

A BILL

i n t i t u l e d

An Act to amend the Franchise Act 1998.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Franchise (Amendment) Act 2012.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 3

2. The Franchise Act 1998 [*Act 590*], which is referred to as the “principal Act” in this Act, is amended in section 3—

(a) in subsection (1), by inserting after the words “the sale” the words “and operation”; and

(b) in subsection (2)—

(i) by inserting after the words “The sale” the words “and operation”; and

(ii) in subparagraph (a)(ii), by inserting after the word “within” the words “or outside”.

Amendment of section 4**3.** Section 4 of the principal Act is amended—

(a) in the definition of “franchise”—

(i) in paragraph (c), by inserting after the words “franchise system;” the word “and”;

(ii) by deleting paragraphs (d) and (f); and

(iii) by substituting for the word “; and” at the end of paragraph (e) a full stop; and

(b) by inserting after the definition of “franchise broker” the following definition:

“franchise consultant” means a person who provides advice and consultancy services to another person on the registration of a franchise business and compliance of the related laws;’.

Substitution of section 6**4.** The principal Act is amended by substituting for section 6 the following section:**“Registration of franchisor**

6. (1) A franchisor shall register his franchise with the Registrar before he can operate a franchise business or make an offer to sell the franchise to any person.

(2) Any franchisor who fails to comply with this section, unless exempted by the Minister under section 58, commits an offence and shall, on conviction, be liable—

(a) if such person is a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit, and for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit; or

(b) if such person is not a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or

to both, and for a second or subsequent offence, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.”.

New sections 6A and 6B

5. The principal Act is amended by inserting after section 6 the following sections:

“Registration of franchisee of foreign franchisor

6A. (1) Before commencing the franchise business, a franchisee who has been granted a franchise from a foreign franchisor shall apply to register the franchise with the Registrar by using the prescribed application form and such application shall be subject to the Registrar’s approval.

(2) The Registrar may impose any conditions for the approval of registration of franchise referred to in subsection (1).

(3) Where a franchisee has been granted approval from a foreign franchisor to sell the franchise, the franchisee shall register such approval.

Registration of franchisee

6B. A franchisee who has been granted a franchise from a local franchisor or local master franchisee shall register the franchise with the Registrar by using the prescribed registration form within fourteen days from the date of signing of the agreement between the franchisor and franchisee.”.

Amendment of section 10

6. The principal Act is amended by substituting for section 10 the following section:

“Period of effectiveness

10. The registration of a franchise shall continue to be effective unless the Registrar issues a written order to the franchisor, to suspend, terminate or cancel the registration of the franchise under this Act.”.

Amendment of section 11

7. Section 11 of the principal Act is amended—

- (a) in subsection (1), by inserting after the word “shall” the words “, with the approval of the Registrar.”; and
- (b) by inserting after subsection (3) the following subsection:

“(4) Any person who fails to comply with this section commits an offence.”.

Amendment of section 12

8. Subsection 12(1) of the principal Act is amended by substituting for the words “, prohibit or deny the sale or” the words “or cancel the approval of the”.

Amendment of section 13

9. Section 13 of the principal Act is amended by substituting for subsection (2) the following subsection:

“(2) The Registrar shall cancel the registration of the franchise from the register if he is satisfied that—

- (a) the franchisor has failed to submit his annual report to the Registrar as stipulated under section 16 for the duration of five years continuously;
- (b) the franchisor is insolvent; or
- (c) the franchisor is no longer granting rights under the franchise.”.

Amendment of section 14

10. Section 14 of the principal Act is amended—

- (a) by inserting after the words “franchise broker” wherever appearing the words “or franchise consultant”;
- (b) in subsection (5), by substituting for the words “one year” the words “two years”; and

(c) by inserting after subsection (5) the following subsections:

“(5A) The franchise broker or franchise consultant shall apply for the renewal of registration within thirty days from the date of the expiration of the registration.

(5B) Any franchise broker or franchise consultant who fails to comply with subsection (5A) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit, and for a second or subsequent offence, to a fine not exceeding twenty-five thousand ringgit.”.

Amendment of section 15

11. Section 15 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting after the words “disclosure documents” the words “including amendments to the disclosure documents approved under section 11”; and

(ii) by inserting after the words “with the franchisor” the words “or after the disclosure documents is approved by the Registrar under section 11, whichever is applicable”; and

(b) in subsection (2)—

(i) by deleting the word “disclosure”; and

(ii) by inserting after the word “Registrar” the words “under section 7”.

Amendment of section 16

12. Section 16 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) The franchisor shall, within six months from the end of each financial year of the franchise business, submit a report to the Registrar in the prescribed form.”;

- (b) in paragraph (3)(b), by substituting for the words “, prohibit or deny the sale or” the words “or cancel the approval of the”; and
- (c) by inserting after subsection (3) the following subsection:
 - “(4) Any person who fails to comply with this section commits an offence.”.

Amendment of section 19

13. Section 19 of the principal Act is amended by inserting after the word “writing” the words “in the disclosure document”.

Amendment of section 20

14. Section 20 of the principal Act is amended by substituting for the words “a contravention of this Act” the words “an offence under this Act”.

Amendment of section 26

- 15.** Section 26 of the principal Act is amended—
- (a) in subsection (1), by substituting for the words “the franchisee and his employees” the words “the franchisee, including its directors, the spouses and immediate family of the directors, and his employees”; and
 - (b) in subsection (2), by substituting for the words “The franchisee and his employees” the words “The franchisee, including its directors, the spouses and immediate family of the directors, and his employees”.

Amendment of section 27

- 16.** Section 27 of the principal Act is amended—
- (a) in subsection (1), by substituting for the words “the franchisee and his employees” the words “the franchisee, including its directors, the spouses and immediate family of the directors, and his employees”; and

- (b) in subsection (2), by substituting for the words “The franchisee and his employees” the words “The franchisee, including its directors, the spouses and immediate family of the directors, and his employees”.

Amendment of section 28

17. Subsection 28(1) of the principal Act is amended by inserting after the word “bind” the words “a franchisor or”.

Amendment of section 29

18. Section 29 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) The franchisee shall operate the business separately from the franchisor, and the relationship of the franchisee with the franchisor shall not at anytime be regarded as a partnership, service contract or agency.”.

Amendment of section 31

19. Section 31 of the principal Act is amended—

(a) in subsection (1), by inserting after the word “franchisor” the words “or franchisee”;

(b) in paragraphs (2)(a) and (2)(b), by inserting after the words “the failure of” the words “a franchisor or”;
and

(c) in subsection (3)—

(i) by inserting after the words “in which the” the words “franchisor or”; and

(ii) by inserting after paragraph (a) the following paragraph:

“(aa) becomes bankrupt or insolvent;”.

Amendment of section 34

20. Section 34 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) A franchisee may, at his option, apply for an extension of the franchise term by giving a written notice to the franchisor not less than six months prior to the expiration of the franchise term.”.

Amendment of section 37

21. Section 37 of the principal Act is amended—

(a) by renumbering the existing section as subsection (1);

(b) in subsection (1), by inserting after the words “commits an offence” the words “and shall, on conviction, be liable—

(a) if such person is a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit, and for a second or subsequent offence to a fine not exceeding five hundred thousand ringgit; or

(b) if such person is not a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both, and for a second or subsequent offence, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.”; and

(c) by inserting after subsection (1) the following subsection:

“(2) Subsection (1) shall also apply to a franchise broker or franchise consultant.”.

New section 37A

22. The principal Act is amended by inserting after section 37 the following section:

“Offence of holding out as a franchise

37A. A person who assumes or uses in relation to its business, the term “franchise” or any of its derivatives or any other words indicating the carrying on of a franchise business, including the use of the word “franchise” or any abbreviation thereof as part of the name or title in documents, agreements, books, advertisements or publications, without approval of registration by the Registrar under section 8 commits an offence and shall, on conviction, be liable—

- (a) if such person is a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit, and for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit; or
- (b) if such person is not a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both, and for a second or subsequent, offence to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.”.

Amendment of section 38

23. Section 38 of the principal Act is amended by deleting the words “and shall, on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both”.

Amendment of section 39

24. Section 39 of the principal Act is amended—

- (a) in subsection (1), by substituting for paragraphs (a) and (b) the following paragraphs:

“(a) if such person is a body corporate, to a fine of not less than ten thousand ringgit and not more

than fifty thousand ringgit, and for a second or subsequent offence, to a fine of not less than twenty thousand ringgit and not more than one hundred thousand ringgit; or

(b) if such person is not a body corporate, to a fine of not less than five thousand ringgit and not more than twenty-five thousand ringgit or to imprisonment for a term not exceeding six months, and for a second or subsequent offence, to a fine of not less than ten thousand ringgit and not more than fifty thousand ringgit or to imprisonment for a term not exceeding one year.”; and

(b) in subsection (2), by substituting for the words “a first offence” the words “an offence under this section”.

Deletion of section 55

25. The principal Act is amended by deleting section 55.

Deletion of section 57

26. The principal Act is amended by deleting section 57.

Amendment of section 60

27. Subsection 60(2) of the principal Act is amended—

(a) by substituting for the word “ten” the word “fifty”; and

(b) by substituting for the words “five years” the words “one year”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Franchise Act 1998 (“Act 590”).

1. The current Franchise Act 1998 provides for the regime to regulate franchise business in Malaysia. The proposed amendments would ensure that this Act is consistent and up-to-date with current development of

franchise business in this country. It also would further strengthen the Act for the purpose of proper administration and enforcement of franchise law in Malaysia.

2. *Clause 1* contains the short title and provisions on the commencement of the proposed Act.

3. *Clause 2* seeks to amend section 3 to expand the scope of the proposed Act to cover franchise transaction which is concluded outside Malaysia and operated within Malaysia as to enable this transaction to be regulated under the proposed Act.

4. *Clause 3* seeks to strengthen the definition of “franchise” as to facilitate the prosecution of the offence under the proposed Act by eliminating the elements of franchise which are not crucial to define franchise business. It also seeks to include the definition of the words “franchise consultant”.

5. *Clause 4* seeks to amend section 6 by inserting the requirement to register the franchise before the franchisor can operate a franchise business or make an offer to sell the franchise to any person. It also seeks to insert the offence and penalty provision for non-compliance of this section.

6. *Clause 5* seeks to insert new sections 6A and 6B under the proposed Act to make it compulsory for any franchisee of a local franchisor or local master franchisee and any franchisee of a foreign franchisor to register with the Registrar.

7. *Clause 6* seeks to amend section 10 to clarify the power of Registrar to suspend and terminate the registration of franchise.

8. *Clause 7* seeks to amend section 11 to strengthen the provision by making it a compulsory for the franchisor to get approval from the Registrar if there are any changes to the disclosure document.

9. *Clause 8* seeks to amend section 12 to clarify the power of Registrar to suspend and terminate the registration of franchise and for the purpose of proper drafting of this section.

10. *Clause 9* seeks to amend section 13 to give the power to the Registrar to cancel registration of franchise business.

11. *Clause 10* seeks to amend section 14 to regulate franchise consultant under the proposed Act. It also seeks to amend the term of registration for franchise broker and franchise consultant from one year to two years and to provide for the platform for renewal of registration. Where the franchise broker or franchise consultant fails to renew the registration within the stipulated time, the franchise broker or franchise consultant shall be liable to pay to a fine.

12. *Clause 11* seeks to amend section 15 to further impose the franchisor to submit to the franchisee any amendments to the disclosure documents ten days after the approval of the Registrar under section 11.

13. *Clause 12* seeks to amend section 16 to give more time for the franchisor to submit its annual report to the Registrar which is from thirty days from the anniversary date of the registration to six months from the end of each financial year of the franchise business. This is in tandem with the practice of companies regulated under Companies Act 1965. It also seeks to make it an offence for any person who breaches this provision.

14. *Clause 13* seeks to amend section 19 to further clarify the obligation of the franchisor to state in writing in the disclosure documents, in the event that the franchisor requires any payment from the franchisee before signing of the franchise agreement.

15. *Clause 14* seeks to amend section 20 for the purpose of proper drafting of this section.

16. *Clause 15* seeks to amend section 26 to widen the scope of the section to cover guarantee by a franchisee including its directors, spouses and immediate family of directors, and his employees to prohibit them from disclosing confidential information.

17. *Clause 16* seeks to amend section 27 to widen the scope of the section to cover guarantee by a franchisee including its directors, spouses and immediate family of directors, and his employees to prohibit them from conducting similar business within two years after the expiration or early termination of the franchise term.

18. *Clause 17* seeks to amend section 28 to bind not only the franchisee but also the franchisor from contracting out from the provision of the proposed Act.

19. *Clause 18* seeks to amend section 29 to regulate the conduct of the franchisee and to clarify the relationship between the franchisor and the franchisee.

20. *Clause 19* seeks to amend section 31 to give the rights to the franchisor and the franchisee to terminate franchise agreement in accordance to this section. It also seeks to include the ground “bankrupt and insolvent” as a ground for termination.

21. *Clause 20* seeks to amend section 34 to impose on the franchisee to give notice of extension to the franchisor six months before the expiration of franchise term.

22. *Clause 21* seeks to amend section 37 to provide for the penalty to a person including the franchise broker and franchise consultant who breaches this provision.

23. *Clause 22* seeks to introduce new section 37A to provide for the offence of holding out as a franchise.
24. *Clause 23* seeks to amend section 38 to make the penalty of the offence under the section to be applicable under general penalty in section 39.
25. *Clause 24* seeks to amend section 39 to increase the penalty for the offence where no penalty is expressly provided under the proposed Act.
26. *Clause 25* seeks to delete section 55.
27. *Clause 26* seeks to delete section 57.
28. *Clause 27* seeks to amend section 60 to increase the penalty for the offence prescribed under any regulations made under Act 590.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN(U²)2779]