

Indonesia: Another E-Commerce regulation: more protection and more control

Overview

The Ministry of Trade (**MoT**) recently issued MoT Regulation No.50 of 2020 entitled “Provisions on Business Licencing, Advertising, Guidance and Supervision of Business Players in Trade through Electronic Systems” (**MoTR 50/2020**), to further implement Government Regulation No.80 of 2019 on Trade through Electronic Systems (**GR 80/2019**).

Key provisions

MoTR 50/2020 further regulates electronic-based trading business activities (**E-Commerce**). We set out below some of the key provisions and changes.

1. Scope of E-Commerce business

Domestic and foreign E-Commerce businesses are divided into the following three categories:

- a. **Merchants** (i.e. businesses that conduct E-Commerce either directly or through E-Commerce Organisers (see immediately below)), including domestic merchants that conduct E-Commerce through social media;
- b. **E-Commerce Organisers** (*Penyelenggara Perdagangan Melalui Sistem Elektronik*) (i.e. businesses that provide electronic communications facilities for the purpose of trade transactions, such as Tokopedia, Shopee and other E-Commerce platforms); and
- c. **Intermediary Service Providers** (*Penyelenggara Sarana Perantara*) (i.e. businesses that provide electronic communications facilities for intermediary purposes, such as Google, Safari and other search engines).

2. Licencing

To engage in E-Commerce activities, certain E-Commerce businesses must obtain a new business license known as a “Trade through Electronic System Business Licence” (*Surat Izin Usaha Perdagangan melalui Sistem Elektronik*, **SIUPMSE**).

Certain domestic Merchants (as further described below), domestic E-Commerce Organisers and Intermediary Service Providers (subject to certain exemptions, described below) are now required to obtain a SIUPMSE.

SIUPMSE are issued through the Online Single Submission System (**OSS System**) and will only become effective after the E-Commerce business has:

- a. obtained an Electronic System Provider Registration Certification (*Surat Tanda Terdaftar Penyelenggara Sistem Elektronik*);
- b. provided its website address and/or name of the application it uses; and
- c. established a consumer complaints service (contact number and/or email address) that includes information on the consumer complaints contact at the Directorate General of Consumer Protection and Trade Compliance.

3. Key provisions for Merchants

Domestic Merchants that use their own E-Commerce online portal or electronic facilities for their trading activities are required to obtain a SIUPMSE.

Domestic Merchants are already required to obtain business licenses in accordance with their business sectors. For example, domestic Merchants that conduct general

trade business activities are required to obtain a Trade Business License (*Surat Izin Usaha Perdagangan*) through the OSS System.

In contrast, foreign Merchants are now required to “register” with the domestic E-Commerce Organiser through which the foreign Merchant’s goods/services are sold, providing the number, name and issuing agency of the foreign Merchant’s business licence (from its originating country). The relevant domestic E-Commerce Organiser is required to arrange for the storage of such data.

4. Key provisions for Intermediary Service Providers (ISP)

Whether an ISP is domestic or foreign, ISPs are required to obtain a SIUPMSE. However, an ISP may be exempted from this requirement if:

- a. the ISP is not a direct beneficiary of E-Commerce transactions; or
- b. the ISP is not directly involved in the contractual relationship between the parties to E-Commerce transactions.

5. Key provisions for E-Commerce Organisers

Domestic E-Commerce Organisers are required to obtain a SIUPMSE.

On the other hand, foreign E-Commerce Organisers are required to establish a trade representative office in Indonesia (**TRO**) to act on their behalf if the E-Commerce Organiser has:

- a. made more than 1000 transactions with Indonesian consumers within a period of one year; and/or
- b. sent more than 1000 packages to Indonesian consumers within a period of one year.

The TRO’s function is to represent the E-Commerce Organiser in Indonesia by dealing with consumer protection obligations, guidance to improve “competitiveness” and dispute resolution.

6. Electronic advertising key provisions

E-Commerce businesses are permitted to produce and disseminate electronic advertisements for the purpose of marketing or promotion. MoTR 50/2020 provides that electronic advertisement broadcasts must:

- a. comply with the advertising code of ethics;
- b. not deceive consumers regarding the quality, quantity, materials, usage and price of the goods/services, and the time that the goods/services will be received by consumers;
- c. not provide misleading guarantees or warranties on the goods/services;
- d. not contain any misleading, false, or inaccurate information on the goods/services;
- e. provide information on the risks of using the goods/services;
- f. not exploit any event or individual without the authorization or approval of such individual;
- g. provide an exit function for the broadcasted electronic advertisement (through a “close” or “skip” sign placed in an area in the advertisement that is easily seen and accessible to the consumer)

Electronic advertisements that show consumer ratings and testimonies must also be able to show or have proof of the relevant authentic source.

7. Prioritising local products

MoTR 50/2020 requires E-Commerce businesses to assist government programs by prioritising trade in domestically produced goods and services, increasing the



competitiveness of domestic products and services, and domestic E-Commerce Organisers are required to provide promotional space for domestically produced goods and services.

8. Transitional Provisions

MoTR 50/2020 will be effective as of 19 November 2020 (six months after enactment).

9. Administrative sanctions for non-compliance

Business actors who violate the obligations under MoTR 50/2020 will be imposed with escalating administrative penalties, ranging from written warnings to having their application and/or website blocked by the authorities.

Conclusion

In an era where consumers become increasingly reliant on E-Commerce services, MoTR 50/2020 serves to bring more legal certainty to consumers by requiring E-Commerce businesses to obtain appropriate licenses and regulating matters concerning consumer protection and advertising. At the same time, further foundations have been laid for foreign E-Commerce players to disclose information about their presence and sales in Indonesia, giving the Indonesian government greater ability to monitor taxable transactions.

We will continue to monitor and report on any new regulations relevant to E-Commerce businesses, which we expect to be relatively soon, given the dynamic growth of E-Commerce in Indonesia and the world.

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If you would like to discuss any aspect of this update, please feel free to contact us.



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