

INDONESIA: LIBERALIZATION OF FRANCHISE REGULATIONS

Good news for the franchise sector in Indonesia which revoked most of the previous regulations imposing requirements for the registration and operation of franchises.

Minister of Trade (“**MoT**”) Regulation No. 71 year 2019 (“**MoT 71/2019**”) relaxes limitations on the number of franchise outlets, the obligation to use local content and on master franchise for foreign franchisor and add a comprehensive definition of the franchise in Indonesia. However, some provisions being purely deleted without being replaced, requirement to comply with some practices, such as the possibility to sell supporting goods to the franchise, may raise doubts.

MoT 71/2019 revokes, among others:

- (i) Minister of Trade Regulation No. 53/M-DAG/PER/8/2012 year 2012 concerning Franchise Operation, as amended by Minister of Trade Regulation No. 57/M-DAG/PER/9/2014 year 2014;
- (ii) Minister of Trade Regulation No. 68/M-DAG/PER/10/2012 year 2012 concerning Franchise for Modern Shop Types;
- (iii) Minister of Trade Regulation No. 07/M-DAG/PER/2/2013 concerning Development of Franchise Partnership for Food and Beverage Service Business Type, as amended by Minister of Trade Regulation No. 58/M-DAG/PER/9/2014 year 2014; and
- (iv) Minister of Trade Regulation No. 60/M-DAG/PER/9/2013 concerning Franchise Logo

(the “**Revoked Regulations**”).

1. Revoked and relaxed Provisions

MoT 71/2019 revokes and relaxes several provisions from the Revoked Regulations, namely:

a. Revocation of limitation on number of self-owned outlets

Under the Revoked Regulations, franchisors or franchisees for restaurant, diner, bar/drink and café outlets were limited to own and operate a maximum of 250 outlets. Similarly, franchisor or franchisees

for modern shops business type¹ were also limited to own and operate 150 outlets maximum.

Franchisors or franchisees intending to add more outlets were to do so through sub-franchising or the establishment of a dedicated joint-venture.

MoT 71/2019 revokes the relevant regulations without replacing them. Such limitation shall therefore no longer apply.

b. Relaxation of the local content requirement

The Revoked Regulations imposed on franchisors and franchisees to use a minimum of 80% of local content. MoT 71/2019 introduces some flexibility in the local content requirement. .

Under MoT 71/2019, franchise operators are no longer required to meet the minimum of 80% local content, but only to prioritize the use of domestically produced goods and services as long as the local goods/services meet the quality set by the franchisor.

It's worth noted that the Minister of Trade Regulation No. 47/M-DAG/PER/6/2016 year 2016 concerning the Enhancement of Local Products Utilization ("MoT 47/2016") has not been revoked. MoT 47/2016 provides that one of the applications on the obligation to use local products shall be conducted by using at least 80% of local products from the number and types of goods traded in retail level.

However, as MoT 47/2016 requires the government to issue sectorial regulations explicitly providing such limitations, and considering the MoT has revoked the 80% of local content requirement, it seems doubtful that the administration will apply such a requirement any longer.

Though such reasoning could be discussed, it is the current interpretation of the MoT.

c. Revocation of limitation on master franchise

The Revoked Regulations provided, inter alia, the following:

- 1) Franchisors and franchisees could not share any controlling relationship, both directly and indirectly.
- 2) Clean break requirement - In the event franchisor terminated an agreement unilaterally, the franchisor was prevented from appointing new franchisees for the same area without the prior

¹ Pursuant to MoT Regulation No. 68/M-DAG/PER/10/2012 year 2012 concerning Franchise for Modern Shops Business Type, modern shops are shops with self-service system, selling several types of goods in retail which may be in the form of minimarket, supermarket, department store, hypermarket or wholesaler in the form of grocery.

approval of the franchisee or a final and binding court decision to ensure that no litigation was pending among the parties.

- 3) Franchisors and franchisees could only carry out businesses that were limited to the business license they possess. However, in certain circumstances, they could sell supporting goods for the primary business at a maximum of 10% of the total quantity of type of goods that are sold.

As MoT 71/2019 removes these restrictions without replacing them. The administration now holds a larger interpretation power, which may cause a lack of certainty for the franchise stakeholders.

d. Indefinite validity period of Franchise Registration Certificate ("STPW")

Since the launch of the Online Single Submission ("OSS") system last year, a the STPW must be obtained through the OSS system.

Under the Revoked Regulations, the STPW was valid for 5 years, renewable for the same validity period. Under MoT 71/2019, the validity period of STPW is no longer provided. As such, once an STPW is obtained, it will remain valid indefinitely, unless:

- the validity period of the underlying franchise agreement has expired (for franchisees); or
- either party ceases to carry out the business activities; and/or
- the registration of Intellectual Property Rights (IPR) by the franchisor is not approved by the Directorate General of IPR or the validity period of the IPR under the franchise has expired.

2. New provisions and requirements

a. Criteria to obtain a STPW

MoT 71/2019 sets out franchise criteria to be met to apply for the STPW.

A franchise must now have the following criteria:

- a. meeting specific business characteristics;
- b. proven profitability , fulfilled if a franchisor has at least 5 years of experience and has a sufficient knowledge in the concerned activity to support and develop the activity, proven with the survival and development of the franchisor's business in a profitable manner;
- c. having standard of service and offered goods and/or services in writing;

- d. can be easily taught and applied to a franchisee not having experience or knowledge in the activity concerned by the related franchise;
- e. where the franchisor may provide continuous support by advising, providing operational support, training and promotion ; and
- f. that intellectual properties related to the business, such as trademark, copyright, patent, license or trade secret have been registered or are pending registration.

b. Franchise agreement

The Revoked Regulation did not provide any explicit mandatory provisions to be included into a franchise agreement.

MoT 71/2019 clarifies requirements to be met while drafting a franchise agreement in line with the practice required by the MoT and the laws of contracts, such as:

- a. the requirement to register the franchise offer prospectus prior to execute any franchise agreement;
- b. the franchise agreement shall be governed by Indonesian Law; and,
- c. the franchise agreement shall be written in Indonesian Language. *A priori*, a bilingual version may be executed and should be accepted by the MoT.