



PwC Indonesia Legal Alert

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Manufacturer and
Distributor Provisions
based on GR
No.29/2021 and MOT
Regulation No.24/2021
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Manufacturer and Distributor Provisions based on GR No.29/2021 and MOT Regulation No.24/2021

Last year, the Minister of Trade (“**MOT**”) issued the MOT Regulation No. 24 of 2021 (“**MOT Regulation 24/2021**”) on Agreements for Distribution of Goods by Distributors or Agents, which revokes and replaces the MOT Regulation No. 11/M-DAG/PER/3/2006 (“**MOT Regulation 11/2006**”). MOT Regulation 24/2021 was issued as an implementing regulation of Government Regulation No. 29 of 2021 on Implementation of the Trade Sector (“**GR 29/2021**”).

Key changes

While a local manufacturer is still prohibited from selling goods directly to end consumers (on a retail basis), it is now possible for a local manufacturer to distribute their goods directly to retailers without having any business license in the trade sector from the MOT.¹ The local manufacturer in these regulations refers to both domestic investment manufacturing companies (“**PMDN**”) and foreign investment manufacturing companies (“**PMA**”) that are located in Indonesia.

However, those regulations are unclear as to whether a local manufacturer is able to become a distributor of other goods produced by another manufacturer, although note that there is no specific prohibition stipulated in the regulations. MOT views that it is still possible for a local manufacturer to be a distributor, as long as the distributor obtains a business license in the trade sector based on the relevant Standard Classification of Indonesian Business Fields (*Klasifikasi Baku Lapangan Usaha Indonesia - KBLI*). If you are a manufacturer, we may suggest seeking a consultation with MOT before applying for a distribution license with regards to the distribution of goods produced by another manufacturer.

Retained provision which is often overlooked

Since the enactment of MOT Regulation 11/2006, a PMA that engages as a distributor/wholesaler has been required to appoint a local/domestic distributor, sole distributor, agent, or sole agent. A local/domestic distributor should be

¹ Articles 35 paragraph (1) and Article 56 of GR 29/2021 jo. Article 2 paragraph (1) of MOT 24/2021.

construed as a PMDN distributor.² While MOT Regulation 24/2021 retains this provision, some PMA distributors are under the impression that the appointment of a local/domestic distributor is a new rule.

The appointment of a PMDN distributor as referred to above is made in the form of an agreement legalised by a public notary. Such agreement must also be approved in writing by the Manufacturer Principal.³ Along with that, the PMA Distributor does not need to obtain the STP due to the obligation to obtain the STP being carried out by the appointed PMDN Distributor.⁴

Conclusion

The recently enacted GR 29/2021 and MOT Regulation 24/2021 have enabled a manufacturer to sell its self-produced goods directly to retailers without requiring such manufacturer to obtain a trade business license in addition to its industry business license. As for the goods produced by another manufacturer, it is advised to consult with the MOT should a manufacturer wish to distribute goods produced by another manufacturer since the relevant regulations are silent on that matter. With regards to the PMA Distributor, a PMA Distributor is required to appoint a PMDN distributor. This rule has been retained and emphasised in MOT Regulation 24/2021. In that sense, the obligation to obtain the STP lies on the PMDN Distributor instead of the PMA Distributor.

This client alert is only intended to provide an overview of several of the provisions in the regulation, and it may not cover all of the provisions in GR 29/2021 and MOT Regulation No. 24/2021. Please do not hesitate to contact us if you need some more detailed advice or if you have any specific questions.

² Wholly owned by Indonesian parties without any foreign investment involved directly or indirectly.

³ MOT Regulation 24/2021 defines Manufacturer Principal as an individual or business entity in the form of a legal entity or non-legal entity, with the status of a producer who appoints another business entity as a distributor, sole distributor, agent, or sole agent to sell the goods produced/owned/controlled by such manufacturer.

⁴ As stipulated in Article 36 of GR 29/2021, PMDN Distributor is required to obtain Registration Certificate (*Surat Tanda Pendaftaran* or "STP"). The STP is a mark proving that the company has registered as a Distributor, Sole Distributor, Sub Distributor, Agent, Sole Agent, or Sub Agent Goods and/or Services.

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