

New Minister of Trade Regulation Changes the Rules on Franchising

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The Minister of Trade ("MoT") has issued [Regulation No. 53/M-DAG/PER/8/2012](#) on Organizing Franchise Business ("2012 Regulation"). The Regulation was issued with two main objectives for improving the franchise business: first, improve the partnership between franchisers and franchisees by involving small-medium enterprises, and second, maximize the use of domestic products in a franchise business.

Franchise business was previously regulated under MoT [Regulation No. 31/M-DAG/PER/8/2008](#) ("2008 Regulation"), which implemented [Government Regulation No. 42 of 2007](#) on Franchise Business.

Franchise, Franchiser, and Franchisee

As per Article 2(1), in order for a business to be named a franchise, it must meet the following criteria:

- Unique operation
- Proven as profitable
- Having a standardized service and/or products in writing
- (Have a business practice that is) Easily transferable and applicable
- (Franchiser must provide) Continued support
- (Own) Registered Intellectual Property Rights

Individuals or entities that do not meet these criteria cannot name their business as a franchise, and thus, they are not eligible to apply for a Certificate of Franchise Registration (*Surat Tanda Pendaftaran Waralaba* – "STPW") (See Art. 1(9) for definition).

[Indonesian Version](#)

❖ Document(s)

- [The Minister of Trade Regulation No. 53/M-DAG/PER/8/2012](#) (PERMEN_DAG_53MDAG PER82012_2012 - 605Kb)

❖ Recently Published ILBs

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The 2012 Regulation recognizes four kinds of franchisers and four kinds of franchisees (Art. 3; see Art. 1(2) for the definition of franchiser and Art. 1(3) for the definition of franchisee).

Recognized Franchisers under the 2012 Regulation are: (a) foreign franchisers; (b) domestic franchisers; (c) foreign sub-franchisers; and (d) domestic sub-franchisers. Whereas recognized Franchisees are: (a) foreign franchisee; (b) domestic franchisee; (c) foreign sub-franchisee; and (d) domestic sub-franchisee.



The Franchise Contract

Every franchiser must send a prospective franchisee a prospectus (offer) two weeks before a contract is signed. A prospectus must specify in brief the franchise's identity, legality, finances, and other information stipulated in Article 1(6). It must also contain materials or clauses specified in Annex I of 2012 Regulation. A prospectus written in a foreign language must be officially translated into Indonesian (see Art. 4).

A franchise relationship must be based on a contract that is governed by an Indonesian law. A contract written in a foreign language must be officially translated into Indonesian (Art. 5). The minimum requirements in a franchise agreement are stipulated in Annex II of the 2012 Regulation.

Both the franchiser and franchisee must conform to other laws applicable to the franchising business. This includes, but is not limited to: consumer protection, health, education, environment, spatial planning, labor, and intellectual property laws (Art.6).

Applying for Certification

In order to receive permission to operate, every franchiser and franchisee must obtain a STPW (Arts. 9(1) and 10(1)). To get the STPW, a franchiser must register its prospectus and the franchisee must register the Franchise Contract.

All franchisers must apply with the Trade Services Office, which is a part of the Directorate General of Trading Business Development ("DGTBD"), by filing the form attached in Annex III A-1 (Art. 9(2)).

A franchisee contracting with a foreign franchiser must register the agreement with the Trade Services Office by filing the form attached in Annex III B-1 (Art 10(2)).

A franchisee contracting with a domestic franchiser, foreign sub-franchiser, or a domestic sub-franchiser must register the agreement with the Jakarta trade authority, a regency/municipal trade authority, or the local Indonesia National Single Window ("INSW") office by filing the form attached in Annex III B-2 (Art. 10(3)).

All submitted applications for the Certificate must be signed. They must also enclose all of the documents found in Annex IV. Moreover, applicants must present original documents for verification. Prospectus that was registered by a foreign franchiser must be legalized by a notary and certified by Indonesia's trade attaché in the country of origin (Art. 11).

The penalty for non-compliance with Articles 9 and 10 (e.g. operating without a STPW) is an administrative sanction, which includes a warning and fine up to IDR 100 million (Art. 32).

STPW Issuance

The Minister of Trade is responsible for the issuance of the STPW (Art. 22). However, he may delegate this authority. For applications that fall under Article 9 (2), the authority is delegated to the Head of the Trade Services Offices. Whereas, for applications that fall under Article 10(3), the authority is delegated to the Governor of the Jakarta Special Capital Region or the mayor/regent.

Franchisers' Obligation to Develop Franchisees

A franchiser must develop its franchisees in the following areas: management training and education, operational guidance, market development through advertisement, and product and market research and development (R&D) (Art. 27).



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Other Rules and Limitations

A franchiser may not appoint a franchisee that is directly or indirectly controlled by it (Art. 7). This implies that a parent company may not appoint its subsidiary as a franchisee.

If a franchiser unilaterally terminates an ongoing contract, it may not appoint a substitute franchisee for the same area until both parties either settle their dispute or a court decision is rendered (Art. 8).

Local Economy Involvement

Per Article 19, 80% of a franchise's raw materials, operating tools, and merchandise/ services must be domestically sourced. In certain cases, an exemption from this rule is granted based on the Minister of Trade's consent.

Article 20 requires that franchisers engage local small and medium enterprises as franchisees and/or suppliers, as long as they are able to meet the terms and conditions.

Finally, pursuant to Article 21, a franchise business is limited to its permitted trade. Supporting products may be sold, however, their sales cannot amount to more than 10% of all types of goods the franchise business sells.

It is noteworthy, the provisions under Articles 19, 20, and 21 are new provisions and were not regulated under the 2008 Regulation.

Transition from 2008 to 2012 Regulation

The 2012 Regulation revokes and replaces the 2008 Regulation. All current Franchise Registrations remain valid until they expire, at which point they may be extended according to the 2012 Regulation (Art. 37).

The Director General for Domestic Trade will issue its own regulation to govern the technical implementation of the 2012 Regulation.

The Regulation came into force on 24 August 2012.

❖ About this ILB

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