

INDONESIA



New import rules for cell phones in Indonesia



By Christina Natalia Soela

Indonesia's Minister of Trade has issued a new regulation that specifically governs the importation of, among other items, cellular telephones. Cellular phone imports were previously covered by a more general Minister of Trade regulation that lumped together a lot of different products.

Imports of cellular phones soared in the years leading up to the new regulation. Indonesia, according to media reports, imported 25 million mobile phones in 2009, 43 million in 2010 and 45 million in 2011. The import value increased to US\$2 billion in 2010 from US\$1.6 billion in 2009.

With that background, the Minister of Trade issued Regulation No. 82/M-DAG/PER/12/2012, regarding Provisions on the Importation of Cellular Telephones, Handheld Computers and Tablet Computers (MOT Reg 82). In a press release accompanying the issuance of the regulation, the Ministry said its aim was to protect consumer interests by improving the supervision of imports to ensure they met quality standards.

Under MOT Reg 82, importers of cellular phones are required (i) to be established as a Registered Importer (Importir Terdaftar or IT) of cellular phones; and (ii) have Importation Approval (Persetujuan Impor or PI) for cellular phones from the Director General of Foreign Trade at the Ministry of Trade.

One of the requirements to become a Registered Importer of cellular phones is that the importer must have experience either as an importer of cellular phones or as a distributor of cellular phones in Indonesia. There is no minimum period for such previous experience. As long as an importer is established as a Registered Importer under the previous Regulation and has obtained either a Surveyor Report that indicates the company has previously imported cellular phones or an Import Declaration of cellular phones, it can apply to become a Registered Importer of cellular phones under MOT Reg 82.

The result of these requirements is that newly established trading companies are in danger of finding themselves unable to become Registered Importers of cellular phones.

While there is no minimum previous experience as a cellular phone importer required to become a Registered Importer, MOT Reg 82 requires that distributors of cellular phones have at least three years of experience in this field. A company must provide the following documents to prove it has three years of experience as a distributor:

1. Trading Business License;
2. Distributor Certificate of Registration (Surat Tanda Pendaftaran or

- STP) of Goods within the country or overseas for cellular phones issued by the Directorate General of Domestic Trade; and
3. Letter of Appointment or cooperation as a distributor of cellular phones from a cellular phone importer.

Interestingly, or worryingly, it is not possible for a foreign capital investment (Penanaman Modal Asing or PMA) company to provide an STP since under the relevant Minister of Trade regulation, an STP is only granted to wholly owned Indonesian companies. This could result in the restriction of foreign investment in the importation and distribution of cellular phones even though this line of business is open for 100 percent foreign ownership based on Indonesia's so-called Negative Investment List.

There is still confusion over this issue, though Ministry of Trade officials have verbally confirmed that MOT Reg 82 is not aimed at restricting foreign investors from engaging in the importation and distribution of cellular phones.

On a separate note, MOT Reg 82 requires a Registered Importer of cellular phones to trade and/or transfer the imported cellular phones to distributors, not to retailers. This contradicts the normal business practice of importers, who usually also act as distributors and sell their imported products directly to retailers.

An amendment to MOT Reg 82 issued on August 1, 2013, MOT Regulation No. 38/M-DAG/PER/8/2013 (MOT Reg 38), expands the definition of a principal that is able to appoint a company in Indonesia to be its importer and distributor or agent, adding overseas distributor, in addition to the overseas trademark holder and manufacturer stipulated in MOT Reg 82. However, a company importing cellular phones from an overseas distributor must have at least three years of experience as an importer of cellular phones and a network of at least 25 after-sales service offices throughout Indonesia to obtain Importation Approval. An importer appointed by an overseas manufacturer is required to establish a cellular phone manufacturing company within three years of being granted Registered Importer status. Failure to comply with this obligation may result in the revocation of its Registered Importer status.

Interestingly, MOT Reg 38 provides the opportunity for exemptions. It is not clear, however, how such exemptions will be granted or even the kind of exemptions. MOT Reg 38 says only that exemptions will be stipulated by the Minister of Trade through the Director General based on a recommendation from the relevant agency.

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