

Client Alert



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New Ministry of Trade Regulation Might Require Some Companies to Change Their Distribution Chains

Recent development

Under a new Ministry of Trade ("**MOT**") issued on 28 March 2016 regulation, all companies that distribute goods in Indonesia might need to make changes to their chain of distribution of goods in Indonesia.

Regulation No. 22 of 2016 on General Provisions on Distribution of Goods ("**MOT Regulation 22**") replaces Minister of Industry and Trade Regulation No. 23 of 1998 on Trading Institutions, which has set out the chain of distribution in Indonesia for the past 18 years.

Implication for distributors

MOT Regulation 22 adds another chain to the distribution by adding another layer to the chain (i.e. only retailers can sell to consumers). This is of course to protect the role of intermediaries in the market.

What the regulation says

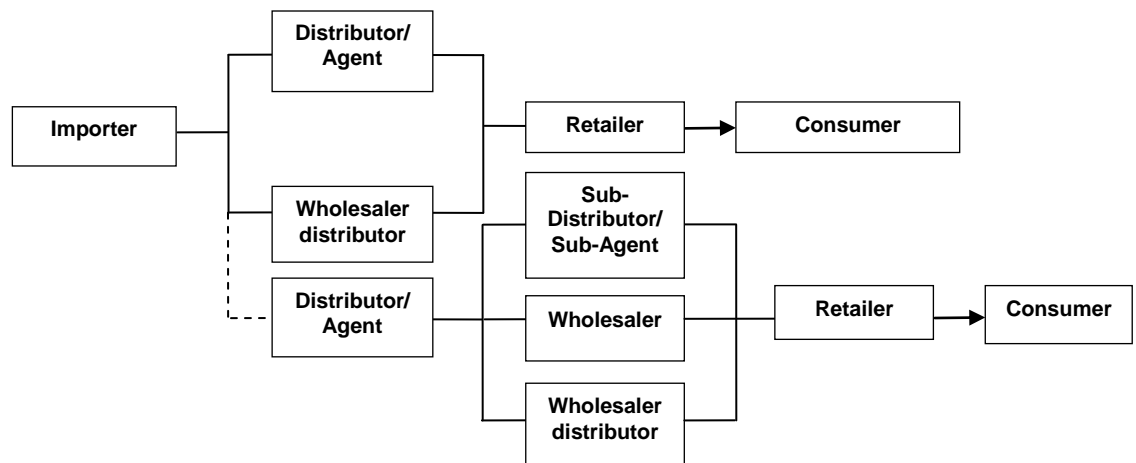
Scope

Generally, the distribution of goods regulated under MOT Regulation 22 is divided into 2 categories, i.e., direct distribution sales and indirect distribution sales. Under Regulation 22, indirect distribution sales must be carried out through a general distribution scheme, or through a franchise scheme.

Under MOT Regulation 22, in relation to a general distribution scheme:

1. Importers can only sell to distributors/agents or wholesale distributors (*perkulakan*).
2. Distributors/agents can only sell to sub-distributors/sub-agents, wholesalers (*grosir*), wholesale distributors or retailers.
3. Importers who are also distributors can sell directly to retailers.
4. Importers cannot sell to retailers.
5. Only retailers can sell to consumers.

In light of the above, the chain of sale would be as follows:



Meanwhile, on direct distribution sales, MOT Regulation 22 includes a new category of "single level marketing" which is defined as a variant of direct distribution, the other variant being "multi-level-marketing" ("MLM"). A separate ministerial decree will further clarify what this variant means, but considering its link to MLM, it appears that single level marketing will also require a sales network similar to those of MLM. However, it seems that only one intermediary layer separates the supplier and consumer, as distinct from the multiple layers of an MLM. Of course, we have to wait for the MOT to provide more clarity, but at the moment the MOT appears to have direct sales to consumers by sales-persons (e.g. of books, learning materials) in mind when it includes this category.

Goods distributed using a direct distribution system can only be marketed by an authorized seller that is registered as a member of a direct selling company with exclusive distribution rights. MOT Regulation 22 defines "exclusive distribution rights" as rights to distribute goods granted to only one company in Indonesia arising from (i) a direct or indirect agreement with the owner of the brand distribution right, or (ii) the ownership of the brand.

Definition of Consumers

Until now there has been no clear definition of consumers (or users) under any regulations in Indonesia (including MOT Regulation 22).

In MOT Regulation 22, intermediaries (e.g. retailers and wholesalers) are not classified as consumers. MOT Regulation 22 clarifies that retailers are classified as trading institutions that sell directly to consumers. It now appears clear that sales by distributors and wholesalers to retailers do not amount to retailing, ending a confusion that has been persisting for some years now. In light of this, logically consumers will be people (whether consumers or business actors) who buy the products for themselves.

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Distribution by Foreign Investment Companies ("PMA Companies")

As MOT Regulation 22 does not revoke Ministry of Trade Regulation No. 11 of 2006 on the Registration of Agencies and Distributorships ("**MOT Regulation 11**"), it leaves open the question whether a different rule applies to foreign investment distributors. However, during our discussion with an MOT official, we were informed that Regulation 22 is intended for domestic investment companies and not PMA Companies. PMA Companies should comply with MOT Regulation 11, which states that a PMA distribution company cannot sell directly to retailers, but must appoint a local distributor or agent as an intermediary. Then the local distributor/agent sells to a retailer, and the retailer sells to consumers. This will of course add another chain, which would likely increase the sale price.

Distribution by Manufacturing Companies

MOT Regulation 22 emphasizes a MOT regulation issued in 1977 which allows producers to sell directly their products to other producers as long as the products are used as raw and supporting materials.

In addition, MOT Regulation 22 makes it clear that, in distributing their goods that are not used as raw and supporting materials, producers must appoint a distributor or an agent.

Exemptions

MOT Regulation 22 provides that goods subject to restrictions or supervision will be separately regulated. This opens up the possibility that sensitive products may be subject to different rules altogether.

Transition period

The provisions of MOT Regulation 22 are not clearly drafted and this is causing confusion. Many provisions of MOT Regulation 22 could be interpreted in different ways.

This regulation is effective as of the date it is announced. However, copies of MOT Regulation 22 that have been published do not include the date of the announcement of this regulation. So, it is not clear whether or not MOT Regulation 22 has become effective. We could not get any clarify from MOT officials whom we spoke with on this (i.e. when is the date of the announcement). In addition, the MOT officials told us that this regulation has elicited complaints from many parties and so has not been implemented yet. The MOT is considering amending this regulation. We will provide an update if the MOT provides any clarifications or makes any amendments to this regulation.