

General

## Guideline on Unfair Trade Practices of Online Food Delivery Platforms

The COVID-19 pandemic in Thailand has seen escalating consumer demand for the use of food delivery digital platforms (“**Online Food Delivery Platforms**”). At the same time, there has been an increase in complaints by restaurant operators regarding the unfair trade practices adopted by certain Online Food Delivery Platforms, such as overcharging and the imposition of higher commissions.

After a public consultation period during which comments and feedback on a draft notification were received, the Trade Competition Commission (“**Commission**”) issued the Notification of the Trade Competition Commission regarding the Guideline of Considering Unfair Trade Practices between Online Food Delivery Service Providers and Restaurant Operators (“**Notification**”). The Notification, which took effect on 23 December 2020, provides a guideline of the practices which may be considered as causing damage to the restaurant operators in breach of Section 57 of the Trade Competition Act B.E. 2550 (2017), referred to as the “unfair trade practices” provision, as summarized below:

1. Collecting expenses, consideration or other benefits in an unfair manner, examples of which include:
  - (a) Collecting commission fee or gross profit without reasonable ground or on a discriminatory basis;
  - (b) Collecting advertising fees for which the restaurant operators do not receive benefits as mutually agreed without reasonable grounds;
  - (c) Collecting sales promotion fees without reasonable grounds; or
  - (d) Collecting expenses, consideration or other benefits of which there is no precedent regarding their collection, without reasonable grounds.
2. Prescribing the trade terms and conditions by way of limiting or restricting business operation of other business operators in an unfair manner, examples of which include prescribing exclusive dealing conditions on the restaurant operators without reasonable grounds and imposing commercial penalties on the alleged errant restaurant operators without reasonable grounds.
3. Abuse of market power or superior bargaining power in an unfair manner, examples of which include intervening in or restricting the restaurant operators’ freedom of price determination without reasonable grounds, prescribing the rate parity conditions on the restaurant operators without reasonable grounds, and amending conditions or duration of the agreement with the restaurant operators without reasonable grounds.

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4. Other unfair trade practices which may cause damage or limit or restrict the business operation of other business operators.

In the event that any Online Food Delivery Platform commits any unfair practice under the Notification, such violating Online Food Delivery Platform may be ordered by the Commission to suspend, stop, correct or change such unfair practice under the criteria, method, conditions and the time period prescribed by the Commission. Moreover, the errant Online Food Delivery Platform will be subject to an administrative fine of not more than 10% of its revenue in the year that such unfair practice is committed.

In addition, if such unfair practice is committed under instruction or through the conduct of a director, manager or any person responsible for the operation of the errant Online Food Delivery Platform, or where such person has the duty to instruct or perform some conduct but fails to instruct or perform the conduct causing the Online Food Delivery Platform to commit such unfair practice, such person will be subject to the same punishment.

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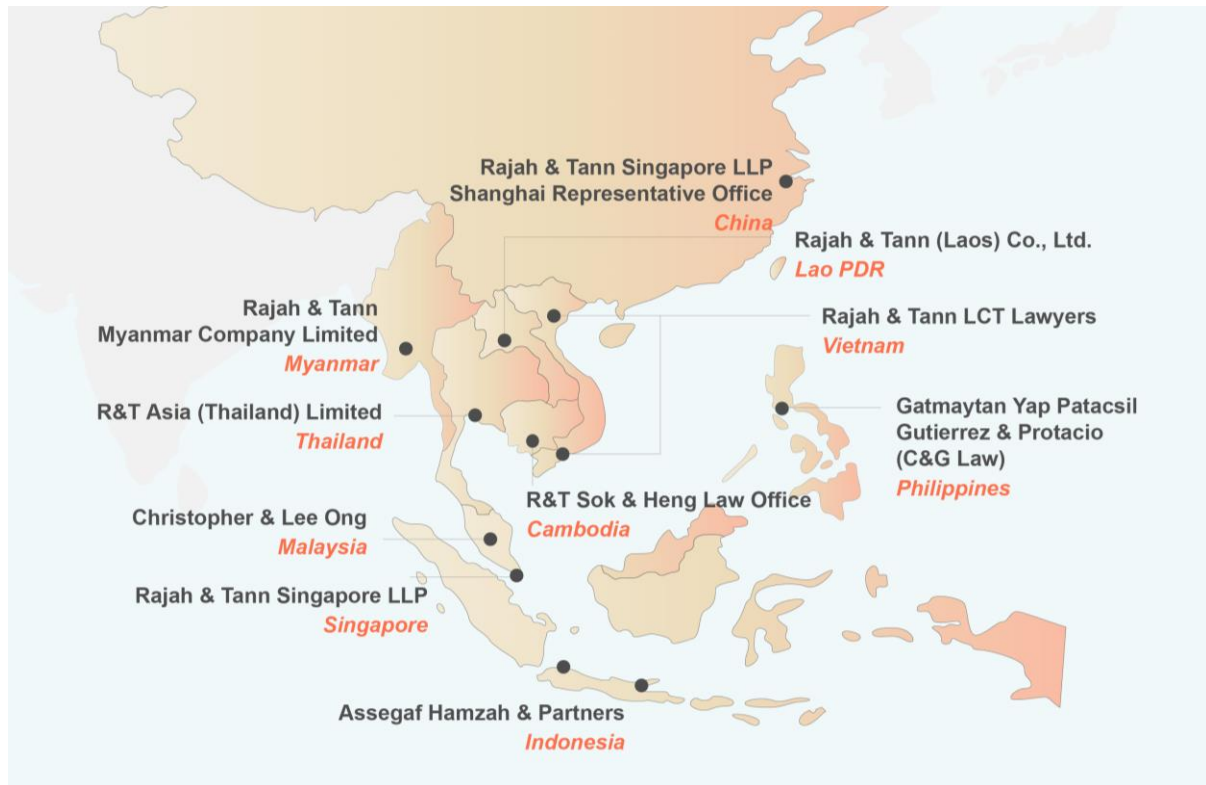
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