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INDONESIA ENACTS NEW FRANCHISE REGULATION

The Ministry of Trade of the Republic Indonesia (“**MoT**”) has just issued a new regulation on franchises in early September this year. This new franchise regulation, namely Minister of Trade Regulation No.71 of 2019 on Franchise (“**MoT 71/2019**”) replaces the following franchise-related regulations:

1. Minister of Trade Regulation No. 53/M-DAG/PER/8/2012 on Franchises as last amended by Minister of Trade Regulation No. 57/M-DAG/PER/9/2014 concerning the Amendment to Minister of Trade Regulation No. 53/M-DAG/PER/8/2012 (“**MoT 53/2012**”);
2. Minister of Trade Regulation No. 68/M-DAG/PER/10/2012 concerning Franchise for Modern Store (“**MoT 68/2012**”);
3. Minister of Trade Regulation No. 60/M-DAG/PER/9/2013 concerning Obligation on the Use of Franchise’s Logo (“**MoT 60/2013**”); and
4. Minister of Trade Regulation No. 07/M-DAG/PER/2/2013 concerning the Partnership Development in Franchises for Food and Beverage Services as last amended by Minister of Trade Regulation No. 58/M-DAG/PER/9/2014 concerning the Amendment to Minister of Trade Regulation No. 07/M-DAG/PER/2/2013 (“**MoT 07/2013**”).

MoT 71/2019 came into effect on 4 September 2019. It aims to simplify franchising rules in Indonesia by eliminating provisions that are considered to be burdensome and further replaced them with more business-friendly rules.

Some key changes in the recently enacted regulation are as follows:

Local content requirement

Previously, MoT 53/2012 obliged franchisors and franchisees to sell at least 80% locally sourced or produced goods and/or services. MoT 71/2019 introduces a more flexible provision regarding the local content requirement as it no longer stipulates the minimum percentage of local content in a product or service. MoT 71/2019 only requires the franchisee and franchisor to prioritize the use of local goods/or services as long as the local goods/services meet the quality set by the franchisor.

With the elimination of the obligation to use at least 80% locally produced goods, logic would dictate that franchisors would have more control over the material used to produce their products.

Online Single Submission (“OSS”)

Upon the launch of the OSS system last year, a Franchise Registration Certificate or Surat Tanda Pendaftaran Waralaba (“**STPW**”) (including almost all licenses required for conducting business in Indonesia) must be obtained through the OSS system. All relevant ministries must implement a licensing system that is synchronized with the OSS System. Since early this year, MoT has synchronized its licensing system with the OSS system.

MoT 71/2019 reinforces this provision. In order to apply for an STPW, franchisors and franchisees must now file the application through OSS. Any amendment of the STPW must also be done through the OSS system.

Validity period of STPW

There is no longer a limitation on the validity period of an STPW. Once an STPW is obtained, it will remain valid indefinitely, unless:

- the validity period of the underlying franchise agreement has expired (applies only to STPW for franchisee); or
- either party ceases to carry out the business activities; and/or
- the registration of Intellectual Property Rights (“**IPR**”) by the franchisor is not approved by the Directorate General of IPR or the validity period of the IPR under the franchise has expired.

Limitation on self-owned outlets

Previously, there was a limitation for franchisor and franchisee to set up their own outlets. The limitation was maximum 250 outlets for those engaged in the field of food and beverage services and maximum 150 outlets for those engaged in the modern stores line of business.

Since MoT 71/2019 revokes the relevant regulations (MoT 07/2013 and MoT 68/2012), which stipulate this limitation, without replacing it with a new provision, this limitation on self-owned outlets shall no longer apply.

Consequently, franchisors or franchisees in Indonesia are now free to set-up and open new outlets.

Status of IPR

MoT 71/2019 now explicitly recognizes the importance of having a valid IPR protection in conducting franchise business. The status of IPR may affect the validity of STPW. Pursuant to MoT 71/2019, STPW will be deemed invalid if the registration of IPR by the Franchisor were not approved by the relevant authority, or if the validity period of IPR has expired.

Franchise Logo

MoT 71/2019 retains most of the rules and requirements pertaining to the use of “Franchise Logo” in the previous regulation, i.e. MoT 60/2013. What is new is that it is now illegal for franchise operator without STPW to use a “Franchise Logo”.

Restriction to appoint subsidiary as a franchisee

Before the enactment of MoT 71/2019, the franchisor could not appoint a franchisee that has control relationship either directly or indirectly with the franchisor. Since MoT 53/2012 has been revoked, by law this restriction shall no longer apply.

Other notable provisions

- **Annual report:** The deadline to submit the annual report is now moved from previously 31 March to 31 June every year.
- **Existing STPW.** Every STPW issued pursuant to the previous regulation shall remain effective until the expiry date of the STPW.

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