

## MALAYSIA

On 24 December 1998 the Malaysian *Franchise Act* was given Royal Assent.<sup>1</sup> The Act contains 61 articles divided into eight sections, dealing with the appointment of the Registrar of Franchises and registration requirements, the franchise agreement, the conduct of the parties and the termination of the franchise agreement, the Franchise Advisory Board, offences and penalties, the enforcement of the Act and sundry miscellaneous issues.

The Act covers both unit franchises and master franchises (Article 4, definition of “franchise”). In both cases the Act covers only franchises that are to be operated within Malaysia, although irrespective of whether the offer to sell or buy a franchise is made in Malaysia and accepted within or outside Malaysia, or is made outside Malaysia and accepted within Malaysia (Article 3(2)).

The Registrar of Franchises is a public officer appointed by the Minister entrusted with the responsibility for matters relating to franchises. The Minister may also appoint Deputy Registrars of Franchises and Assistant Registrars of Franchises, as necessary (Article 5(1)).

Before a franchisor can make an offer, it is required to register the franchise with the Registrar (Article 6(1)). The application must be made on the prescribed form and must annex the complete disclosure document with all the necessary particulars filled in, a sample of the franchise agreement, the operations manual of the franchise, the training manual of the franchise, a copy of the latest audited accounts, financial statements, and the reports (if any) of the auditors and directors of the applicant, as well as any such additional information or documents as may be required by the Registrar for the determination of the application (Article 7(1)(a) to (f)). However, no provision provides a list of what the disclosure document should contain. Article 18(2) instead provides a list of the items that the franchise agreement must contain, even if it need not necessarily be limited to these. If the disclosure documents or the additional information or documents requested by the Registrar are amended, the amended documents must be filed with the Registrar, who may request additional information on the amendments (Article 11(1) – (3)).

An application that is approved may be made subject to any such conditions as the Registrar may impose (Article 8(2)). Furthermore, upon approving an application, the Registrar may require the applicant to pay any amount of fees that may be prescribed (Article 8(3)). The registration continues to be effective, unless the Registrar issues an order by written notice to the applicant or the franchisor to suspend, terminate, prohibit or deny the sale or registration of the franchise (Article 10). No indication is given of the reasons on which such decisions may be based, although Article 12(1) indicates that if the Registrar proposes to suspend, terminate, prohibit or deny the sale or registration of a franchise, he shall give the applicant or the franchisor written notice of his intention to do so, specifying the nature of the proposed

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<sup>1</sup> *Franchise Act*, Act 590, given Royal Assent on 24 December 1998, in *Gazette*, 31 December 1998. See CCH, *Business Franchise Guide*, at ¶ 7185.

action and the grounds on which he proposes to take such action. The applicant or the franchisor shall be given opportunity to make a written representation on the matter within fourteen days from the date of the service of the notice (Article 12(1)).

In addition to the registration of the franchisors themselves, the Act provides for the registration of franchise brokers (Article 14(1)). The registration of a franchise broker is effective for one year from the date of registration unless the Registrar determines otherwise (Article 14(5)).

The disclosure documents must be submitted to the prospective franchisee at least ten days before the agreement is signed (Article 15(1)). The disclosure documents given to the prospective franchisee are the same as those handed in to the Registrar (Article 15(2)). Franchisors are required to submit annual reports to the Registrar (Article 16(1)), following which the Registrar may notify the franchisor if any additional information or modification of the disclosure document is required, or issue an order to suspend, terminate, prohibit or deny the sale or registration of the franchise in the public interest or for the purpose of protecting prospective franchisees until any deficiencies specified by the Registrar have been corrected (Article 17(1)).

A cooling off period of at least seven working days is provided for (Article 18(4)). If the franchise agreement is terminated in this cooling off period, the franchisor may retain a sum of money from out of the initial franchise fees to cover the reasonable expenses it has incurred in the preparation of the agreement, whereas the rest of the money must be paid back to the franchisee (Article 18(5)). Where such initial franchise fees are required, or where a franchisor requires the franchisee to make payment before signing a franchise agreement, the franchisor is required to state in writing the purpose of the payment and the conditions for the use and refund of the money (Article 19).

Where the franchisee is required to pay fees for the purpose of promoting the franchise, a special Promotion Fund is to be set up (Article 22). Any payments for promotional purposes are to be made to the fund (Article 23(1)).

The Act provides that the franchise term shall be no less than five years (Article 25). Provision is also made for confidential information (Article 26), and non-competition (Article 27). Furthermore, it is not possible to waive compliance with the Act (Article 28(1)).

A number of provisions deal with the termination of the franchise agreement, Article 31(1) specifying that no franchisor shall terminate a franchise agreement before the expiration date except for good cause, and Article 31(2) going on to specify what good cause includes.

Article 32(1) states that a franchisor commits an offence if it refuses to renew a franchise agreement, to extend a franchise term without compensating a franchisee, or to waive any portion of the franchise agreement which prohibits the franchisee from continuing to conduct

substantially the same business under another mark in the same area subsequent to the expiration of the franchise agreement, or if it does not give the franchisee a written notice of its intent not to renew the franchise agreement at least six months prior to the expiration date of the franchise agreement.

Earlier termination is admitted in certain circumstances (Article 33). The extension of the term of the franchise agreement is to all intents and purposes mandatory when the franchisee requests it: Article 34(1) states that, at any time before the expiration of the franchise term, the franchisee shall (at its option) give written notice to the franchisor to extend the franchise term. The franchisor is obliged to grant the extension of the term to another period except where the franchisee has breached the terms of the previous agreement (Article 34(2)). Furthermore, a franchise agreement the term of which has been extended shall contain conditions that are similar to, or not less favourable than, the conditions contained in the previous franchise agreement (Article 34(3)).

Part V of the Act deals with the Franchise Advisory Board, which is to be composed of fifteen members who have wide knowledge of and experience relating to franchising. Their selection is entrusted to the Minister (Article 35(2) and (3)). The role of the Board is to advise the Minister and the Registrar on matters concerning franchises and the administration and enforcement of the laws that relate to franchising (Article 36(1)). The Minister and Registrar are however not bound to act upon the advice of the Board (Article 36(2)).

Part VI deals with offences and penalties, covering fraud and deceit (Article 37), the obstruction of officers (Article 38), a general penalty provision (Article 39), offences by the body corporate (Article 40) and the compounding of offences (Article 41).

Part VII (Articles 42 – 52) concerns the enforcement of the Act, and covers *inter alia* the powers of authorised officers to investigate (Article 43) and the actions associated with such an investigation (searches, etc.).

The Miscellaneous Provisions of Part VIII (Articles 53 – 61) cover items such as the subjecting of the sale of a franchise to a non-Malaysian citizen to the approval of the Registrar (Article 53) and the sale of franchises by foreigners in Malaysia (Article 54), as well as advertisements (Article 57).