

Business Franchise Guide - Explanations, Laws, cases, rulings, new developments, Regulation, Indonesia, Regulations—The Provisions on and Procedure for the Implementation of Franchised Business Registration

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Regulations

Ministerial Order Implementing the Medium-mall Retail Business Act

THE MINISTER OF INDUSTRY AND TRADE CONSIDERING:

- a. that in the framework of enforcing Government Regulation No. 16/1997 on franchising, it is necessary to stipulate the provisions on and the procedure for the implementation of franchised business registration;
- b. that to promote the role and participation of the broad community in franchised businesses, it is necessary for small and medium-scale enterprises to play their role as franchisors, franchisees and suppliers of goods and/or services;
- c. that franchised businesses must be developed in the framework of bolstering the growth and development of national franchisors;
- d. that to this end, it is necessary to issue a decree of the Minister of Industry and Trade.

In view of:

1. Government Regulation No. 16/1997 on franchising (Statute Book No. 49/1997, Supplement to Statute Book No. 3689);
2. Presidential Decree to 96/M/1993 on the establishment of Development Cabinet VI, as already amended by Presidential Decree No. 388/M/1995;
3. Presidential Decree No. 2/1996 on the amendment to Presidential Decree No. 15/1964 on the organizational structure of ministries as already amended twenty-five times, the latest by Presidential Decree No. 61/1995;
4. Joint Decree of the Minister of Industry and Trade and the Minister of Home Affairs No. 45/MPP/Kep/5/97 and No. 57/1997 dated May 1997 on the re-arrangement and nurturing of markets and shops;
5. Decree of the Minister of Trade No. 1458/Kp/XII/1984 on the trade business licenses (SIUP);
6. Decree of the Minister of Industry and Trade No. 29/MPP/SK/2/1996 and No. 92/MPP/Kep/4/1996 on the organization and the working system of the Ministry of Industry and Trade;
7. Decree of the Minister of Industry and Trade No. 84/MPP/Kep/4/1996 on the organization and the working system of the regional offices of the Ministry of Industry and Trade at provinces and offices of the Ministry of Industry and Trade at /districts/municipalities:

DECIDES TO STIPULATE:

The Decree of the Minister of Industry and Trade Concerning the Provisions on and the Procedure for the Implementation of Franchised Business Registration

CHAPTER I—GENERAL PROVISIONS

Article 1

Referred to in this ministerial decree as:

1. a franchise shall be an agreement in which one party is given the right to utilize and/or use the right over the intellectual property or invention or unique business characteristics owned by

another party against a fee on the basis of the requirements stipulated by the said other party in the framework of providing and/or selling goods and/or services.

2. a franchisor shall be a business company or an individual providing the right to another party to utilize and/or use the right over the intellectual property or invention or unique business characteristics owned by the franchisor;

3. a franchisee shall be a business company or an individual that is given the right to utilize and/or use the right over the intellectual property or invention or unique business characteristics owned by the franchisor;

4. the main franchisee shall be a franchisee exercising the right to draw up a subordinate franchising agreement obtained from a franchisor;

5. a subordinate franchisee shall be a business company or an individual receiving the right to utilize and/or use the right over the intellectual property or invention or unique business characteristics owned by a franchisor through the main franchisee;

6. a franchising agreement shall be a written agreement between a franchisor and a franchisee;

7. a subordinate franchising agreement shall be a written agreement between a main franchisee and a subordinate franchisee;

8. a traditional market shall be a village market, a sub-district market and so forth;

9. a franchised business registration certificate, hereafter abbreviated as STPUW, shall be an evidence of registration obtained by a franchisee after filing an application for an STPUW and fulfilling the requirements stipulated in this decree;

10. the Minister shall be the Minister of Industry and Trade.

CHAPTER II – FRANCHISING AGREEMENT

Article 2

(1) A franchise shall be established on the basis of a written agreement between a franchisor and a franchisee.

(2) A franchising agreement shall be drawn up in Indonesian and shall be subject to the Indonesian laws.

Article 3

(1) A franchising agreement between a franchisor and a franchisee may or may not be followed by the granting of the right to draw up a subordinate franchising agreement.

(2) All provisions regarding a franchisor as regulated in this decree shall also apply to the main franchisee which shall exercise the right to draw up a subordinate franchising agreement with a subordinate franchisee.

Article 4

In the event that a franchisee is given the right to appoint further a subordinate franchisee, the said main franchisee shall be obligated to own and manage by himself at least 1 (one) place of business where a franchised business activities may be carried out.

Article 5

Prior to drawing up an agreement, a franchisee shall be obligated to furnish a franchisee written and correct information containing at least:

a. the identity of the franchisor along with information about the business activities including the balance sheet and the profit and loss statement of the last 2 (two) years;

- b. the right over the intellectual property or invention or unique business characteristics constituting the objects of a franchise;
- c. requirements which must be fulfilled by a franchisee;
- d. aid or facility a franchisor offers a franchisee;
- e. the rights and the obligations of a franchisor and a franchisee;
- f. the methods of and conditions for the expiration, termination and extension of a franchising agreement;
- g. other matters which a franchisee needs to know in the framework of the implementation of a franchising agreement.

Article 6

Prior to making a subordinate franchising agreement, a main franchisee shall be obligated to notify a subordinate franchisee in an authentic document that the main franchisee has the right or the license to draw up a subordinate franchising agreement from the franchisor.

Article 7

(1) A franchising agreement between a franchisor and a franchisee shall contain at least the following clauses:

- a. the name, address and domicile of the company of each party;
- b. the name and position of each party authorized to sign the agreement;
- c. the name and type of right over intellectual property, invention or a unique business characteristic, for example a management system, a selling or display method or a distribution method which constitutes a special characteristic which is the object of a franchise;
- d. the rights and obligations of each party and the aid and facility given to a franchisee;
- e. the marketing area;
- f. the period of the agreement and the method of and the requirements for the extension of the agreement;
- g. the method for settling a dispute;
- h. mutually agreed basic provisions which may result in the termination or expiration of an agreement;
- i. compensation in the event of agreement termination;
- j. the procedure for the payment of compensation;
- k. the use of domestically produced goods or materials produced and supplied by small-scale enterprises;
- l. nurturing guidance and training for franchises.

(2) The appointment of a marketing area for a franchised business in a franchising agreement may cover all or part of the territory of Indonesia.

(3) It is obligatory that every subordinate franchising agreement shall be drawn up by the main franchisee and subordinate franchisees in the knowledge of the franchisor.

Article 8

A franchising agreement shall be valid for at least 5 (five) years.

Article 9

(1) A franchisor from abroad must be in possession of a legal evidence from an authorized government agency in his country of origin and this legal evidence must be acknowledged by the local official of the representative office of the Republic of Indonesia.

(2) A domestic franchisor shall be obligated to possess a SIUP and or a business license from another technical ministry.

Article 10

The Minister or another appointed official may give his counsel about an improvement to a franchising agreement between the main franchisee and a subordinate franchisee in order to protect the interest of a franchisee/a subordinate franchisee and the participation of small-and-medium-scale enterprises as franchisees/subordinate franchisees or as suppliers of goods and/or services.

CHAPTER III—OBLIGATION TO REGISTER AND AUTHORITY TO ISSUE STPUW

Article 11

(1) To obtain an STPUW, every franchisee/subordinate franchisee shall be obligated to register his franchising agreement along with the written statement as meant in Article 5 of this decree at the Ministry of Industry and Trade c.q. an official authorized to issue STPUW.

(2) The registration as meant in sub-article (1) shall be conducted by means of filling up a list of completion for an application of an STPUW and this shall be conducted at the latest 30 (thirty) working days as from the date when the franchising agreement takes effect.

(3) The registration as intent in sub-article (1) shall be conducted in the framework of and in the interest of nurturing and developing businesses by means of franchising.

(4) The model of the list of completion for an application for an STPUW shall be as set forth in Attachment I [not reproduced.— CCH.] to this decree and shall be made in 2 (two) fold, signed by the franchisee/subordinate franchisee or his proxy.

(5) The list of completion for an application for an STPUW may be obtained free of charge from the Directorate General of Domestic Trade or at a local regional office of the Ministry of Industry and Trade.

Article 12

(1) The list of completion for an application for an STPUW already completed and signed by the franchisee/subordinate franchisee or his proxy shall be submitted to an official authorized to issue an STPUW with 1 (one) Xerox copy of the following being attached:

a. the franchising agreement along with the written statement;

b. a trade business license and/or a business license from another technical ministry.

(2) In the event that the list of completion for an application for an STPUW and its complementary documents are considered as being in complete and correct order, the authorized official shall, within a maximum period of 5 (five) working days, issue an STPUW, using an STPUW form as set forth in Attachment II or Attachment III [not reproduced.— CCH.].

(3) In the event that the list of completion for an application for an STPUW and its complementary documents are considered as not yet being in complete and correct order, the authorized official shall, within a maximum period of 5 (five) working days, reject the application for the issuance of an STPUW with the reasons for the rejection being given.

(4) As for an application whose application is rejected as meant in sub-article (3), he may file again an application for an STPUW after fulfilling the requirements stipulated in this decree.

Article 13

An STPUW shall remain valid as long as the agreement between a franchisor and a franchisee or the agreement between a main franchisee and a subordinate franchisee is valid.

Article 14

(1) If a franchisor terminates a franchising agreement with a franchisee prior to the expiration of the validity period of the franchising agreement and afterwards appoints a new franchisee, an STPUW shall be issued to a new franchisor only if the franchisor has settled all problems arising as a result of the said termination as set forth in a clean break joint statement.

(2) If the main franchisee decides to terminate a franchising agreement with an old subordinate franchisee prior to the expiration of the validity period of the franchising agreement, and afterwards appoints a new subordinate franchisee, an STPUW for the new subordinate franchisee can be issued only after the main franchisee has settled all problems arising as a result of the said termination as set forth in a clean break joint statement.

Article 15

The authority to grant an STPUW shall be delegated to an official authorized to issue an STPUW as follows:

- a. STPUWs for foreign franchisees and franchisors shall be issued by the Directorate General of Domestic Trade, using the form as meant in Attachment II [not reproduced.— CCH].
- b. STPUWs for domestic franchisees and franchisors and subordinate franchisees of domestic and foreign franchises shall be the head of a local regional office of the Ministry of Industry and Trade, using the form as meant in Attachment III [not reproduced.—CCH].

CHAPTER IV—FRANCHISE REQUIREMENTS

Article 16

A franchisor and a franchisee/subordinate franchisee shall give priority to the maximum use of domestically-produced goods and/or materials as far as the quality standards of the goods and services provided and/or sold on the basis of a franchising agreement are met.

Article 17

(1) A franchisor shall give priority to small-and-medium-scale enterprises as franchisees/subordinate franchisees as and/or suppliers in the framework of provision and/or suppliers of goods and/or services.

(2) In the event that a franchisee/subordinate franchisee is not a small-scale or a medium-scale enterprise, the franchisor and the franchisee/subordinate franchisee shall be obligated to give priority to cooperation and/or supplies of goods and/or services from small-and-medium-scale enterprises.

Article 18

(1) Franchised businesses can be conducted in all provincial capitals and other particular cities/ places in second-level regions as the Minister shall stipulate from time to time.

(2) Franchised businesses in particular cities/places in second-level regions as meant in sub-article (1) shall be stipulated by the Minister in stages with account being taken of the needs of the community, the level of social and economic development and in the framework of developing small-and-medium scale enterprises in the areas concerned.

(3) Locations for franchised businesses in provincial capitals as meant in sub-article (1) and situated at traditional markets and outside modern markets (malls, supermarkets, department stores and shopping centers) shall be intended only for franchised businesses run by small-scale entrepreneurs.

(4) Franchised businesses in other particular cities/places in second-level regions as meant in sub-articles (1) and (2) shall be permitted only for franchised businesses run by small-scale entrepreneurs.

(5) As long as they are located in modern markets (malls, supermarkets, department stores and shopping centers), franchised businesses in other particular cities/places in second-level regions as meant in sub-articles (1) and (2) may be run by non-small-scale entrepreneurs after an approval has been obtained from the Minister or from another appointed official.

Article 19

(1) A franchisor shall be prohibited to appoint more than 1 (one) franchisee at adjacent spots on a particular location for the same goods and/or services and the same trade marks, if it is understood or it should be understood that the appointment of more than one franchisee may result in the franchised business not being feasible to run on the said location.

(2) A main franchisee shall be prohibited to appoint more than 1 (one) subordinate franchisee at adjacent spots on a particular location for the same goods and/or services and the same trade marks, if it is understood or should be understood that the appointment of more than one subordinate franchisee may result in the franchised business not being feasible to run on the said location.

(3) If on a particular location adjacent to a franchised business conducted by a franchisee/subordinate franchisee, it shall be prohibited to set up on the said location a business which is a branch of the franchisor concerned under the same name with the exception of different goods and/or services.

Article 20

As an exception to the provisions in Article 18, franchised business activities specially selling uniquely and traditionally Indonesian goods/foods/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.

CHAPTER V—REPORTING

Article 21

(1) A franchisee/subordinate franchisee already obtaining an STPUW shall be obligated to submit a report to the official authorized to issue an STPUW on the progress in the franchised business activities periodically every 6 (six) months, namely, at the latest, every July 31 and January 31, using the form as meant in Attachment IB [not reproduced.—CCH.] to this decree.

(2) The franchised business activities reported as meant in sub-article (1) shall be the development of franchised business activities in the first semester (January 1 up to June 30) and in the second semester (July 1 up to December 31).

(3) Franchisees/subordinate franchisees already obtaining an STPUW shall be obligated to submit a report to the official authorized to issue an STPUW in order that the STPUW may be adjusted to any changes in the agreement as follows:

- a. expansion/addition/reduction of the franchised business activities or subordinate franchisees;
- b. transfer in the ownership of the business;
- c. a change of address of the place of the franchised business or the head office;

- d. the name of management board members, owners and forms of business of the franchisee or the franchisor;
- e. extension/change in the period of the agreement between a franchisor and a franchisee.

CHAPTER VI—SANCTIONS

Article 22

(1) A franchisee/subordinate franchisee already obtaining an STPUW may be given a written warning in the following cases:

- a. non-fulfillment of the obligations as meant in Article 21 of this decree;
- b. non-fulfillment of the tax obligations to the government pursuant to the prevailing stipulations;
- c. a report or a complaint being filed/lodged by an authorized official or the holder of the right over intellectual property to the effect that the franchisor or the franchisee has violated the right over intellectual property such as, among others, a copyright, a patent or a trademark.

(2) An STPUW may be suspended if a franchisee/subordinate franchisee:

- a. has received written warnings as meant in sub-article (1) for 3 (three) consecutive times with an interval of 1 (one) month each but still fails to fulfill the obligations;
- b. is undergoing a trial at a court of justice because of being prosecuted for having committed an economic criminal act or another act related to the business activities or a violation in the area of intellectual property right.

(3) The suspension of an STPUW as meant in sub-article (2), letter a, shall be valid for 6 (six) months as from 1 (one) month after the date of the issuance of the third written warning.

(4) The suspension of an STPUW as meant in sub-article (2), letter b, shall be valid until the issuance of a ruling of a judiciary agency which has a permanent legal force.

(5) The suspension of an STPUW may be lifted if:

- a. the STPUW is obtained on the basis of incorrect or false information/data;
- b. within 6 (six) months during the suspension period, the franchisee/subordinate franchisee has made amends or has fulfilled the obligations pursuant to the provision as meant in Article 21 and has fulfilled the tax obligations to the government pursuant to the prevailing laws;
- c. the economic criminal act or violation in the area of intellectual property right is declared as not being proved in accordance with the ruling of a judiciary agency with a permanent legal force.

(6) An STPUW may be revoked if:

- a. during 6 (six) months of the suspension period, the franchisee/subordinate franchisee fails to fulfill the obligations pursuant to the provisions as meant in sub-article (1), letters a and b;
- b. a sentence has been passed by a judiciary agency and has a permanent legal force.

(7) An official authorized to issue an STPUW shall give the written warnings and suspend and revoke the STPUW.

Article 23

(1) A franchisee/subordinate franchisee whose STPUW has been revoked but that continues to carry out franchised business activities shall be subject to the imposition of a sanction in the form of the revocation of an SIUP or other similar licenses pursuant to the prevailing stipulations.

(2) A franchisee/subordinate franchisee that fails to register the notarial act on agreement along with the written statement but continues to carry out business activities despite having received written warnings for three consecutive times with an interval of 1 (one) month each shall be subject

to the imposition of the revocation of an SIUP or other similar licenses pursuant to the prevailing stipulations.

CHAPTER VII—TRANSITIONAL PROVISIONS

Article 24

(1) It is obligatory that a franchising agreement already in force prior to the stipulation of this decree should be registered pursuant to the stipulations set forth in this decree:

(2) The registration as meant in sub-article (1) shall be conducted at the latest 6 (six) months as from June 18, 1997, namely, the date when Government Regulation No. 16/1997 on franchising came into force.

(3) As for franchisee and subordinate franchisees, the STPUWs already in existence prior to the stipulation of this decree shall be valid until the end of the agreement agreed upon.

CHAPTER VIII—CLOSING

Article 25

The implementation of the granting of an STPUW shall entail no collection in whatever form.

Article 26

This decree shall take effect as from the date of stipulation.

For public cognizance this decree shall be announced by publishing it in the State Gazette of the Republic of Indonesia.