

## A New Push to Regulate E-Commerce



On 19 May 2020, the Ministry of Trade issued Regulation No. 50 of 2020 on the Requirements regarding Business Licensing, Advertising, Development, and Supervision of Businesses in Commerce through the Electronic Systems. This regulation is an implementing regulation of the E-Commerce Regulation (Government Regulation No. 80 of 2019 on Commerce through Electronic Systems), which clarifies most of the unresolved issues in the E-Commerce Regulation.

Broadly, the new regulation regulates the appointment of representatives by foreign e-commerce service providers and business licenses for local merchants, e-commerce service providers, and intermediary service providers (collectively, “**E-Commerce Players**”). Moreover, it also elaborates the requirements for electronic advertisements and the obligation to prioritise local products and services.

### Requirements for E-Commerce Players

#### *Local E-Commerce Players*

The new regulation leaves no doubt that local E-Commerce Players must now obtain a business license, and the type of license will depend on the service that they provide. An e-commerce service provider must obtain an e-commerce trade business license (*Surat Izin Usaha Perdagangan Melalui Sistem Elektronik* or “**SIUPMSE**”), while a local merchant must obtain a business license that is relevant to their business activities. Applications for both licenses can be submitted online via the Online Single Submission (“**OSS**”) portal.

The new regulation also reiterates that an intermediary service provider is not required to obtain a SIUPMSE if it does not receive any direct benefit from the transaction or is not directly involved in the contractual relationship between the transacting parties (“**Exempted Circumstances**”). Although frequently raised as an issue to the Ministry of Trade, the new regulation fails to provide an adequate explanation of what activities would constitute as obtaining a direct benefit from an e-commerce transaction.

### **Foreign E-Commerce Players**

As highlighted in our previous alert ([click here to read](#)), save for the Exempted Circumstances, foreign e-commerce service providers that actively engage with consumers and satisfy certain thresholds must appoint a representative in Indonesia to act on their behalf. The new regulation clarifies these thresholds and requires a foreign e-commerce service provider to appoint a representative if annually it:

1. transacts with more than 1,000 consumers in Indonesia; or
2. delivers more than 1,000 packages to consumers in Indonesia.

The representative must be established in the form of an e-commerce representative office (*Kantor Perwakilan Perusahaan Perdagangan Asing bidang Perdagangan Melalui Sistem Elektronik* or “**Representative Office**”). The Representative Office must also obtain a representative office trade business license (*Surat Izin Usaha Perwakilan Perusahaan Perdagangan Asing* or “**SIUP3A**”) before it begins commercial operation in Indonesia. A Representative Office is permitted to establish branch offices in Indonesia, and one Representative Office can only serve one foreign e-commerce service provider. Further, the Representative Office can only conduct the following actions:

1. providing services to fulfil the foreign e-commerce service provider’s consumer protection commitment;
2. providing guidance to improve the products’ competitiveness; and
3. settling disputes in Indonesia.

Foreign merchants are not required to obtain any license from the Indonesian authorities; instead they are only required to register the business license issued by the authorised institution in their country of origin with the local e-commerce service provider if they list their products via such local e-commerce service provider.

## **Electronic Advertisement**

The new regulation also includes provisions on electronic advertisement for marketing and promotion activities. E-Commerce Players can self-publish their advertisement or appoint a third-party e-commerce application provider to publish their advertisement. But as the new regulation does not regulate electronic advertisements in detail, E-Commerce Players must ensure that their advertisement complies with Indonesia’s broadcasting, personal data, consumer protection and competition-related regulations.

## **Sanctions and Normalisation**

In addition to prescribing similar administrative sanctions as those under the E-Commerce Regulation, the new regulation also provides a normalisation procedure for E-Commerce Players that have received sanctions under the new regulation. Here, E-Commerce Players that are temporarily blocked, put in a

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priority supervision list, or blacklisted may submit a normalisation application to the Ministry of Trade after they have remedied their violation.

## Conclusion

Although the new regulation have not addressed all issues under the E-Commerce Regulation, for example, the type of benefit that would constitute a direct benefit from an e-commerce transaction and how a party can fulfil the requirements on cross border data transfer, clarification relating to the licensing requirements of local players and threshold for appointing a representative in Indonesia are nonetheless crucial development for the Indonesian e-commerce sector.

Further, the new regulation shows the government's preference to regulate by licensing Indonesia's rapidly growing e-commerce industry. This is a further indication that a clear legal basis to implement the new taxation regime on e-commerce activities is among the drivers of the approach. Consequently, businesses in the e-commerce sector are left with no choice but to start preparing to adjust with the regulation during the approximately six-month grace period before the regulation comes into full force on 29 November 2020.

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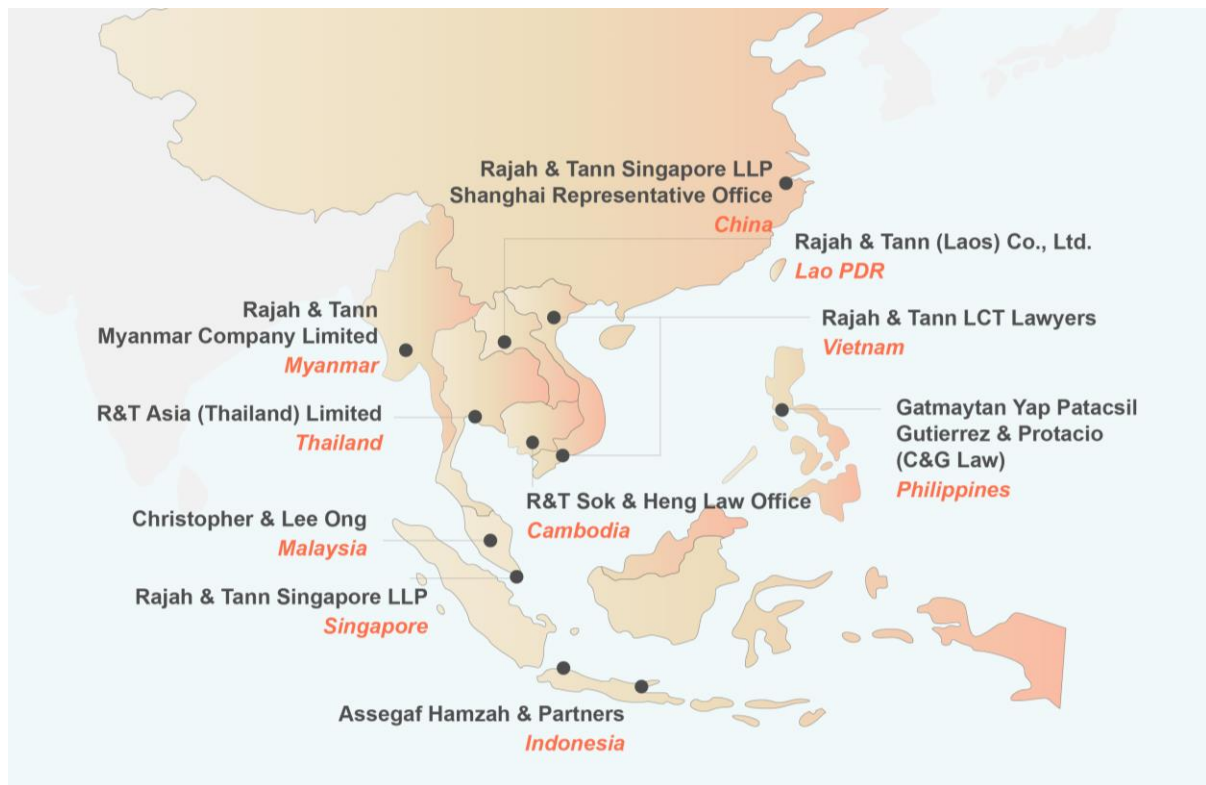
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