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Franchise Agreement Registration in Indonesia

With the biggest economy in ASEAN and the fourth-largest population in the world, Indonesia is an attractive location for franchisors. In this article, we will examine the process for registering franchise agreements in Indonesia, in order to provide guidance to those operating or planning to operate in this lucrative and highly competitive market.

The Governing Law

Government Regulation No. 42 of 2007 on Franchising, together with a few other regulations issued by the Ministry of Trade, set out the requirements to establish a franchise in Indonesia. For a business to be qualified as a franchise, it must have:

1. specific business characteristics;
2. proven records of profitability for at least two years; and
3. written standards of the offered goods and/or services (franchise-offering prospectus).

In addition, business conduct must be teachable and capable of being applied by the franchisee, and the franchisor must be available for continuous support and must have registered any related intellectual property rights with Indonesia's Directorate General of Intellectual Property. All relevant franchise agreements must also be completed and registered.

Franchise Agreement Registration

Upon entering into a franchise agreement, the franchisor must provide the franchisee with a franchise-offering prospectus (detailed disclosure). The franchise-offering prospectus must contain, among other details on the business and the franchising parties, a history of business activities, financial statements, lists of franchisees, and the rights and obligations of the franchisor and the franchisee.

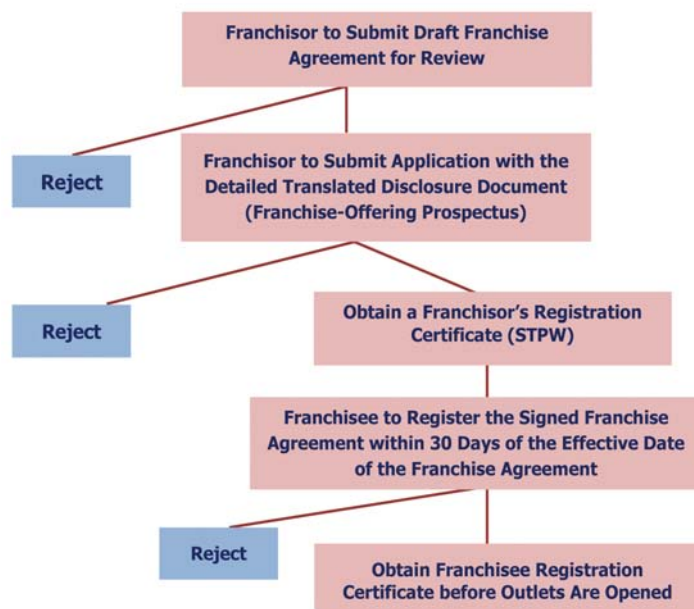
The franchise-offering prospectus and the franchise agreement must be registered with the Ministry of Trade in order to obtain a franchise registration certificate (Surat Tanda Pendaftaran Waralaba/STPW). A franchisor (or an authorized proxy) must first submit a draft franchise agreement to the Ministry of Trade for its review. If the draft franchise agreement does not violate any local laws or regulations, the franchisor may proceed to file an application and register their franchise-offering prospectus in the Indonesian language with the Ministry of Trade. If the franchisor is a foreign entity, the prospectus must be legalized in the country of origin prior to registration in Indonesia and must be submitted together with a sworn translation. The prospectus must be filed at least two weeks before entering into an agreement with a franchisee.

Once the prospectus is registered, the franchisor and franchisee can enter into a franchise agreement. Franchise agreements, among other requirements, must be registered by each franchisee (or an authorized proxy) with the Ministry of Trade.

A franchise agreement must be executed on the basis of a written agreement between a franchisor and a franchisee, it must comply with Indonesia's law, and it must be drawn up in the Indonesian language. Thus, if a franchise agreement is drafted in a foreign language, an Indonesian translation of the agreement must be provided alongside the original. In case of a dispute arising over the agreement, the Indonesian version shall prevail.

If everything is in order, the Ministry of Trade will issue a franchise registration certificate, which shall be valid for five years and extendable for another five years, subject to the period that the franchise agreement is effective. If the application is rejected, applicants are entitled to resubmit the application.

Flow Chart:



Sanctions for Failing to Comply

Government authorities can impose administrative sanctions on franchisors or franchisees in the following cases:

- ▶ The franchisor fails to foster training, operational counseling of management, offerings, research and development, and the sustainability of a franchisee.
- ▶ Either the franchisor or the franchisee fails to register the franchise-offering prospectus or the franchise agreement.

Administrative sanctions can be made in the following forms:

1. **Written warnings** – A warning in writing can be made once every two weeks for a total of three times, starting from the date of issuance of the previous warning.

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- 2. Fine** – After the third written warning has been issued, a fine shall be imposed on franchisors that do not register the franchise-offering prospectus or on franchisees that do not register the franchise agreement. The maximum fine is IDR 100 million (approximately USD 8,333).
- 3. Revocation of the Franchise's Certificate of Registration** – After the third written warning has been issued, the certificate of registration of the franchise shall be revoked from a franchisor if it is not fostering its franchisees.

Franchise Logo

An additional obligation under the law is that the franchise logo must be used at the location of the head office



A Franchise Logo

and outlets of the domestic franchisor. Franchisors and franchisees who have franchise registration certificates must use a franchise logo—otherwise, they may face sanctions from written warnings, leading up to suspensions and a revocation of the franchise registration certificate.

In addition to the overview provided above, there are numerous other factors and requirements involved in starting and operating a franchise business in Indonesia. Franchisors and franchisees need to have a clear understanding of the various steps in the process and their compliance requirements, as the responsible government authorities are keeping a watchful eye on this growing sector. ⚖️