

TECHNICAL GUIDANCE ON THE ESTABLISHMENT OF FRANCHISE SYSTEM

Our Senior Associate, Dr. Julius I.D. Singara, together with Ir. Abdul Kadir Damanik, M.M. (Assistant Deputy for Partnerships and Business Networks), Burang Riady, M.B.A. (Partner at the International Franchise Business Management) and Ir. H. Tamba, M.B.A. (Director of Business Development of Rotating Fund Management Board), have received inquiries from the Ministry of the Cooperative and Small and Medium Enterprises (“**Kemenkop**”) to participate in the Technical Guidance on the Establishment of Franchise System (“

Bimtek

”) which was held on 4th

September 2012 at the Madani Medan Hotel in Medan (North Sumatera) and attended by micro-, small-, and medium-scale enterprises (“

UMKM

”).

In such Bimtek, Dr. Julius I.D. Singara was assigned by Kemenkop to explain the legal aspect of franchise under the prevailing laws and regulations in Indonesia. Such technical guidance might be the first socialization of the new franchise regulation, namely Regulation of Minister of Trade Number 53/M-DAG/PER/8/2012 regarding the Establishment of Franchise (“**MOT**

Regulation No. 53/2012

”) which replaced Regulation of Minister of Trade Number 31/M-DAG/PER/8/2008 regarding the Establishment of Franchise (“

MOT Regulation No. 31/2008

”). The principle points explained by Dr. Julius I.D. Singara to the UMKM, are as follows:

1. Legal Basis. The franchise business in Indonesia is regulated under:

1. Law Number 20 Year 2008 regarding Micro-, Small-, and Medium-scale Enterprises (“**UMKM Law**

”);

2. Government Regulation Number 42 Year 2007 regarding Franchising (“**GR No. 42/2007**”); and

3. MOT Regulation No. 53/2012.

2. Criteria. To be considered as a franchise, a business shall meet the 6 (six) criteria as set forth in Article 3 of GR No. 42/2007 in conjunction with Article 2, paragraph (1), of MOT Regulation No. 53/2012, namely:

1. Shall possess business special characteristics;
2. Shall be proven to have generated profits;
3. Shall have the standards for the services and goods and/or other services offered made in writing;
4. Shall be easy to be studied/taught and applied;
5. There is sustainable support; and
6. There are registered Intellectual Property Rights.

An individual person or business entity shall be prohibited to use the terms and/or name of the franchising for the name and/or activities of their business, if they fail to fulfill the above criteria (Article 2, paragraph (2), of MOT Regulation No. 53/2012). Failure to comply with such provision, such person or business entity shall be subject to penalties as regulated in the Indonesian prevailing laws and regulations (Article 34 of MOT Regulation No. 53/2008).

3. Registration of Prospectus. The Foreign Franchisor, Domestic Franchisor, Subsequent Franchisor from Foreign Franchisor, and Subsequent Franchisor from Domestic Franchisor (hereinafter, shall collectively be referred to as the “**Franchisor**”) shall obtain a Certificate of Franchising Registration (“**STPW**”

”) by filing registration for Prospectus of Franchising Offering (“**Prospectus**”

”) to the Office of Commercial Services at the Directorate of Business Development and Company Registration (Article 10, paragraph (1), of GR No. 42/2007 in conjunction with Article 9 of MOT Regulation No. 53/2012). However, in order to obtain the STPW, the Franchisor shall prove that its business activities are successful and profitable for a period of at least 5 (years) which are proven by financial statement audited by public accountant in the last 2 (two) years (the obligation for using the public accountant does not apply to the micro and small enterprises).

Subsequently, no later than 2 (two) days as of the receipt of application letter for STPW and required documents in complete and accurate manners, the official will issue STPW which is valid for 5 (five) years and may be extended for the same period (Article 12, paragraphs (5) and (6), of GR No. 42/2007 in conjunction with Article 14 in conjunction with Article 17, paragraphs

(1) and (2), of MOT Regulation No. 53/2012). Further, the Franchisor shall provide a Prospectus to prospective Franchisee minimum 2 (two) weeks prior to the signing of Franchising Agreement (Article 4, paragraph (1), of MOT Regulation No. 53/2012).

4. Registration of Franchise Agreement. Foreign Franchisee shall be obliged to obtain the STPW by filing registration for Franchise Agreement to the Office of Commercial Services at the Directorate of Business Development and Company Registration, while Domestic Franchisee, Subsequent Franchisee from Foreign Franchisee and Subsequent Franchisee from Domestic Franchisee (hereinafter, shall collectively be referred to as the “

Franchisee

”), shall hold the STPW issued by the Offices in Charge of Trade of DKI Jakarta or Local Regency/Municipality (Article 11 of GR No. 42/2007 in conjunction with Article 10 of MOT Regulation No. 53/2012). Further, in order to be registered, the Franchise Agreement shall contain, at least, a number of clauses specified in Article 5 of GR No. 42/2007 in conjunction with Article 5, paragraph (2), of MOT Regulation No. 53/2012.

Subsequently, no later than 2 (two) days as of the receipt of application letter for STPW and required documents in complete and accurate manners, the official will issue STPW which is valid for 5 (five) years and may be extended for the same period (Article 12, paragraphs (5) and (6), of GR No. 42/2007 in conjunction with Article 14 in conjunction with Article 17, paragraphs (1) and (2), of MOT Regulation No. 53/2012).

5. Franchise Logo. Franchisor and Franchisee which already hold the STPW, shall use the Franchise Logo. Further provisions regarding the Franchise Logo shall be governed in a separate MOT Regulation (Article 18 of MOT Regulation No. 53/2012).

6. Franchisor and Franchisee Relationship. Franchisor cannot appoint Franchisee that is directly or indirectly controlled by Franchisor (Article 7 of MOT Regulation No. 53/2012).

7. Unilateral Termination. In the event of the Franchise Agreement being unilaterally terminated by Franchisor prior to the lapse of the Franchise Agreement, Franchisor shall not be able to appoint a new Franchisee covering the same area, prior to the achievement of dispute resolution by both parties (*clean break*) or until the issuance of a binding court decision (Article 8 of MOT Regulation No. 53/2012)

8. Obligation to carry out the business in accordance with the business permit. As stipulated in Article 21 of MOT Regulation No. 53/2012, Franchisor and Franchisee shall only be permitted to carry out business activities as per the business license held. In this matter, Franchisor and Franchisee may sell goods that support the principal business in as many as 10% of the total types of goods sold.

9. Local Content. Franchisor and Franchisee shall be obligated to use raw materials, business equipment and sell goods in no less than 80% of the goods and/or services that are produced domestically, unless permitted otherwise by MOT (Article 19 of MOT Regulation No. 53/2012).