

# Licensing & Franchising - The Good, The Bad and The Ugly!

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23.9.2013

# Agenda

- The basic franchise and licensing laws of Malaysia
- Common Disputes
- Expansion through methods other than franchise
- Licensing v Franchising

# What is a Franchise?

business arrangement which allows for the reputation, (goodwill) innovation, technical know-how and expertise of the innovator (franchisor) to be combined with the energy, industry and investment of another party (franchisee) to conduct the business of providing and selling of goods and services

# Franchise & Licensing

- Licence
  - + a right to use a legally protected intellectual property (e.g. trade mark, copyright, knowhow, trade secret)
- Franchise
  - + Governed by Franchise Act 1998 (FA)

# Licence

- Sole Licence
- Exclusive Licence
- Non-exclusive Licence
- Right to Sub Licence
- Licence Fee
- Duration
- Term, Extension and Renewal

# Franchise

- Registration of Franchise
  - + Local Franchisor
  - + Local Franchisee
  - + Foreign Franchisor
  - + Franchisee of Foreign Franchisor

# Franchise

- General Requirements for Registration
  - + 3 years of audited report
  - + Franchise Act compliant Agreement
  - + Operation & Training Manuals
  - + Projected Cashflow
  - + Prototype Store
  - + Trade Marks Applications
  - + Many, many more!

# Franchise

- Franchise Agreement (s. 18)
  - + name and description of franchised product and business;
  - + **territorial rights**;
  - + **franchise fee**, promotion fee, royalty or any related type of payment which may be imposed on the franchisee, if any;
  - + obligations of the franchisor and franchisee;

# Franchise

- Fees ([www.franchisemdtcc.gov.my](http://www.franchisemdtcc.gov.my))

## **A&W Restaurant**

Startup Capital: 600,000 - 800,000

Franchise Fee: 100,000

## **Ayamas**

Startup Capital: RM237,000

Franchise Fee: RM10,000

# Franchise

- Fees ([www.franchisemdtcc.gov.my](http://www.franchisemdtcc.gov.my))

## Coffee Bean

Startup Capital: 905,000

Franchise Fee: 95,000

Training Fee: RM 4,000 (Manager), RM 2,000 (Team member)

Royalty: 8% of gross profit (1st year), 9% (2nd year), 10% (3rd year & above)

# Franchise

- Fees ([www.franchisemdtcc.gov.my](http://www.franchisemdtcc.gov.my))

## **Gloria Jeans**

### Startup Capital :

Full Store : 750,000

Kiosk : 520,000

Cart : 310,000

### Franchise Fee:

Full Store : 70,000

Kiosk : 52,500

Cart : 35,000

# Franchise

- Franchise Agreement
  - + franchisee's rights to use the mark or any other intellectual property, pending the registration or after the registration of the franchise;
  - + the conditions under which the franchisee may assign the rights under the franchise;
  - + a statement on the **cooling off** period;

# Franchise

- Franchise Agreement
  - + a description pertaining to the mark or any other intellectual property owned or related to the franchisor which is used in the franchise;
  - + if the agreement is related to a master franchisee, the franchisor's identity and the rights obtained by the master franchisee from the franchisor;

# Franchise

- Franchise Agreement
  - + duration of the franchise and the terms of renewal; and
  - + effect of **termination or expiration** of the franchise agreement.

# Franchise

- No termination except for "good cause"
- "Good cause"
  - + With Notice - to remedy any breach
  - + Without Notice to remedy -
    - makes an assignment of the franchise rights for the benefit of creditors or a similar disposition of the assets of the franchise to any other person;
    - becomes bankrupt or insolvent;

# Franchise

- "Good cause"
  - + Without Notice to remedy -
    - voluntarily abandons the franchised business;
    - is convicted of a criminal offence which substantially impairs the goodwill associated with the franchisor's mark or other intellectual property; or
    - repeatedly fails to comply with the terms of the franchise agreement.

# Franchise

- Offence not to renew or extend a franchise term if:-
  - No compensation given to franchisee or repurchase of the franchised business
- But only if franchisee:
  - + barred for 6 months from continuing with substantially same business; or
  - + not given 6 months prior notice not to renew

# Franchise

- No discrimination
- Compulsory Practice
- Prohibition of Similar Business
- Promotional Funds

# Franchise

- Extension
  - + 6 months before expiry
  - + Franchisor must extend
  - + Unless previous agreement breached
  - + Similar terms and must not be less favourable

# Franchise

- Repercussions
  - + Failure to Register
    - body corporate - RM250,000 (1st Offence)
    - Not body corporate - RM100,000 or imprisonment not exceeding 1 year (1st Offence)
  - + Failure to fulfill s. 18 of FA
    - Agreement null and void

# Common Disputes

- Viability of the Franchise
- Disclosure Documents – misleading & deceptive
- Disclosure of Know-how
- Inadequate Training
- Territorial Rights
- Offering unregistered franchise
- Under reporting
- Unmerchantable Products

# Licence v Franchise

# Other Expansion Methods

- Licensing
- Management Agreement
- Technical Service Agreement

# QUESTIONS?

# Thank you

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