

Redefining the Philippine E-Commerce Landscape: the Internet Transactions Act of 2023

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Republic Act No. 11967 or the Internet Transactions Act of 2023 (the “Internet Transactions Act”), which was signed into law only last 5 December 2023, embodies the state’s policy to promote and maintain a robust electronic commerce environment in the Philippines by building trust between online merchants and consumers. The objective behind the enactment of the Internet Transactions Act is to guarantee the effective regulation of electronic commerce in the country to safeguard consumer rights and data privacy, encourage innovation, promote competition, secure internet transactions, and ensure product standards and safety compliance.



Scope and Extraterritoriality

Under the Internet Transactions Act, internet transactions are defined as the sale or lease of digital or non-digital goods and services over the internet.¹ The scope of the Internet Transactions Act is limited to *business-to-business* and *business-to-consumer* internet transactions where one (1) of the parties is situated in the Philippines.² The Internet Transactions Act does not cover online media content and consumer-to-consumer transactions, which are transactions between end-users done for personal, family, or household purposes, and not done in the ordinary course of business.³

Notably, the Internet Transactions Act has extraterritorial application. If a person who engages in electronic commerce avails of the Philippine market to the extent of establishing minimum contacts in the country, then such person shall be subject to applicable Philippine laws and regulations despite not being legally present in the country.⁴ However, the Internet Transactions Act does not define the term “minimum contacts” and there is no specific definition of “minimum contacts” under Philippine law. There is only a Philippine Securities and Exchange Commission (“SEC”) opinion predating the Internet Transactions Act that touches on the concept of “minimum contacts”. In SEC-OGC Opinion No. 17-03 dated 04 April 2017, the SEC applied the Sliding Scale Test to determine if a foreign corporation had minimum contacts in the Philippines. The Sliding Scale Test is based on the United States case of *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997), which categorized internet activities into certain types in order to determine if personal jurisdiction can be exercised. In *Zippo*, which was cited in SEC-OGC Opinion No.

¹ Section 4(h).

² Section 3. Under Section 4(a) of the Internet Transactions Act, business-to-business transactions refers to internet transactions between businesses, such as those between a manufacturer and a wholesaler, or a wholesaler and a retailer. On the other hand, Under Section 4(b) of the Internet Transactions Act, business-to-consumer transactions are those between businesses and end-users.

³ Section 3.

⁴ Section 5.

17-03. the Supreme Court of the United States stated that “the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet”.

For purposes of the Internet Transactions Act, the Sliding Scale Test may aid in determining if digital platforms, e-marketplaces, e-retailers, online merchants, and generally all business that engage in electronic commerce that enter into sales, lease, or service contracts with persons situated in the Philippines have minimum contacts in the country and will be covered by the provisions thereof.

The Parties in Internet Transactions

Parties to internet transactions as defined in the Internet Transactions Act include the following:

- i. Online consumers – natural or juridical persons who purchase, lease, receive, or subscribe to foods or services over the internet for a fee;⁵
- ii. Digital Platforms – information and communication technology-enabled mechanisms that connect and integrate producers and users in online environments where goods and services are requested, developed, and sold, and data is generated and exchanged;⁶
- iii. E-marketplaces – digital platforms whose business is to connect online consumers with online merchants, facilitate and conclude the sales, process the payment of the products, goods or services through the platform, or facilitate the shipment of the goods or provide logistics services and post-purchase support within such platforms, and otherwise retains oversight over the consummation of the transaction;⁷
- iv. E-retailer – natural or juridical persons selling goods or services directly to online consumers through its own website, webpage, or application;⁸ and
- v. Online Merchant – a person selling non-financial goods or services to online consumers through an e-marketplace or third-party digital platform.⁹

Rights, Obligations, and Liabilities of Parties in Internet Transactions

a. Online Consumers

Online consumers must exercise ordinary diligence in any internet transaction.¹⁰ This means that online consumers must exercise the diligence of a good father of a family which requires them to exercise reasonable care and caution which an ordinarily prudent person would have used in the same situation.

In addition, the Internet Transactions Act prohibits online consumers from cancelling confirmed orders when the goods have already been paid for, or the goods are perishable in nature and are already in the possession of third-party delivery services or are otherwise in transit.¹¹

⁵ Section 4(i).

⁶ Section 4(d). Examples of digital platforms are e-marketplaces, mobile application platforms, online delivery platforms, social media platforms, and travel platforms

⁷ Section 4(e).

⁸ Section 4(g).

⁹ Section 4(j). Under Section 4(j) of the Internet Transactions Act, an e-retailer shall be considered an online merchant if it offers the same goods or services outside its own website through a third-party digital platform

¹⁰ Section 19.

¹¹ Section 19. Please note that under Section 19, the customer may still cancel confirmed orders even if said items have been paid for by, or the goods are perishable in nature and are in the possession of a third-party delivery service, or are otherwise in transit if:

- i. The online consumer uses electronic or digital payment and authorized the crediting of the amount despite cancellation;

In the event that the goods received by the online consumer are defective, start malfunctioning, or gets lost without the fault of the online consumer, and without the failure of the online merchant or e-retailer to conform with the warranty or liability that arises out of the contract, the online consumers may pursue the repair, replacement, or refund of the goods, as well as avail the remedies that are available under Republic Act No. 7394 (Consumer Act of the Philippines) and any existing laws.¹²

b. E-Marketplaces and Other Digital Platforms

E-marketplaces and other digital platforms must disclose the identity of the person/s on whose behalf the transaction is made.¹³ They must further require all online merchants, whether foreign or Filipino, to submit pertinent information that would sufficiently identify such person/s prior to listing with their platform. The information to be collected by the e-marketplaces and other digital platforms includes, but is not limited to, the name, address, and contact details of online merchants. Such information must be accompanied by at least one (1) valid ID for individuals or business registration documents for juridical entities.¹⁴

E-marketplaces and other digital platforms are also required to clearly indicate in their platform basic information regarding the goods being sold, particularly, its name and brand, its price, a description thereof, and the condition of the product.¹⁵

E-marketplaces and other digital platforms are required to provide an effective and responsive redress mechanism where online consumers and online merchants may report users on the platform that are deemed in violation of relevant laws.¹⁶ This is essential since the Internet Transactions Act requires online consumers to first avail of the platform's internal redress mechanism prior to the filing of a complaint before any court or appropriate government agency or before resorting to alternative dispute resolution.¹⁷

Lastly, e-marketplaces and other digital platforms are required to exercise ordinary diligence in performing their obligations.

c. E-retailers and online merchants

Pursuant to the Internet Transactions Act, e-retailers and online merchants must indicate the price of goods and services in accordance with Art. 81 of the Consumer Act of the Philippines or the price tag requirement.¹⁸

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- ii. The online consumer reimburses the third-party delivery service as a pre-condition for the cancellation of the order;
 - iii. The transaction allows cancellation for a fee; or
 - iv. The parties agree otherwise.

¹² Section 20. Please note that under Section 20, when an online consumer avails of replacement or refund as a remedy, the online merchant is entitled to the return of the original goods delivered, without any cost to the online consumer, within a reasonable period from the receipt thereof, unless otherwise agreed upon by the parties. In case the refund is already paid, but the goods cannot be returned due to the fault of the online consumer, the amount received shall be reimbursed to the online merchant or e-retailer, subject to the proportionate reduction in price, if appropriate.

¹³ Section 21.

¹⁴ Section 21 (b). Under the same section, if the services offered by an online merchant is connected with the exercise of a regulated profession, the details of such merchant's membership in any professional body or similar relevant institution with which it is registered should be submitted as well.

¹⁵ Section 21(g).

¹⁶ Section 21 (f).

¹⁷ Section 24.

¹⁸ Essentially, it is unlawful to offer products to the public without an appropriate price tag, label or marking publicly displayed to indicate the price of each article and said products shall not be sold at a price higher than that stated in the price tag and without discrimination to all buyers.

Moreover, e-retailers and online merchants must ensure the integrity, functionality, compatibility, interoperability, and fitness for the purpose for which they were intended of the goods purchased and received by the online consumer.¹⁹ They must further ensure that the goods delivered to the online consumer are essentially complete and must possess the qualities that are standard and normal for goods of the same type, which the online consumer may expect considering its nature any advertisements that were provided.²⁰ Where the transaction involves the performance of a service, e-retailers and online merchants must ensure that it is completed in accordance with the contract and as advertised.²¹

While the Internet Transactions Act did not provide for a degree of diligence that e-retailers and online merchants must observe in internet transactions, nevertheless, it may be argued that Art. 1173 of the Philippine Civil Code shall apply, which states that if the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

Moreover, e-retailers must publish its information on its homepage such as, but not limited to, its corporate and business name, the address of its physical shop, and its contact details.²²

E-retailers are also required to provide an efficient redress mechanism for handling complaints from their client.

d. Other Digital Platforms

Digital platforms that do not retain oversight over the consummation of the transaction must exercise ordinary diligence in the performance of its obligations under the Internet Transactions Act.²³

These types of digital platforms must require online merchants to indicate the name and brand of the goods or services it offers, its price, its description, its condition, and the online merchant must submit contact details.²⁴ In view thereof, these types of digital platforms must also maintain an updated list of accounts that make use of its platform for internet transactions.²⁵

These types of digital platforms are also required to provide an effective and responsive redress mechanism where online consumers and online merchants may report users on the platform that are deemed in violation of relevant laws.²⁶

Common provisions on Data Privacy

The Internet Transactions Act requires digital platforms, e-marketplaces, e-retailers, and online merchants to take necessary precautions to protect the data privacy of online consumers at all times in accordance with Republic Act No. 10173 or the Data Privacy Act, and to comply with minimum

¹⁹ Section 23(b) and (c).

²⁰ Section 23 (c). The same requirement applies to digital goods or services.

²¹ Section 23(e).

²² Section 23(f). Under the same section, if the services offered by an e-retailer merchant is connected with the exercise of a regulated profession, the details of such retailer's membership in any professional body or similar relevant institution with which it is registered should be submitted as well. Furthermore, information provided under Section 23(f) shall be submitted to the E-Commerce Bureau, and must be accompanied by at least one (1) valid government ID or registration document as proof of its identity.

²³ Section 22.

²⁴ Section 22(c).

²⁵ Section 22(e).

²⁶ Section 22(d).

information security standards set by the National Privacy Commission, the E-Commerce Bureau that will be established, and other issuances of relevant government agencies.²⁷

Liabilities under the Internet Transactions Act

The Internet Transactions Act states that e-retailers or online merchants are primarily liable in civil actions or administrative complaints arising from internet transactions.²⁸ Primary liability means that the e-retailers or online merchants shall be directly liable to the online consumers.

On the other hand, e-marketplaces and digital platforms shall be subsidiarily liable to the online consumer in a civil action or an administrative action for the damages that are the direct result of the internet transaction that it facilitated.²⁹ Subsidiary liability means that the e-marketplaces and digital platforms will be secondarily liable in the civil action or administrative complaint for the internet transactions it facilitated in case it:

- i. Failed to exercise ordinary diligence in performing its obligations under Sec. 21 and 22 of the Internet Transactions Act;
- ii. Failed to act expeditiously in removing goods or services that infringe on another's intellectual property rights or are the subjects of takedown orders; and
- iii. Has no legal presence in the country but the e-marketplace and digital platform failed to provide the contact details thereof despite notice.

However, if the e-marketplace or the digital platform shows that it relied in good faith on the representations, warranties, and registration documents of the online merchant, it shall not be held liable under the Internet Transactions Act.

Lastly, the Internet Transactions Act makes e-marketplaces or digital platforms solidarily liable if it fails to act expeditiously in removing or disabling access to goods or services that are prohibited by law, imminently injurious, unsafe, or dangerous. Solidary liability means that such e-marketplaces or digital platforms are primarily liable with the online merchants who sell the prohibited and dangerous goods.³⁰ Notably, the Internet Transactions Act also makes e-marketplaces or digital platforms solidarily liable to online consumers if it is found that it is the same entity as the online merchant against which a civil action or administrative complaint is brought.³¹

Establishment of the E-Commerce Bureau and Online Dispute Resolution for Internet Transactions

The Internet Transactions Act mandates the Department of Trade and Industry (“DTI”) to establish an E-Commerce Bureau within six (6) months from the effectivity of the law. Some of the E-Commerce Bureau’s powers and functions include the power to implement, monitor, and ensure strict compliance with the law, and to investigate motu proprio and recommended the filing of the appropriate case for violation of the Internet Transactions Act.

Sec. 17 of the Internet Transactions Act also mandates the DTI to establish an Online Dispute Resolution (“ODR”) platform that will facilitate an alternative mode of dispute resolution for online consumers, online merchants, e-retailers, e-marketplaces, and other digital platforms.

²⁷ Section 21(d), Section 22(f) and Section 23(f)(2).

²⁸ Section 25.

²⁹ Section 26.

³⁰ Section 27.

³¹ Section 25.

Role of the Department of Trade and Industry

The Internet Transactions Act makes the DTI the main regulatory entity for the use of the internet for conducting electronic commerce by e-marketplaces, online merchants, e-retailers, digital platforms, and third-party platforms. As part of the DTI's regulatory power over internet transactions, the DTI Secretary can issue subpoenas, compliance orders, takedown orders, and a blacklist of businesses that fail to comply with compliance orders, are the subjects of takedown orders, or of cease and desist orders issued by an appropriate government agency.

Transitory Provision

There will be a transitory period of eighteen (18) months from the effectivity of the law so that affected parties can comply with its requirements. Hence, there is sufficient time for digital platforms, e-marketplaces, e-retailers, online merchants, and other digital platforms to comply with the Internet Transactions Act. Businesses must make the necessary changes to their administrative and operational processes in order to ensure that it be compliant with the Internet Transactions Act and in order to avoid administrative and even civil liability.

The Internet Transactions Act marks a turning point for e-commerce in the Philippines. It clamps down on nefarious practices in the online space, protecting consumers and businesses alike. Transparency and fairness become the cornerstones of every online transaction. This is especially crucial in today's world, where the internet fuels countless everyday dealings. By understanding how the law applies to them, both consumers and businesses can unlock the law's full potential and enter into internet transactions with confidence.

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