

## **Overview of the Regulatory Framework for the Franchise Industry in Malaysia: A Guide for Foreigner's Participation**

Franchising has emerged as a significant trend in Malaysia, offering attractive opportunities for local and foreign investors to expand their businesses as well as allowing entrepreneurs to operate under an established brand, significantly reducing the risks associated with starting a new business from scratch. Franchise models are prevalent across various sectors including the most recognisable food and beverage industry, beauty and health, retail, services, education, clothing and more. With the strong support of the Malaysian government through the National Franchise Development Master Plan 2021-2025 and related programmes, the franchise industry has witnessed remarkable growth in recent years, with an average annual growth rate of 15% over the past five years. This upward trajectory is projected to contribute approximately RM 46 billion to Malaysia's Gross Domestic Product (GDP) by 2025. Until December 2022, it is recorded that there is a total of 1,197 registered franchisor companies and of that number, 713 were local franchisor companies and the remaining 428 were foreign franchisor companies.

The franchise industry in Malaysia is governed by the Ministry of Domestic Trade and Cost of Living (the "Ministry") with a strong support of the Malaysian Franchise Association. Unlike licensing where focuses are more on intellectual property solely than the complete business model, franchising in Malaysia is largely and strictly regulated, especially by the Franchise Act 1998 (the "Act").

### **Registration of Foreign Franchisors**

To sell a franchise in Malaysia, a foreigner must submit an application to the Registrar of Franchise pursuant to section 54 of the Act and register itself as franchisor with the Registrar, failing which will amount to an offence punishable under section 6 of the Act. Alternatively, a foreigner may incorporate a Malaysian company by adhering to the requirements established by the Companies Commission of Malaysia and subsequently apply as a local franchisor. Following the 2022 amendments to the Act, there is minimal distinction in the registration process between local and foreign franchisors, except for the registration and approval fees outlined in the Franchise (Forms and Fees) Regulations 1999. Currently, the registration for both local and foreign franchisors can be made on the MyFex2.0 website launched by the Ministry.

### **Preparing for Submission Application**

Section 7 of the Act mandates the submission of a complete disclosure document in the prescribed form which must be approved and shared with the franchisees at least 10 days before the execution of franchise agreement, a sample franchise agreement drafted by registered franchise consultant and with content as required under section 18 of the Act, the operation and training manual of the franchise, copy of the latest 3 years audited account and financial statement reports and prototype outlet management account for at least 6 months operations. The Registrar may also require corporate documents including the certificate of incorporation, forms of annual return and company officers' particulars related documents, company's organisational chart, photographs of outlet(s), business proposals, 5-year financial projection for the franchise business and bankruptcy searches on directors.

Franchisors must also ensure that his trade mark associated with the franchise is registered in accordance with the Trade Marks Act 1976 and submit the certified true copy of the registered trade mark certificate.

It is worth highlighting that foreign franchisors operating within the distributive trade sectors including retail, wholesale, and direct-selling businesses are required to adhere to the

Ministry's Guidelines on Foreign Participation in Distributive Trade Services. The guidelines encompass various aspects, including but not limited to the acquisition of businesses, expansion of outlets, appointment of personnel, minimum capital requirement and compliance with relevant government policies.

### Post-Registration Obligations

Once registered, the franchise certificate must be displayed prominently at the place of business. The registration of franchise needs to be renewed every 5 years and within 30 days from the expiration date of the 5-year term. Franchisors shall also submit an annual report within six months from the end of each financial year of the franchise and keep the aforementioned disclosure document updated.

In engaging with franchisees, franchisors are advised to conduct thorough due diligence on prospective franchisees. It is essential to note that franchisees are also required to register with the Registrar in accordance with the provisions of the Act. The Act also sets out general obligations of the franchisors and franchisees where franchisors should provide assistance to franchisees to operate business while franchisees are obligated to pay franchise fees, royalty, promotion fee or other payment and to work together in protecting consumers' interests. While the Act outlines the aforementioned obligations, the specific duties and expectations can be further detailed and customised through the franchise agreement between the franchisor and franchisee.

### Other Concerns

In addition to conducting market research to understand the Malaysia's culture and consumer preferences and to ensure a successful adaptation of the franchise model within the Malaysian context, foreign franchisors should also be aware of practical considerations such as foreign exchange rules, taxation, visas, employment matters, and other operational risks. Engaging separate professionals may be essential to ensure compliance in these areas. On top of that, staying informed about developments in the relevant laws and the industry is vital as the franchise sector continues to evolve. Regularly monitoring these changes is crucial for ensuring compliance and maintaining a competitive edge.

*\*This article is not intended to constitute legal advice. Potential franchisors are advised to seek professional consultants, legal, accounting professionals to ensure compliance with all relevant laws and regulations pertaining to franchising.*

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