

LEGAL CONTROL OF ONLINE SALES BUSINESS IN MYANMAR

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Abstract

Online sale business is the sale of goods or services on the internet. In today's digital age, online sale business has become an essential part of the global economy. In Myanmar, the Online Sales Business Registration Order, 2023, is issued by the Ministry of Commerce. That Order has mandated the application of registration certificate by the Registration Certificate Holders in online sales business and the duties and the rights of the Registration Certificate Holder in online sales business. Besides, it has provided the orders such as suspension of the registration certificate and the cancellation of the registration certificate for the violations of the Registration Certificate Holders in online sales. Disputes arisen between consumers and the Registration Certificate Holder must be settled in compliance with the Consumer Protection Law, 2019. And, the Online Sales Business Registration Order, 2023 has been provided in favor for the application of the registration of online sales business and does not sufficiently complete for the violations of the duties and promotion of the Registration Certificate Holders in online sales. Hence, the Online Sales Business Law should be provided for enforcing the liabilities of the Registration Certificate Holder or entities, and for promoting the continuous and sound development of online sales business.

Keywords- Online Sales Business, registration certificate, promotion of online sales business.

Introduction

Online sales business means providing services by sale of goods or services through online system. In today's digital age, online sales business involves an essential competent of the global economy. In Myanmar, everyone who wishes to operate online sales business shall register his or her online sales business to the Department of Trade of the Ministry of Commerce in accordance with the specified manners by the Department through online system. When the consumers suffered the damages relating to the buying of the goods through online sales, they can file the complaint as to disputes to the Department of Consumer Affairs. The Registration Certificate Holders in online sale have to perform the duties as mentioned in the Competition Law, 2015; the Electronic Transaction Law, 2004; the Intellectual Property Laws; and the Online Sales Business Registration Order, 2023. The Registration Certificate Holders in online sales are entitled to the rights when their online businesses are registered under the Online Sales Business Registration Order, 2023. And, the State shall operate the sustainable development of the online sales businesses.

Aim and Objectives

The aim of this paper is to get a balance between to control it effectively and legally and promoting online sales business growth. And with the rapid growth of online sales business, regulations are necessarily to ensure that online sales business operate within a legal framework that fosters transparency, fairness and accountability. This research paper will explain how to control the online sales business legally based on the Laws; the Orders; Newspapers and Monthly News Letter of the Consumer Affairs and e-source.

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Definition relating to Online Sales Business

Online Sales Business

“Online Sales Business is defined providing service by sale of goods or services through Online system.”²

Registration Certificate

“Registration Certificate” is Registration Certificate for Online Sales Business issued by the Department of Trade according to the Online Sales Business Registration Order, 2023.³

Registration Certificate Holder

“Registration Certificate Holder” is a company or a business organization or a person who holds the Registration Certificate and operates Online Sales Business.⁴

Essentiality of Online Sales Business

In today’s digital age, online sales business becomes an essential component of the global economy, allowing businesses of all sizes to reach new markets and customers. The COVID-19 pandemic has been a wakeup call to the world, proving that the digital age has come.

There are many advantages of the Online Sales Business. They are (i) increasing sales; (ii) reducing costs; (iii) eliminating Geographic Barriers; (iv) improving customer services; (v) increasing efficiency and (vi) conducting the online business easily.

(i) Increasing Sales

“Online sale business always helps to increase sales” as it widens the market by reaching out to new customers not only throughout the country but also all over the world.

(ii) Reducing Costs

“It also helps to reduce business costs” as it eliminates the need for a physical store and sales staff. It also helps reducing inventory costs and transportation costs.

(iii) Eliminating Geographic Barriers

It also eliminates geographic barriers, as customers can purchase goods and services from anywhere in the world.

(iv) Improving Customer services

It also allows customers to compare prices and products from different retailers easily, which is not possible in a physical store.

(v) Increasing Efficiency

“Efficiency is increased as orders can be made quickly and easily” through an e-commerce website. This eliminates the requirements for paperwork and reduces the chances of human error.

² Clause 2 (a) of Online Sales Business Registration Order, 21st July, 2023.

³ Clause 2 (b), Ibid.

⁴ Clause 2 (c), Ibid.

(vi) Conducting the online business easily

The business operators in online business can easily conduct their online business from anywhere all they need is a solid internet connection.

Therefore, as the online sales business has many advantages, and the influence of online sales business also extends across various aspects of the economy, consumer behavior, and business operations, it becomes an essential component of the global economy.

Registration of Online Sales Business

In Myanmar, everyone who desires to operate online sales business shall register online sale business to the Department of Trade.

The Essential Supplies and Services Law provides that “the Union Government may confer any relevant Ministry to issue prohibiting order, regulating order, supervision order, preventing order and the order which cause to carry out as necessary, regarding the following matters; -⁵

- (a) matters relating to import, export, trade, possession, storage, transport, distribution, utilization and consumption regarding any goods stipulated and declared as essential goods;
- (b) matters relating to slaughter, catching, causing to work, breeding, import, export, trade, possession, storage, transport, distribution, utilization, consumption regarding such animal stipulated and declared as essential goods of any goods;
- (c) matters relating to such service stipulated and declared as essential service of any service.”

Hence, the Ministry of Commerce (MOC) was conferred full authority by the Union Government of Myanmar to issue various necessary orders related to online businesses on 21 July 2023 since it is recognized as essential services under Section 4 (c) of the Essential Supplies and Services Law of 2012. The Ministry of Commerce has practiced its authority by issuing the “Online Sales Business Registration Order”. This Order has mandated that local individuals, companies, or business organizations engaged in online sales business that provides goods or services through the online system must apply for a registration certificate from the Department of Trade (DOT) under the Ministry of Commerce.

Everyone who desires to operate online sales business shall complete the application form specified by the Department and shall apply for a Registration Certificate to the Department through online system.⁶

The Online Sales Business Registration Order describes that “the applicant shall comply with the following stipulations for registration of online sales businesses if he or she applies for a company or business organization according to above-mentioned clause (3):⁷

- (a) a company or business organization which has been formed according to the Myanmar Companies Law or the Co-operative Society Law or other existing Law;
- (b) company or business organization which has official website in its own name;

⁵ Section 4 of the Essential Supplies and Services Law, 2012.

⁶ Clause 3 of the Online Sales Business Registration Order, 21st July, 2023.

⁷ Clause 4, Ibid.

(c) company or business organization which can present the online sale business place.”

The Online Sales Business Registration Order provides that “the applicant shall comply with the following stipulations for registration of application if he or she applies for an individual according to clause (3):⁸

- (a) a person who resides within the territory of the Republic of the Union of Myanmar;
- (b) a person who has attained 18 years old and above;
- (c) a person who can abide by the stipulations in this Order;
- (d) a person who is not suffering from mental illness;
- (e) a person who hasn’t been listed in the black list of relevant government department or any government organization;
- (f) a person who can present the online sales business place”.

Whoever conducts any online business shall operate it only after the receipt of a registration certificate.⁹ Those who operates any online sales business without a registration certificate shall be prosecuted under Section 5 of the Essential Supplies and Services Law.¹⁰

Whoever violates any order issued under section 4 of the Essential Supplies and Services Law, shall, on convention, be punished with imprisonment for a term from a minimum of six months to a maximum of three years and shall be also liable to a fine not exceeding five hundred thousand Kyats.¹¹

As of July 2024, more than 6,000 online businesses are officially registered, according to the Department of Trade under the Ministry of Commerce. The department is conducting the registration process under the Consumer Protection Law and some existing laws to ensure that consumer rights are protected in the online sales sector in Myanmar.¹² However, the non-registered online sale businesses are still due to the lack of awareness of the business operator and cannot be effectively enforceable by the Department of Trade. There are some complaints which may not be effectively enforceable by the Department of Trade after issue of the “Online Sales Business Registration Order”.

The complainant who lives in Magway city, Magway Region, ordered Mini Tricycle through the Online Shopping and transferred 118, 0000 Kyats for the price of Mini Tricycle. Nevertheless, such Mini Tricycle was not delivered. Therefore, the Department of the Consumer Affairs filed the complaint through Website Complaint System. When the Department of the Consumer Affairs investigated those complaint, the Online Shopping is an Online Shopping situated in China. Its Online Shopping did not have in Tamu. Therefore, the Department of the Consumer Affairs notified to the complainant that those Online Shopping can be disconnected and it is difficult to connect those Online Shopping as it has situated in China. And the authority of the Department of the Consumer Affairs linked and the address mentioned in the complaint

⁸ Clause 5 of the Online Sales Business Registration Order, 21st July, 2023.

⁹ Clause 2 of the Order for specifying online sales business as an essential service, 21st July, 2023.

¹⁰ Clause 3, Ibid.

¹¹ Section 5 of the Essential Supplies and Services Law, 2012.

¹² Global New Light of Myanmar, 27, July, 2024.

situated in China. Hence, under the Relevant Law, this complaint should be settled only with the sufficient evidence and this complaint was conclusive.¹³

The complainant who lives in Yangon, filed the application relating to the illegal sale of medicine through the online shopping. That medicine is the essential product for the patients who suffered the diabetes. And that kind of the Mixtrad Insulin is placed under the control of the prescribed temperature for not harming of the patients. Hence, those exported illegal sale does not guarantee the quality of the medicine and harm to life. He claimed to prevent the illegal exportation of Cold Chain Product and to operate the required sanction rapidly upon the illegal sale of the Cold Chain Product. When the Department of Consumer Affairs inquired those illegal sales of the Cold Chain Product upon the Facebook page, those Facebook account is the account selling a bottle of medicine to Turkey, Pakistan and India particularly. As it did not precisely describe the address upon the Facebook page, it has not been inquired by the Department.¹⁴ Therefore, those illegal selling online businesses are still until now even if the Online Sales Business Registration Order, were issued in 21st July, 2023.¹⁵

A complainant from Kawthaung Township, Tanintharyi Region purchased a mobile phone from the facebook account and transferred 60,000 kyats to KPay through phone on 18-6-2023. However, the Facebook account and phone number were blocked and the ordered item was not delivered, so he filed a complaint with the Consumer Affairs Department, Website Complaint System. Regarding the complaint, the Tanintharyi Region Chief Executive Office contacted the phone number where the money was transferred, but could not be disconnected. Therefore, the KPay account opened with that phone number at KBZ Bank was closed to prevent further fraud.¹⁶

Therefore, everyone who conducts any online business shall operate it only after the receipt of a registration certificate. Whoever operates any online sales business without a registration certificate shall be punished with imprisonment for a term from a minimum of six months to a maximum of three years and shall be also liable to a fine not exceeding five hundred thousand Kyats. Nevertheless, the non-registered online sale businesses are still and cannot be effectively enforceable by the Department of Trade. The Department of Trade should effectively enforce the non-registered online sales businesses.

The Duties of the Registration Certificate Holder in Online Sales Business

In Myanmar, the Registration Certificate Holders in online sales have to perform the duties as prescribed the Online Sales Business Registration Order, 2023. Besides, they have to perform the duties followed under the Competition Law, 2015; the Electronic Transaction Law, 2004; the Intellectual Property Laws; and the Tax Laws.

The duties of the Registration Certificate Holder provide in the Online Sales Business Registration Order that “the Registration Certificate Holders; -¹⁷

¹³ News Letter of the Consumer Affairs, November, 2023.

¹⁴ News Letter of the Consumers Affairs, August, 2024.

¹⁵ News Letter of the Consumers Affairs, July, 2024.

¹⁶ News Letter of the Consumers Affairs, July, 2024.

¹⁷ Order 18 of the Online Sales Business Registration Order, 21st July, 2023.

- (a) shall take responsibility to resolve the issues related to the sale of goods or services;
- (b) shall provide the receipt for the sale of goods or services;
- (c) shall provide correct information and guarantees for the sale of goods or services;
- (d) shall take responsibility and accountability to ensure the quality of goods or services equivalent of the purchased price of the goods or services;
- (e) shall specify the sales principles and the cooling-off period for the sale of the goods and undertake in accordance with them in the case of returning goods by the consumer due to non- conformity or with the information or guarantees provided;
- (f) shall avoid sales of any goods or services that are not included in the list of the types of goods or services attached with the application form;
- (g) shall avoid the manner that is disrespectful to the consumer or affect the consumer's dignity in respect of the sale of goods or services,
- (h) shall provide correct information for the methods of payment made by the consumer for the sale of goods or services;
- (i) shall inform the mode and terms of delivery of the goods to the consumer, allow to choose the options prior to the sale and then deliver the goods accordingly;
- (j) shall keep the consumer's personal information or information that is undesirable to disclose by the consumer except the case of disclosing it;
- (k) shall avoid stimulating, preaching, organizing, advocating and demonstrating with the purpose of political matters or the destruction of peace, stability and security of the public through online sales business;
- (l) shall avoid transferring registration certification directly or indirectly to others;
- (m) shall sell goods or service transparently;
- (n) shall comply with the rules and regulations prescribed by the relevant government departments for food or medicine or medical equipment or cosmetics;

If the Registration Certificate Holder in online sales businesses violates any stipulation in clause (18) of the Online Sales Business Registration Order, 2023, the Department of Trade of the Ministry of Commerce may order suspension of the registration certificate for a limited period or cancellation of the registration certificate.

Besides, the Registration Certificate Holders in online sale have the duties under the Competition Law, 2015; the Electronic Transaction Law, 2004; the Intellectual Property Laws; the Tax Laws.

The Registration Certificate Holders in online sale businesses shall avoid any infringement under the Competition Law, 2015. Therefore, the Registration Certificate Holders in online sale businesses shall not carry out the acts which cause monopolization on market under

Section 15 of the Competition Law, 2015. The Registration Certificate Holders shall avoid the acts for the purposes of unfair competition under Section 17 of the Competition Law, 2015.¹⁸

The Registration Certificate Holder in the online sales businesses shall also avoid any kind of direct intellectual property infringement under the Trademark Law, 2019, Industrial Design Law, 2019, Patent Law, 2019, and Copyright Law, 2019. The Registration Certificate Holders in online sales businesses shall comply with intellectual property laws, including respecting copyrights, trademarks, and patents. They do not use, reproduce, or distribute any IP without proper authorization. Those who sell counterfeit goods or infringe on intellectual property rights shall, on conviction, be imposed with the legal penalties under the Intellectual Property.

In addition, the Electronic Transaction Law provides for businesses to protect personal data and maintain the confidentiality of user information. The Registration Certificate Holders in the online sales businesses protect personal data and maintain the confidentiality of user information under Section 27 A of the Electronic Transaction Law, 2004.

The Registration Certificate Holders shall additionally perform their obligations to pay income tax and commercial tax in accordance with the Commercial Tax Laws, 1990 and the Union Taxation Law, 2023.

If the Registration Certificate Holders violate the duties under the Online Sales Business Registration Order, they may be passed the orders such as, the suspension for a limited period and the cancellation of the registration certificate. Nevertheless, although current enforcement like suspension or cancellation of registration certificates for violation of the duties by the Registration Certificate Holders under the 2023 Online Sales Business Registration Order exists, they are insufficient. Therefore, stronger penalties such as fines or civil remedies should be implemented for more effective enforcement.

Disputes Resolution in Online Sales Business for Consumer Disputes

Today, there are many disputes arisen between consumers and the Registration Certificate Holders in online sale. Disputes arisen between consumers and the Registration Certificate Holders in online sales must be settled in compliance with the Consumer Protection Law, 2019. When the consumers have suffered damages as to buying the goods through the online sales, they can file any complaint as to disputes to the Department of Consumers Affair.

Under the Ministry of Commerce, “the Consumer Affairs Department (CAD) has announced that consumers can complain to it about their grievances against local online shops. Millions of people visit the website of online businesses. Mostly, consumers have to pay only when they received the goods. However, some online shops request payments first and then block the consumer’s account after receiving payments. Therefore, the Consumer Affairs Department informed that customers can lodge complaints about non-arrival of goods after payments, discrepancies with advertised product quality, being unable to contact after payments, exaggerating the information on the goods, and non-arrival of products within the agreed delivery time. Complaints can be made on Facebook page of the Department of the Consumer Affairs and the Department of the Consumer Affairs Myanmar Application, or by contacting 1535.”¹⁹

¹⁸ Section 17 of the Competition Law, 2015.

¹⁹ Global New Light of Myanmar, 2nd May, 2023.

Submitting the complaint is accepted two ways in the dispute settlement mechanisms such as online (website, social, media and mobile) and offline (documents, phone and in person) in the Disputes Settlement Body where is relevant State and Regions and head of office.

The aggrieved consumer or the family members of the aggrieved consumer or the related person of the aggrieved consumer or the government departments and organizations; and the consumer protection associations may file the complaint to the relevant Office in person or any form of the social media together with evidence.²⁰

Hence, there are many complaints of the consumers made to the Department of Consumer Affairs. Under the Consumer Protection Law, 2019, the consumers are entitled to in two ways such as consumer's entitlement to guaranteed goods and to guaranteed services. There are many complaints made by the consumers when they have suffered damages.

The complainant who lives in Pyawbwe Township, Meiktila, ordered 40 pieces of Tamu Longyi through online Shopping. The price of 1 piece of Tamu Longyi is 4,500 Kyats. He transferred 22,000Kyats for 40 pieces of Tamu Longyi by KBZpay account. Nevertheless, the parcel ordered from online shopping has not been delivered to him. Hence, on 7 July, 2023, the complainant filed the application of the complaint to the Department of the Consumer Affairs. When the Department of the Consumer Affairs investigated the complaint, the online shopping is situated and opened in Yangon. The owner of the Online Shopping page has been notified by the Department of the Consumer Affairs and in mediation by the Department of the Consumer Affairs, the complainant recovered 21,8000 Kyats and satisfied. Therefore, the complaint is conclusive.²¹

The complainant who lives in Kawthaung Township, Taninthayi Region, ordered the mobile phone through Facebook online shopping account. He transferred 6,0000 Kyats for the price of mobile phone by KBZpay account. His Facebook account and the phone number were blocked and the parcel ordered by him has not been delivered. Hence, he filed the application of complaint through Website Complaint System to the Department of the Consumer Affairs. As to such complaint, when Department of the Consumer Affairs of Taninthayi investigated the phone number transferred for the price of the mobile phone. That phone number was disconnected and KBZpay account opened by that phone number was closed by KPZ Bank. For not causing of fraud in the future, the complainant was educated for awareness to buy from the legal Online Shopping account and his complaint was conclusive.²²

The complainant who lives in Patheingyi, Ayeyawady Region, ordered Wifi Router Machine through Facebook Page of the Electronic Shop. As the Wifi Router Machine was not used within a week, he resent it to the Electronic Shop to prepare it. But it has not been redelivered. Therefore, he filed the complaint to Western District Department of Consumer Affairs in Yangon. When its Department investigated the Electronic shop, it responded that as it did not have the extra device or tool to prepare the Wifi router Machine, it has delayed. It will prepare the Wifi Router Machine until the satisfaction on the part of buyer. It has delivered Wifi Router

²⁰ Section 44 of the Consumer Protection Law, 2019.

²¹ News Letter of the Consumer Affairs, December, 2023.

²² News Letter of the Consumer Affairs, December, 2023.

Machine when it has been prepared. The complainant has satisfied and his complaint was conclusive.²³

A complainant from Nay Pyi Taw, Union Territory, ordered a Smart Watch from an online shop in Hinthada Township and it was delivered by a delivery company on 28-3-2024. He has received and charged it for an hour, but it did not charge. He called back and received no response, so he contacted the Consumer Affairs Department. Officials from the Hinthada District Chief's Office contacted Online-Shop regarding the complaint. On 23-5-2024, the Online Shop contacted the department. The Smart Watch purchased was repaired and returned by delivery. The department official contacted the complainant and asked him about the repaired Smart Watch and he replied that he was satisfied with it. It was reported that the complaint was resolved through negotiation under the Consumer Protection Law.²⁴

Therefore, the disputes arisen between the consumers and the Registration Certificate Holders in online sale in Myanmar can be settled under the Consumer Protection Law, 2019. When the consumers filed the complaints to the Department of Consumer Affairs, they are entitled to repair and replace the goods as guaranteed or refund.

The Promotion of the Online Sales Businesses

The Registration Certificate Holders in online sales can obtain the rights when their online businesses are registered under the Online Sales Business Registration Order, 2023. Besides, the State shall operate the sustainable development of the online sales businesses.

The Online Sales Business Order, 2023 provides that “the Registration Certificate Holders in online sales who holds the registration certificate shall obtain the right for recovery of his good reputation if consumer's damage is not due to his or her goods or services; the right to defend himself or herself against consumer's complaint according to the law; the right to claim and report officially related to his or her business; the right to accept payment in accordance with the agreement and the value for the sale of goods or services; and the right to sell online under the name mentioned in the registration certificate.”²⁵

The State should promote “the construction of e-commerce infrastructures and strengthen the construction of e-commerce standards system”.

The State shall provide equal treatment of online and offline commercial activities and promote their integrated development.

The State should promote the establishment of multi-national and cross-regional communication and cooperation on cross-border e-commerce and participates in the development of international e-commerce rules.

In Myanmar, the rights of the Registration Certificate Holders who hold the registration certificates have been provided in the Online Sales Business Registration, 2023. Nevertheless, this Order has been provided in favor for the application of the registration of online sales business and the State shall promote the sustainable development of the online sales businesses.

²³ News Letter of the Consumer Affairs, April, 2024.

²⁴ News Letter of the Consumer Affairs, July, 2024.

²⁵ Clause 19 of the Online Sales Business Registration Order, 21st July, 2023.

Research Finding

Since online sales business involves an essential component of the global economy in today's digital age, it is effectively and legally required to control. In Myanmar, the Online Sales Business Registration Order is recently issued the on 21st July, 2023. It contains the application for registration certificate and the duties and the rights of the Registration Certificate Holders who hold registration certificate. Nevertheless, the Online Sales Business Registration Order, 2023 is not sufficient to control the online sales businesses in Myanmar. Today, there are many illegal online sales businesses in Myanmar. Therefore, the law relating to Online Sales Businesses should be enacted for control of them to enforce the violations of the duties of the Registration Certificate Holders in online sales business and promoting the continuous and sound development of online sales business.

Conclusion

The online sales business is the buying and selling of goods and services through online system. Everyone who desires to operate the online sales business must apply for the registration. Whoever operates the online sales business without registration shall be prosecuted in accordance with Section 5 of the Essential Supplies and Services Law. Whoever shall be punished with imprisonment for a term from a minimum of six months to a maximum of three years and with a fine not exceeding five hundred thousand Kyats. The non-registered online sales businesses are still and cannot be effectively enforced by the Department of the Trade. The Department of Trade should effectively enforce the non-registered online sales business. If the Registration Certificate Holders violate the duties under the Online Sales Business Registration Order, they may be passed the orders such as, the suspension for a limited period and the cancellation of the registration certificate. Nevertheless, the orders of suspension for a limited period and the cancellation of the registration certificate are not effectively sufficient for the violations relating the duties of the Registration Certificate Holders in online sales under the Online Sales Business Registration Order, 2023. The sufficient penalties such as fine or some effective prevention under the civil liabilities should be effectively provided. When the consumers filed the complaints to the Department of Consumers Affairs, they are entitled to repair and replace the good as guaranteed or refund. The Registration Certificate Holders who hold Registration Certificate are entitled the rights under the Online Sales Business Registration Order, 2023. Nevertheless, the Online Sales Business Registration Order has been provided in favor for the application of the registration of online sales business and does not complete for promotion of online sales business. The State should promote the construction of e-commerce infrastructures and equal treatment and promote technology and application of online sales business. Therefore, Law relating to online sales business should be provided with a view to safeguarding the legitimate rights and interests of the Registration Certificate Holders or entities, regulating online sales business conduct and promoting the continuous and sound development of the online sales business.

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