



## Tighter regulatory credit terms that favour SMEs

### The following report may be of interest to:

All clients

### Summary:

On 24 May 2021, the Trade Competition Commission (TCC) of Thailand issued new anti-trust guidelines – TCC Notification, Guidelines for Consideration of Fair-trade Practices Regarding Trade Credit Terms for Small and Medium-sized Enterprises (SMEs) as Sellers of Goods or Services.

The new guidelines protect against unfair trade practices relating to the credit terms for SMEs selling products or services to buyers. The guidelines were published in the *Government Gazette* on 18 June 2021 and will come into force in mid-December 2021 after a lapse of the 180 days' waiting period.

The anti-trust guidelines aim to help SMEs increase their liquidity and protect them against the abuse of superior bargaining power, discrimination and trade barriers when dealing with buyers. Under the guidelines, an SME is defined as:

1. a product manufacturer who employs no more than 200 people or generates an annual turnover that doesn't exceed THB500m, or
2. a service provider, wholesaler or retailer with either a maximum 100 employees or an annual turnover that doesn't exceed THB300m.

### Maximum credit terms

The notification limits the credit terms for buyers to pay SMEs for products and services at 30 or 45 days, depending on the products and services. Specifically, it doesn't exceed:

- 45 days for trade, manufacturing and service sectors, or
- 30 days for trade, manufacturing and service sectors for agricultural products or primary processed agricultural products with non-complex production processes.

Any credit terms longer than those stated above must be backed by a reasonable business, marketing or economic justification and will be subject to contract terms and conditions related to payment or credit terms.

#### Counting the maximum terms

The credit terms start on the date the products or services are delivered and the required documents are submitted. For a consignment transaction, the terms start on the completion of the sale by the consignee as agreed in terms of quantity and rate.

#### Trade credit settlements

Any business operator who is a business partner with an SME must clearly show the payment process in the ordinary course of trade. Meanwhile, the SME must provide proof of their SME status, which includes documented evidence of the number of employees or annual income.

#### Examples of unfair practices

The guidelines stipulate that the following actions would be deemed unfair.

- Making payment for products or services beyond the stipulated credit terms without justifiable grounds
- Changing credit terms or contractual conditions without at least 60 days' prior notice and without justifiable grounds
- Other unfair conduct, e.g. specific conditions that impose unnecessary burdens on an SME.

#### Applicability

In a nutshell, understanding the implications of this notification is important. As this notification also applies to existing agreements, the agreements could be deemed unfair if they're contrary to the guidelines or disadvantageous to an SME.

Therefore, business operators with active or pending agreements should revisit and, if necessary, adjust the credit terms to comply with the guidelines.

Also, buyers who deal with SMEs should take the guidelines, especially the prescribed maximum credit terms, seriously when negotiating credit terms and trade conditions. This is because punishment for violation of the guidelines will seriously affect business operations.

### Ramifications

A violation of this notification will carry significant penalties, both civil and administrative liabilities. This is outlined below and includes the possibility that the Office of TCC (OTCC) will issue an administrative order of stoppage of the violation.

- Civil liability: monetary compensation to the damaged SMEs – the civil case could be sued by either the damaged party or the OTTC
- Administrative liability: a fine up to 10% of gross income of the year of violation

The anti-trust law states that individual SMEs can bring cases to either the court or the OTTC. So, the number of future claims could increase, particularly as the TCC has broadened its definition of SMEs.



#### For further information, please contact:

- Ms. Vunnipa Ruamrangsri, Partner, at [vunnipa.ruamrangsri@pwc.com](mailto:vunnipa.ruamrangsri@pwc.com)
- Mr. Pinit Chomsavas, Manager, at [piniti.chomsavas@pwc.com](mailto:piniti.chomsavas@pwc.com)