

Goods Distribution in Indonesia - Regulation Update

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On 28 March 2016, the Indonesian Government through the Minister of Trade (“**Minister**”) enacted Minister of Trade Regulation No. 22/M-DAG/PER/3/2016 on General Provision of the Goods Distribution (“**MOT Reg 22/2016**”). This MOT Reg 22/2016 is the implementing regulation of Law No 7 of 2014 on Trade (“**Indonesian Trade Law**”) and it revokes Decree of Minister of Industry and Trade No. 23/MPP/Kep/1/1998 on Trade Business Institutions.

In principle, MOT Reg 22/2016 explains that goods distribution to consumers within Indonesia can be conducted either by an indirect or a direct distribution system. The indirect distribution of goods can be done by either (i) distribution; (ii) agency; or (iii) franchise arrangement. While the direct distribution of goods is conducted by way of (i) single-level marketing or (ii) multi-level marketing.

MOT Reg 22/2016 sets out the flow of indirect distribution of goods in Indonesia as follows:

1. a distributor is only allowed to distribute goods to a sub-distributor, *grosir*, *perkulakan*, or retailers;
2. a sub-distributor is only allowed to distribute goods to *grosir*, *perkulakan* or retailers;
3. an agent is only allowed to distribute goods to sub-agents, *grosir*, *perkulakan* or retailers; and
4. a sub-agent is only allowed to distribute goods to *grosir*, *perkulakan* or retailer.

Under this regulation, a distributor is defined as a distribution business actor acting for and its own behalf, which is appointed by a producer or a supplier or an importer based on an agreement to conduct goods distribution activities. While an agent is defined as a distribution business actor acting as an intermediary for and on behalf of a party appointing it based on an agreement to conduct goods distribution activities. A *grosir* is defined as a distribution business actor who sells various of goods not in retail. A *perkulakan* is defined as a *grosir* in a store format with a self-service system. While a retailer is a distribution business actor who sells the goods directly to consumers.

MOT Reg 22/2016 provides administrative sanctions for any violation of this regulation. Administrative sanctions are in the form of (i) written warning; (ii) suspension of business activities by freezing the license; and lastly, (iii) revocation of the business license.

We highlight 2 (two) provisions under MOT Reg 22/2016, i.e., Article 7 (1) and 19 (4) of MOT Reg 22/2016 which are not consistent with the previous regulations, namely Government Regulation No. 36 of 1977 regarding Termination of Foreign Business Activities in the Trade, as amended several times, i.e., by (i) Government Regulation No. 19 of 1988; (ii) Government Regulation No. 35 of 1996; (iii) Government Regulation No. 41 of 1997; and (iv) Government Regulation No. 15 of 1998 (together called as “**GR 36/1977 and its Amendments**”).

Article 7 (1) of MOT Reg 22/2016 states that a producer must appoint a distributor or an agent to distribute its goods. Further, Article 19 (4) of MOT Reg 22/2016 prohibits a large and medium manufacturer/producer and an importer from distributing goods to a retailer.

Our view, these provisions are **contrary with** Article 3 (2) (a) (iii) of Termination of Foreign Business Activities in the Trade Regulations. Article 3 (2) (a) (iii) of GR 36/1977 and its Amendments allows a foreign investment manufacturing company (“**PMA Company**”) to distribute/sell its products directly to retailers as long as it appoints a non-PMA retailer company. The prohibition under MOT Reg 22/2016 will affect manufacturers or producers as they must add another distribution chain to distribute their goods to reach consumers.

We understand that business people and association have clarified this prohibition to the Ministry. The Minister stated that they will further review this prohibition and get back with the decision. Until this newsletter is issued, we still have not yet received any update on this matter.

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