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Indonesia

INTRODUCTION OF NEW IMMIGRATION POLICY

インドネシアでは、新型コロナウイルスの感染拡大により国境を越えた往来が制限されるなか、在留外国人に対して暫定的に緊急滞在許可を付与していた。その後、数次の改正を経て、緊急滞在許可が廃止され、現在は、滞在期限を超過している外国人は改めて滞在許可の更新手続が必要となっている。そこで本稿では最新の在留許可制度の状況について紹介する。

Introduction

The Directorate General of Immigration of Republic of Indonesia (“DGI”) on 18 September 2020 issued an announcement on the new immigration policy especially for foreigners holding permanent stay permit (KITAP) or limited stay permit (KITAS) to stay in Indonesia.

As a background, the Regulation of Minister of Law and Human Rights No. 11 of 2020 on the Temporary Ban for Foreigners to Enter the Territory of Republic of Indonesia (“MOLHR Regulation No. 11 of 2020”) was issued on 31 March 2020. Upon the enactment of MOLHR Regulation No. 11 of 2020, the DGI has issued the immigration policy which has been amended from time to time depending on the condition and development of the COVID-19 pandemic in Indonesia. The last amendment was issued on 18 September 2020.

Key Features

We set out below the comparison between the old immigration policy and the current immigration policy for foreigners holding KITAP and KITAS:

No.	Issue	Old Immigration Policy	Current Immigration Policy
1.	Foreigners holding KITAP or KITAS which will expire soon and they are still staying in Indonesia	The foreigners will be automatically granted “Emergency Stay Permit” without requirement to submit any application to	The foreigners are required to submit an application to renew the KITAP and KITAS at the Immigration Office.

No.	Issue	Old Immigration Policy	Current Immigration Policy
		the Immigration Office. The Emergency Stay Permit is valid until the pandemic status is revoked by the government of Indonesia.	
2.	Foreigners holding KITAP or KITAS which has expired and they are still staying in Indonesia.	The foreigners will be automatically granted "Emergency Stay Permit" without require to submit any application to the Immigration Office. The Emergency Stay Permit is valid until the pandemic status is revoked by the government of Indonesia.	<p>a. The foreigners are required to leave Indonesia at the latest by 5 October 2020; or</p> <p>b. The foreigners can apply for limited stay visa through the DGI's website https://visa-online.imigrasi.go.id/ without having to leave Indonesia.</p> <p>The application in (b) above can only be made if such foreigners have guarantor in Indonesia and the guarantor has returned the old stay permit document to the Immigration Office.</p>
3.	Foreigners holding KITAP or KITAS which will be expiring soon or has expired and they are staying outside Indonesia.	The foreigners cannot be granted the Emergency Stay Permit. If such person wishes to return to Indonesia, he/she is required to submit visa application in the Indonesian Embassy of their country.	<p>a. The foreigners can return to Indonesia without requirement to apply for new visa, as long as such foreigner has obtained the approval from the relevant authority (for example: if the purpose of stay is employment, the approval of foreign worker utilization permit (RPTKA) from the Ministry of Manpower);</p> <p>b. If such person is unable to obtain the relevant approval letter, he/she needs to obtain new visa in the Indonesian Embassy of their country;</p> <p>c. If the issuance of KITAP or KITAS is due to family relationship (KITAS or KITAP held by spouse and/or children), such KITAS or KITAP holders are permitted to return to Indonesia without any requirements; and</p> <p>d. Upon arrival in Indonesia, all KITAP or KITAS holders need to renew their license in the Immigration Office at the latest by 31 December 2020.</p>

Conclusion

Through the issuance of this new immigration policy the DGI wishes to abolish the concept of Emergency Stay Permit and requests all foreigners to renew their KITAP or KITAS if it will expire or has already expired. The abolishment of the Emergency Stay Permit aims to control and monitor the foreigners in Indonesia. Before this new policy, all foreigners who were staying in Indonesia irrespective of the type of visa they held were automatically granted the Emergency Stay Permit if they decided to stay in Indonesia or they were unable to return to their home country because of the unavailability of international flights.

Starting from June 2020, the government of Indonesia has gradually opened international flight routes for foreigners or Indonesian citizens who are permitted to travel based on the prevailing regulations. As such, the government expects that the foreigners who have overstayed in Indonesia are now able to return to their home country. Given that the Emergency Stay Permit ceases to be valid, foreigners need to undertake the required action to renew their KITAP or KITAS to legally reside in Indonesia.

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Thailand

DRAFT GUIDELINES ON ONLINE FOOD DELIVERY SERVICES

タイの取引競争委員会は、オンラインフードデリバリーサービス事業者に対する新規制の草案を公表し、パブリックヒアリングを実施した。この新規制は、新型コロナウイルスの感染拡大に伴い同サービスのニーズが急速に高まるとともに、有力なサービス事業者が飲食店に対して課す高額なサービスフィーや排他的条件等が問題視されるに至ったことを受け、同サービスに関する不公正な行為を規制するためのものである。今後は、パブリックヒアリングの結果を踏まえた修正を経て、年末を目処に施行が予定されている。

Summary

Recently, the Trade Competition Commission of Thailand (“TCC”) has issued a new draft notification, i.e., Guidelines on Unfair Trade Practices between Online Food Delivery Service Providers and the Restaurant Business Operators (“Draft Guidelines”).¹ The Draft Guidelines have completed the public hearing stage on 15 September 2020 and are subject to further changes and publication. It is expected that such Draft Guidelines will be published in the government gazette by the end of this year.

The Draft Guidelines aim to regulate any unfair acts by powerful online food delivery service providers on various aspects, e.g., setting of commission fee, advertisement fee, promotion fee, delayed credit terms, refusal to deal, and unreasonable delisting, etc. Such Draft Guidelines signal the TCC's goal for stricter regulations in the online food-delivery sector.

¹ <https://otcc.or.th/wp-content/uploads/2020/08/draft-trade-practices-during-food-delivery-services-and-restaurant-business.pdf>

Market Background Information and Problems

Recent data estimated that the online food delivery market size in Thailand is approximately worth USD 1.2 billion (approximately 33 to 35 billion THB) with an average growth of 14% a year (based on 2019 financial year information).² At present, there are main business operators, from various foreign unicorn start-ups, having significant market shares, Grab Food (from Singapore), holding 52.9% of the market share³ currently reigns as the market leader, other business operators are Line Man (South Korea), Food Panda (Germany) and Get! Food (Indonesia). Please note that Uber Eats (USA) already exited Thailand market since 2018, due to Grab's South East Asia regional business takeover.⁴ More recently in July this year, Line Man has purchased 'Wongnai', its strategic Thai partner, which is Thailand's number one food reviews website and application, to reinforce their access to a large network of restaurants in Thailand.⁵ The nature of market competition is extremely fierce with each business having to take on much losses, sustaining approximately USD 3 to 6 million (approximately 100 to 200 million THB) in losses a year on average in order to survive and grow their market shares.⁶

Unfair Act and Issuance of Detailed Guidelines

Pursuant to the TCC's recent press releases and newsletter⁷, unfair acts may have arisen around March to April 2020 in which many complaints were filed by some of the restaurants, including SMEs.

During the COVID-19 shut-down in Thailand, many restaurants heavily relied on the online delivery channel to connect with their customers. Also, there were high consumer demands for take-away food due to the nation-wide shut-down and fear of spread of diseases from eating-out. As a result, certain online food delivery service providers became extremely powerful in deciding their trade terms and conditions against these struggling restaurants, especially service fee and advertising fee charges which were in a very high range of 35-40%, exclusive dealing condition, etc.⁸ It can be seen that, without any regulatory intervention, restaurants could become victimized.

The TCC therefore issued the Draft Guidelines pursuant to Section 57 of the Trade Competition Act of 2017 ("TCA")⁹. The Draft Guidelines provide legal definition of "Online Food Delivery Service Provider" as "a business operator who provides service of collecting food from the restaurants operators and delivers to the consumer, with the order being made by electronic channels". The Draft Guidelines lay out the principles of free and fair trade, non-mandatory, non-discriminatory, clear and written terms in advance as well as having reasonable business practices. The following unfair acts are regulated:

- (1) demanding unfair economic benefits, e.g., unreasonably high commission fee and extra fee outside the agreed terms are not allowed, the criteria of charging the commission fee shall not be unreasonable and discriminatory towards certain restaurants based on the same delivery distance, location, as well as the quality and quantity of the food offered;
- (2) unreasonably high marketing and advertising fee, e.g., Online Food Delivery Service Provider shall honor the previously agreed terms with the restaurants and not charge excessively;
- (3) exclusive dealing, e.g., restaurants cannot be forced to use only one Online Food Delivery Service Provider's application not the competitor's application and they should not have to face discrimination as a result of the same;

² <https://marketeeronline.co/archives/178476> news article dated 4 August 2020

³ Ibid

⁴ <https://www.marketingoops.com/news/biz-news/transition-from-uber-is-grab/> news article dated 9 April 2018

⁵ <https://www.bangkokpost.com/business/1960199/line-man-wongnai-merger-bags-110m> news article dated 30 July 2020

⁶ <https://www.thairath.co.th/news/business/entrepreneur/1902535> news article dated 4 August 2020

⁷ <https://otcc.or.th/news/2020/05/18/fooddelivery01/> TCC press release dated 18 May 2020

⁸

<https://otcc.or.th/news/2020/04/01/%e0%b8%aa%e0%b8%82%e0%b8%84-%e0%b8%ab%e0%b9%89%e0%b8%b2%e0%b8%a1%e0%b8%9c%e0%b8%b9%e0%b9%89%e0%b9%83%e0%b8%ab%e0%b9%89%e0%b8%9a%e0%b8%a3%e0%b8%b4%e0%b8%81%e0%b8%b2%e0%b8%a3%e0%b8%aa%e0%b9%88%e0%b8%87/> TCC press release dated 1 April 2020

⁹ Section 57 imposes a hefty administrative fines penalty in case of the violation of a maximum of 10% of annual revenue of the violator pursuant to Section 82 of the TCA. For reference, Section 57 of the TCA prescribes that:

"No business operator shall undertake any conduct resulting in damage to other business operators in one of the following ways: (1) by unfairly obstructing the business operation of other business operators; (2) by unfairly utilizing superior market power or superior bargaining power; (3) by unfairly setting trading conditions that restrict or prevent the business operation of others; and (4) by conduct in other ways prescribed in the TCC's notification"

- (4) rate parity clause, e.g., restaurants cannot be forced to list the same food prices for all distribution channel of Online Food Delivery Service Providers;
- (5) delayed credit term, e.g., restaurants should not have to wait for a long period of time before the food order money is transferred into their account after the sale;
- (6) harsh penalty without reasonable ground, e.g., service boycott, delisting, refusal to deal with certain restaurants who try to negotiate or complain, is not allowed; and
- (7) arbitrary termination and amendment clauses, e.g., restaurants shall be given notice before there is termination of services by the Online Food Delivery Service Provider. The Draft Guidelines also suggests that a 60-days' notice for any change in service termination date be placed in the terms and conditions.

Furthermore, intervention by the Online Food Delivery Service Providers in relation to the pricing and operations of the restaurants is not allowed. As the Draft Guidelines do not set any price ceiling for commission charges, it remains uncertain on how the TCC will interpret what constitutes excessively high charge.

Conclusion

The Draft Guidelines reiterate the TCC's stance that unfair and abusive actions by the powerful business operators will not be tolerated. It also shows the tendency for the TCC to expand into other fields with similar problems concerning several e-commerce platform operators with the power to abuse their smaller trading partners. The TCC has in the past, issued many specific sector-based regulations that aim to regulate certain segment of the market, e.g., franchise, modern trade/manufacture regulations. This Draft Guidelines represents the TCC's initial testing of their regulatory power into the e-commerce sector in general.

The TCC hints that, should there be any cartel price fixing activities found between any Online Food Delivery Service Providers, Section 54 of the TCA could be invoked with strong criminal penalty.¹⁰ For example, the Online Food Delivery Service Providers who agree to jointly charge similar commission fee rate and not compete with each other to lower the commission fee against the restaurants on purpose could possibly be in violation of horizontal cartel among the business operators. Foreign investors in the e-commerce sector should be particularly aware of future unfair trade and anti-competition aspects that may be regulated by the TCC

¹⁰ <https://otcc.or.th/ebook/2020/06/01/60-ebook/> TCC Newsletter May 2020 Issue

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Myanmar

DRAFT E-COMMERCE OPERATION GUIDELINES

ミャンマーでは、2020年5月28日に電子商取引に関するバーチャル会議が開催され、商業省から電子商取引に関するガイドライン草案が公開された。同ガイドラインは、電子商取引に関する新たな許認可制度を設け、消費者保護を充実させ信頼性の高い電子商取引を実現することを目指すものであり、年内に制定される見通しである。そこで本稿では、同ガイドライン草案の概要について紹介する。

Introduction

The Department of Trade under the Ministry of Commerce of Myanmar (“**MOC**”) held a virtual conference on e-commerce on 28 May 2020 and published the draft Guidelines on the Operation of E-Commerce, 2020 (“**E-Commerce Guidelines**”) which are set to be issued later this year. The purpose of the E-Commerce Guidelines is to establish a new licensing regime for e-commerce activities in Myanmar, to ensure trust between sellers and buyers, to protect the rights of the consumers, and to be able to resolve disputes in accordance with the framework provided in the procedures of the respective laws. The key provisions of the E-Commerce Guidelines are discussed below:

Key Provisions

1. Scope and applicability

E-Commerce Guidelines will apply to anyone who will carry out all e-commerce transactions through electronic mode within Myanmar. Under the E-Commerce Guidelines, ‘e-commerce activities’ is defined as the sale and purchase of goods and services using computer networks. E-commerce transactions conducted on social media platforms and online marketplaces will also be governed by the E-Commerce Guidelines. E-Commerce Guidelines identify and categorize the e-commerce operators into three types:

- a. **Platform Operators:** An entity or organization or individual which can manage a cyberspace or a virtual place for transaction matching is eligible to conduct independent e-commerce activities.
- b. **Operators on Platforms:** Any e-commerce operator selling goods or providing services to consumers via an e-commerce platform run by platform operators.
- c. **Other Operators:** Any other e-commerce operators selling or rendering their goods or services through their own websites.

2. Information disclosure requirements

Under the E-Commerce Guidelines, e-commerce operators are required to disclose information about their business such as the business name, address, e-mail address and phone number on the website or advertisement. In order to allow consumer to make reasoned decisions, e-commerce entities are required to disclose information about the categories, quality and price of goods or services. Information relating to return, refund, exchange, warranty and guarantee, delivery, all payment-related information and instructions are required to be disclosed to the consumers. In addition, requirements and conditions regarding fund transfers shall be provided in detail.

3. Duties and obligations of the e-commerce operators and platform operators

E-commerce operators must ensure that the personal data collected from the customers is protected and used only for the purpose of e-commerce transactions. E-commerce operators are required to, among other requirements (a) comply with all applicable laws when conducting the activities, (b) collect and maintain necessary details of the customer’s information in accordance with the applicable laws (c) issue e-invoices and vouchers as per Myanmar laws; (d) avoid conducting any activities that may infringe applicable intellectual property rights; (e) cooperate with the relevant department; (f) display business license on the homepage; (g) notify the relevant ministerial department and the public of any change to the business license. E-commerce operators have a responsibility towards consumer protection and to prevent unfair practices. In addition, special attention should be given to advertising products related to children. An additional step should be added to secure the permission of the minor’s parent or legal

guardian while collecting personal information of minors under 16 years' of age.

Platform Operator: An e-commerce platform operator is required to immediately initiate investigations if it discovers that restricted products are being advertised or sold on its platform. If an e-commerce platform operator terminates its services, 60 days advance notice by way of an announcement on the official website has to be made. Moreover, e-commerce platform operators are responsible to collect and maintain the necessary details of the participants, and shall assume responsibility to resolve any dispute arising between sellers and customers.

4. Requirements for registration

E-Commerce Guidelines further provide the general requirements for registration of e-commerce license with the Department of Trade under the Ministry of Commerce. Any Myanmar citizen over 18 years of age is eligible to apply for a business license to carry out e-commerce operations. E-commerce entities with foreign investment are also permitted to apply for licenses in accordance with the provisions of the Myanmar Investment Law 2016.

Registration is not mandatory and e-commerce operators may voluntarily register themselves with the Trade Department under the Ministry of Commerce. The registration will be submitted through an online application system and the registration will be free of charge. Such e-commerce license holders may then have the right to avail of certain incentives.

Conclusion

E-Commerce Guidelines aim to bring transparency in provision of information and disclosure by the e-commerce entities to the consumer. Once enacted, the guidelines will provide space and equitable treatment for the e-commerce entities. It will also allow disputes to be settled in a fair and transparent manner. While the E-Commerce Guidelines remain vague on some provisions, it is likely that there will be certain amendments to the final version as well as additional notification regarding licensing matters.

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