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Franchise Alert

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Amendments to Malaysia Franchise Act 1998

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Franchisors and franchisees must prepare now to comply with Malaysia's recently amended franchise regulations.



What's the Impact?

- / The Amendment introduces more rigorous requirements and penalties governing franchising and franchises in Malaysia
- / The new law and corresponding circular outlines registration, renewal requirements and fees, and display regulations for franchisors and franchisees
- / Franchisors and franchisees should assess their need to comply with the Amendment

On April 28, 2022, the Franchise (Amendment) Act 2020 ("**Amendment**") became effective in Malaysia and amended the Franchise Act 1998 ("**Act**"). In addition, on July 28, 2022, the Registrar of Franchise ("**Registrar**") issued a circular advising that all franchise registrations in Malaysia will

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be expiring. A few material changes in the law and impacts of the recent circular include the following:

Foreign franchisor—registration requirement

Any franchisors that have registered their franchise in Malaysia must now re-register their franchise under the Registrar's new system—MyFEX 2.0 (the "**System**"). The System was launched on July 28, 2022. All previously registered franchises will have a grace period of three (3) years to complete the re-registration process. The grace period began on August 1, 2022. If a franchise fails to re-register within the grace period, the Registrar may issue a notice of suspension, termination, or cancellation of franchise registration.

Additionally, prior to proceeding with re-registering, all foreign and local franchisors must submit their franchise business annual reports ("**Annual Reports**") to the Registrar for approval. Typically, Annual Reports must be filed with the Registrar within six (6) months of the end of the franchisor's fiscal year. The Annual Reports submission must include the Registrar's Annual Report form (Form 6), a copy of the franchisor's most recent audited financial statements, and the franchisor's updated disclosure document.

If a foreign franchisor submits its Annual Report and obtains approval from the Registrar, it can proceed to register the franchise with the Registrar prior to any sale of the franchise. In addition to the franchisor submitting their Annual Reports, franchisees, master franchisees, and sub-franchisees must also submit their Annual Reports to the franchisor and to the Registrar.

If the foreign franchisor does not seek approval and subsequently does not register the franchise with the Registrar, the franchisor will be subject to fines, or possible imprisonment of up to three (3) years.

Franchisees—registration requirements

The Amendment provides that a franchisee of either a foreign franchisor or a local franchisor must also register via the System. If the franchisee fails to do so, they will face penalties equivalent to penalties the franchisor would encounter.

Once a franchisor has successfully re-registered their franchise registration under the System, the franchisor is required to re-register each of their franchisee(s)—if the franchisee was registered under the old system.

If a franchisee was registered as a master franchisee under the old system, the master franchisee must re-register its franchise registration, separately from the franchisor. It must register as a master franchisee under the System and subsequently re-register all of its sub-franchisees, who were registered under the old system.

Franchise registrations fees and renewals

The Amendment prescribes fees for all new applications for registration of franchisor and franchisees/master franchisees and sub-franchisees for the System. These prescribed fees will be

waived for any re-registration, made during the grace period, of franchisors and franchisees, master franchisees and sub-franchisees that were previously registered under the old system.

Once registered with the Registrar via the System, the registration is effective for a five (5) year period. A franchise may apply for renewal of the registration within thirty (30) days from the expiration of such registration, and pay a renewal fee to the Registrar. The renewal process for registered franchisees and sub-franchisees is the same renewal process set forth for franchisors.

Registration of franchise display

All franchisors and franchisees must now display the registration of the franchise in a conspicuous spot in the place of business. Failure to display the registration is an offense under the Act.

What's next?

The Amendment introduces more rigorous requirements and penalties governing franchising and franchises in Malaysia. In anticipation of increased enforcement by the Registrar, franchisors and franchisees should assess their need to comply with the Amendment and the recent circular.

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