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What to Expect from Amendments to the Malaysian Franchise Act

The Franchise (Amendment) Bill 2019 was passed by the Dewan Negara (Senate) on 19 December 2019. Once implemented, we may expect some notable changes to the franchise regime in Malaysia. Some of the key changes are outlined below.

Additional registration for foreign franchisors

At present, a foreign franchisor who intends to offer its franchise in Malaysia is required to obtain approval from the Franchise Registry under s 54 of the Franchise Act 1998 (**the Act**). A local franchisor who intends to do so must register its franchise under s 6(1) of the Act.

With the amendments, a foreign franchisor will also be required to register its franchise under s 6(1) of the Act, in addition to obtaining approval under s 54. It is not entirely clear why a foreign franchisor would soon be subject to additional registration requirements, particularly when a s 54 approval under current practice is almost as stringent as a s 6(1) registration. That said, this additional registration requirement may have stemmed from the recent decision in *Dr HK Fong BrainBuilder Pte Ltd v SG-Maths Sdn Bhd & Ors*,^[1] where the High Court held that the requirement for a franchisor to register its franchise under s 6(1) should also extend to foreign franchisors.

The Bill also provides that a foreign franchisor that has already obtained approval under s 54 of the Act **before the effective date** of the amended Act is deemed to have registered its franchise under s 6(1) of the Act. However, if a s 54 application is still pending on the effective date of the amended Act, the foreign franchisor must comply with the new registration requirement and subsequently register its franchise under s 6(1) of the Act.

Validity period and renewal of a franchise

Under the current system, the registration of a franchise will continue to be effective unless the Registrar issues a written order to suspend, terminate or cancel the registration.

In light of the new amendments, the registration of a franchise will only be effective for a prescribed period and it must be renewed 30 days before the expiration of such period, upon payment of the prescribed fees. That said, approval for the renewal application may be subject to

other conditions imposed by the Registrar.

Amendment to the requirements in a franchise agreement

In Malaysia, certain provisions or information must be included in a franchise agreement. These include the territorial rights granted to the franchisee, the obligations of franchisee and franchisor, a statement of the cooling-off period and duration of the franchise, and terms of renewal. Currently, the failure to include these statutory requirements may not constitute an offence but will render a franchise agreement null and void.

With the new amendments, a person who omits the inclusion of these compulsory provisions or information will commit an offence and be liable to a fine and/or imprisonment upon conviction. That said, such omission will no longer form a ground to nullify a franchise agreement under the Act.

Franchisors and franchisees must carefully observe the provisions of the Act and its proposed amendments to ensure that all necessary approvals and registrations are obtained from the Franchise Registry.

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