



Franchise Act 1998

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01. Introduction

HISTORY OF FRANCHISING

Originates from Europe more than 150 years ago

McCormick and Singer Sewing Machine Co. have planted the seeds and started a franchise network in 1850s

French word “franco” = freedom

Automobile dealership in 1900s (eg. GM-founded in 1908 & established a basic franchise dealership concept in 1920s)

Early 1930s - oil companies & petroleum marketer began granting franchises to individuals (non-employee managers)

01. Introduction

DEVELOPMENT OF FRANCHISE

Ray Kroc discovered the success story of McDonald's in 1955, and became the turning point in the **modern** history of franchising

- Almost **35,000** restaurants in more than **121** countries
- Patronized by **96%** of American at least once, and not less than **8%** of them have McDonald's meals every day
- 1.9 million people work for McDonald's & its Franchisees
- 80% of its restaurants are franchised
- Has developed almost **5,000** franchisees and partners worldwide and recruiting about **700,000** employees (mostly youths) annually



AT A GLIMPSE

August 1992, National Economic Policy placed UPP under the Prime Minister's Department, to act as a Regional Franchise Centre

May 1995, Franchise Development Division UPP under Prime Minister's Department is transferred under the MECD as the Franchise and Vendor Division

- ❑ **1960s/70s** – hotel chains, fast-food/QSR
- ❑ **1980s** – establishment of homegrown franchises
- ❑ **Mid 1992** – government introduced FDP
- ❑ **18th Jan 1994** – MFA was established
- ❑ **27th Jan 1994** – 1st FIM Exhibition & Conference
- ❑ **1997** – Ministry of Entrepreneur Development was set up and Franchise Financing Scheme (FFS) and Franchise Development Assistance Scheme (FDAS) was introduced
- ❑ **1998** – Franchise Act was enacted and AFM was introduced
- ❑ **2001** – MED declared “Franchise Year 2001”
- ❑ **2004** – Perbadanan Nasional Berhad was given the mandate as franchise developmental agency
- ❑ **2008** – Franchise Development Division (FDD) was transferred to MDTCC
- ❑ **2012** – Micro Franchise Scheme was introduced
- ❑ **2012** – National Franchise Blueprint was launched and Amendments to the Franchise Act
- ❑ **2014** – Franchising agenda was included into National budget
- ❑ **2020** – Amendment 2020 gazette on 6th March 2020

01. Introduction

FRANCHISE ACT 1998 Overview

In force since 8 October 1999

Provides for the registration and regulation of the franchise industry in Malaysia

Enacted to facilitate an orderly and systematic development and healthy growth of the franchise industry in Malaysia

Not only requires the registration of all businesses to be franchised, but also details the obligations of franchisors and franchisees

Amendments to the Franchise Act 1998 was introduced in 2011 and 2018 which culminated to the Franchise (Amendment) Act 2012 and The Franchise (Amendment) Act 2020 respectively that brought more changes and strengthen regulation making it quasi criminal

01. Introduction

A **method** of **growing a business** where a franchisee is **granted**, for a **fee**, the **right** to distribute goods or provide service under a **system determined by the franchisor**.

THREE (3) MAIN IMPORTANT COMPONENT IN FRANCHISING

Intellectual Property Rights (IPR) Include trademarks and all intangible assets that can create customer loyalty (e.g. McDonald's, Coke)

Operating System
Delivers the promise of proven business format

Ongoing support
Tools and tips to expand growth of customer base and market share

02. Franchise Act 1998 - Interpretation & Application

Application

3(1) This Act applies throughout Malaysia to the sale and operation of any franchise in Malaysia.

3(2) The sale and operation of a franchise is deemed to be in Malaysia where—

(a) an offer to sell or buy a franchise—

(i) is made in Malaysia and accepted within or outside Malaysia; or

(ii) is made outside Malaysia and accepted within or outside Malaysia; and

b) the franchised business is operated or will be operating in Malaysia.

02. Franchise Act 1998 - Interpretation & Application

Application (Cont.)

3(3) Nothing in this Act shall affect the provisions of any other written laws, but if there is any conflict between the provisions of this Act and the provisions of the other written laws, the provisions of this Act shall prevail.

02. Franchise Act 1998 - Interpretation & Application

Interpretation (only important part)

4 In this Act, unless the context otherwise requires—

“advertisement” means any publication, circular, notice, or any oral or written communication, whether broadcasted by electronic or any other publishing media, or any form of electronic communications to the public for the purpose of offering the sale of a franchise or promoting the sale of a franchise;

“disclosure documents” means such disclosure documents as may be prescribed by the Minister;

02. Franchise Act 1998 - Interpretation & Application

Interpretation (only important part)

“franchise” means a contract or an agreement, either expressed or implied, whether oral or written, between two or more persons by which—

(a) the franchisor grants to the franchisee the right to operate a business according to the franchise system as determined by the franchisor during a term to be determined by the franchisor;

(b) the franchisor grants to the franchisee the right to use a mark, or a trade secret, or any confidential information or intellectual property, owned by the franchisor or relating to the franchisor, and includes a situation where the franchisor, who is the registered user of, or is licensed by another person to use, any intellectual property, grants such right that he possesses to permit the franchisee to use the intellectual property;

02. Franchise Act 1998 - Interpretation & Application

Interpretation (only important part)

“franchise” means a contract or an agreement, either expressed or implied, whether oral or written, between two or more persons by which—

(c) the franchisor possesses the right to administer continuous control during the franchise term over the franchisee’s business operations in accordance with the franchise system; and

(d) *(Deleted by Act A1442).*

(e) in return for the grant of rights, the franchisee may be required to pay a fee or other form of consideration.

(f) *(Deleted by Act A1442).*

02. Franchise Act 1998 - Interpretation & Application

Interpretation (only important part)

“franchise agreement” means a contract or an agreement made between a franchisor and a franchisee in respect of a franchise in return for any form of consideration but does not include any contract or agreement made for the purpose of direct selling as provided by the Direct Sales Act 1993 [Act 500];

“franchisee” means a person to whom a franchise is granted and includes, unless stated otherwise in this Act—

(a) a master franchisee with regard to his relationship with a franchisor; and

(b) a subfranchisee with regard to his relationship with a master franchisee;

02. Franchise Act 1998 - Interpretation & Application

Interpretation (only important part)

“franchisor” means a person who grants a franchise to a franchisee and includes a master franchisee with regard to his relationship with a subfranchisee, unless stated otherwise in this Act;

“mark” includes a trade mark, service mark, symbol, design, brand, heading, label, ticket, name, signature, word and letter or any combination of them;

“master franchisee” means a person who has been granted rights by a franchisor to subfranchise to another person, at his own expense, the franchise of the franchisor;

“person” includes a natural person, corporation, partnership, association, firm, joint venture or trust;

02. Franchise Act 1998 - Interpretation & Application

Interpretation (only important part)

“‘Subfranchise’ means ‘a franchise granted by a master franchisee to a subfranchisee for business purposes under the Act’; and

‘Subfranchisee’ means ‘a subfranchise holder’.”

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Appointment of Registrar, Deputy Registrar etc

5(1) The Minister may appoint a public officer as a Registrar of Franchises and such number of Deputy Registrars of Franchises, Assistant Registrars of Franchises and other officers as may be necessary for the purposes of this Act.

5(2) The Registrar shall, subject to the general direction and control of the Minister, perform the duties imposed and exercise the powers conferred on him under this Act.

5(3) The Deputy Registrar, Assistant Registrars and other officers appointed under subsection (1) shall be under the direction and control of the Registrar.

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Appointment of Registrar, Deputy Registrar etc (Cont.)

5(4) The Deputy Registrar may perform all the duties and exercise all the powers conferred upon the Registrar under this Act.

5(5) The Registrar or Deputy Registrar may perform all the duties imposed and exercise all the powers conferred upon an Assistant Registrar under this Act.

5(6) All officers appointed under this section shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Appointment of Registrar, Deputy Registrar etc (Cont.)

5(4) The Deputy Registrar may perform all the duties and exercise all the powers conferred upon the Registrar under this Act.

5(5) The Registrar or Deputy Registrar may perform all the duties imposed and exercise all the powers conferred upon an Assistant Registrar under this Act.

5(6) All officers appointed under this section shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Section 6 Registration of Franchisor

6(1) A franchisor or a foreign person who has obtained an approval to sell a franchise in Malaysia or to any Malaysian citizen under section 54 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.

6(2) Any franchisor or foreign person who fails to comply with this section, unless exempted by the Minister under section 58, commits an offence and shall, on conviction, be liable—

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Section 6 Registration of Franchisor (Cont.)

(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.

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

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~~ by submitting the application in such form as may be determined by the Registrar together with the prescribed fee 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).

(2A) Upon approving the application under subsection (1), the Registrar may require the applicant to pay such amount of fee as may be prescribed

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

(4) Any franchisee who fails to comply with this section commits an offence

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Registration of franchisee

6B(1) 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~~ submitting an application in such form as may be determined by the Registrar together with the prescribed fee within fourteen days from the date of signing of the agreement between the franchisor and franchisee.

6B(2) Any franchisee who fails to comply with subsection (1) commits an offence

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

- ❑ **Tea Delights (M) Sdn Bhd v Yeap Win Nee (2015) MLJU 673** (1) Agreement is unlawful void ab initio as there is no registration (2) The Defendants owe a duty of care to the Plaintiff (The Second Defendant persuaded the Plaintiffs to enter into a franchise which turns out to be illegal)
- ❑ **SP Multitech Intelligent Homes Sdn Bhd v Home Sdn Bhd (2010) MLJU 1845** (1) (1) Agreement is unlawful void ab initio as there is no registration (2) restitution and refund of all payments (3) Facts - parties signed in escrow and Plaintiff well aware that Defendant applied for registration

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Application for registration

7(1) A franchisor shall make an application to register his franchise by submitting to the Registrar the application in ~~the prescribed form~~ ~~together with~~ such form as may be determined by the Registrar together with the prescribed fee and —

- (a) the complete disclosure documents with all the necessary particulars filled in;
- (b) a sample of the franchise agreement;
- (c) the operation manual of the franchise;
- (d) the training manual of the franchise;

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Application for registration (Cont.)

(e) a copy of the latest audited accounts, financial statements, and the reports, if any, of the auditors and directors of the applicant; and

(f) such other additional information or documents as may be required by the Registrar for the purpose of determining the applicant

7(2) At any time after receiving an application and before it is determined, the Registrar may, by written notice, require the applicant, or the director or manager of the applicant, to provide additional information or documents.

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Application for registration (Cont.)

7(3) The matters specified under paragraph (1)(f) or the requirements under subsection (2) may differ as between different applicants, or different classes, categories or descriptions of applicants.

7(4) An application under this section may be withdrawn at any time before it is approved or refused.

7(5) If any additional information or document required under subsection (2) is not provided by the applicant or his director or manager within the time specified in the requirement or any extension of time granted by the Registrar, the application shall be deemed to have been withdrawn and shall not be further proceeded with, but without affecting any fresh application being made by the applicant.

7(6) A person who submits false or misleading information or documents under this section commits an offence.

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Approval or refusal of application for registration

8(1) Upon receipt of an application for registration together with the information or documents required under section 7, the Registrar may approve or refuse the application, and shall give the reason for the refusal.

8(2) An application for registration which is approved under this section may be subject to such conditions as the Registrar may impose.

8(3) Upon approving an application under subsection (1), the Registrar may require the applicant to pay such amount of fees as may be prescribed.

8(4) The Registrar shall give the applicant a written notice of his decision under this section.

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Effective date of registration of franchise

9. If the registration of a franchise is approved under section 8, the registration shall be effective on the date stated in the written notice given by the Registrar and such date shall be after the date of the filing of all required information or documents unless, prior to it, one of the following events has taken place:

(a) the Registrar has notified the applicant that the applicant has failed to comply with the requirements of section 6 and subsections 7(1), (2) and (3); or

(b) the Registrar has issued an order under section 10 or paragraph 16(3)(b).

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

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.~~

10(1) 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.

10(2) Notwithstanding subsection (1), the Registrar may at any time issue a written order to the franchisor to suspend, terminate or cancel the registration of the franchise under the Act

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

10A Renewal of registration of franchise

10A(1) A franchisor may apply to the Registrar for renewal of the registration of franchise by submitting as application in such form as may be determined by the Registrar together with the prescribed fee within thirty days from the expiration date of such registration.

10A(2) An approval for the application made under subsection (1) may be subject to such conditions as the Registrar may impose.

10A(3) Upon approving the application under subsection (1), the Registrar may require the applicant to pay such amount of fee as may be prescribed.

10A(4) Section 10 shall apply to the period of effectiveness of the registration of franchise which is renewed under this section.

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

10B Display of registration of franchise

10B (1) A franchisor or franchisee shall at all times display the registration of franchise in a conspicuous position at the place where the franchisor or franchisee carries on his business.

10B (2) Any franchisor or franchisee who fails to comply with subsection 1 commits an offence

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Notice of suspension, termination, etc, of registration

12(1) Subject to section 13, if the Registrar proposes to suspend, terminate or cancel the approval of the registration of a franchise, he shall give the applicant or the franchisor written notice of his intention to do so, specifying the nature of the proposed action and the grounds on which he proposes to take such action, and he shall give the applicant or the franchisor an opportunity to make a written representation on the matter within fourteen days from the date of service of the notice.

12(2) After the expiry of the period of fourteen days mentioned in subsection (1) and after considering any representation made by the applicant or franchisor under that subsection, the Registrar shall decide whether to proceed with the proposed action or to take no further action.

12(3) The Registrar shall give the applicant or franchisor written notice of his decision under subsection (2) and the decision shall take effect from the date on which the written notice is served on the applicant or franchisor.

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Cancellation from register

13(1) A franchisor may, at any time after the franchise term, apply to the Registrar for cancellation of the registration of the franchise from the register.

13(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.

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Registration of franchise broker **or franchise consultant**

14(1) A franchise broker or franchise consultant shall register himself with the Registrar in the following manner:

- (a) ~~by using the prescribed application form~~ by submitting the application in such form as may be determined by the Registrar together with the prescribed fee; and
- (b) by filing with the Registrar any information, which shall be determined by the Registrar, in respect of any representative or agent appointed by the franchise broker or franchise consultant.

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Registration of franchise broker **or franchise consultant (Cont.)**

14(2) The franchise broker or franchise consultant must meet all the requirements as prescribed on the qualifications of a franchise broker or franchise consultant before he can be registered.

14(3) The Registrar may impose conditions on the registration of a franchise broker or franchise consultant.

14(3A) Upon approving the application under subsection (1), the Registrar may require the applicant to pay such amount of fee as may be prescribed.

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Registration of franchise broker (Cont.)

14(4) The conditions in subsection (3) may include conditions governing the sale of a franchise by a franchise broker or franchise consultant and conditions on the conduct, suspension, termination, prohibition or denial of registration of a franchise broker or franchise consultant.

~~**14(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.~~

~~**14(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.~~

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Registration of franchise broker (Cont.)

14(6) The provisions relating to confidential information and the prohibition on carrying on a similar business in sections 26 and 27 are also applicable to a franchise broker or franchise consultant.

14(7) Any franchise broker or franchise consultant who fails to comply with subsection (1) 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

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Renewal of registration of franchise broker or franchise consultant

14A(1) A franchise broker who is still carrying on his business as a franchise broker or a franchise consultant shall apply to the Registrar for renewal of his registration as a franchise broker or franchise consultant, as the case may be, in such form as may be determined by the Registrar together with the prescribed fee within thirty days from the expiration date of such registration

14A(2) An approval for the application made under subsection (1) may be subject to such conditions as the Registrar may imposed.

14A(3) Upon approving the application under subsection (1), the Registrar may require the applicant to pay such amount of fee as may be prescribed.

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Renewal of registration of franchise broker or franchise consultant (Cont.)

14A(4) Subsection (5) shall apply to the period of effectiveness of the registration of a franchise broker or franchise consultant which is renewed under this section.

14A(5) Any franchise broker or franchise consultant who fails to comply with subsection (1) commits an offence and shall on conviction, be liable to a fine not exceeding ten thousand ringgit, and for a second and subsequent offence, to a fine not exceeding twenty-five thousand ringgit

03. Part II – Registrar and the Registration of Franchise, Broker, Consultant and Foreign Franchise

Display of registration of franchise broker or franchise consultant

14B. (1) A franchise broker or franchise consultant shall at all times display the registration of franchise broker or franchise consultant, as the case may be, in a conspicuous position at a place where the franchise broker carries on his business or franchise consultant provides his services

14B(2) Any franchise broker or franchise consultant who fails to comply with section commits an offence

03. Part VIII Miscellaneous –Foreign Franchise and others

Sale of franchise to non-citizen subject to Registrar's approval

53. A franchisor who intends to sell a franchise to a person who is not a Malaysian citizen shall obtain the approval of, and be subject to the conditions which may be imposed by, the Registrar.

03. Part VIII Miscellaneous –Foreign Franchise and others

Sale of franchise by foreigner in Malaysia

54(1) A foreign person who intends to sell a franchise in Malaysia or to any Malaysian citizen shall submit an application to the Registrar.

54(2) The Registrar may approve or refuse an application under subsection (1) without giving any reason for the refusal.

54(3) An application which is approved under this section may be subject to such conditions as the Registrar may impose.

03. Part VIII Miscellaneous – Public Inspection and Power to Exempt

Public inspection of disclosure documents

56 The Registrar may allow the public inspection of any disclosure documents filed with the Registrar unless, in his opinion, the inspection may bring harm to a franchisor or franchisee or any person involved in the franchised business related to the inspection or the inspection is not necessary or appropriate in the public interest.

Power to exempt

58 The Minister may, by order published in the *Gazette*, exempt, subject to such conditions as he deems fit to impose, any person or class of persons or business or industry from all or any of the provisions of this Act.

03. Part VIII Miscellaneous – Immunity

Protection to officers

59 No action or prosecution shall be brought, instituted or maintained in any court against—

(a) the Registrar, Deputy Registrar, Assistant Registrar or any officer or person duly authorized under this Act for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Act; and

(b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Minister, Registrar, Deputy Registrar, Assistant Registrar, or any officer or person duly authorized under this Act if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it.

Franchise Act 1998 – Relationship between Franchisor & Franchisee

01

COMPULSORY
PRACTICES

02

DOCUMENTS
INCLUDE AGREEMENT
& DISCLOSURE
DOCUMENTS

03

IMPORTANT
FEATURES IN
FRANCHISE ACT TO BE
INCLUDED IN
FRANCHISE
AGREEMENT

01. Compulsory Practices

Compulsory Practice

15(1) A franchisor shall submit to a franchisee a copy of the franchise agreement and ~~disclosure~~ document at least ten days before the franchisee signs the agreement with the franchisor or after the disclosure documents is approved by the Registrar under section 11, whichever is applicable.

15(2) The documents in subsection (1) shall be the same documents submitted to the registrar under section 7 **and 11**.

15(3) A person who fails to comply with this section commits an offence.

01. Compulsory Practices

Annual Report

16(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. **16(2)** The report shall contain the disclosure documents which have been updated.

16(3) The Registrar may review the report and disclosure documents and—

01. Compulsory Practices

Annual Report (cont.)

(a) notify the franchisor if any additional information or modification of the disclosure documents is to be included or deleted; or

(b) issue an order to suspend, terminate or cancel the approval of the registration of the franchise in the public interest or for the purpose of protecting prospective franchisees until any deficiencies specified by the Registrar have been corrected.

16(4) Any person who fails to comply with this section commits an offence.

01. Compulsory Practices

Appeal against Registrar's decision

17(1) A person who is aggrieved by any decision of the Registrar under this Part may appeal to the Minister in the prescribed manner within one month from the date the decision is communicated to the person.

17(2) The Minister's decision on the appeal shall be final

02. Documents – Agreement (Part III)

Requirement of Franchise Agreement

18(1) A franchise agreement shall be in writing

18(2) A franchise agreement shall contain but is not limited to—

(a) the name and description of the product and business under the franchise;

(b) the territorial rights granted to the franchisee;

(c) the franchise fee, promotion fee, royalty or any related type of payment which may be imposed on the franchisee, if any;

(d) the obligations of the franchisor;

02. Documents – Agreement (Part III)

Requirement of Franchise Agreement (Cont.)

18(2) A franchise agreement shall contain but is not limited to— (Cont.)

(e) the obligations of the franchisee;

(f) the franchisee's rights to use the mark or any other intellectual property, pending the registration or after the registration of the franchise;

(g) the conditions under which the franchisee may assign the rights under the franchise;

(h) a statement on the cooling off period as provided in subsection (4);

02. Documents – Agreement (Part III)

Requirement of Franchise Agreement (Cont.)

18(2) A franchise agreement shall contain but is not limited to— (Cont.)

(i) a description pertaining to the mark or any other intellectual property owned or related to the franchisor which is used in the franchise;

(j) if the agreement is related to a master franchisee, the franchisor's identity and the rights obtained by the master franchisee from the franchisor;

(k) the type and particulars of assistance provided by the franchisor;

02. Documents – Agreement (Part III)

Requirement of Franchise Agreement (Cont.)

18(2) A franchise agreement shall contain but is not limited to— (Cont.)

~~(l) the duration of the franchise and the terms of renewal;
and~~

(l) the term of the franchise, and the terms of renewal, and extension of the franchise agreement; and

(m) the effect of termination or expiration of the franchise agreement

02. Documents – Agreement (Part III)

Requirement of Franchise Agreement (Cont.)

18(3) ~~Failure to comply with subsection (2) shall render a franchise agreement null and void.~~

18(4) A franchise agreement shall have a cooling off period, which shall be determined by both contracting parties but shall not be less than seven working days, during which the franchisee has the option to terminate the agreement.

18(5) Upon termination of the franchise agreement under subsection (4), an amount to cover the reasonable expenses incurred by the franchisor to prepare the agreement may be retained by the franchisor from the initial fees paid under section 19; however, all other moneys shall be refunded to the franchisee.

02. Documents – Agreement (Part III)

Requirement of Franchise Agreement (Cont.)

18(6) A person who fails to comply with ~~subsection (5)~~ this section commits an offence

02. Documents – Conduct of Parties (Part IV)

Conduct of parties

29(1) A franchisor and a franchisee shall act in an honest and lawful manner and shall endeavour to pursue the best franchise business practice of the time and place.

29(2) A franchisor and a franchisee in their dealings with one another shall avoid the following conduct:

- (a) substantial and unreasonable overvaluation of fees and prices;
- (b) conduct which is unnecessary and unreasonable in relation to the risks to be incurred by one party; and
- (c) conduct that is not reasonably necessary for the protection of the legitimate business interests of the franchisor, franchisee or franchise system.

02. Documents – Conduct of Parties (Part IV)

Conduct of parties (Cont.)

29(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.

02. Documents – Conduct of Parties (Part IV)

Obligation of franchisor and franchisee

30(1) A franchisor shall give a written notice about a breach of contract by a franchisee and allow the franchisee time to remedy the breach.

30(2) A franchisee shall pay the franchise fees, royalty, promotion fees or any other payment as provided in the franchise agreement.

30(3) A franchisor shall provide assistance to a franchisee to operate his business, such as the provision or supply of materials and services, training, marketing, and business or technical assistance.

30(4) A franchisor and a franchisee shall protect the consumer's interests at all times.

02. Documents – Conduct of Parties (Part IV)

Termination of franchise agreement

31(1) No franchisor or franchisee shall terminate a franchise agreement before the expiration date except for good cause as provided in subsections (2) and (3).

31(2) “Good cause” shall include, but is not limited to—

(a) the failure of a franchisor or a franchisee to comply with any terms of the franchise agreement or any other relevant agreement entered into between the franchisor and franchisee; and

(b) the failure of a franchisor or the franchisee to remedy the breach committed by him or any of his employees within the period stated in a written notice given by the franchisor, which shall not be less than fourteen days, for the breach to be remedied.

02. Documents – Conduct of Parties (Part IV)

Termination of franchise agreement (Cont.)

31(3) “Good cause” shall include, but without the requirement of notice and an opportunity to remedy the breach, circumstances in which the franchisor or franchisee—

(a) 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;

(aa) becomes bankrupt or insolvent;

(b) voluntarily abandons the franchised business;

02. Documents – Conduct of Parties (Part IV)

Termination of franchise agreement (Cont.)

(c) is convicted of a criminal offence which substantially impairs the goodwill associated with the franchisor's mark or other intellectual property; or

(d) repeatedly fails to comply with the terms of the franchise agreement.

02. Documents – Conduct of Parties (Part IV)

Non-renewal of franchise agreement

32. A franchisor commits an offence if he refuses to renew a franchise agreement or extend a franchise term without compensating a franchisee either by a repurchase or by other means at a price to be agreed to between the franchisor and the franchisee after considering the diminution in the value of the franchised business caused by the expiration of the franchise where—

02. Documents – Conduct of Parties (Part IV)

Non-renewal of franchise agreement (Cont.)

(a) the franchisee is barred by the franchise agreement, or by the refusal of the franchisor at least six months before the expiration date of the franchise agreement to waive any portion of the franchise agreement which prohibits the franchisee, from continuing to conduct ~~substantially the same business~~ similar business under another mark in the same area subsequent to the expiration of the franchise agreement; or

(b) the franchisee has not been given a written notice of the franchisor's intent not to renew the franchise agreement at least six months prior to the expiration date of the franchise agreement.

02. Documents – Conduct of Parties (Part IV)

Earlier termination of franchise agreement

33. Notwithstanding section 25, a franchise term may be terminated before the expiry of the minimum term of five years in the following circumstances:

(a) where both parties to the franchise agreement agree to a termination; or

(b) where the court has decided that there are certain conditions in the franchise agreement which merit the agreement to be terminated earlier than the minimum term.

02. Documents – Conduct of Parties (Part IV)

Extension of franchise term

34(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.

34(2) Except when a franchisee has breached the terms of a previous franchise agreement, a franchisor shall extend the franchise term to another period if the franchisee has applied for the extension of term under subsection (1).

34(3) A franchise agreement which franchise term has been extended shall contain conditions which are similar or not less favourable than the conditions in the previous franchise agreement.

03. Important Features in Franchise Agreement

Payment of franchise fee, etc.

19. If a franchisor requires that a franchisee makes a payment before signing a franchise agreement, including a payment which is part of a franchise fee, the franchisor shall state in writing in the disclosure document the purpose for the payment and the conditions for the use and refund of the moneys.

Payment of franchise fee or royalty

21. If a franchisee is required to pay any franchise fees or royalty to a franchisor, the rate of franchise fees or royalty shall be the rate as provided in the disclosure documents.

03. Important Features in Franchise Agreement

Promotion Fund

22(1) A franchisor who requires a franchisee to make any payment for the purpose of the promotion of a franchise shall establish a Promotion Fund (“Fund”).

22(2) The Fund shall be managed under a separate **bank** account and shall only be used for the promotion of the product under the franchise.

22(3) If a franchisee is required to make any payment under section 23, the franchisor shall submit a financial statement of the Fund, which has been endorsed by a registered public accountant, to the Registrar within thirty days after the conclusion of the last financial term.

03. Important Features in Franchise Agreement

Promotion Fund (Cont.)

22(4) The financial statement in subsection (3) shall be submitted to the Registrar together with the annual report under section 16.

22(5) A person who fails to comply with this section commits an offence.

03. Important Features in Franchise Agreement

Promotion Fee, etc

23(1) If a franchisee is required to make any payment for promotional purposes or pay promotion fees to the franchisor, the payment shall be at the rate as provided in the disclosure documents.

23(2) The payment required to be made under subsection (1) shall be deposited into the Fund.

03. Important Features in Franchise Agreement

Prohibition against discrimination

20. It shall be an unfair franchise and an offence under this Act a for any franchisor to unreasonably and materially discriminate between franchisees operating a franchise in the charges offered or made for franchise fees, royalties, goods, services, equipment, rentals or advertising services if such discrimination will cause competitive harm to a franchisee who competes with a franchisee who receives the benefit of the discrimination, unless and to the extent that any classification of or discrimination between franchisees is—

03. Important Features in Franchise Agreement

Prohibition against discrimination (cont.)

- (a) based on franchises granted at different times, and such discrimination is reasonably related to the differences in time;
- (b) related to one or more programmes for making franchises available to persons with insufficient capital, training, business experience or education, or lacking other qualifications;
- (c) related to efforts by the Government or any of its agencies to promote variation in products or service lines or business formats or designs;
- (d) related to efforts by one or more franchisees to cure deficiencies in the operation of franchised businesses or defaults in franchise agreements; or
- (e) based on other reasonable distinctions considering

03. Important Features in Franchise Agreement

Registration of trade mark or service mark

24. A franchisor is required to register his trade mark ~~or service mark~~ relevant to his franchise in accordance with the Trade Marks Act 1976 [Act 175] (if they are registrable under the Act) before applying for the registration of the franchise under section 7.

Franchise term

25. A franchise term shall not be less than five years

03. Important Features in Franchise Agreement

Confidential Information

26(1) A franchisee shall give a written guarantee to a franchisor that the franchisee, including its directors, the spouses and immediate family of the directors, and his employees shall not disclose to any person any information contained in the operation manual or obtained while undergoing training organized by the franchisor during the franchise term and for two years after the expiration or earlier termination of the franchise agreement.

26(2) The franchisee, including its directors, the spouses and immediate family of the directors, and his employees shall comply with the terms of the written guarantee given under subsection (1).

26(3) A person who fails to comply with subsection (1) or (2) commits an offence.

03. Important Features in Franchise Agreement

Prohibition against similar business

27(1) A franchisee shall give a written guarantee to a franchisor that the franchisee, including its directors, the spouses and immediate family of the directors, and his employees shall not carry on any other business similar to the franchised business operated by the franchisee during the franchise term and for two years after the expiration or earlier termination of the franchise agreement.

27(2) The franchisee, including its directors, the spouses and immediate family of the directors, and his employees shall comply with the terms of the written guarantee given under subsection (1).

27(3) A person who fails to comply with subsection (1) or (2) commits an offence.

03. Important Features in Franchise Agreement

Waiver void

28(1) Any condition, stipulation or provision in a franchise agreement purporting to bind a franchisor or a franchisee to waive compliance with any provision of this Act is void.

28(2) This section shall not prevent any person from entering into a settlement agreement or executing a general release regarding a potential or actual civil action filed in respect of the franchise nor shall it prevent the arbitration of any claim.

Franchise Body & Enforcement

01

FRANCHISE BODY

02

OFFENCES &
PENALTIES (PART
IV)

03

ENFORCEMENT &
PROSECUTION

01. Franchise Advisory Board Part V

Franchise Advisory Board

35(1) There is established a Franchise Advisory Body

35(2) The Franchise Advisory Board shall consist of such persons, not exceeding fifteen in number, as the Minister may, from time to time, appoint.

35(3) The members to be appointed under subsection (1) shall be persons who have wide knowledge and experience in matters relating to franchises.

35(4) The members of the Franchise Advisory Board may receive such remuneration as may be prescribed for their services.

01. Franchise Advisory Board Part V

Functions of Franchise Advisory Board

36(1) The Franchise Advisory Board shall advise the Minister and the Registrar on matters relating to franchises, and the due administration and enforcement of laws relating to franchises.

36(2) The Minister and the Registrar shall not be bound to act upon the advice or report of the Franchise Advisory Board.

02. Offences and Penalties (Part VI)

Offence for fraud, deceit, etc.

37(1) A person who **in relation to an offer to sell a franchise or during the sale of a franchise**, whether directly or indirectly—

- (a) employs any device or scheme in order to defraud;*
- (b) makes any untrue statement of a material fact or omits to state a material fact which renders his statement to be misleading;*
- (c) engages in any act, practice or course of business, which operates or would operate as a fraud or deceit upon any person,*

02. Offences and Penalties (Part VI)

Offence for fraud, deceit, etc. (Cont.)

commits an offence, 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.

02. Offences and Penalties (Part VI)

Offence for fraud, deceit, etc. (Cont.)

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

02. Offences and Penalties (Part VI)

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—

02. Offences and Penalties (Part VI)

Offence of holding out as a franchise (Cont.)

- (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.*

02. Offences and Penalties (Part VI)

Obstructing of officers

38 (1) A person who-

- (a) obstruct any person appointed under this Act acting in pursuance of this Act*
- (b) fails to comply with any requirement properly made to him by an authorized officer under this Act; or*
- (c) without reasonable cause fails to give to an authorized officer any assistance or information which may reasonably be required by the officer for the purpose of the performance of his duties under this Act,*

Commits an offence

02. Offences and Penalties (Part VI)

General penalty

- 39.** (1) A person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable—
- (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.*

02. Offences and Penalties (Part VI)

- (2) Upon sentencing a franchisor for an offence under this section, the court may—
- (a) declare the franchise agreement between the franchisor and any franchisee to be null and void;*
 - (b) order that the franchisor refunds any form of payment which he has obtained from any franchisee; or*
 - (c) prohibit the franchisor from making any new franchise*

02. Offences and Penalties (Part VI)

Offence by body corporate

- 40.** If an offence against any provision of this Act has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such body corporate, or was assisting in such management, shall be deemed to have committed that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
- (a) that the offence was committed without his knowledge, consent or connivance; and
 - (b) that he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

02. Offences and Penalties (Part VI)

Compounding of offences

- 41 (1)** The Registrar may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act and prescribed by the Minister to be a compoundable offence by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Registrar of an amount of money not exceeding fifty per cent of the amount of maximum fine for that offence within the time specified in the offer.
- 41(2)** An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted.

02. Offences and Penalties (Part VI)

Compounding of offences (Cont.)

- 41(3)** If the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Registrar may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.
- 41(4)** If an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made.
- 41 (5)** All sums of money received by the Registrar under this section shall be paid into and form part of the Federal Consolidated Fund.

03. Enforcement (Part VII)

Authorized Officer

42 (1) The Minister may, in writing, authorize the Registrar or any Deputy Registrar, Assistant Registrar or public officer to exercise the powers of enforcement under this Act.

42 (2) In exercising any of the powers of enforcement under this Act, an authorized officer shall on demand produce to the person against whom he is acting the authority card signed by the ~~Minister~~ Registrar and issued to him.

03. Enforcement (Part VII)

Power to investigate

43 (1) An authorized officer may investigate ~~the activities of a franchisor, franchise broker or franchisee for the purpose of determining whether he is complying with this Act~~ the commission of any offence under this Act

43 (2) For the purposes of subsection (1), the authorized officer may issue orders to ~~a franchisor, franchise broker or franchisee~~ any person to further his investigation and secure compliance with this Act.

03. Enforcement (Part VII)

Power to investigate

43 (3) In addition to his powers under subsections (1) and (2), in any case relating to the commission of an offence under this Act, an authorized officer carrying on an investigation may exercise all or any of the powers in relation to police investigation in seizable cases given by the Criminal Procedure Code ~~[Act 594]~~ [Act 593]

03. Enforcement (Part VII)

Search by warrant

44 (1) If it appears to a Magistrate, upon written information on oath and after such inquiry as he considers necessary, that there is reasonable cause to believe that an offence under this Act is being or has been committed on any premises, the Magistrate may issue a warrant authorizing any authorized officer named therein, to enter the premises at any reasonable time by day or by night, with or without assistance and if need be by force.

03. Enforcement (Part VII)

Search by warrant

44 (2) An authorized officer may, in the premises entered under subsection (1), search and seize—

- (a) copies of any books, accounts or other documents, including computerized data, which contain or are reasonably suspected to contain information as to any offence so suspected to have been committed;
- (b) any mark, signboard, card, letter, pamphlet or other device or thing representing or implying that the person is a franchisor, franchise broker or franchisee;
- (c) any other document or item that is reasonably believed to furnish evidence of the commission of such offence.

03. Enforcement (Part VII)

Search by warrant

44 (3) An authorized officer conducting a search under subsection (1) may, if in his opinion it is reasonably necessary to do so for the purpose of investigating into the offence, search any person who is in or on such premises.

44 (4) An authorized officer making a search of a person under subsection (3) may seize, detain or take possession of any book, accounts, document, computerized data, mark, **signboard**, card, letter, pamphlet, device or thing found on such person for the purpose of the investigation being carried out by such officer.

03. Enforcement (Part VII)

Search by warrant

44 (5) Where, by reason of its nature, size or amount, it is not practicable to remove any book, accounts, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing seized under this section, the seizing officer shall, by any means, seal such book, accounts, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing in the premises or container in which it is found.

44 (6) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (5) or removes any book, accounts, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing under seal or attempts to do so commits an offence.

03. Enforcement (Part VII)

Search warrant valid notwithstanding defects

44A A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the search warrant or in the application for such search warrant and any book, account, document, computerized data, mark, signboard, card, letter, pamphlets, device or thing seized under such search warrant shall be admissible as evidence in any proceedings under this Act.

03. Enforcement (Part VII)

Search and seizure without warrant

45 If an authorized officer in any of the circumstances referred to in section 44 has reasonable cause to believe that by reason of delay in obtaining a search warrant under that section the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, such officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 44 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

03. Enforcement (Part VII)

Search of female person

46 No female person shall be searched under section 44 or 45 except by another female person.

Access to computerized data

47 An authorized officer conducting a search under section 44 or 45 shall be given access to computerized data whether stored in a computer or otherwise.

03. Enforcement (Part VII)

List of things seized

- 48 (1)** Except as provided in subsection (2), where any book, accounts, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing is seized under section 44 or 45, the seizing officer shall prepare a list of the things seized and immediately deliver a copy of the list signed by him to the occupier of the premises which have been searched, or to his agent or servant, at those premises.
- 48 (2)** Where the premises are unoccupied, the seizing officer shall whenever possible post a list of the things seized conspicuously on the premises.

03. Enforcement (Part VII)

Forfeiture of seized book, etc

48A (1) Any book, account, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing seized under this Act shall be liable to forfeiture.

48A (2) An order for the forfeiture or for the release of any book, account, document, computerized data, mark, signboard, card letter, pamphlet, device or thing seized under this Act shall be made by the court before which the prosecution with regard thereto has been held and an order for the forfeiture of the book, account, document, computerized data, mark, signboard, card letter, pamphlet, device or thing shall be made if it is proved to the satisfaction of the court that an offence under this Act has been committed, and that the book account, document, computerized data, mark, signboard, card letter, pamphlet, device or thing was the subject matter of or was used in the commission of the offence notwithstanding that no person may have been convicted of the offence

03. Enforcement (Part VII)

Forfeiture of seized book, etc

48A (3) If there is no prosecution with regard to any book, account, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing seized under this Act such book, account, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing shall be taken and deemed to be forfeited at the expiration of one calendar month before that date in the manner set out in subsection (4), (5) and (6).

48A (4) Any person asserting that he is the owner of such book, account, document, computerized data, mark, signboard, card letter, pamphlet, device or thing referred to in subsection (3) and that it is not liable to forfeiture may personally or by his agent authorized in writing give written notice to an authorized officer of his claim.

03. Enforcement (Part VII)

Forfeiture of seized book, etc

48A (5) On receipt of such notice under subsection (4), the authorized officer shall refer the claim to the Registrar who may direct that such book, account, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing be released or forfeited, or may direct the authorized officer to refer the matter to a court for decision.

03. Enforcement (Part VII)

Forfeiture of seized book, etc

48A (6) The court to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the book, account, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing and the person from whom it was seized to appear before the court and upon his appearance or default to appear due service of the summons being proved, the court shall proceed to the examination of the matter and on proof that an offence under this Act has been committed and that such book ... was the subject matter or was used in the commission of such offence, shall order the same to be forfeited or may, in the absence of such proof, order its release to the person entitled to it.

03. Enforcement (Part VII)

Forfeiture of seized book, etc

48A (7) Any book, account, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing forfeited or deemed to be forfeited shall be delivered to the authorized officer who shall dispose of it in accordance with the directions of the Registrar.

48A (8) Where any book, account, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing seized under this Act is of a perishable nature or where the custody of such book ... involves unreasonable expenses and inconvenience, such book ... may be sold by the authorized officer at anytime and the proceeds of the sale held by the authorized officer at anytime and the proceeds of the sale held by the authorized officer to abide by the result of any prosecution or claim under this section, or be disposed of in accordance with the provisions of this section

03. Enforcement (Part VII)

Released of seized book, etc

48B (1) If any book, account, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing has been seized under this Act, the authorized officer who effected the seizure may release the book... to the person that he determines to ne lawfully entitled to it, if he is satisfied that the book ... is not otherwise required for the purpose of any proceedings under this Act, or for the purpose of any prosecution under any other written laws, and in such event the authorized officer effecting the seizure, the Government, the Registrar or any person acting on behalf of the Government, the Registrar shall not be liable to any proceedings by any person if the seizure and the release of the book... had been effected in good faith

03. Enforcement (Part VII)

Released of seized book, etc (Cont.)

48B (2) A record in writing shall be made by the authorized officer effecting the release of anything under subsection (1) specifying in detail the circumstances of and the reason for the release, and he shall send a copy of such record to the Public Prosecutor within seven days of the release.

03. Enforcement (Part VII)

No cost or damage arising from seizure to be recoverable

48C. No person shall, in any proceedings before any court in respect of any book, account, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing has been seized in the exercise of any power conferred under this Act, be entitled to costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

03. Enforcement (Part VII)

Reward for information

48D. In the case of a conviction involving a fine, the court imposing the fine may, on the application of the prosecuting officer, direct the payment of any part of the fine in such proportion as the court thinks fit but in any case not exceeding one half of such fine to the person who gave the information leading to the conviction.

03. Enforcement (Part VII)

List of things seized

- 48 (1)** Except as provided in subsection (2), where any book, accounts, document, computerized data, mark, signboard, card, letter, pamphlet, device or thing is seized under section 44 or 45, the seizing officer shall prepare a list of the things seized and immediately deliver a copy of the list signed by him to the occupier of the premises which have been searched, or to his agent or servant, at those premises.
- 48 (2)** Where the premises are unoccupied, the seizing officer shall whenever possible post a list of the things seized conspicuously on the premises.

03. Enforcement (Part VII)

Power to require attendance of person acquainted with case

49 (1) An authorized officer making an investigation under this Act may by order in writing require the attendance before himself of a person who appears to the authorized officer to be acquainted with the circumstances of the case, and the person shall attend as so required.

49 (2) If the person fails to attend as required, the authorized officer may report the failure to a Magistrate who shall issue a warrant to secure the attendance of the person.

03. Enforcement (Part VII)

Examination of person acquainted with case

50 (1) An authorized officer making an investigation under this Act may examine orally a person supposed to be acquainted with the facts and circumstances of the case.

50 (2) The person shall be legally bound to answer all questions relating to the case put to him by the authorized officer, but the person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

50 (3) A person making a statement under this section shall be legally bound to state the truth, whether or not the statement is made wholly or partly in answer to questions.

03. Enforcement (Part VII)

Examination of person acquainted with case (Cont.)

- 50 (4)** The authorized officer obtaining information from a person shall first inform that person of the provisions of subsections (2) and (3).
- 50 (5)** A statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish.

03. Enforcement (Part VII)

Additional Power

51 An authorized officer shall, for the purpose of the execution of this Act, have power to do all or any of the following:

- (a) to require the production of records, accounts, computerized data and documents kept by a franchisor, franchise broker or franchisee and to inspect, examine and copy any of them;
- (b) to require the production of any identification document from any person in relation to any case or offence under this Act;
- (c) to make such inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with

03. Enforcement (Part VII)

Prosecution

52. No prosecution shall be instituted under this Act without the consent in writing of the Public Prosecutor.

Thank You



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