

Client Update: Indonesia

25 AUGUST 2017

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Indonesia E-Commerce Road Map

After an extended waiting period from when the proposed plan was first announced, the Government of the Republic of Indonesia finally issued Indonesia's e-commerce road map through Presidential Regulation No. 74 of 2017 on E-Commerce Road Map for the Year of 2017-2019 (the "**E-Commerce Road Map**"). This E-Commerce Road Map purports to provide direction and strategic guidance to various Government agencies to support and accelerate development of e-commerce in Indonesia. The guidelines instruct both the Central and Local/Regional Governments to develop sectoral policies and programs. It is curious to note that the E-Commerce Road Map does not define "e-commerce". Perhaps this is an oversight, or a recognition of how widespread and common the term has become that no definition is required. Further discussion on possible meaning of e-commerce is provided below.

The E-Commerce Road Map consists of eight (8) key areas, namely funding, taxation, customer protection, education and human resources, telecommunication infrastructure, logistic, cyber security, and establishment of a coordinating function (in the form of steering and management committee). These key areas are further divided into 26 programs, which must be carried out by the respective Governmental stakeholders in the 2017-2019 period.

Based on the programs, we note that funding, education and human resources, telecommunication infrastructure, and establishment of a coordinating function are mostly geared toward local e-commerce companies. Among the programs are: increasing access to Credit Facility for Micro and Small Business (*Kredit Usaha Rakyat*) for micro or small size local e-commerce companies; providing education for local e-commerce companies; creating incubation to support local start-up companies; and beefing up telecommunication infrastructure in the form of internet speed, network, and security.

In addition to the programs that are aimed to support local start-up constituencies, there are also programs that will affect larger and foreign players. We highlight examples of those programs below.

1. Taxation

With regard to tax, the Government plans to undertake 3 programs, namely (i) streamlining of tax obligation; (ii) drafting the procedure and guidelines for registration of e-commerce business; and (iii) promoting equal tax treatment for foreign e-commerce businesses.

Items (ii) and (iii) are relevant to foreign e-commerce. Under the E-Commerce Road Map, the Government will draft a regulation requiring all e-commerce companies carrying out their business in Indonesia to be registered with the Ministry of Trade. Under this straightforward requirement it appears that the registration requirement will also include foreign e-commerce companies. This regulation is expected to be completed in September 2017.

The plan to apply equal tax treatment for foreign e-commerce companies is in accordance with the Circular Letter of Minister of Communication and Informatics No. 3 of 2016 ("**CL No. 3/2016**") which essentially requires offshore over-the-top companies (app-based internet services and internet-based content

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services companies) carrying out business in Indonesia to have a presence in Indonesia in the form of a permanent establishment in order for them to be subject to Indonesian taxation regulation. Clearly the intention here is for both onshore and offshore e-commerce companies carrying out business activity within Indonesian territory to be equally subject to the same tax regime. A more detailed explanation regarding CL No. 3/2016 is provided in our previous client alert <http://www.ahp.co.id/client-update-01-april-2016>.

2. Customer Protection

There are three (3) programs in this area: (i) drafting Government Regulation on e-commerce transaction; (ii) building customer trust; and (iii) using national payment gateway for e-commerce transaction in Indonesia.

The draft Government Regulation on e-commerce transaction has been presented for public consultation since 2015 and pursuant to the E-Commerce Road Map is expected to be enacted in October 2017. The Government Regulation will govern among others: rights and obligations of merchant and customer, payment method, applicability of electronic contract, logistic, exchange and refund requirements, and dispute settlement in e-commerce transaction. Under the draft Government Regulation "e-commerce" is defined as "*trade transaction which is carried-out by utilizing a series of electronic equipment and procedures*". This definition is currently the only available reference to the meaning of e-commerce. Unless other regulations mandated by the E-Commerce Road Map define it differently, we believe the proposed definition should suffice.

With respect to building customer trust, the Government will create comprehensive legal framework in relation to e-commerce business which includes classification of e-commerce business, electronic certification procedure, accreditation process, payment mechanism policy, customer protection policy in e-commerce transaction, online dispute resolution procedure, and information system for e-commerce entrepreneur. This legal framework aims to create legal certainty for both merchant and customer so they will be fully protected by the regulation. The legal framework is expected to be issued in November 2017.

The requirement to utilize national payment gateway for e-commerce transaction within Indonesian territory is in line with CL No. 3/2016 which requires onshore and offshore over-the-top companies to use national payment gateway for all transactions within the Indonesian territory. In this regard, Bank Indonesia has just issued Bank Indonesia Regulation No. 19/8/PBI/2017 on National Payment Gateway. The details on this Bank Indonesia regulation are provided in our previous client alert at <http://www.ahp.co.id/client-update-31-july-2017>.

The mandatory requirement to use the national payment gateway will create opportunity for new players, including foreign investors, to carry out business in this area considering the number of e-commerce transactions that are expected to take place in the future. Overall, we believe, the Government's plan to create a comprehensive legal framework for e-commerce business, such as the national payment gateway will provide legal certainty that will not only benefit the customers, but also the e-commerce companies in conducting their business in Indonesia.

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3. Logistic

Considering the rapid development of e-commerce business in Indonesia, the demands for logistic companies to deliver the goods from merchant to customer have also increased. As such, the Government wishes to increase the number of logistic service providers to ensure timely delivery across the country. According to the prevailing negative investment list, logistic business is open to a maximum 49% foreign ownership. The increase in demand due to the increase or potential increase in e-commerce transactions shows opportunities for logistic companies. However, given the restriction in maximum foreign ownership we wonder whether the size of the market alone is enough to attract foreign players to enter the Indonesian market.

4. Cyber Security

According to the E-Commerce Road Map, under the purview of cyber security, the Government wishes to develop national supervision system for e-commerce transaction in order for all e-commerce transactions in Indonesia to be monitored by the Government through an integrated electronic system. Aside from the requirement for all e-commerce companies to fulfil the requirements to support the system which is expected to be completed in January 2018, there is no further elaboration yet on what the national supervision system entails.

Conclusion

The issuance of the E-Commerce Road Map is an important milestone for the Government in developing the e-commerce business in Indonesia. That being said, we wonder whether the Government's plan to implement the 26 programs within a two (2) year period is not too ambitious. Coordination by at least 21 Government institutions in the development of the 26 programs are among the main challenges that face this road map. It sounds ironic that coordination becomes a major hurdle, but we believe it is really the key. Perhaps understanding this weakness is the very reason why the President wrote into the road map a certain coordinating function in the form of a steering and management committee of the E-Commerce Road Map to ensure success in the execution and implementation of the road map. We will wait in anticipation the crucial coordination and implementation role that will be played by both committees. In closing, it is interesting to note that it has been reported in the media that the founder and executive chairman of Alibaba Group, Jack Ma, has accepted the role of an advisor to the steering committee of the E-Commerce Road Map. It is presently unclear the exact role that Jack Ma will play, but the acceptance of appointment by Jack Ma is seen as a positive endorsement from a key e-commerce global player.

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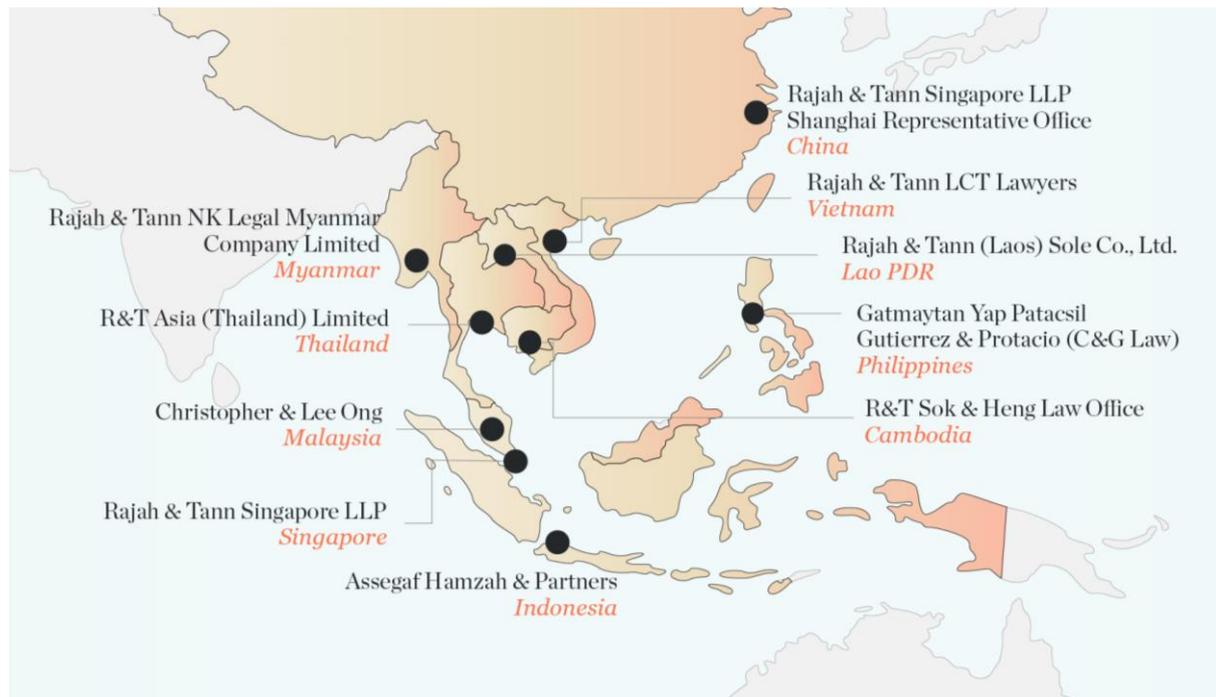
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