

RESEARCH REPORT

**SOCIAL COMMERCE IN VIETNAM:
A LEGAL REVIEW**

RESEARCH REPORT

**SOCIAL COMMERCE IN VIETNAM:
A LEGAL REVIEW**

Hanoi, March 2021





PREFACE



Electronic commerce (E-commerce) in Vietnam is growing at an extremely high annual rate. In addition to e-commerce websites, a large number of individual and corporate entities are using social network' tools to sell and purchase goods and services.

The current legal framework for e-commerce and social networks has been in place since 2013. Since regulations were initiated in the early phase, many issues were generally specified or not successfully covered, resulting in application difficulties. Moreover, many regulations have become out of date due to rapid development of Internet-based e-commerce services. Therefore, regulations on social network and e-commerce management have been reviewed and are expected to revised in the near future.

The Vietnam Chamber of Commerce and Industry (VCCI) has developed this report to include a legal review of social commerce in Vietnam. The main research methods include legal review and in-depth interviews of relevant subjects.

The research revealed that the social commerce is relatively typical and not completely similar to any e-commerce forms, including e-commerce exchanges. One of the outstanding differences between the social networks and the e-commerce exchanges is that the social network has not been characterized by online ordering functions as of today. Buyers and sellers are required to directly contact with each other to complete transactions. Meanwhile, e-commerce exchanges may be supported by online ordering functions. Accordingly, e-commerce deals are successfully finalized through the Internet environment from ordering to shipping and delivery. Some social networks have deployed functions to facilitate e-commerce-related activities (such as Facebook Marketplace or Zalo Shop); however, these functions aim to facilitate good and service introduction and information provision only, not online ordering functions. This practice requires the regulations on e-commerce to be developed properly to effectively regulate and facilitate e-commerce development. Management and control of social commerce should address differences between social networks



and e-commerce forms and the benchmark needs to be established to compare and match based on the nature of the activity and feasibility.

Some policy recommendations have been released herein in accordance with studies and analysis on practice and management of services involving in the social commerce. Some key recommendations include:

- 1. Regulations governing social commerce should be based on laws on consumer protection and advertisement. Accordingly, the focus should be on user obligations when goods or services are posted on the social networks, rather than focusing on the social network's obligations (EU social network management models are referred).
- 2. Specific and feasible management policies should be applied for each service involving in social commerce, including:
 - >> i. If social networks allow its users to post commercial information but do not offer any specific supports or demonstrate online ordering functions, they should be managed in accordance with regulations on Internet-based information management, supply and use (Decree 72/2013/ND-CP).
 - >> ii. If social networks have commerce support functions but do not have online ordering functions, they should be managed in accordance with commerce standards, low-level user authentication criteria under the laws on e-commerce.
 - >> iii. If social networks demonstrate online ordering functions, they should be managed similar to e-commerce exchanges.
- 3. Taxation of sellers on e-commerce platforms (including e-commerce exchanges and social networks) should be guided by a clear and flexible mechanism so that the relevant subjects may consult or authorize a third party (such as tax agent, tax, audit or legal service providers, etc.,) to pay applicable taxes.
- 4. For the services involving in the cross-border social commerce, regulators should understand the cross-border operation and social network platforms in order to regulate and manage services of such platforms effectively. For example,



more practical regulations should be considered, so that foreign companies are required to notify their activity (with focal point of contact), based on that the regulators could deliver the support inquiries to identify infringing users or handle violations in accordance with the proper procedures, rather than applying formalism obligations such as establishing representative offices or appointing a legal representative in Vietnam.

Hopefully, this report will provide the regulators and the industry an overview on social commerce in Vietnam and policy recommendations for state management of these activities.



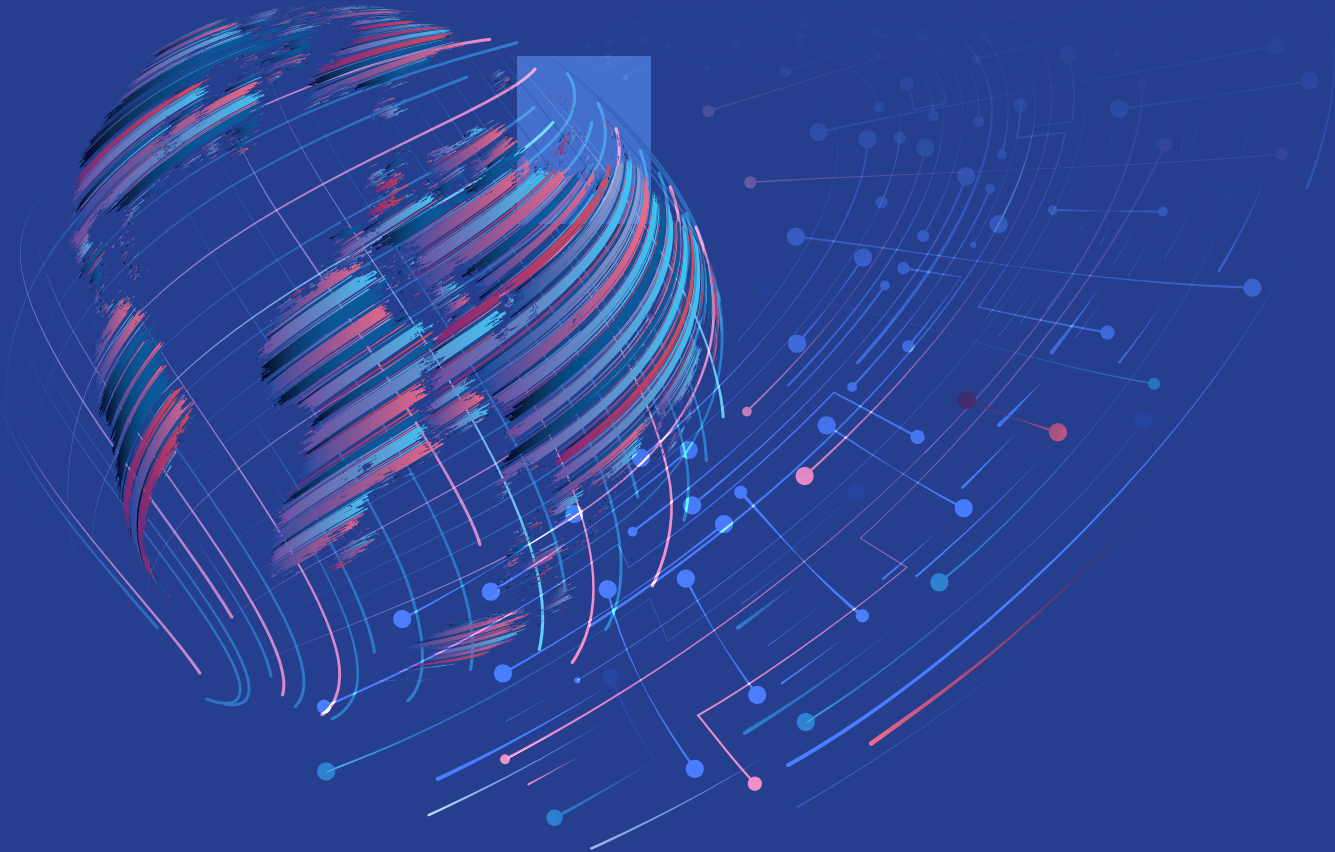


TABLE OF CONTENTS



PREFACE	2
----------------	----------

01. INTRODUCTION	8
1. Background	8
2. Objectives	9
3. Research methodology	9
4. Scope of the research	10

02. PRACTICES AND DEVELOPMENT TRENDS OF SOCIAL COMMERCE NOWADAYS	11
1. Overview of e-commerce market	11
2. Social network and social commerce	14
3. Development trends of social commerce	17

03. LEGAL ISSUES FOR SOCIAL COMMERCE	20
1. Distinguish social commerce and e-commerce exchange	20
1.1. Definitions on social network and e-commerce exchange	21
1.2. Distinguish by posted data and information	22
1.3. Distinguish by online ordering functions	23
1.4. Distinguish by commerce supporting functions	26
1.5. Distinguish introduction of traders and of products, goods and services	28
2. Obligations of controlling posts	30
2.1. For general posting information of user - community standard	30
2.2. For information using special commerce supporting functions on social networks - commercial standards	32
3. Checking and monitoring commercial contents on social network platforms	32
4. Information declaration and commercial user authentication	34
5. Compliance with state agencies' requests	35
6. Taxation	36
7. Cross-border e-commerce activities	38
7.1. Cross-border social commerce in Vietnam	38
7.2. Customs management for product import and export goods transited via e-commerce	40
8. Sales by celebrities	41

04. RECOMMENDATION	43
---------------------------	-----------



01

INTRODUCTION

1. Background	8
2. Objectives	9
3. Research methodology	9
4. Scope of the research	10

➤ 1. Background

Recently, the global business model has seen significant changes with the rapid growth and development of e-commerce activities. Digital commerce has emerged as a key contributor and driving force to the economic growth in the context that the Fourth Industrial Revolution is initiated.

An analysis of Global Data's E-Commerce Analytics reveals that Vietnam is recognized as one of most developed e-commerce markets in the South East Asia region, characterized by average annual growth rate of about 18%, and the market size is predicted to achieve US\$ 26 billion by 2024. The breakthrough growth of e-commerce makes Vietnam one of the most attractive markets among the ASEAN countries. This trend is well matched with the global trend. Although Vietnam shows a great potential in the digital commerce space, the future of the Vietnamese e-commerce market also faces many challenges with many struggles and obstacles.

On 15 May 2020, the Prime Minister promulgated the Decision 645/QĐ-TTg to approve the National Master Plan for e-commerce development for the period of 2021 - 2025. The Plan has outlined key objectives and described what 2025 might look like of these goals are achieved:

- + 55% of its population will participate in online shopping, with online trading value of US\$ 600/person/year;
- + B2C e-commerce revenue (for both online trading goods and services) increases by 25%/per year (US\$ 35 billion), accounting for 10% of total retail sales and consumable service revenue in the country.

In order to facilitate the successful launch of the National Master Plan for e-commerce development in the period of 2021 - 2025, one of the key solutions is to open and diversify e-commerce channels. Since 2016, social networks have become a new and cost-effective e-commerce support channel, especially for small enterprises and sole proprietorships. Social commerce is increasingly



popular. Even large enterprises have had to expand their social network-based product/service distribution channel.

In the survey released by Vietnam E-Commerce Association (VECOM) in 2019, 39% of business respondents unveiled that sales are initiated using social network's tools. Although this rate is significantly lower than that of 42% of enterprises selling on its website, it is remarkably higher than the 17% of enterprises activities on e-commerce exchanges. Moreover, the rate of enterprises selling via social network's tools tends to increase by 3% (compare to 2018). Meanwhile, rate of enterprises selling on their websites tend to decrease by 2% (compare to 2018).

This practice requires regulators to develop proper policies not only for effective management, but also support and facilitate development of social commerce. Development of this e-commerce channel shall not only facilitate business development of SMEs and household businesses, but also establish a supportive infrastructure for Vietnam e-commerce market.

In such context, research on social commerce in Vietnam has been launched by VCCI to provide practical information and recommendations on management policies to be well matched with such services.

➤ 2. Objectives

The research focuses on the operation mechanism of social commerce, with a comparison with e-commerce exchanges. Accordingly, specific, effective and feasible management policies are recommended to promote development of such e-commerce services.

➤ 3. Research methodology

The applicable research methodologies include:

- + General research:** Based on available domestic and foreign studies and reports, the VCCI research team has studied on operation of social commerce and other e-commerce forms as well as international experiences in managing social commerce with a comparison to other e-commerce forms such as e-commerce exchanges.
- + Survey or interview:** Twenty-five in-depth interviews were conducted with subject matter experts in the fields of social networks, e-commerce



exchanges, payment and shipping service providers and sellers, trading a series of goods and services on social network, and buyers to investigate:

- Mode of operation of social commerce;
- Questions and difficulties during operation;
- Recommendations on management policies.

+ Expert consultation workshop: A meeting was organized to consult with experts on e-commerce and exchanged main contents and findings from aforesaid research and survey activity. Accordingly, the research report was completed before release.

▶ 4. Scope of the research

The report focuses on social commerce, i.e. e-commerce-related activities conducted via social network's tools. Analysis of e-commerce services on websites, applications and e-commerce exchanges was initiated for the comparative analysis purposes. Among e-commerce forms, only Business to Customer (B2C) and Customer to Customer (C2C) are covered by the report. As most of social commerce activities include two forms, Customer to Business (C2B) and Business to Business (B2B), accounting for insignificant ratio on the social network, shall not be analyzed.

Goods and services covered exclude online content services such as music, movies, video, books and newspaper, and online radio. The research mentions various topics such as comprehensive commerce from product introduction, search for buyers and sellers, trading, payment, delivery, service supply, customer care and dispute settlement.

The social networks refer to platforms that enable users to **post and share information** with other users.





02

PRACTICES AND DEVELOPMENT TRENDS OF SOCIAL COMMERCE NOWADAYS

1. Overview of e-commerce market	11
2. Social network and social commerce	14
3. Development trends of social commerce	17

PRACTICES AND DEVELOPMENT TRENDS OF SOCIAL COMMERCE NOWADAYS

Overview of e-commerce market

The Vietnam e-commerce market is characterized by fast development. E-commerce growth rate in the country saw a 20% increase in the period of 2013 - 2019. That is why, from low starting point, i.e., US\$ 2.2 billion in 2013, e-commerce market scale hit US\$ 10.08 billion in 2019.

Figure 1: Vietnam-domiciled B2C e-commerce market scale in the period of 2013 - 2019

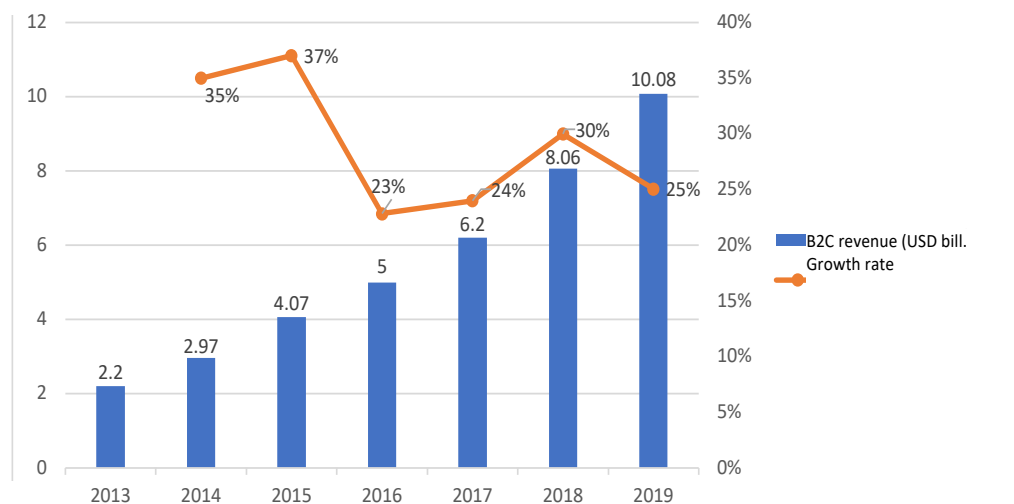


Table 1: Figures on Vietnam-domiciled B2C e-commerce market scale in the period of 2013 - 2019

	2013	2014	2015	2016	2017	2018	2019
Estimated number of online buyers (million person)	18,47	20,52	30,3	32,7	33,6	39,9	44,8
Estimated online trading value of a buyer (USD)	120	145	160	170	186	202	225
B2C e-commerce revenue ratio against total retail sales and nationwide consumer service revenue	N/A	2,12%	2,8%	3%	3,6%	4,2%	4,9%
Percent of Internet users	36%	39%	54%	54,2%	58,1%	60%	66%

Source: Summary from E-commerce Reports in 2013 & 2014 and E-commerce White book in 2015 - 2019 released by Vietnam e-Commerce and Digital Economy Agency under the Ministry of Trade and Industry (previous Department of E-commerce and Information Technology).

The e-commerce market in Vietnam is forecast to continue a fast growth going forward. Based on the e-Economy SEA 2019 report released by Google and Temasek, the digital commerce market size in Vietnam set to grow at 49% Compound Average Growth Rate (CAGR) in the period of 2015 – 2025, which represents US\$ 23 billion by 2025. Meanwhile, Vietnam would become the second largest e-commerce market in the region, behind Indonesia (US\$ 82 billion).



E-commerce is not only characterized by fast growth in terms of scale but also diversified development. In terms of form, e-commerce offers various sales forms, ranging from advertisement, lead search, customer care to trading, payment, dispute settlement, etc.,). Some forms are relatively simple and premature such as small ads sites on forum and groups involved in goods and trading information exchange on social networks. In addition, e-commerce platforms offer a series of features and experiences, such as multi-platform experiences (website, mobile application) and diversified payment methods (in cash, e-wallet, mobile account, payment card, etc.,).

In terms of product/service sales and introduction channels, there are 3 major e-commerce channels, including forum, social network, e-commerce exchanges and sales websites. The statistics released by the Vietnam e-Commerce and Digital Economy Agency revealed that as of the end of 2019, 29,370 sales websites and 999 e-commerce exchanges became available. Among which, 4 leading e-commerce exchanges were mentioned, i.e., Shopee, Lazada, Tiki¹ and Sendo. Iprice's Vietnam E-commerce map revealed that monthly web traffic of the top 4 e-commerce exchanges is very high, such as nearly 52.5 million and 21 million of login turns for Shopee and Tiki, etc., far exceeding other e-commerce exchanges.

Different goods and services offered on e-commerce platform are relatively diversified from general items such as books, newspapers, office supplies, fashion accessories to items such as automobile, motorbikes, medicines, food supplements, etc.,. However, the report released by the Vietnam e-Commerce and Digital Economy Agency unveiled that the goods/Service value exchanged on the e-commerce platforms is relatively small when approximately 70.4% of service has value of less than VND 1 million.

➤ 2. Social network and social commerce

Nowadays, the social network is increasingly popular and widely used by many Vietnamese people. According to the report on Digital 2020 for Vietnam released by the We are social and Hootsuite, active social network users in Vietnam as of January 2020 numbered 65 million, accounting for 67% of population. In comparing with January 2019, the total active social network users in Vietnam

¹ <https://iprice.vn/insights/mapofecommerce/>



increased by 9.6% (5.7 million). The social network users were relatively active. Accordingly, average time of social network use spent by a Vietnamese user was 2 hours 22 minutes per day. 89% of Internet users involved in or contributed to the social network in the nearest month.

The leading social network platforms include Facebook, YouTube, and Zalo with respective number of Internet users of 98%, 89% and 74%. Furthermore, Instagram, Tiktok and Pinterest were also used by many, more popular with Z generation (population born within the range of 1997 – 2010).² The social network also played a very important role to the job when it was used for job purposes by 58% Internet users.

In addition to popular cross-border social network platforms, Vietnam is also the home of numerous small social networks, such as Otofun, Tinh te, Webtretho, Lam cha me, etc., Recently, some new social networks were emerged, such as Hahalolo, Gapo, Lotus, to name a few. However, all domestic forums and social networks are characterized by small scale and low number of users in comparing with cross-border social networks (excluding Zalo).

With such high number of users, high interactivity and information sharing, the social network has great significance to services involving in e-commerce elements:

Firstly, the social network plays a role as a popular and effective online marketing channel. The survey launched by Q&Me Vietnam Market Research revealed that among digital marketing modes, social network marketing is the most popular mode, used by 84% of respondents, far exceeding other modes.

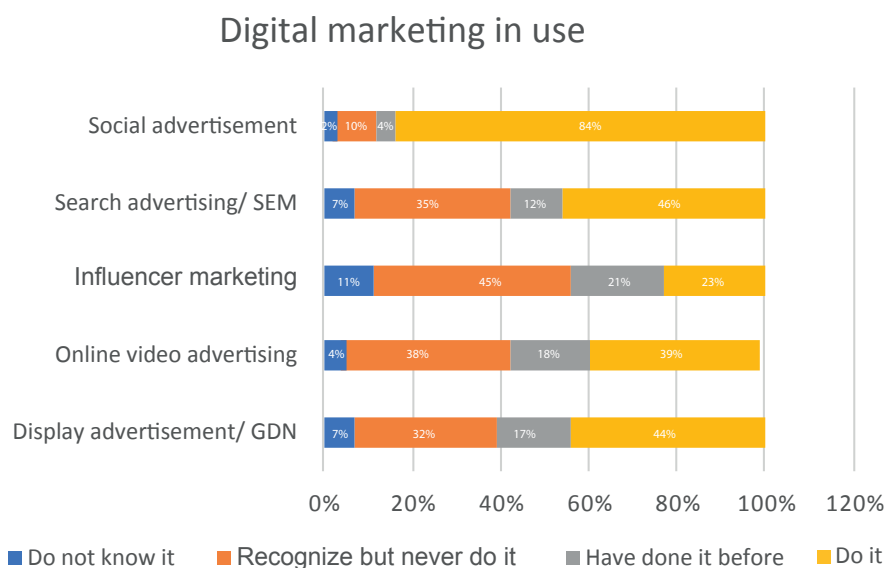
The social network is considered to be marketing channel serving different sized enterprises. The above survey also revealed that the social network marketing is used by 94% of SMEs and as well as 79% of small-scale enterprises. This is regarded as a difference between social network marketing and other digital marketing forms when most of remaining modes are mainly served for medium and large enterprises.

Therefore, expenditure for social network marketing is forecasted to gain high growth. Statistics specified that the expected expenditure increase twice, from US\$ 36 million in 2017 to US\$ 76 million by 2024.

² <https://marketingai.admicro.vn/bao-cao-dinh-hinh-su-phat-trien-cua-cac-nen-tang-mang-xa-hoi-tai-viet-nam-hien-nay/#mua-sam-truc-tuyen>



Figure 2: Use level of digital marketing modes



Source: The digital marketing landscape in Vietnam, Q&Me Vietnam Market Research

Second, the social network is regarded as a good place for e-commerce supporting services. According to the 2019 survey released by VECOM, forum and social commerce is involved by approximately 39% of corporate respondents.³ Regarding consumers, the report found that forum and social shopping is used by 57% of respondents.⁴

Social commerce is relatively abundant and diversified. The social commerce activity may be triggered by small ads columns of forums, personal sites or social network groups or professionally accounts for business purposes such as fan pages. Regarding sellers, social network-based seller or product introduction subjects may be enterprises or individuals, or sometimes individuals without business purposes such as old goods exchange or goods that are not needed for use any more. Regarding goods, social goods are also much diversified in terms of category. Among which, columns subject to high control in terms of quality standard such as medicines, cosmetics and food supplements, to name a few; columns subject to commercial restrictions such as alcohol and beer. Regarding service, many traditional services are also exchanged on social network such as beauty consultancy services, residence

³ Vietnam E-commerce Association (VECOM), Report on Vietnam E-commerce Indicator 2020

⁴ Vietnam e-Commerce and Digital Economy Agency, 2020 Vietnam E-commerce Whitebook



services, foods delivery services, overseas study, training and employment brokerage consultancy services, etc.,

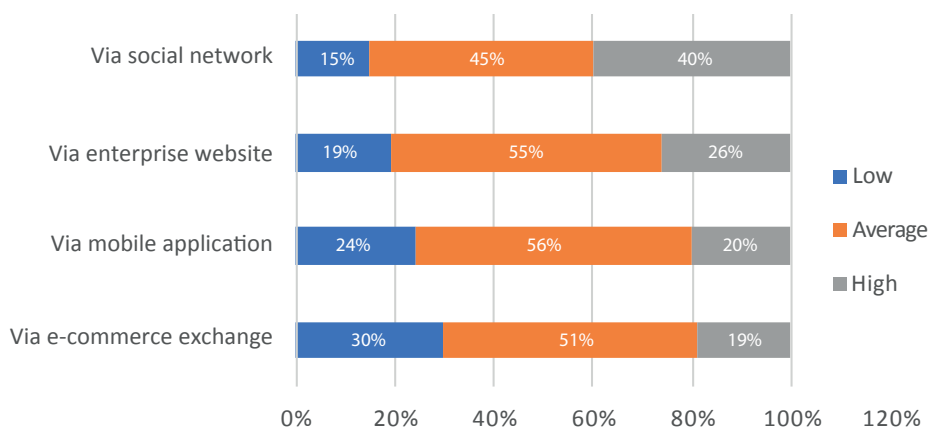
Third, the social network also facilitates other e-commerce platforms. For instance, the report released by YouNet Network and Iprice Group indicated that the 2019 e-commerce market shows that the performance of e-commerce activities had certain reliance on social network when web traffic and competitiveness of exchanges are affected by the effectiveness of social network-based communications. The reasons outlined by the report included the social network affects every phase of customer's purchase behavior, it is also known as an important communication channel to introduce products to the customer and bridge customers with each other.

▶ 3. Development trends of social commerce

NAs mentioned above, social commerce, e-commerce-related activities conducted via social network's tools, witness fast and steady development.

Regarding enterprises, VECOM survey revealed that 2019 witnessed a 39% growth of social commerce involvement by enterprises, much higher than that on e-commerce exchanges (17%) and nearly similar to website trading percent (42%).⁵ Worthy of note, the percentage tended to increase by years and obtained remarkable high value against that in 2015 (28%). Social network efficiency was highly appreciated by traders (high efficiency was reported by 40% respondents), much higher than that of other online trading forms.

Figure 3: Assessment on online tool-based sales efficiency



Source: 2020 Report on E-commerce Indicator, VECOM

⁵ Vietnam E-commerce Association (VECOM), Report on Vietnam E-commerce Indicator 2020



Regarding consumers, the report released by Vietnam E-Commerce and Digital Economics Agency found that 57% of respondents conduct shopping through forums and social network⁶, equivalent to shopping percent on e-commerce exchanges and higher than that of website-based shopping percent (52%). Particularly, this percent sharply climbed up against that in 2018 (36%).

Other figures also showed the social commerce growth potential. The global social commerce revenue hit US\$ 22 billion in 2019. It was forecast to grow over 200% in next 5 years, up to US\$ 67 billion by 2023.⁷ According to the survey on consumer shopping habits, columns were searched from Facebook or Instagram by 70% of respondents; while 30% respondents specified to directly purchase from Pinterest, Facebook, Twitter, Instagram or Snapchat.⁸

Recently, the social networks have been offering a series of features and functions to buyers and sellers so they are able to connect with each other on the platform. For example, in 2016, Facebook piloted the Marketplace product introduction shop feature. This feature enabled sellers to post various columns on Marketplace zone. Columns were displayed with contents, including column name, price, seller information, details or description of goods. Sellers and buyers may exchange other necessary information on Marketplace via various communication modes (call or SMS). Users may also search the desired columns by filtering location, price and category (electronic, home or costume columns). However, **online ordering, shipping or payment features are not supported by Facebook Marketplace.**

Similarly, Zalo also offers Zalo Shop feature. This feature enables sellers to setup a shop where various columns may be displayed. Displayed information is relatively complete, including column name, price, seller information, and goods description and delivery policies of sellers. Information exchange is carried out via Zalo 'chat' feature. Online ordering feature is not also supported by Zalo Shop.

The shared point of the social network for e-commerce development at this moment is that **features of posting products with details (product price, description and others are provided)**. The social network also offers shopping utilities to users such as product search, information exchange and transaction with sellers right on such platform. However, other services such as online ordering, payment or delivery are not offered by the social network.

It is possible to see that some social network tends to provide users with some e-commerce support features on its platform.

⁶ Vietnam e-Commerce and Digital Economy Agency, 2020 Vietnam E-commerce Whitebook

⁷ <https://marketingai.admicro.vn/thuong-mai-mang-xa-hoi-khi-mang-xa-hoi-va-thuong-mai-dien-tu-hoa-lam-mot/#thuong-mai-xa-hoi-dang-phat-trien-voi-toc-do-nhanh>

⁸ <https://blazon.online/social-network-marketing/32-stunning-social-commerce-statistics-for-2020/>



03

LEGAL ISSUES FOR SOCIAL COMMERCE

1. Distinguish social commerce and e-commerce exchange	20
1.1. Definitions on social network and e-commerce exchange	21
1.2. Distinguish by posted data and information	22
1.3. Distinguish by online ordering functions	23
1.4. Distinguish by commerce supporting functions	26
1.5. Distinguish introduction of traders and of products, goods and services	28
2. Obligations of controlling posts	30
2.1. For general posting information of user - community standard	30
2.2. For information using special commerce supporting functions on social networks - commercial standards	32
3. Checking and monitoring commercial contents on social network platforms	32
4. Information declaration and commercial user authentication	34
5. Compliance with state agencies' requests	35
6. Taxation	36
7. Cross-border e-commerce activities	38
7.1. Cross-border social commerce in Vietnam	38
7.2. Customs management for product import and export goodstransited via e-commerce	40
8. Sales by celebrities	41

LEGAL ISSUES FOR SOCIAL COMMERCE

Nowadays, social commerce development offers an important goods and service distribution channel in Vietnam's economy. By taking advantages of low market penetration cost, convenience, cost effectiveness of search and trading, many sellers and buyers have been successfully attracted.

However, with very fast social commerce development, especially e-commerce supporting activities on social commerce platforms, myriad of legal issues to be noted are also arisen. Some examples such as goods and service quality, fake columns, incorrect or misleading posting contents, claim and dispute settlement and consumer benefit protection, detection and sanction to criminals such as fraud, appropriation of property, etc. Moreover, other regulations on taxes and customs must be put into effect to be well matched with this new business form. The key legal regulations on e-commerce and social network management have been promulgated since 2013 on the Decree 72/2013/ND-CP and the Decree 52/2013/ND-CP. Currently, such documents are being reviewed and revised. This is a very good chance to study and recommend a legal framework suitable to social commerce in Vietnam.



1. Distinguish social commerce and e-commerce exchange

E-commerce-related activities at various levels are found in both social networks and e-commerce exchanges and characterized by a series of specific features. However, the regulatory management measures are tended to jointly apply to both these e-commerce forms, not considering its basic differences. Furthermore, many issued regulations are only matched with big e-commerce exchange models, supported by online ordering, delivery and payment features. Many regulations are not really well matched with the social commerce.

Criterion on platform functions are currently applied to social network that are required to fulfill obligations of e-commerce exchange under the Article 6 of the Circular 47/2014/TT-BTC on e-commerce website management. The



Circular indicated that e-commerce exchanges are known as websites having one of following functions: (1) enable participants to establish shops to display and introduce goods or services; (2) enable participants to design sub-websites to exhibit and introduce goods or services; (3) arrange sales column on such platform to enable participants to post sales news. The social network having one of aforesaid operating forms is regarded as e-commerce exchange and required to fulfill the respective obligations.

As shared by surveyed enterprises, this classification method was not appropriate. Therefore, the definition of e-commerce exchanges included websites or social networks which have nothing in common with a true e-commerce exchange.

1.1. Definitions on social network and e-commerce exchange

The concept on social network is currently defined in Article 3.22 of Decree 72/2013/ND-CP on management, provision and use of Internet services and online information. Accordingly, *“social network refers to an information system, offering social network users with data storage, supply, use, search, sharing and exchange services with each other, including design services of personal site, forum, online chat, audio and video share and other similar services.”* It means that the social network concept is relatively broad and characterized by features that enable active users to post and exchange information with each other. In other words, information posting is not only covered by the social network admins but also users. Such information is also active to other users rather than admins of such social network.

Originated from this feature and popularity of users and great volume of posts, the users are enabled to post information by the social networks.

Concept on e-commerce service is defined in Article 3.1 of the Decree 52/2013/ND-CP on e-commerce. Accordingly, *e-commerce service refers to a launch of partially or totally procedure of commercial activity by electronic network with Internet connection, mobile telecom or other open networks.* It is possible to infer that social commerce refers to a conduct of partial or total procedure on commercial activity on social network platforms.

Two popular e-commerce forms are classified by the Decree 52, namely (1) *e-commerce website for sales* and (2) *e-commerce exchange*. Accordingly, *e-commerce website refers to electronic information site to be established to serve for partial or total procedure of good sales or service supply, from*



goods/service exhibition and introduction to contracting, service supply, and payment and after-sales services. This may be considered to be the case that traders self-provide websites and sell their goods and services. *E-commerce exchange refers to e-commerce website, enabling traders, organizations and individuals not website owner to carry out a partial or total procedure of goods/service sales on that platform.* This is known as a case that the traders setup e-commerce exchange and enable other users to post information, buy and sell goods and services on that platform.

Although it is possible to see that enabling users (rather than admins) to post and share information with other users is a common characteristic among platforms when the aforesaid concepts on social network and e-commerce exchange, under the perspective of objectives and level, the social network is characterized by a series of differences against that on e-commerce exchange.

Moreover, as forms of e-commerce exchange and social network are much diversified, the majority of cases are intertwined with each other to a certain extent. For separated cases, definition of obligations of subjects by each legislation is relatively simple. However, it is really hard to identify the governing regulations for cases with overlapping.

1.2. Distinguish by posted data and information

Main posted data and information on e-commerce exchanges are database on products, goods and services. Such database is always embedded with particular data fields such as product, goods and service name, price, quantity and unit. Moreover, other data fields may be added such as product description, technical parameters, images, etc., Meanwhile, posting data and information of social network are generally headings, text contents, image and video, etc.

The social networks are not supported by specific data fields such as product, goods or service name, price, volume, quantity and unit. In many cases, although social network users may use the title, content, image, and video fields to post information about product name, price and quantity, specific data fields are not setup for such information by the social network system. For example, an individual may make use of function to post discussion topic on favorite automobile forum for automobile spare part sales. Although article contents are embedded with information about goods and service price and quantity, specific data fields are not setup for such contents.



Regardless of availability on specific data fields for product name, price and goods quantity, the social network service providers may face challenging to respond to regulations on controlling such posting information. If an individual sells tobacco on e-commerce exchange for example and enters key words "tobacco" on product name data fields, the exchange's information system shall be promptly removed. However, if various tobaccos are mentioned on the social networks by such individual, the removal will be difficult. Although the key words "tobacco" may be detected by the social network information system, it is impossible to specify that such article is for selling tobacco or encouraging people to stop smoking.

Therefore, it is necessary to distinguish the difference between posted data on social network and e-commerce exchange. Accordingly, if social network's users use normal tools (other than typical e-commerce supporting tools) to post information about goods and service sales (commercial information), (1) the users/posters are obligated for the legality of commercial information; (2) the social network is responsible for handling infringing information when receiving feedbacks/requests; and (3) the social network is only responsible to automatically handle general information, rather than commercial one.

1.3. Distinguish by online ordering functions

As mentioned, some social networks have introduced functions to support e-commerce-related activities in Vietnam, but no online ordering functions deployed. However, users are not able to promptly execute contracts on platforms such as Facebook Marketplace or Zalo Shop in Vietnam, they may still directly contact each other via other tools such as chat, telephone and email, etc.

Online ordering functions have been piloted by some large social networks in the world such as 'buy' button on Twitter. When 'buy' button is clicked by a buyer, all information about goods and services shall be converted into PO details to serve for contract execution and next steps such as payment and delivery.

The e-commerce exchanges are also classified as the ones with and without online ordering functions. Those without online ordering functions are often called small ads exchange or market, etc. Chotot.com is known as one of the biggest exchange platforms without online ordering functions. Although posting and trading support functions are relatively new, buyer shall still



directly contact sellers via telephone, email, online chat of chotot.com or on other platforms if order is required. Moreover, there are many other non-online-ordering-function exchanges such as Rong Bay, Cho do cu, Thanh ly do cu, muaban.net, Mogi, Mua ban nhanh (real estates), etc. In some fields with high trading value such as real estates, automobiles and motorbike, no online ordering functions are provided by the exchanges.

The exchanges supported by online ordering functions are developing very fast for goods in low or medium price ranges or standardized products of famous brands. In addition to online ordering, such exchanges are also enabled by additional features and tools such as online payment, shipping and delivery.

Online ordering functions are defined in Article 3.12 of the Decree 52: *online ordering function refers to a function to be set up on e-commerce website or customer's terminals and connected with e-commerce website to enable users to trigger contract execution under terms and conditions announced on such website, including contract execution with automatic information system.* In other words, online ordering functions decide whether buyers and sellers are required to directly contact each other before the execution of the contract. When buyers and sellers are still required to directly contact each other for contract performance, rather than contract execution, it shall be still considered as online ordering. For example, concert tickets are ordered on ticket e-commerce exchanges such as Ticket box. In this case, the buyer is able to complete his/her ticket purchasing transaction online and not required to have the direct contact with the seller. Although, after that he/she needs to come to the theater to watch the concert, this is still considered to have online ordering functions as the ticket purchasing transaction has been completed online.

For trader's sales websites, the online ordering functions are not recorded with big changes in trading relationship. When a trader's website is logged in, buyer is aware that who seller is and which responsibilities of seller for such goods-related issues. Therefore, big difference is not found between the availability of online ordering functions and contact via email, telephone, SMS or direct meeting. In this case, online ordering functions are assigned as a tool to automate ordering process.

However, online ordering tool plays a very important role for the e-commerce exchanges. If online ordering functions are unavailable, buyers shall directly contact with seller to order. Direct contact between buyers



and sellers for contract execution makes the intermediary platform only become product advertisement and introduction function, rather than trading involvement. Therefore, **e-commerce exchanges without online ordering functions only play a role as broker.**

Such tripartite trading relationship will be significantly varied if e-commerce exchanges are supported by online ordering functions. Such functions help buyers to execute contract without direct contact with sellers. Even though seller name and other may still execute contract. As no direct contact between buyers and sellers is initiated, broker's role becomes more important. The broker, in this case, shall not only keep the brokerage role, but also have responsibilities for protecting consumer rights. Moreover, online ordering functions are also recognized to have reverse impact on posting product information as found through the survey. In case of available online ordering functions, PO information shall be generally taken from posting product, goods and service information. If such information is incorrect or insufficient, the PO shall not be finalized. Consequently, sales contract may not be available. Hence, if online ordering functions are available, users shall be motivated to post on correct data fields. Vice versa, only buyer attraction is affected by errors on data fields, rather than PO. Insufficient or missing information on PO shall be fulfilled when buyers and sellers directly contact each other.

A common example of this is that product price is not fully provided by the e-commerce exchanges not supported with online ordering functions and social networks having similar functions like Facebook Marketplace and Zalo Shop. "Negotiable price" or only price range is specified by sellers (it is generally found on real estate exchanges) or even price is not specified or price is specified at zero VND. Please remember that this specific data field is not affected by the seller's failure in specifying price when social network and e-commerce exchanges are classified by the above section. In other words, broker's data system having price data field shall consider it as product trading information, platform classification is not affected by user's failure in completing this data field.

In short, classification of e-commerce exchanges and social networks with respective obligations are summarized in table below:



Functions	Not support e-commerce	Only support product information posting without online ordering functions	Support product information posting with online ordering functions
E-commerce exchange	Unavailable	Small ads sites, used goods market and real estate exchanges	E-commerce exchanges such as Shopee, Tiki, etc.,
Social network	Pure social network and its traditional contents	Social network having functions similar to Facebook Marketplace and Zalo Shop	Unavailable in Vietnam
Recommendations	Governed by the law on social network (the Decree 72)	Governed by the law on e-commerce (the Decree 52)	
		Managed by low and simple level	Managed by higher level

1.4. Distinguish by commerce supporting functions

As mentioned above, the commerce supporting functions are supported and added by some social networks. For example, Facebook Marketplace functions are activated in Vietnam, Zalo Shop is offered by Zalo. Such functions enable users to post information about goods and services with very specific data fields of commerce activities such as product name, price and quantity, etc. Postings on such item are defined as commercial information.

Furthermore, some automatic tools are integrated with some social networks to identify goods and service trading information in the traditional contents and ask the author to confirm. For example, Facebook may identify information in the general posts and then request authors to validate the accuracy of the



trading information. If the answer is "Yes", this shall be identified as commercial information by Facebook. If the answer is "No", it shall not be considered as commercial information.

Another example is that favorite forums have specific column for its members to post product, goods and service trading. Such item is generally called as small ads column, market or otherwise. If posts are initiated on this column by members, the forum admins shall intermediately identify it as e-commerce-related activities. However, if it is the same contents on goods and service trading posted on other columns, the admins shall not distinguish it.

Commercial supporting functions of social network may be named as follows:

- + Having classification between goods/service trading contents and other contents:
 - * Having specific data fields to post product information such as name, photo, and technical details and especially price data field.
 - * Functions enclosed with the products such as comparison and introduction of similar items, ratings and scoring.
- + Having member user classification of a separate group as sellers, rather than other member users. Such group may be called with different names such as sellers, outlets, partners, vendors, shop, merchant, etc.,
 - * Having separate data fields for sellers rather than other members;
 - * With user classification, it may be added with functions of seller ratings, comparison and introduction of similar sellers.

Please note that for social networks having similar functions to Facebook Marketplace, Zalo Shop or small ads column, market, etc., the e-commerce-related state management of these platforms is applicable to the above functions only, not their other traditional functions.



Obligations	<i>The traditional information is posted on social network's traditional functions.</i>	<i>Goods and service trading information is posted on social network's traditional functions.</i>	<i>Goods and service trading information is posted on commercial supporting functions such as Facebook Marketplace and Zalo Shop</i>
Obligations of information posting persons	Under the laws on social network	Under the laws on e-commerce	Under the laws on e-commerce
Obligations of social network's automatic control	Under the laws on social network	Under the laws on social network	Under the laws on e-commerce
Obligations of social network upon receipt of breach report	Under the laws on social network	Under the laws on e-commerce	Under the laws on e-commerce

1.5. Distinguish introduction of traders and of products, goods and services

Currently, available social network platforms are widely used by many enterprises as an alternative to replace or update traditional official websites to use as **their information channel to the public. However, it is not aimed to sell goods and services.** For example, a social network is used to advertise the company's image on strategic vision, human resources, new projects, contact address, CSR activities, environmental protection campaigns, etc. Such sites are characterized by not posting any specific information on the company's goods or service. In other words, a clear distinction must be made between *trader introduction* and *goods and service introduction*. Such distinction shall not be excessively difficult if it is goods provider. However, it shall be unclear if it is service provider. In many cases, distinction between *trader introduction*



and *service introduction* is not really easy. For example, a social network-based fan page is established by a lawyer firm. Then, it is impossible to distinguish which is company introduction and service introduction.

According to some enterprises and experts involving in the interview, a good distinction between *trader introduction* and *product, goods and service introduction* is found from specific information of products, goods and services such as product, goods/service name, price, quantity, volume and unit. If such specific information is available, it shall be regarded as product/goods/service introduction. Otherwise, it is impossible to determine what is a "product", "goods unit" or "a service package". When such information cannot be successfully identified, the parties must still keep direct contact with each other to specifically exchange and reach a common agreement on one or more trading products. In other words, when such information is unavailable, it shall not be considered as product/goods/service introduction. Hence, it should not be governed by the laws on e-commerce.

Lesson from EU

>> EU regulations on social commerce are based on laws on consumer benefit protection and advertisement. Accordingly, EU sets forth no obligations on social network platforms, rather than focusing on obligations of users posting goods/service trading information on such social network. Particularly, such users are assigned with some obligations as follows:

- + Not make misunderstanding for the posting of information. For instance, posting contents which are aimed to advertise and introduce to a goods/service must specify such purposes. In the event that a celebrity is employed to advertise the company's products, the contents must include the words "sponsored by" or other expressions with the similar meanings.
- + Not pretend to be a customer to self-evaluate his or her products.
- + Require to provide sufficient basic information about products, goods and services to buyer before contract is executed such as information about size, color, quantity, price (including taxes and duties), vendor name, brand, terms of payment and delivery.



- + Ensure return rights within 14 working days since goods receipt.
 - + Provide general terms and conditions of trading on downloadable mode and obtain the customer's consent.
 - + Enable the customer to review and adjust their online POs before execution.
 - + Facilitate the customer to confirm POs via email or other electronic network.
 - + Enable the customer to select direct payment forms upon delivery.
- Although many regulations on social network-based seller's obligations are available, EU requires to remove fraudulence and to mislead information on social network only when such information is identified by the social network. **It means that the first obligation belongs to seller to fight against breach information, while the social network is only obligated when it is reported or required to remove breach contents.**

➤ 2. Obligations of controlling posts

Commercial information posting on the social network may be divided into two groups:

- Commercial contents posted by users like other general information.
- Commercial contents posted by users on the basis of social network's commercial supporting functions.

2.1. For general posting information of user - community standard

Social network users may still make use of such social network's general information posting functions to post commercial information. In these cases, the social networks may not classify any commercial information against non-commercial information. That is why general management policies shall be applied. Accordingly, such information shall be managed by social network information control regulations - so-called as community standards. Community standards may be called with various names such as forum regulations, social network by-laws, regulations on social network supply and use, etc.

The social networks are required to identify "prohibited contents on social network" by Article 23đ.2.đ of Decree 72. This may be regarded as regulations



on requiring the social networks to apply community standards. Such prohibitions may be released by the social networks, depending on its purposes or orientations. This is an agreement matter between the social networks and its users. However, such contents must include absolute prohibited contents as prescribed by the laws.

The contents prohibited on the social networks under the Laws of Vietnam are defined at the Law on Cyber Security (Articles 8, 16, 17 and 18) and Decree 72 (Article 5). Although so many contents are specified, the commercial-related regulations only cover a few prohibited contents. According to the Decree 72, the commercial contents prohibited to post on the social network include *"Advertisement, propaganda and sales of prohibited items."* Many prohibited contents on the social network are also listed by the Law on Cyber Security, including commerce-related contents such as: *"Advertisement, propaganda and sales of prohibited items under the prohibition list as prescribed by the laws", "Misleading and untrue information about products and goods", "Misleading and untrue information in the fields of e-commerce, e-payment...."*. Scope of commercial information prohibited by the Law on Cyber Security is wider than that in the Decree 72.

Business interviewees indicated that they have been facing challenges as regulations on controlling such contents are relatively general and not specified. That is why the enterprises have the discretion to ensure compliance:

- First, although the enterprises understand that prohibited goods/service information should be removed, prohibited scope may not be well understood by all players.
- Second, regulations on fraud and fake information about products and goods at the Law on Cyber Security makes many social networks face challenges to compliance in practice. The social networks are unclear about how to distinguish fraud and misleading information about products and goods to remove.

List of prohibited goods

Although the issues related to prohibited goods and services are thought to be simple, it causes a series of difficulties to enterprises upon application. Currently, there are two regulations on prohibited goods and services on the Laws of Vietnam, including the Law on Investment (Article 6) and the Decree 59/2006/ND-CP (Appendix I - List of prohibited trading goods and services).



The cross-border social networks globally apply its own community standards. The domestic social networks are struggled with difficulties in aligning with community standards. Many domestic enterprises have high sense of compliance. However, they are confused by vague regulations. Therefore, the necessity of clarifying legal regulations on community standard is essential.

2.2. For information using special commerce supporting functions on social networks - commercial standards

As mentioned above, for the social networks distinguishing between commercial and non-commercial information, such contents are controlled by such social networks' commerce standards.

The Decree 52 requires the e-commerce exchanges to set up its operating regulations. Article 38 of the Decree 52 specifies contents of operating regulations without specifying the specific contents directly involving in information to be removed out of the e-commerce exchanges. However, such regulations must have contents on *"Review and authority of traders, e-commerce exchange service providers when infringements to the laws on the exchanges are detected"*. This may be regarded as a good basis to design and develop the commerce standards of each e-commerce exchange and social networks having commerce supporting functions. Unfortunately, Decree 52 only stops at such general regulations without clearly specifying the legal references.

The e-commerce exchanges are also difficult in identifying which information must be removed. Many e-commerce exchanges have to employ lawyers or setup special legal team to review the legal regulations and identify which information is considered as violation. However, many issues cannot be answered even by lawyers as the legal regulations are unclear.



3. Checking and monitoring commercial contents on social network platforms

Commercial content, which is subject to censorship on social networks, has been showed in the Section 2 above. Pursuant to current Decree 72, social networks are required to "build up a mechanism to alert members whenever they tend to post any infringing information (filters)". However, Decree 72 does not show more detailed regulations. Pursuant to Decree 52, filters are not obliged for an e-commerce exchange. In reality, many



social networking platforms and e-commerce exchanges have built up their own filters in order to protect other users and not to be fined by the competent governmental agencies.

Interviews have conveyed some difficulties for social networks in building and running these automated tools as follows:

Firstly, the fact those users try to change the letters or use symbols to pass the keyword blocker causes so much hardness for social networks and e-commerce exchanges to add forbidden keywords. This behavior appears in more commercial users than non-commercial users.

Secondly, it is quite hard for many small-scale social networks to develop image, audio, and video analysis tools [because they do not have the in-house capability to do the original content creation].

According to surveyed enterprises, it is quite easy for them to implement keyword filtering tools as required by laws; however, it is really not easy to build up a list of keywords to be filtered. It may be more difficult to implement other tools for audio, images, and video analytics.

Along with above measures, commercial content might be made to conform to community or commercial standards by a 4-step mechanism, including self-review by the administrator, reports by normal users, reports by high authentication users and state agencies' requests.

User reporting mechanisms have been available for all social networks to remove information that violates community or commercial standards. As detecting any violating information, the administrator will decide to remove it. Besides, as per Article 1.11 of Decree 27/2018/ND-CP (amending and supplementing Decree 72) and Article 5 of Circular 38/2016/TT-BTTTT, social networks are obliged to coordinate in removing or dealing with information violating Clause 1, Article 5 of Decree 72 as requested by competent state agencies. Meanwhile, as per Decree 52, e-commerce exchanges are requested to only remain a mechanism to receive and handle law violations. Thus, the obligations in post-processing of e-commerce exchanges are less than that of social networks.

In reality, some e-commerce exchanges may evaluate and score suppliers. It is really effective to attract more users. Currently, some social networks also run this feature when developing commercial support functions.



Some e-commerce exchanges have now developed tools that allow some users to have special accounts with high authenticity. For example, a company may present evidences of its intellectual property rights to a trademark and be given a special account. This account allows that reports by these users shall be processed in shorter time and less obligation of proof. This measure is really effective to fight against intellectual property infringement on social platforms. Current Vietnamese law does not have any regulations on this matter.

▶ 4. Information declaration and commercial user authentication

User authentication on current e-commerce exchange is different from that of social network. According to Article 1.10 of Decree 27/2018/ND-CP (amending and supplementing Decree 72), domestic social networks are required to collect user information, including full name, date of birth, ID card/citizen card/passport number, date of issue, place of issue; phone number and email address (if any). User authentication must be done via SMS sent to a phone number or email box.

Meanwhile, user authentication of e-commerce exchanges as specified in Decree 52 includes name and address of trader, organization or permanent residence address of individual, number, date and place of issue of the business registration certificate of trader; or number, date of issue and provider of the organization's establishment decision, or individual's personal tax identification number; phone number or another online contact form. E-commerce exchanges must inspect and supervise to ensure that seller's information is accurately and completely stated.

Thus, if social networks add e-commerce support functions for users under one of forms as specified in Article 35.2 of Decree 72, they will have to collect more information about user's address and business registration or user tax code.

In practice, however, requesting users' IDs or equivalent for social networks does not seem effective. Currently, many popular Vietnamese social networks do not require it for account registration. Meanwhile, the survey shows that e-commerce exchanges with online shopping functions are quite good in collecting data on address information, business registration or user tax codes as specified by regulation. Whereas, those without online shopping function, but only running as a place for advertisement, often do not require users to declare this information.

Mentioned by businesses participating in the survey, such legal regulations are



currently inconsistent with market reality. They also recommend a reasonable as follows:

- Social networks collect only users' name, age and phone numbers or email address.
- E-commerce exchanges with online shopping functions and shipping and payment support may require the user's bank account number.

▶ 5. Compliance with state agencies' requests

In many cases, Vietnamese state agencies shall send requests to businesses or companies engaging in providing social networking services or e-commerce exchanges. Two most common groups of requests are (1) to remove infringing content and (2) to provide user information that needs to be protected.

Discussing with businesses in this field, most of them show their willingness to comply with regulations of state agencies; however, they face some difficulties in compliance due to the confusion of some regulations. Currently, there are many regulations that require social networks and e-commerce exchanges to provide information to state agencies or remove posted information upon request. The Law on Information Technology, the Law on Cyber Information Security, the Law on Cyber Security, Decree 72, and Decree 52 contain principled provisions on this issue. However, in detail, there are currently no specific regulations and even overlap of regulations.

Businesses in this field face following challenges:

- What is the acceptable method for state agencies to deliver their request, in writing or electronically?
- Which content is included by request sent to the enterprise, should it include a legal basis, the reason for the request or not? Is it necessary to specify the information receiver? Are supporting documents, including decision to prosecute or an inspection or examination decision required?
- How long does it take from the request until its implementation?
- How is the information provided and received? Does it require the minute of information giving and receiving? Does it require to confirm information receiver?

In the comparison with the confidential information keeping and customer



information provision at credit institutions as stipulated in Decree 117/2018/ND-CP, the confusion of regulations causes many difficulties for IT businesses. Decree 117 clearly stipulates the form of information request, information delivery and receipt, authentication of the focal point of delivery, time of implementation, order and procedures of information provision, records of information request, authority to sign the request, information protection after its delivery and other matters.

This problem needs to be clarified in order to facilitate the compliance and enforcement.

➤ 6. Taxation

Tax administration for e-commerce-related activities on social networks currently faces many difficulties. Two main taxes include (i) value added tax and income tax of individuals and organizations selling goods and services on social networks and (ii) withholding tax applicable to cross-border social networks.

- Value added tax and income tax of individuals and organizations selling goods and services on social networks

According to the laws, every individual or organization that sells goods or provides services regardless of whether it is sold directly or via electronic means will be liable to tax. Those directly selling goods to customers often have their own shops, signboards at convenient locations to attract buyers. In these cases, local tax officers will usually come in person, request and guide the business owner to declare and pay taxes. In many cases, business owner may enjoy the convenient lump sum tax scheme.

However, for online business activities, it is not necessary for business individuals and households to open stores and install signboards at convenient places, but only a warehouse. It causes difficulties for local tax officers to grasp information about business establishments. In addition, it is difficult to apply current measure to calculate presumptive tax of online business owners.

The survey shows that only business individuals and households with a very small scale or far from the city transport their products by themselves. Those with medium or higher scale have used shipping and payment services. The current popular form of payment is collection through shipping units while online payment is rare.



The shipment and delivery units are now using software to support their activities. Normally, in order to use shipping services, shop owners have to create an account on the shipper's information technology system. When the order is finalized with the buyers via social networks, the shop owner will place the shipping order on the shipper's system (if an order is made through an e-commerce exchange, there is usually a direct connection between the e-commerce exchange and the shipping unit). The shipper will then come to pick up, deliver products, and receive the buyer's cash. The shipper will pay the shop owner back through his bank transfer, almost no cash payment.

Thus, revenue of shops shall be available on the IT system of the shipper units and banks. If the deal is made through social networks or e-commerce exchanges without online shopping function, this information shall be unavailable. Otherwise, it shall be available on those with online shopping function.

Some shop owners tend to distribute their revenue in many different bank accounts and under different names in order to reduce the risk of attention or reduce taxable revenue.

- Withholding tax responsibilities of cross-border social networks

Withholding tax of social networks providing cross-border advertising services today also poses hardness for tax authorities. According to traditional method of tax collection for cross-border services, a service user in Vietnam will have to declare and pay tax on behalf of an overseas service provider. Previously, customers using cross-border services were often businesses, so it is possible for the tax authorities to require them to declare and pay taxes on behalf of contractors.

However, when advertising revenue of social networks is obtained by small-scale individuals and households, taxation is not feasible. These individuals and households often apply flat tax, do not make year-end tax finalization, so they will have no basis to ask them to declare and pay taxes on behalf of oversea contractors.



▶ 7. Cross-border e-commerce activities

7.1. Cross-border social commerce in Vietnam

As mentioned above, besides Zalo, the top social networking platforms in Vietnam are all cross-border platforms, such as Facebook, YouTube, Twitter, Instagram, Tiktok, and Pinterest. Product buying and selling on these cross-border platforms is quite popular and contributes significantly to the development and growth of e-commerce in Vietnam.

Although cross-border e-commerce activities are so good because it boosts technological advancement, management, enriching the product supplier sources; however, they also cause many difficulties, problems and shortcomings in the market reality. For example, due to geographical distance, time delay, jurisdiction, it is difficult for state agencies to contact the operators of cross-border social networks to handle legal violations.

Meanwhile, the current regulation (Decree 52) has no stipulation on the management of cross-border e-commerce activities in general and cross-border social commerce in particular. Therefore, the study and development of regulations governing cross-border e-commerce activities should not only ensure the efficiency, reasonableness and feasibility but also fight against violations of law, ensure the consumer protection and facilitate social commerce to continue to play its role in promoting the development of e-commerce in Vietnam.

The first problem of composing regulations to manage e-commerce activities with foreign elements in Vietnam is to clearly identify who is the subject regulation. Currently, there are millions of e-commerce websites worldwide, including e-commerce exchanges and social networks, which are accessed by Vietnamese users. Managing these websites is impossible. Therefore, it is necessary to consider the following criteria to determine which websites will be governed by the laws of Vietnam. These criteria may include, (i) the extent to which a foreign trader launches his services in Vietnam (through cross-border advertising or the contribution of local employees); (ii) suitability of products and contents for Vietnamese users or not; (iii) whether the local currency – Vietnamese Dong – will be used for the transactions; (iv) frequency of visits from Vietnamese users is high or not; and (v) whether there are its contact points in Vietnam.



There is also an opinion that e-commerce exchange or social network using Vietnamese language will have to comply with Vietnamese law. However, in fact, the number of Vietnamese people living in many countries is also quite large. If an e-commerce exchange uses Vietnamese language with the target to these Vietnamese communities in foreign countries, it will not impact on Vietnamese e-commerce market at all. Therefore, an e-commerce website using Vietnamese language in other countries with Vietnamese communities should not be governed by Vietnamese law. Moreover, along with the current development of technology, many websites can switch to dozens of different languages, including Vietnamese, automatically without the intention of website owners targeting Vietnamese users. This is simply a technical solution that global platforms are always trying to invest and develops to provide as many language options as possible; of which Vietnamese is just one of many languages, so that they may best serve users worldwide. Therefore, the language should only be considered as one of the bases to define the scope of management, not the only criterion.

After determining the scope of governance, then it is necessary to consider what legal obligations are required for cross-border social networks with e-commerce activities in Vietnam. One of the basic principles is that e-commerce activities must not violate the laws of Vietnam. However, these obligations should be specified in a way that is appropriate to the characteristics of cross-border platforms and is feasible for foreign firms to comply.

For cross-border social networks, the only one single platform in all over the world is one of the biggest characteristics. They don't have a country-specific version. Therefore, some regulations related to the display on the website will also not be feasible. If Vietnamese law requires cross-border e-commerce platforms to attach a certification symbol registered with the Ministry of Industry and Trade, it will not be appropriate and not feasible.

As mentioned above, government agencies and consumers in Vietnam need to contact and should be responded quickly by cross-border platform service providers in the event of any problem arising related to handling of violations to the law or protecting the interests of consumers arising on the platform. This is a legitimate need and should be satisfied by cross-border platforms. However, in the context of the current boom in IT, physical requirements, including the presence a representative office or a legal representative in Vietnam, are no longer suitable and effective. Instead, state agencies should consider to require



foreign merchants, including cross-border social networks, to disclose their activities to regulators via online means. Currently, the tax administration legislation for cross-border service providers also allows overseas businesses with revenue from Vietnam to register tax, open tax codes and pay taxes online. This is feasible and effective in the current IT development context. For e-commerce activities, the declaration form requires to clearly identify the contact point when the Vietnamese state agency needs to send a request for handling illegal acts. This requirement will both solve the difficulty of state management agencies in liaising with the operators of cross-border social networks and ensure that regulations are feasible and easy to be applied in reality.

7.2. Customs management for product import and export goods transited via e-commerce

Currently, the Ministry of Finance is drafting a Decree on customs management for product import and export via e-commerce. These activities have been carried out on the basis of normal goods import and export schedules. However, due to the complexity of customs procedures, there is often an intermediary actor to support the product import and export. It is expected that the new decision of the Ministry of Finance will simplify customs procedures, ordinary shoppers and e-commerce exchange can do it themselves without any assistance.

The potential change would include the following: E-commerce exchanges will connect to the web portal of the General Department of Customs to transfer order information to the customs system. This order information is used to fill up the customs declaration, the declarer only needs to confirm without repeating the declaration. The customs system will automatically classify the products, determine the amount of tax and the associated obligations. Orders with low value, low risk of negative impact on society may be exempt from specialized inspection.

For e-commerce activities on social networks, it is very difficult to enjoy the convenience of this new policy. As this policy is only for commercial platforms with online shopping function (and even support for shipping and payment), then these platforms connect to transmit information to the customs agency.



▶ 8. Sales by celebrities

Currently, the law of Vietnam does not have any regulations on celebrities on social platforms. Some countries over the world has introduced the concept of celebrities on social platforms. In case a celebrity is hired (to receive remuneration or any material or spiritual benefit) to advertise, comment on, review, or evaluate a product, goods or service, it is necessary for him/her to specify that the information he/she have given is the sponsored category. It helps consumers to distinguish between commercial advertising and non-commercial information.

Vietnam's advertising law also stipulate the same principle for advertising on television, radio, print, online newspapers, and electronic information sites. They must show signs of distinguishing advertising with other content; the advertisement must not be mixed with the news. Many newspapers have also made a clear distinction between news actively produced by journalists and sponsored articles. Such a principle is entirely applicable to the case where a celebrity is hired to advertise or comment on, evaluate, or reflect on a commercial product, goods or service.





04

RECOMMENDATION

RECOMMENDATION

Social commerce is a fairly specific and different from other e-commerce activities, including e-commerce exchanges. The biggest difference between e-commerce activities on social networks and e-commerce exchanges is that social networks do not have an online shopping function, but are merely a connecting tool between buyers and sellers. Currently, there are two forms of e-commerce activities on social networks, including regular social networks that do not support e-commerce, and social networks that support e-commerce (such as product introduction, product price, etc.). For both of them, in order for the deal to be made, buyers and sellers still have to communicate directly with each other. Meanwhile, for the e-commerce exchanges with online shopping function, the deal is completely performed from the ordering stage to the shipping and delivery stage. There may also be e-commerce platforms without online shopping function; in this case, the functions of this e-commerce platform are almost similar to social networks with e-commerce support function. In the future, if there are social networks with online shopping function, their operation will be similar to those of e-commerce exchanges with online shopping function.

Currently, regulations and rules governing social networks in general and e-commerce-related activities on social networks in particular are not really consistent with the nature and practice of this activity, so it is not feasible. It causes difficulties for e-commerce businesses. With the aim of contributing the theoretical basis for the law building and management of e-commerce activities on social networks, ensuring the legal and legitimate rights and interests of stakeholders, some management policies are proposed as follows:

- 1. Commercial information posted on normal social networks that do not support e-commerce function or online shopping function should be managed in accordance with the regulations on management, provision and online information utilization (Decree 72/2013/ND-CP).
- 2. Commercial information posted on social networks with e-commerce supporting functions (such as Facebook Marketplace, Zalo Shop, etc.) but without online shopping function should be managed according to the social network's commercial standards. The legislation on e-commerce should require a low level of user authentication only.



- 3. For e-commerce activities on social networks with online shopping function (currently not available in Vietnam but may appear in the future), it should be managed according to the law on e-commerce, that is similar to e-commerce exchange with the online shopping function.
- 4. Commercial standards should specify or reference which items are not allowed to be sold on e-commerce platforms, what commercial content must be removed for businesses to comply, general requirement to remove the content violating the current law.
- 5. Business associations may play a role of the intermediary between businesses to help them to learn from others' pre-check tools (filters) to remove products and other information that are not allowed to be posted on e-commerce exchanges and sales functions of social networks.
- 6. User authentication should be done by following manner: (i) Ordinary social networks without commercial support function are obliged to gather information about names and phone numbers or email addresses of non-commercial user; (ii) E-commerce exchanges with e-commerce support function (but not online shopping function) are obliged to collect information of name, address and verify via phone number (iii) E-commerce exchanges or social networks with online shopping functions and shipping and payment support may require to collect information of the user's bank account number as well.
- 7. Regulations on users' request to remove information or provide information should be strictly stipulated in terms of authority, procedures, and confidentiality procedures (similar to Decree 117/2018/ND-CP on keeping confidentiality, providing customer information of credit institutions, foreign bank branches) so that businesses can feel secure in running their business.
- 8. The mechanism to collect taxes from individuals and organizations selling goods or providing services on e-commerce platforms (both e-commerce exchanges and social networks), especially for cross-border ones, needs to be very clear and flexible. These individuals and organizations may register, declare and pay taxes by themselves or authorize a third party (such as tax agents, tax service companies, audit accounting, legal, etc.,) to do that.
- 9. The development of regulations on customs procedures for e-commerce goods will take advantage of the preeminence of the information system in e-commerce to serve the customs management.



- 10. For cross-border social commerce, lawmakers need to master the operating mechanism of cross-border social networking platforms in order to develop regulations governing these platforms in an effective, reasonable and feasible manner, ensuring social networks to continue to play a role in promoting the development of e-commerce in Vietnam. Specifically:
 - +
 - +
- 11. There should be a regulation on celebrity's obligations if being hired to post content on social networks to advertise a product. It must be clearly stated that the content is sponsored to avoid consumer confusion.



