

Technology, Media, And Telecommunications

Indonesia's 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 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>.

Technology, Media, And Telecommunications

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.

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.

Technology, Media, And Telecommunications

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.

Contacts



Zacky Zainal Husein
Partner
Technology, Media &
Telecommunications
Assegaf Hamzah & Partners

D (62) 21 2555 9956
F (62) 21 2555 7899
zacky.husein@ahp.co.id



Rajesh Sreenivasan
Head, Technology, Media
& Telecommunications
Rajah & Tann Singapore
LLP

D (65) 6232 0751
F (65) 6428 2204
rajesh@rajahtann.com



Steve Tan
Deputy Head, Technology, Media
& Telecommunications
Rajah & Tann Singapore LLP

D (65) 6232 0786
F (65) 6428 2216
steve.tan@rajahtann.com



Lionel Tan
Partner, Technology,
Media &
Telecommunications
Rajah & Tann Singapore
LLP

D (65) 6232 0752
F (65) 6428 2119
lionel.tan@rajahtann.com



Benjamin Cheong
Partner, Technology, Media &
Telecommunications
Rajah & Tann Singapore LLP

D (65) 6232 0738
F (65) 6428 2233
benjamin.cheong@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
F +65 6225 9630
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*
Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Sole Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited

T +95 9 7304 0763 / +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977
F +632 552 1978
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

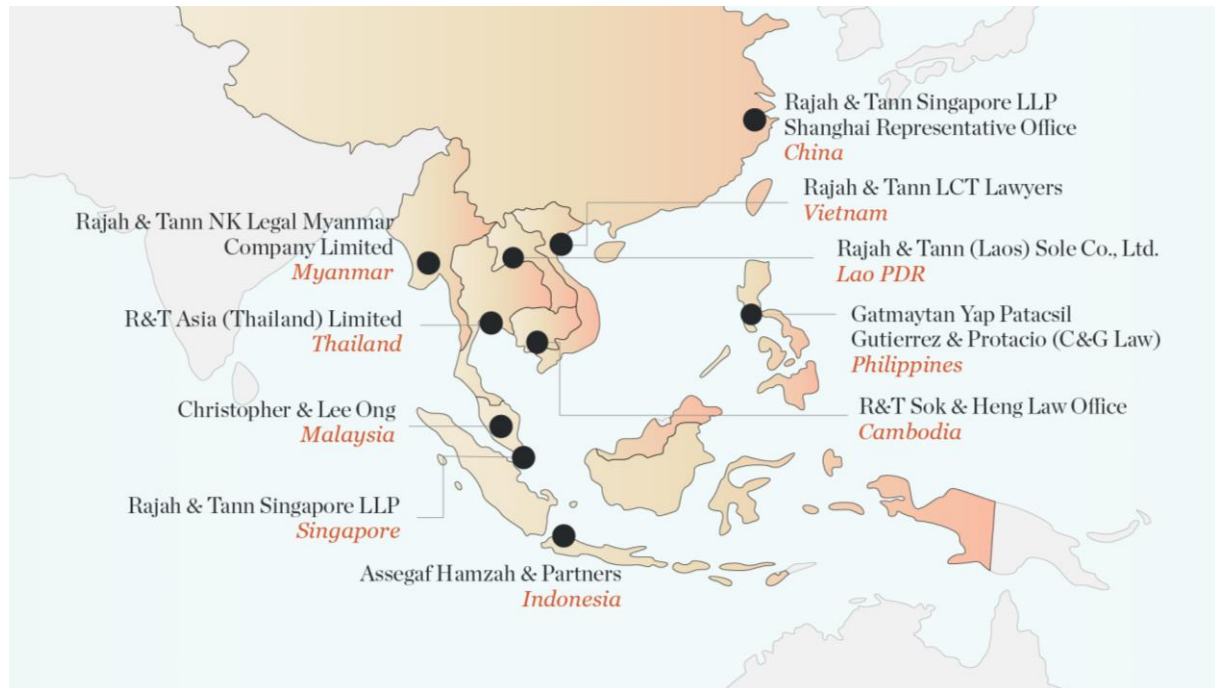
T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Member firms are constituted and regulated in accordance with local legal requirements and where regulations require, are independently owned and managed. Services are provided independently by each Member firm pursuant to the applicable terms of engagement between the Member firm and the client.

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or e-mail Knowledge & Risk Management at eOASIS@rajahtann.com.