

INDONESIA

On 18 June 1997, the Indonesian Government issued *Government Regulation No. 16/1997*, which relates specifically to franchising. This Regulation requires disclosure and the registration of both the franchise agreement and the disclosed information with the Ministry of Industry and Trade. Implementing regulations were adopted in July that same year by the Minister of Industry and Trade.¹ Many of the provisions of the Decree take up the same issues as the Regulation, but in more detail.

In addition to the disclosure requirements that are specified in Article 5 of the Decree and the further specification of the clauses that a franchise agreement must include contained in Article 7, the Decree provides that the franchise agreement must be in writing and in Indonesian (Article 2(1) and (2)), and that it must be governed by Indonesian law (Article 2(2)). It requires a sub-franchisor (referred to as the “main franchisee”) who has been given the right to appoint sub-franchisees to own and manage at least one outlet of its own (Article 4), and states that franchisors and franchisees must give priority to the use of local products or raw materials and that the franchisor must provide guidance and training to the franchisee. The Decree furthermore stipulates that the duration of the agreement must be at least five years (Article 8). A foreign franchisor must possess legal evidence from an authorised government agency in its country of origin, and this legal evidence must be acknowledged by the local official of the representative office of the Republic of Indonesia (Article 9(1)). Similarly, a domestic franchisor must possess a franchised business registration certificate issued by the Ministry of Industry and Trade, or a business licence issued by another technical Ministry (Article 9(2)). The Decree also establishes the procedure for the franchisee’s registration of the franchise agreement and the issuing on the part of the Government of a trade licence (Articles 11 to 16).

The Decree specifically states that those of its provisions that relate to the franchisor shall also apply to the sub-franchisor (“main franchisee”) (Article 3(2)). It indicates that prior to concluding a sub-franchise agreement (“subordinate franchising agreement”) the sub-franchisor is under an obligation to notify the sub-franchisee in an authentic document that the sub-franchisor has been given the right or the licence to draw up a sub-franchise agreement by the franchisor (Article 6). A desire to promote local business may be seen in the provision that a franchisor must give priority to small and medium scale enterprises as franchisees/sub-franchisees and/or as suppliers (Article 17(1)). This is confirmed in the limitations that are introduced as regards the locations in which franchising will be permitted (provincial capitals and other particular cities or places in second-level regions as the Minister of Industry and Trade shall stipulate from time to time – Article 18(1)) and in the fact that in deciding the second-level regions in which franchising may be conducted, account shall be taken of the needs of the community, the level of social and economic development

¹ Decree of the Minister of Industry and Trade Concerning the Provisions on and the Procedure for the Implementation of Franchised Business Registration, Decree of the Minister of Industry and Trade No. 259/MPP/Kep/7/1997, of 30 July 1997. For an English version, see CCH, *Business Franchise Guide*, at ¶ 7145.

and that the decision shall be taken in the framework of developing small-and-medium scale enterprises in the area concerned (Article 18(2)). Furthermore, the franchised businesses in the provincial capitals and those which are located at traditional markets and outside modern markets, such as malls, supermarkets, department stores and shopping centres, are intended only for franchised businesses run by small-scale entrepreneurs (Article 18(3)). On the other hand, franchised businesses in other particular cities or places in second-level regions will be open only to franchised businesses run by small-scale entrepreneurs (Article 18(4)). However, as long as they are located in modern markets, franchised businesses in other particular cities or places in second-level regions may be run by non-small-scale entrepreneurs after approval has been obtained from the Minister of Industry and Trade or from another appointed official (Article 18(5)). An exception to the rules contained in Article 18 is that contained in Article 20, according to which franchised business activities that in particular sell uniquely and traditionally Indonesian goods or foods or drinks may be carried out in the entire territory of Indonesia by small-and-medium-scale enterprises and/or with the participation of small-and-medium-scale enterprises.

A general prohibition of encroachment is introduced (Article 19), as are reporting requirements (Article 21) and sanctions (Articles 22 and 23).