
General Corporate Commercial

Amendments to the Malaysian Franchise Act 1998

Introduction

The Franchise (Amendment) Bill 2019 (“**Bill**”) was passed by the House of Representatives (*Dewan Rakyat*) and the Senate (*Dewan Negara*) on 3 December 2019 and 19 December 2019 respectively to amend the Franchise Act 1998 (“**Act**”). To date, the Bill is not yet in force pending Royal Assent and a date to be appointed by the Ministry of Domestic Trade and Consumer Affairs for the Bill to come into operation by notification in the Gazette.

As an overview, the main amendments under the Bill are as follows:

- (a) it will be an offence for not including the terms prescribed under the Act in a franchise agreement;
- (b) a foreign person who has obtained an approval under section 54 of the Act to sell a franchise in Malaysia or to any Malaysian citizen must also register the franchise under section 6 of the Act before he can operate a franchise business or make an offer to sell the franchise;
- (c) the period in which a registered franchise will be effective will be limited, thereby requiring periodic renewal of registrations; and
- (d) a franchisee who is not registered will commit an offence.

Main Amendments

(A) Non-compliance with Prescribed Terms

Currently, section 18 of the Act provides for certain mandatory provisions to be included in franchise agreements. Failure to include these mandatory provisions will render a franchise agreement null and void.

Amendments to section 18 change the effects and the consequences of non-compliance by deleting the provision which states that the franchise agreement will be rendered null and void. Instead, any person who fails to comply with section 18 will commit an offence. This suggests that any non-compliant franchise agreement may still be enforceable, but the franchisor and the franchisee will be

General Corporate Commercial

subject to statutory penalties. Please refer to Part E (*General Penalty*) below for information on penalties.

Both franchisors and franchisees must take note of this amendment. The drafting of a franchise agreement must strictly adhere to the requirements under the Act, or both parties risk being subjected to hefty fines. All franchise agreements, especially those drafted based on the law of foreign jurisdictions where franchise is unregulated, will have to be rigorously scrutinised to ensure compliance with the Act.

(B) Double Registrations of Franchisor under Both Section 54 and Section 6

In *Dr HK Fong BrainBuilder Pte Ltd v SG-Maths Sdn Bhd & Ors* [2018] 11 MLJ 701 (“**Dr Fong’s case**”), the High Court held that a foreign franchisor is also required to be registered under section 6, notwithstanding that the current registration system maintained by the Registrar of Franchises (“**Registrar**”) only provides the option for a foreign franchisor to be registered under section 54.

The amendment to section 6 will require a foreign franchisor who has been granted an approval to sell a franchise in Malaysia or to any Malaysian citizen under section 54 to also register itself under section 6. This seems to give effect to the judgment in *Dr Fong’s case*.

A foreign franchisor who fails to comply with section 6 commits an offence. The following table shows the penalties for the non-compliance with this section:

Type of Person	Fine	Imprisonment
Body corporate	(i) Not exceeding RM250,000 (ii) For a second or subsequent offence, not exceeding RM500,000	N/A
Not a body corporate	(i) Not exceeding RM100,000 (ii) For a second or subsequent offence, not exceeding RM250,000	(i) Not exceeding one year (ii) For a second or subsequent offence, not exceeding three years

Nonetheless, a foreign franchisor may find comfort in the transitional provision of the Bill. Any foreign person who has obtained an approval under section 54 before the date of coming into operation of the Bill shall, on the date of coming into operation of this Bill, be deemed to have registered his franchise under section 6 as amended by this Bill.

General Corporate Commercial

(C) Limited Period of Effectiveness of Registration and Renewal

Section 10 of the Act provides that the registration of a franchise continues to be effective perpetually until it is suspended, terminated or cancelled by the Registrar.

However, once the Bill comes into effect, the Registrar may prescribe a limited period for which the registration of a franchise may remain effective. Following this amendment, a new section 10A will also be introduced to allow a franchisor to apply to the Registrar for the renewal of the registration for a fee within 30 days from the expiration date of such registration. For each renewal, the Registrar may similarly prescribe a period of effectiveness.

(D) Non-registration of Franchisee an Offence

Although sections 6A and 6B of the Act currently provide for registration of franchisee, they are silent on whether the non-compliance with the sections amounts to an offence.

However, under the Bill, it is provided that any franchisee who fails to register itself as a franchisee will commit an offence. Please refer to Part E (*General Penalty*) below for information on penalties.

(E) General Penalty

Under the Act, any person who commits an offence for which no penalty is expressly provided shall, on conviction, be liable in the following ways:

Type of Person	Fine	Imprisonment
Body corporate	(i) Not less than RM10,000 and not more than RM50,000 (ii) For a second or subsequent offence, not less than RM20,000 and not more than RM100,000	N/A

General Corporate Commercial

Not a body corporate	<ul style="list-style-type: none"> (i) Not less than RM5,000 and not more than RM25,000 (ii) For a second or subsequent offence, not less than RM10,000 and not more than RM50,000 	<ul style="list-style-type: none"> (i) Not exceeding six months (ii) For a second or subsequent offence, not exceeding one year
----------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------

Conclusion

The Act was last amended by the Franchise (Amendment) Act 2012 with effect from 1 January 2013. The revisions brought about by this Bill are much needed, if not overdue, to address the ambiguity in the language of the Act and to end the conflicts raised in Dr Fong's case. When the Bill comes , franchisors and franchisees must be aware of their added risks under the Bill and be prepared to not depart from the boundaries imposed by the Act.

Contacts



Yau Yee Ming
Partner

T +60 3 2267 2669
F +60 3 2273 8310
[yee.ming.yau](mailto:yee.ming.yau@christopherleeong.com)
[@christopherleeong.com](mailto:yee.ming.yau@christopherleeong.com)



Ng Kim Poh
Partner

T +60 3 2267 2721
F +60 3 2273 8310
[kim.poh.ng](mailto:kim.poh.ng@christopherleeong.com)
[@christopherleeong.com](mailto:kim.poh.ng@christopherleeong.com)



Joanne Hoh
Associate

T +60 3 2273 1919
F +60 3 2273 8310
[joanne.hoh](mailto:joanne.hoh@christopherleeong.com)
[@christopherleeong.com](mailto:joanne.hoh@christopherleeong.com)

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP
T +65 6535 3600
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong
T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office
T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited
T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**
T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)
T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office
T +62 21 2555 7800
F +62 21 2555 7899

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited
T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office
T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

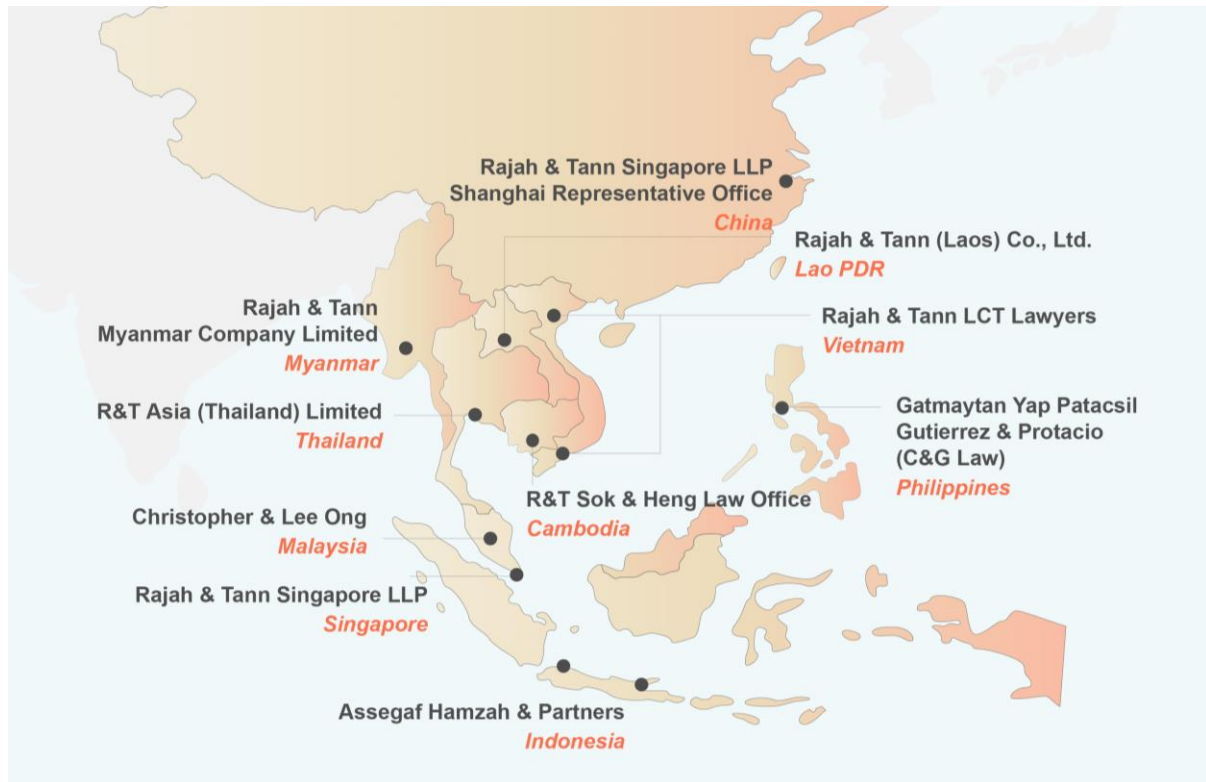
Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in South-East Asia. Member firms are constituted and regulated in accordance with local legal requirements and where regulations require, are independently owned and managed. Services are provided independently by each Member firm pursuant to the applicable terms of engagement between the Member firm and the client.

This Update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this Update.

Our Regional Presence



Christopher & Lee Ong is a full service Malaysian law firm with offices in Kuala Lumpur. It is strategically positioned to service clients in a range of contentious and non-contentious practice areas. The partners of Christopher & Lee Ong, who are Malaysian-qualified, have accumulated considerable experience over the years in the Malaysian market. They have a profound understanding of the local business culture and the legal system and are able to provide clients with an insightful and dynamic brand of legal advice.

Christopher & Lee Ong is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Christopher & Lee Ong and subject to copyright protection under the laws of Malaysia and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Christopher & Lee Ong.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business or operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Christopher & Lee Ong.