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FRANCHISE ACT 1998

(Act 590)

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FRANCHISE ACT 1998

(Act 590)

An Act to provide for the registration of, and to regulate, franchises, and for incidental matters.

[]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

1. Short title.

This Act may be cited as the Franchise Act 1998.

2. Commencement.

This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

3. Application.

(1) This Act applies throughout Malaysia to the sale of any franchise in Malaysia.

(2) The sale of a franchise is deemed to be in Malaysia where—

(a) an offer to sell or buy a franchise—

(i) is made in Malaysia and accepted within or outside Malaysia; or

(ii) is made outside Malaysia and accepted within Malaysia; and

(b) the franchised business is operated or will be operating in Malaysia.

(3) Nothing in this Act shall affect the provisions of any other written laws, but if there is any conflict between the provisions of this Act and the provisions of the other written laws, the provisions of this Act shall prevail.

4. Interpretation.

In this Act, unless the context otherwise requires—

“advertisement” means any publication, circular, notice, or any oral or written communication, whether broadcasted by electronic or any other publishing media, or any form of electronic communications to the public for the purpose of offering the sale of a franchise or promoting the sale of a franchise;

“authorised officer” means an officer authorised in writing by the Minister under section 42 to exercise the powers of enforcement under this Act;

“disclosure documents” means such disclosure documents as may be prescribed by the Minister;

“franchise” means a contract or an agreement, either expressed or implied, whether oral or written, between two or more persons by which—

- (a) the franchisor grants to the franchisee the right to operate a business according to the franchise system as determined by the franchisor during a term to be determined by the franchisor;
- (b) the franchisor grants to the the franchisee the right to use a mark, or a trade secret, or any confidential information or intellectual property, owned by the franchisor or relating to the franchisor, and includes a situation where the franchisor, who is the registered user of, or is licensed by another person to use, any intellectual property, grants such right that he possesses to permit the franchisee to use the intellectual property;
- (c) the franchisor possesses the right to administer continuous control during the franchise term over the franchisee’s business operations in accordance with the franchise system;

- (d) the franchisor has the responsibility to provide assistance to the franchisee to operate his business including such assistance as the provision or supply of materials and services, training, marketing, and business or technical assistance;
- (e) in return for the grant of rights, the franchisee may be required to pay a fee or other form of consideration; and
- (f) the franchisee operates the business separately from the franchisor, and the relationship of the franchisee with the franchisor shall not at anytime be regarded as a partnership, service contract or agency;

“franchise agreement” means a contract or an agreement made between a franchisor and a franchisee in respect of a franchise in return for any form of consideration but does not include any contract or agreement made for the purpose of direct selling as provided by the Direct Sales Act 1993;

“franchise broker” means a person doing business as an agent or representative of a franchisor to sell a franchise to any person for a certain consideration but does not include any director, officer or employee of the franchisor or franchisee;

“franchisee” means a person to whom a franchise is granted and includes, unless stated otherwise in this Act—

- (a) a master franchisee with regard to his relationship with a franchisor; and
- (b) a sub-franchisee with regard to his relationship with a master franchisee;

“franchisor” means a person who grants a franchise to a franchisee and includes a master franchisee with regard to his relationship with a sub-franchisee, unless stated otherwise in this Act;

“mark” includes a trade mark, service mark, symbol, design, brand, heading, label, ticket, name, signature, word and letter or any combination of them;

“master franchisee” means a person who has been granted rights by a franchisor to sub-franchise to another person, at his own expense, the franchise of the franchisor;

“Minister” means the Minister for the time being charged with the responsibility for matters relating to franchises;

“person” includes a natural person, corporation, partnership, association, firm, joint venture or trust;

“prescribed” means prescribed by regulations made under this Act;

“Registrar”, “Deputy Registrar” and “Assistant Registrar” mean respectively the Registrar of Franchises, a Deputy Registrar of Franchises and an Assistant Registrar of Franchises appointed under section 5;

“regulations” means regulations made under this Act;

“this Act” includes any regulations made under this Act.

PART II

APPOINTMENT OF REGISTRAR OF FRANCHISES, REGISTRATION, *ETC.*

5. Appointment of Registrar, Deputy Registrar, *etc.*

(1) The Minister may appoint a public officer as a Registrar of Franchises and such number of Deputy Registrars of Franchises, Assistant Registrars of Franchises and other officers as may be necessary for the purposes of this Act.

(2) The Registrar shall, subject to the general direction and control of the Minister, perform the duties imposed and exercise the powers conferred on him under this Act.

(3) The Deputy Registrar, Assistant Registrars and other officers appointed under subsection (1) shall be under the direction and control of the Registrar.

(4) The Deputy Registrar may perform all the duties and exercise all the powers conferred upon the Registrar under this Act.

(5) The Registrar or Deputy Registrar may perform all the duties imposed and exercise all the powers conferred upon an Assistant Registrar under this Act.

(6) All officers appointed under this section shall be deemed to be public servants within the meaning of the Penal Code.

6. Registration.

(1) A franchisor shall register his franchise with the Registrar before he can make an offer to sell the franchise to any person.

(2) A person who fails to comply with this section commits an offence unless he has been exempted by the Minister under section 58 from the requirement to register under this section.

7. Application for registration.

(1) A franchisor shall make an application to register his franchise by submitting to the Registrar the application in the prescribed form together with—

- (a) the complete disclosure documents with all the necessary particulars filled in;
- (b) a sample of the franchise agreement;
- (c) the operation manual of the franchise;
- (d) the training manual of the franchise;
- (e) a copy of the latest audited accounts, financial statements, and the reports, if any, of the auditors and directors of the applicant; and
- (f) such other additional information or documents as may be required by the Registrar for the purpose of determining the application.

(2) At any time after receiving an application and before it is determined, the Registrar may, by written notice,

require the applicant, or the director or manager of the applicant, to provide additional information or documents.

(3) The matters specified under paragraph (1)(f) or the requirements under subsection (2) may differ as between different applicants, or different classes, categories or descriptions of applicants.

(4) An application under this section may be withdrawn at any time before it is approved or refused.

(5) If any additional information or document required under subsection (2) is not provided by the applicant or his director or manager within the time specified in the requirement or any extension of time granted by the Registrar, the application shall be deemed to have been withdrawn and shall not be further proceeded with, but without affecting any fresh application being made by the applicant.

(6) A person who submits false or misleading information or documents under this section commits an offence.

8. Approval or refusal of application for registration.

(1) Upon receipt of an application for registration together with the information or documents required under section 7, the Registrar may approve or refuse the application, and shall give the reason for the refusal.

(2) An application for registration which is approved under this section may be subject to such conditions as the Registrar may impose.

(3) Upon approving an application under subsection (1), the Registrar may require the applicant to pay such amount of fees as may be prescribed.

(4) The Registrar shall give the applicant a written notice of his decision under this section.

9. Effective date of registration of franchise.

If the registration of a franchise is approved under section 8, the registration shall be effective on the date stated in the written notice given by the Registrar and such date shall be after the date of the filing of all required information or documents unless, prior to it, one of the following events has taken place:

- (a) the Registrar has notified the applicant that the applicant has failed to comply with the requirements of section 6 and subsections 7(1), (2) and (3); or
- (b) the Registrar has issued an order under section 10 or paragraph 16(3)(b).

10. Period of effectiveness.

The registration of a franchise shall continue to be effective unless the Registrar issues an order made by written notice to the applicant or the franchisor to suspend, terminate, prohibit or deny the sale or registration of the franchise under this Act.

11. Amendments to disclosure documents.

(1) If there is any material change in the disclosure documents mentioned in paragraphs 7(1)(a) and (f), the applicant or his director or manager shall amend the documents according to the prescribed form.

(2) The documents in subsection (1) shall be filed with the Registrar.

(3) The Registrar may, at any time, require additional information on the amendments made under this section.

12. Notice of suspension, termination, etc., of registration.

(1) Subject to section 13, if the Registrar proposes to suspend, terminate, prohibit or deny the sale or registration of a franchise, he shall give the applicant or the franchisor written notice of his intention to do so, specifying the nature of the proposed action and the grounds on which he proposes to take such action, and he shall

give the applicant or the franchisor an opportunity to make a written representation on the matter within fourteen days from the date of service of the notice.

(2) After the expiry of the period of fourteen days mentioned in subsection (1) and after considering any representation made by the applicant or franchisor under that subsection, the Registrar shall decide whether to proceed with the proposed action or to take no further action.

(3) The Registrar shall give the applicant or franchisor written notice of his decision under subsection (2) and the decision shall take effect from the date on which the written notice is served on the applicant or franchisor.

13. Cancellation from register.

(1) A franchisor may, at any time after the franchise term, apply to the Registrar for cancellation of the registration of the franchise from the register.

(2) The Registrar shall accordingly cancel the registration of the franchise from the register if he is satisfied that the franchisor is no longer granting rights under the franchise.

14. Registration of franchise broker.

(1) A franchise broker shall register himself with the Registrar in the following manner:

(a) by using the prescribed application form; and

(b) by filing with the Registrar any information, which shall be determined by the Registrar, in respect of any representative or agent appointed by the franchise broker.

(2) The franchise broker must meet all the requirements as prescribed on the qualifications of a franchise broker before he can be registered.

(3) The Registrar may impose conditions on the registration of a franchise broker.

(4) The conditions in subsection (3) may include conditions governing the sale of a franchise by a franchise broker and conditions on the conduct, suspension, termination, prohibition or denial of registration of a franchise broker.

(5) The registration under this section shall be effective for one year from the date of registration, unless determined otherwise by the Registrar.

(6) The provisions relating to confidential information and the prohibition on carrying on a similar business in sections 26 and 27 are also applicable to a franchise broker.

15. Compulsory practice.

(1) A franchisor shall submit to a franchisee a copy of the franchise agreement and disclosure documents at least ten days before the franchisee signs the agreement with the franchisor.

(2) The disclosure documents in subsection (1) shall be the same documents submitted to the Registrar.

(3) A person who fails to comply with this section commits an offence.

16. Annual report.

(1) Annually the franchisor shall, within thirty days from the anniversary date of the registration, submit a report to the Registrar in the prescribed form.

(2) The report shall contain the disclosure documents which have been updated.

(3) The Registrar may review the report and disclosure documents and—

- (a) notify the franchisor if any additional information or modification of the disclosure documents is to be included or deleted; or
- (b) issue an order to suspend, terminate, prohibit or deny the sale or registration of the franchise in the public interest or for the purpose of protecting prospective franchisees until any deficiencies specified by the Registrar have been corrected.

17. Appeal against Registrar's decision.

(1) A person who is aggrieved by any decision of the Registrar under this Part may appeal to the Minister in the prescribed manner within one month from the date the decision is communicated to the person.

(2) The Minister's decision on the appeal shall be final.

PART III

FRANCHISE AGREEMENT

18. Requirements of franchise agreement.

(1) A franchise agreement shall be in writing.

(2) A franchise agreement shall contain but is not limited to—

- (a) the name and description of the product and business under the franchise;
- (b) the territorial rights granted to the franchisee;
- (c) the franchise fee, promotion fee, royalty or any related type of payment which may be imposed on the franchisee, if any;
- (d) the obligations of the franchisor;
- (e) the obligations of the franchisee;
- (f) the franchisee's rights to use the mark or any other intellectual property, pending the registration or after the registration of the franchise;

- (g) the conditions under which the franchisee may assign the rights under the franchise;
- (h) a statement on the cooling off period as provided in subsection (4);
- (i) a description pertaining to the mark or any other intellectual property owned or related to the franchisor which is used in the franchise;
- (j) if the agreement is related to a master franchisee, the franchisor's identity and the rights obtained by the master franchisee from the franchisor;
- (k) the type and particulars of assistance provided by the franchisor;
- (l) the duration of the franchise and the terms of renewal; and
- (m) the effect of termination or expiration of the franchise agreement.

(3) Failure to comply with subsection (2) shall render a franchise agreement null and void.

(4) A franchise agreement shall have a cooling off period, which shall be determined by both contracting parties but shall not be less than seven working days, during which the franchisee has the option to terminate the agreement.

(5) Upon termination of the franchise agreement under subsection (4), an amount to cover the reasonable expenses incurred by the franchisor to prepare the agreement may be retained by the franchisor from the initial fees paid under section 19; however, all other monies shall be refunded to the franchisee.

(6) A person who fails to comply with subsection (5) commits an offence.

19. Payment of franchise fee, etc.

If a franchisor requires that a franchisee makes a payment before signing a franchise agreement, including

a payment which is part of a franchise fee, the franchisor shall state in writing the purpose for the payment and the conditions for the use and refund of the monies.

20. Prohibition against discrimination.

It shall be an unfair franchise and a contravention of this Act for any franchisor to unreasonably and materially discriminate between franchisees operating a franchise in the charges offered or made for franchise fees, royalties, goods, services, equipment, rentals or advertising services if such discrimination will cause competitive harm to a franchisee who competes with a franchisee who receives the benefit of the discrimination, unless and to the extent that any classification of or discrimination between franchisees is—

- (a) based on franchises granted at different times, and such discrimination is reasonably related to the differences in time;
- (b) related to one or more programmes for making franchises available to persons with insufficient capital, training, business experience or education, or lacking other qualifications;
- (c) related to efforts by the Government or any of its agencies to promote variation in products or service lines or business formats or designs;
- (d) related to efforts by one or more franchisees to cure deficiencies in the operation of franchised businesses or defaults in franchise agreements;
or
- (e) based on other reasonable distinctions considering the purposes of this Act and is not arbitrary.

21. Payment of franchise fees or royalty.

If a franchisee is required to pay any franchise fees or royalty to a franchisor, the rate of franchise fees or royalty shall be the rate as provided in the disclosure documents.

22. Promotion Fund.

(1) A franchisor who requires a franchisee to make any payment for the purpose of the promotion of a franchise shall establish a Promotion Fund (“Fund”).

(2) The Fund shall be managed under a separate account and shall only be used for the promotion of the product under the franchise.

(3) If a franchisee is required to make any payment under section 23, the franchisor shall submit a financial statement of the Fund, which has been endorsed by a registered public accountant, to the Registrar within thirty days after the conclusion of the last financial term.

(4) The financial statement in subsection (3) shall be submitted to the Registrar together with the annual report under section 16.

(5) A person who fails to comply with this section commits an offence.

23. Promotion fees, etc.

(1) If a franchisee is required to make any payment for promotional purposes or pay promotion fees to the franchisor, the payment shall be at the rate as provided in the disclosure documents.

(2) The payment required to be made under subsection (1) shall be deposited into the Fund.

24. Registration of trade mark or service mark.

A franchisor is required to register his trade mark or service mark relevant to his franchise in accordance with the Trade Marks Act 1976 (if they are registrable under the Act) before applying for the registration of the franchise under section 7.

25. Franchise term.

A franchise term shall not be less than five years.

26. Confidential information.

(1) A franchisee shall give a written guarantee to a franchisor that the franchisee and his employees shall not disclose to any person any information contained in the operation manual or obtained while undergoing training organized by the franchisor during the franchise term and for two years after the expiration or earlier termination of the franchise agreement.

(2) The franchisee and his employees shall comply with the terms of the written guarantee given under subsection (1).

(3) A person who fails to comply with subsection (1) or (2) commits an offence.

27. Prohibition against similar business.

(1) A franchisee shall give a written guarantee to a franchisor that the franchisee and his employees shall not carry on any other business similar to the franchised business operated by the franchisee during the franchise term and for two years after the expiration or earlier termination of the franchise agreement.

(2) The franchisee and his employees shall comply with the terms of the written guarantee given under subsection (1).

(3) A person who fails to comply with subsection (1) or (2) commits an offence.

28. Waivers void.

(1) Any condition, stipulation or provision in a franchise agreement purporting to bind a franchisee to waive compliance with any provision of this Act is void.

(2) This section shall not prevent any person from entering into a settlement agreement or executing a general release regarding a potential or actual civil action filed in respect of the franchise nor shall it prevent the arbitration of any claim.

PART IV
CONDUCT OF PARTIES AND TERMINATION OF
FRANCHISE AGREEMENT

29. Conduct of parties.

(1) A franchisor and a franchisee shall act in an honest and lawful manner and shall endeavour to pursue the best franchise business practice of the time and place.

(2) A franchisor and a franchisee in their dealings with one another shall avoid the following conduct:

- (a) substantial and unreasonable overvaluation of fees and prices;
- (b) conduct which is unnecessary and unreasonable in relation to the risks to be incurred by one party; and
- (c) conduct that is not reasonably necessary for the protection of the legitimate business interests of the franchisor, franchisee or franchise system.

30. Obligations of franchisor and franchisee.

(1) A franchisor shall give a written notice about a breach of contract by a franchisee and allow the franchisee time to remedy the breach.

(2) A franchisee shall pay the franchise fees, royalty, promotion fees or any other payment as provided in the franchise agreement.

(3) A franchisor shall provide assistance to a franchisee to operate his business, such as the provision or supply of materials and services, training, marketing, and business or technical assistance.

(4) A franchisor and a franchisee shall protect the consumer's interests at all times.

31. Termination of franchise agreement.

(1) No franchisor shall terminate a franchise agreement before the expiration date except for good cause as provided in subsections (2) and (3).

(2) “Good cause” shall include, but is not limited to—

- (a) the failure of a franchisee to comply with any terms of the franchise agreement or any other relevant agreement entered into between the franchisor and franchisee; and
- (b) the failure of the franchisee to remedy the breach committed by him or any of his employees within the period stated in a written notice given by the franchisor, which shall not be less than fourteen days, for the breach to be remedied.

(3) “Good cause” shall include, but without the requirement of notice and an opportunity to remedy the breach, circumstances in which the franchisee—

- (a) makes an assignment of the franchise rights for the benefit of creditors or a similar disposition of the assets of the franchise to any other person;
- (b) voluntarily abandons the franchised business;
- (c) is convicted of a criminal offence which substantially impairs the goodwill associated with the franchisor’s mark or other intellectual property; or
- (d) repeatedly fails to comply with the terms of the franchise agreement.

32. Non-renewal of franchise agreement.

A franchisor commits an offence if he refuses to renew a franchise agreement or extend a franchise term without compensating a franchisee either by a repurchase or by other means at a price to be agreed to between the franchisor and the franchisee after considering the diminution in the value of the franchised business caused by the expiration of the franchise where—

- (a) the franchisee is barred by the franchise agreement, or by the refusal of the franchisor at least six months before the expiration date of the franchise agreement to waive any portion of the franchise agreement which prohibits the franchisee, from continuing to conduct

substantially the same business under another mark in the same area subsequent to the expiration of the franchise agreement; or

- (b) the franchisee has not been given a written notice of the franchisor's intent not to renew the franchise agreement at least six months prior to the expiration date of the franchise agreement.

33. Earlier termination of franchise term.

Notwithstanding section 25, a franchise term may be terminated before the expiry of the minimum term of five years in the following circumstances:

- (a) where both parties to the franchise agreement agree to a termination; or
- (b) where the court has decided that there are certain conditions in the franchise agreement which merit the agreement to be terminated earlier than the minimum term.

34. Extension of franchise term.

(1) At any time before the expiration of the franchise term, a franchisee shall at his option give written notice to the franchisor to extend the franchise term.

(2) Except when a franchisee has breached the terms of a previous franchise agreement, a franchisor shall extend the franchise term to another period if the franchisee has applied for the extension of term under subsection (1).

(3) A franchise agreement which franchise term has been extended shall contain conditions which are similar or not less favourable than the conditions in the previous franchise agreement.

PART V

FRANCHISE ADVISORY BOARD

35. Franchise Advisory Board.

- (1) There is established a Franchise Advisory Board.
- (2) The Franchise Advisory Board shall consist of such persons, not exceeding fifteen in number, as the Minister may, from time to time, appoint.
- (3) The members to be appointed under subsection (1) shall be persons who have wide knowledge and experience in matters relating to franchises.
- (4) The members of the Franchise Advisory Board may receive such remuneration as may be prescribed for their services.

36. Functions of Franchise Advisory Board.

- (1) The Franchise Advisory Board shall advise the Minister and the Registrar on matters relating to franchises, and the due administration and enforcement of laws relating to franchises.
- (2) The Minister and the Registrar shall not be bound to act upon the advice or report of the Franchise Advisory Board.

PART VI

OFFENCES AND PENALTIES

37. Offence for fraud, deceit, etc.

- A person who, whether directly or indirectly—
- (a) employs any device or scheme in order to defraud;
 - (b) makes any untrue statement of a material fact or omits to state a material fact which renders his statement to be misleading;
 - (c) engages in any act, practice or course of business, which operates or would operate as a fraud or

deceit upon any person, in relation to an offer to sell or a sale of a franchise,

commits an offence.

38. Obstruction of officers.

A person who—

- (a) obstructs any person appointed under this Act acting in pursuance of this Act;
- (b) fails to comply with any requirement properly made to him by an authorised officer under this Act; or
- (c) without reasonable cause fails to give to an authorised officer any assistance or information which may reasonably be required by the officer for the purpose of the performance of his duties under this Act,

commits an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

39. General penalty.

(1) A person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable—

- (a) for the first offence, to a fine of not less than five thousand ringgit and not more than fifty thousand ringgit; and
- (b) for a second or subsequent offence, to a fine of not less than ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Upon sentencing a franchisor for a first offence, the court may—

- (a) declare the franchise agreement between the

franchisor and any franchisee to be null and void;

- (b) order that the franchisor refunds any form of payment which he has obtained from any franchisee; or
- (c) prohibit the franchisor from making any new franchise agreement or appointing any new franchisee.

40. Offence by body corporate.

If an offence against any provision of this Act has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such body corporate, or was assisting in such management, shall be deemed to have committed that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—

- (a) that the offence was committed without his knowledge, consent or connivance; and
- (b) that he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

41. Compounding of offences.

(1) The Registrar may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act and prescribed by the Minister to be a compoundable offence by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Registrar of an amount of money not exceeding fifty per cent of the amount of maximum fine for that offence within the time specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted.

(3) If the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Registrar may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) If an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made.

(5) All sums of money received by the Registrar under this section shall be paid into and form part of the Federal Consolidated Fund.

PART VII ENFORCEMENT

42. Authorised officer.

(1) The Minister may, in writing, authorise the Registrar or any Deputy Registrar, Assistant Registrar or public officer to exercise the powers of enforcement under this Act.

(2) In exercising any of the powers of enforcement under this Act, an authorised officer shall on-demand produce to the person against whom he is acting the authority card signed by the Minister and issued to him.

43. Power to investigate.

(1) An authorised officer may investigate the activities of a franchisor, franchise broker or franchisee for the purpose of determining whether he is complying with this Act.

(2) For the purposes of subsection (1), the authorised officer may issue orders to a franchisor, franchise broker or franchisee to further his investigation and secure compliance with this Act.

(3) In addition to his powers under subsections (1) and (2), in any case relating to the commission of an offence under this Act, an authorised officer carrying on an investigation may exercise all or any of the powers in relation to police investigation in seizable cases given by the Criminal Procedure Code.

44. Search by warrant.

(1) If it appears to a Magistrate, upon written information on oath and after such inquiry as he considers necessary, that there is reasonable cause to believe that an offence under this Act is being or has been committed on any premises, the Magistrate may issue a warrant authorising any authorised officer named therein, to enter the premises at any reasonable time by day or by night, with or without assistance and if need be by force.

(2) An authorised officer may, in the premises entered under subsection (1), search and seize—

- (a) copies of any books, accounts or other documents, including computerised data, which contain or are reasonably suspected to contain information as to any offence so suspected to have been committed;
- (b) any mark, signboard, card, letter, pamphlet or other device or thing representing or implying that the person is a franchisor, franchise broker or franchisee;
- (c) any other document or item that is reasonably believed to furnish evidence of the commission of such offence.

(3) An authorised officer conducting a search under subsection (1) may, if in his opinion it is reasonably necessary to do so for the purpose of investigating into the offence, search any person who is in or on such premises.

(4) An authorised officer making a search of a person under subsection (3) may seize, detain or take possession

of any book, accounts, document, computerised data, mark, card, letter, pamphlet, device or thing found on such person for the purpose of the investigation being carried out by such officer.

(5) Where, by reason of its nature, size or amount, it is not practicable to remove any book, accounts, document, computerised data, mark, signboard, card, letter, pamphlet, device or thing seized under this section, the seizing officer shall, by any means, seal such book, accounts, document, computerised data, mark, signboard, card, letter, pamphlet, device or thing in the premises or container in which it is found.

(6) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (5) or removes any book, accounts, document, computerised data, mark, signboard, card, letter, pamphlet, device or thing under seal or attempts to do so commits an offence.

45. Search and seizure without warrant.

If an authorised officer in any of the circumstances referred to in section 44 has reasonable cause to believe that by reason of delay in obtaining a search warrant under that section the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, such officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 44 in as full and ample a manner as if he were authorised to do so by a warrant issued under that section.

46. Search of female person.

No female person shall be searched under section 44 or 45 except by another female person.

47. Access to computerised data.

An authorised officer conducting a search under section 44 or 45 shall be given access to computerised data whether stored in a computer or otherwise.

48. List of things seized.

(1) Except as provided in subsection (2), where any book, accounts, document, computerised data, mark, signboard, card, letter, pamphlet, device or thing is seized under section 44 or 45, the seizing officer shall prepare a list of the things seized and immediately deliver a copy of the list signed by him to the occupier of the premises which have been searched, or to his agent or servant, at those premises.

(2) Where the premises are unoccupied, the seizing officer shall whenever possible post a list of the things seized conspicuously on the premises.

49. Power to require attendance of person acquainted with case.

(1) An authorised officer making an investigation under this Act may by order in writing require the attendance before himself of a person who appears to the authorised officer to be acquainted with the circumstances of the case, and the person shall attend as so required.

(2) If the person fails to attend as required, the authorised officer may report the failure to a Magistrate who shall issue a warrant to secure the attendance of the person.

50. Examination of person acquainted with case.

(1) An authorised officer making an investigation under this Act may examine orally a person supposed to be acquainted with the facts and circumstances of the case.

(2) The person shall be legally bound to answer all questions relating to the case put to him by the authorised officer, but the person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not the statement is made wholly or partly in answer to questions.

(4) The authorised officer obtaining information from a person shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish.

51. Additional powers.

An authorised officer shall, for the purposes of the execution of this Act, have power to do all or any of the following:

- (a) to require the production of records, accounts, computerised data and documents kept by a franchisor, franchise broker or franchisee and to inspect, examine and copy any of them;
- (b) to require the production of any identification document from any person in relation to any case or offence under this Act;
- (c) to make such inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with.

52. Prosecution.

No prosecution shall be instituted under this Act without the consent in writing of the Public Prosecutor.

PART VIII

MISCELLANEOUS

53. Sale of franchise to non-citizen subject to Registrar's approval.

A franchisor who intends to sell a franchise to a person who is not a Malaysian citizen shall obtain the approval of, and be subject to the conditions which may be imposed by, the Registrar.

54. Sale of franchise by foreigner in Malaysia.

(1) A foreign person who intends to sell a franchise in Malaysia or to any Malaysian citizen shall submit an application to the Registrar.

(2) The Registrar may approve or refuse an application under subsection (1) without giving any reason for the refusal.

(3) An application which is approved under this section may be subject to such conditions as the Registrar may impose.

55. Registration of franchisee of foreign franchisor.

(1) Notwithstanding section 6, a franchisee of a foreign franchisor shall register his franchise with the Registrar by using the prescribed application form.

(2) The Registrar may impose conditions on the registration of a franchisee referred to in subsection (1).

56. Public inspection of disclosure documents.

The Registrar may allow the public inspection of any disclosure documents filed with the Registrar unless, in his opinion, the inspection may bring harm to a franchisor or franchisee or any person involved in the franchised business related to the inspection or the inspection is not necessary or appropriate in the public interest.

57. Advertisement.

(1) A person who wishes to publish, distribute or use any advertisement offering to sell or to buy a franchise under this Act shall file with the Registrar one original copy of the advertisement at least five days before the first publication, distribution or use of the advertisement or such shorter period as may be approved by the Registrar, or unless the advertisement has been exempted from this section by the Registrar.

(2) The Registrar may, by order, prohibit the use of any advertising deemed to be false, fraudulent, misleading or deceptive.

(3) A person who fails to comply with subsection (1) commits an offence.

58. Power to exempt.

The Minister may, by order published in the *Gazette*, exempt, subject to such conditions as he deems fit to impose, any person or class of persons or business or industry from all or any of the provisions of this Act.

59. Protection of officers.

No action or prosecution shall be brought, instituted or maintained in any court against—

- (a) the Registrar, Deputy Registrar, Assistant Registrar or any officer or person duly authorised under this Act for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Act; and
- (b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Minister, Registrar, Deputy Registrar, Assistant Registrar, or any officer or person duly authorised under this Act if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it.

60. Regulations.

(1) The Minister may make regulations for all or any of the following purposes:

- (a) prescribing the forms, procedure and other requirements for the purposes of this Act;
- (b) prescribing the form and content of disclosure documents;
- (c) prescribing the fees or charges to be paid to the Registrar in respect of the registration of a franchise and the manner for collecting and disbursing such fees or charges;

- (d) prescribing the procedure for appeal under this Act;
- (e) prescribing the procedure and requirements for the registration of any franchise granted or sold in or outside Malaysia by a franchisor or a franchise broker before the commencement of this Act;
- (f) prescribing the remuneration for the services of the Franchise Advisory Board; and
- (g) providing for such other matters as are contemplated by, or necessary for giving full effect to, the provisions of this Act and for their due administration.

(2) The regulations made under subsection (1) may prescribe any act in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding five years or both.

61. Savings and transitional.

A franchisor or a franchise broker who has granted or sold in or outside Malaysia a franchise to a franchisee before the commencement of this Act shall, not later than twelve months from the commencement, register his franchise with the Registrar in accordance with the prescribed procedure and requirements under this Act.