

Legal Requirements For Doing Franchise Business In Indonesia

Starting a new business is a challenge for entrepreneur candidates who do not yet have a systematic and planned of working and business management, have little experience in doing business or do not have sufficient capital. The alternative solution is acquiring a franchise business with good reputation that is profitable and in line with the entrepreneurs' passion and interest. Another factor to be considered is the budget to acquire a franchise as the top-ranked franchises shall charge high franchise fees paid up upfront, excluding the initial investment costs.

Criteria of Franchise Business

Pursuant to Ministry of Trade Regulation Number 71 of 2019 concerning Franchising ("MOT Reg 71/2019"), a franchise must meet some criteria as follow:

- a. has typical business characteristics;
- b. proven that the franchise is already profitable;
- c. has a written standard for marketing goods and/or services;
- d. easy to teach and apply;
- e. there is continuous support; and
- f. Registered Intellectual Property Rights (IPR).

Franchise Offer Prospectus

The business begins with preparing Franchise Offer Prospectus from the Franchisor to the Franchisee no later than 2 (two) weeks prior to the signing of the Franchise Agreement. This document is required to protect the interests of Franchisees, particularly Indonesian Franchisees who will acquire foreign franchise, so the Franchisee has opportunity to study and negotiate initial terms and conditions such as market demand and penetration, competitors, infrastructure etc. This prospectus is also including provisions that will be mutually agreed by the Parties in the Franchise Agreement.

Franchise Agreement

The Franchisor and Franchisee will then sign a Franchise Agreement which has to be made under Indonesian law. Some matters that must be determined in a Franchise Agreement as regulated under Attachment II of MOT Reg 71/2019 are as follows:

- a. Each Franchisor and Franchisee identity.
- b. Types of Intellectual Property Rights, such as company brands and logos, store/business premises designs, franchised management or marketing systems.

LEGAL ARTICLE



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- c. The agreed business activities, such as education, restaurants, workshops or other types of business.
- d. Rights and obligations of Franchisor and Franchisee, such as receiving royalties, use of intellectual property rights or business characteristics.
- e. Assistance, facilities, operational guidance, training and marketing provided by the Franchisor to the Franchisee.
- f. Business areas such as for certain areas only or covering the entire territory of Indonesia.
- g. Term of the Franchise Agreement.
- h. The procedure for payment of royalties, including the timing and method of calculating the amount of royalties.
- i. Ownership, change of ownership and rights of heirs.
- j. Settlement of disputes using the choice of Indonesian law.
- k. Procedure and conditions for extension and termination of the Franchise Agreement.
- l. Guarantee from the Franchisor to continue to carry out its obligations during the term of the Franchise Agreement.
- m. The number of outlets/business premises that will be managed by the Franchisee. MOT Reg 71/2019 is no longer limiting number of outlets/business premises for restaurants and minimarket businesses.

Besides the above, some other provisions that are commonly included in a franchise agreement among others:

- a. Confidentiality to prevent unpermitted disclosure of confidential information, knowledge, know-how belong to the Franchisor.
- b. Covenants not to compete or not to engage in the same business directly or indirectly for certain period of time.
- c. Assignment of the Franchisor's rights and obligations to other party and no encumbrance on the Franchise Agreement or the Franchise Business by the Franchisee.
- d. Force Majeure which leads to the Franchisor's rights to terminate the Franchise Agreement after certain period of time.
- e. Relationship of the Parties where the Franchisee will be the Franchisor's independent contractor without rights to represent and take action on behalf of the Franchisor.

Franchise Registration Certificate

After the Franchise Agreement is signed, the Franchisor and the Franchisee are also required to obtain a Franchise Registration Certificate (*STPW*) where the *STPW* application is submitted through the OSS System which will then be processed by the Directorate of Business Development and Distribution Actors of the Ministry of Trade or the One Stop Integrated Service Unit (*PTSP*) at the Provincial/Regency level in all Indonesian regions.

Three legal requirements for doing franchise business in Indonesia are proposing Franchise Offer Prospectus, signing Franchise Agreement and obtaining Franchise Registration Certificate