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Intellectual Property

# Malaysian Franchise (Amendment) Act 2020: Key Changes

## Introduction

The franchise industry in Malaysia is governed by the Franchise Act 1998 ("**the 1998 Act**") which regulates, among others, the registration system and enforcement of franchise businesses in Malaysia. The Franchise (Amendment) Act 2020 ("**the Amendment Act**"), which brings about some changes to the 1998 Act, was gazetted on 6 March 2020 and has come into force on 28 April 2022. We will highlight some of the more significant changes introduced by the Amendment Act.

## Changes to the 1998 Act

### New defined terms

Section 4 of the 1998 Act now includes the following new defined terms:

- 1) 'subfranchise' which is defined as a franchise granted by a master franchisee to a subfranchisee for business purposes under the 1998 Act; and
- 2) 'subfranchisee' which is defined as a subfranchise holder.

### Requirements for registration of a franchise

Prior to the Amendment Act, Section 6(1) of the 1998 Act required a "franchisor" to register his franchise with the Registrar of Franchises before he can operate a franchise business or make an offer to sell the franchise to any person; this requirement was generally understood to apply to local franchisors only until the decision of the High Court (which was upheld by the Court of Appeal) in *Dr HK Fong BrainBuilder Pte Ltd v SG-Maths Sdn Bhd & Ors.* which "clarified" that the requirement was applicable to foreign franchisors well.

Prior to the said decision, it was generally understood that a foreign franchisor who intended to sell a franchise in Malaysia or to any Malaysian citizen only had to obtain the prior consent or approval of the Registrar (as required under Section 54 of the 1998 Act) and there was no requirement to subsequently register his franchise under Section 6(1).

The above confusion has now been resolved by the Amendment Act which has amended Section 6(1) of the 1998 Act by expressly making the requirement to register a franchise applicable to foreign

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franchisors who have obtained the consent or approval of the Registrar under Section 54 of the 1998 Act.

Thus, foreign franchisors are now required to first apply for the consent or approval of the Registrar under Section 54 of the 1998 Act and, upon obtaining the consent or approval, subsequently apply to register their franchise under Section 6(1) of the 1998 Act.

Section 6(2) of the 1998 Act has also been amended by making the penalty for failure to comply with Section 6(1) applicable to foreign franchisors.

The following table shows the penalties for non-compliance with Section 6(1):

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.

However, a foreign franchisor who had obtained consent or approval under Section 54 before the Amendment Act came into force on 28 April 2022 is deemed to have registered his franchise under Section 6(1) of the 1998 Act.

### Effective period of a franchise registration

Prior to the Amendment Act, under (the unamended) Section 10 of the 1998 Act, the registration of a franchise would continue to be effective unless the Registrar issued a written order to the franchisor, to suspend, terminate, or cancel the registration.

However, pursuant to the Amendment Act, the validity of registration of a franchise is now limited to a period to be prescribed. Currently, this period, as prescribed under the Franchise (Prescription of Period

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of Effectiveness of Registration) Regulations 2022, is five years. It is important to note that the power of the Registrar to suspend, terminate or cancel a franchise registration is maintained.

A newly inserted Section 10A stipulates that a franchisor may apply to the Registrar and pay the prescribed fees to renew his franchise registration within 30 days from the expiration date of such registration.

### **Failure to comply with mandatory requirements of a franchise agreement does not render the agreement null and void**

Section 18(2) of the 1998 Act sets out the mandatory requirements of what must be contained in a franchise agreement. The Amendment Act has deleted Section 18(3) of the 1998 Act which stipulated that: "failure to comply with subsection (2) shall render a franchise agreement null and void".

However, the Amendment Act has made failure to comply with Section 18(2) an offence (please see below).

### **New offences**

The Amendment Act has introduced new offences which include the following:

- 1) Section 6A of the 1998 Act: failure of a franchisee who has been granted a franchise from a foreign franchisor to apply to register the franchise before commencing the franchise business;
- 2) Section 6B of the 1998 Act: failure of a franchisee who has been granted a franchise from a local franchisor or local master franchisee to apply to register the franchise within 14 days of the signing of the franchise agreement;
- 3) Section 10B of the 1998 Act: failure of a franchisor or franchisee to display registration of his franchise at all times in a conspicuous position at the place where the franchisor or franchisee carries on his business; and
- 4) Section 18(6) of the 1998 Act: failure to (a) include all the mandatory requirements in a franchise agreement; and (b) provide for a minimum cooling off period of seven working days in the agreement.

## **Conclusion**

Whilst the regulatory requirements of conducting a franchise business in Malaysia under the 1998 Act are generally quite strict, the Amendment Act has brought about some much-needed clarification to some aspects of the franchise registration regime, all of which will hopefully further promote and boost the growth of the franchise industry in Malaysia.

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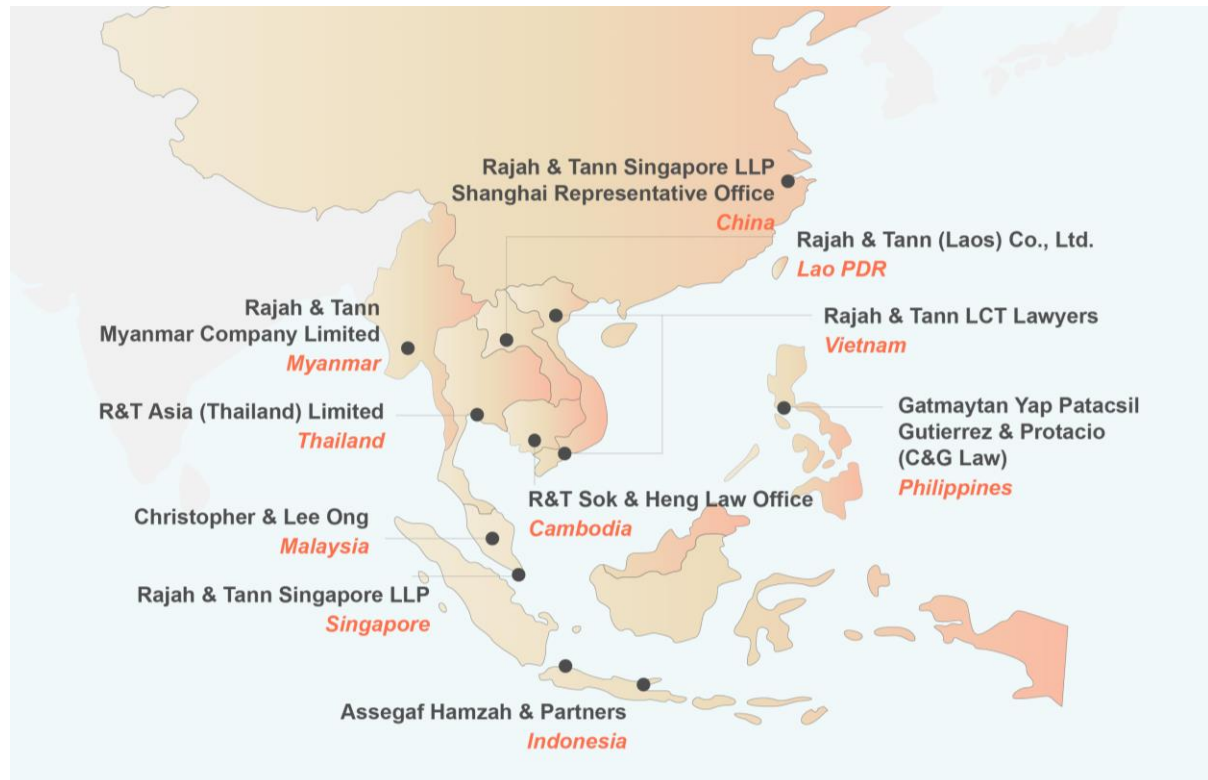
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