party sellers



their payment upon deduction of the necessary charges/commission within 10 days, unless otherwise agreed between them.

Marketplaces are also required to include the necessary phone number, email, or other means of communication through which consumers may file a complaint. Such complaints must be recorded and a solution must be provided to the consumer within 72 hours. Marketplaces are also instructed to ensure there is a proper rating and review system so that buyers can view them and make an informed choice. Such reviews cannot be deleted by the platform.

What are the sanctions for not complying?

The Guidelines themselves do not state any specific sanctions for violating its this instrument per se, but as was explained above many rules refer to existing other laws that do have sanctions. The Guidelines refer to administrative actions that can take the form of cancelling of a trade license, company registration or the VAT registration. Also, the Guidelines state that aggrieved consumers can file suit, apparently under the more generally applicable Consumer Protection Act.

It is not clear to which extent all these sanctions are actually supported by the relevant legislation, but certainly various authorities could use whatever discretion they have under laws on company or tax registration to make

life hard for companies they feel do not comply with the Guidelines. The Guidelines do have some reference to actions the various authorities could take such cancellation of trade license, company registration, VAT registration, etc. The Guidelines also refer that aggrieved buyers may lodge complaints with the Directorate of Consumer Rights Protection to seek a redress against any loss resulting from non-compliance.

Some recommendations

Clients should not underestimate the degree of suspicion which has been created in Bangladesh towards e-commerce by recent scandals, which center around taking payments without making deliveries of ordered goods. The Guidelines are just one manifestation of this. Earlier this year, Bangladesh Bank announced it would stop payments from proceeding unless deliveries are made, and several banks have stopped processing payments to nearly all local marketplaces. The pressure put by the Government to minimize fraud and increase transparency has reverberated through the country. For example, landlords are now weary to rent space to e-commerce companies and banks are reluctant to open bank accounts for them.

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