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Trade Competition: Meaning of SME for Credit Terms

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The Trade Competition Commission ("TCC") issued guidelines on fair trade practices for credit terms for small and medium enterprises ("SMEs"). This article will discuss the TCC's clarification of what constitutes an SME, and the credit term guidelines.

The Notification

TCC issued Notification Re: Guidelines for Consideration of Fair-Trade Practices Related to Credit Terms for Small and Medium-Sized Enterprises (SMEs) that Sell Goods and Services ("Notification") on 18 June 2021. The Notification took effect on 16 December of last year.

The Notification provides guidelines to set credit terms between operators and SMEs in order to maintain fair trade and enhance cash flow of SMEs. For SMEs engaged in trade, manufacture, and services, credit terms must not exceed 45 days unless a shorter term has already been agreed.

Credit terms for SMEs involved in agricultural products are further reduced to 30 days. This is, unless the parties have justifiable grounds to agree to longer credit terms, which must be considered case-by-case.

Meaning of SME

The Notification classifies operators in the following sectors with the corresponding characteristics as SMEs:

- (1) Manufacturing: 200 employees or less, **or** with a maximum annual revenue of Baht 500 million; and
- (2) Service Purveyors, Wholesalers, or Retailers with 100 employees or less, **or** with annual revenue not exceeding Baht 300 million.

Several operators within different sectors have approached the Author to question the definition, particularly whether an operator, having less than 100 employees but earning annual revenue of more than Baht 300 million, would qualify as an SME (?)

Operators feel perplexed over how one can qualify as an SME if they have less than 100 employees but earn Baht 1 billion of annual revenue. Ultimately, they are reluctant to request their counterparties to reduce their credit terms from 90 days to 45 days.

The Author, in principle, views that laws are to be interpreted according to their letter and then, only when the letter of the law is ambiguous, must one consider their spirit. Hence, a company with either less than 100 employees or a maximum annual revenue of Baht 300 million should qualify as an SME. In other words, a trading company with less than 100 employees would qualify as an SME, regardless of its annual revenue.

The Author formally requested clarification from the TCC. The authority upheld the Author's interpretation and further elaborated it considers only one condition, either the employment or annual revenue threshold, to tag an operator as an SME. To be clear, an operator who engages in trading or provides services, and has less than 100 employees but more than Baht 300 million annual revenue, or more than 100 employees but an annual revenue not exceeding Baht 300, is an SME.

Other Notes.

The Notifications provides added credit term guidelines.

1. Credit terms for the sale of goods and provision of services should start from the product/service delivery date with complete documents.
2. In cases of consignment, credit terms start from the date products are sold at amounts or rates agreed under customary trade practices.
3. Operators who transact with SMEs must clearly state the payment process. SMEs must provide evidence showing the number of employees or annual revenue to confirm SME status.
4. Delay of payment in excess of, or a change to, the credit terms without reasonable grounds may be treated as an unfair trade practice.
5. Special conditions for credit terms that create unnecessary burdens may also be treated as unfair trade practice.
6. Operators committing unfair trade practices may be responsible for compensation and an administrative fine.

Author's Note:



Operators should now be clear about the meaning of "SME" under the Notification. More specifically, an operator who meets one condition, either having less than 100 employees OR less than Baht 300 million annual revenue, is an SME under the Notification. Now, readers should be able to determine for themselves whether they are an SME. And, they should start reviewing their credit terms with the counterparties in order to negotiate a 45 days credit term (or 30 days), as the case may be. Doing so may help SMEs enhance their cashflow.

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