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Navigating Indonesia's Latest Franchise Regulation

In response to the growing number of franchise businesses in Indonesia, the Government of Indonesia introduced Government Regulation No. 35 of 2024 on Franchise ("GR 35/2024"), which revokes the previous Government Regulation No. 42 of 2007 on Franchise ("GR 42/2007"). While GR 35/2024 came into force on 2 September 2024, the current Ministry of Trade Regulation No. 71 of 2019 on the Implementation of Franchise ("MOT Reg 71/2019") will remain in effect until a new ministerial regulation is issued to replace it.

We highlight several notable provisions under GR 35/2024 as follows.

I. Updated Franchise Criteria

Franchise criteria were previously outlined in GR 42/2007. However, these criteria have been updated under GR 35/2024 as follows:

a) Business System

GR 35/2024 simplifies and consolidates several criteria from GR 42/2007, including: (i) possessing business characteristics; (ii) having written service standards for the products and/or services offered; and (iii) being easy to teach and implement, merging them into a single business system criterion.¹

GR 35/2024 elaborates that the business system shall be in the form of operational standards and procedures, which must at least include: (i) human resource management; (ii) administration; (iii) operational management; (iv) standard operating methods; (v) business location selection; (vi) business premises design; (vii) employee requirements; and (viii) marketing strategy.² The business system shall be reflected in both the prospectus and the franchise agreement.³

b) Profitability Assessment Thresholds

GR 42/2007 and GR 35/2024 mandate that a franchise shall be a profitable business in order to be franchised. Under Article 3(b) of GR 42/2007, in conjunction with Article 2(2) and (3) of MOT Reg 71/2019, profitability may be proven if, among other factors, the franchisor has at least 5 years of experience and the franchise business has shown sustainable growth and profitability.

¹Article 4(4) of GR 35/2024.

²Article 4(3) of GR 35/2024.

³Article 5(2) in conjunction with 6(2) of GR 35/2024.

Under Article 4(5) of GR 35/2024, the profitability requirement is amended. Profitability can be proven if: (i) the franchise business has been operating for at least 3 consecutive years; and (ii) the audited financial statements (with an unqualified opinion) for the last 2 years show profits.⁴

c) **Registration or Recording of Intellectual Property Rights**

GR 42/2007 permits the franchisee to operate the franchise business regardless of whether the intellectual property rights have been registered and certified or are in the process of registration.⁵ However, GR 35/2024 sets a stricter requirement, stipulating that intellectual property rights (including trademarks, copyrights, patents, trade secrets, industrial designs, and integrated circuit layout designs) must be registered and recorded prior to the registration of the franchise, and must be valid upon the signing of the franchise agreement.⁶

II. **Franchise Offering Prospectus**

GR 42/2007, its implementing regulation MOTR 71/2019, and GR 35/2024 mandate that franchisors provide a franchise offering prospectus prior to entering into a franchise agreement. Under GR 35/2024, franchisors must provide the prospectus to the franchisee (in Indonesian) at least 14 days before the execution of the franchise agreement.

Certain mandatory clauses must be included in GR 35/2024, such as background information on the franchisor, financial statements for the last 2 years, the number of outlets, the business system, and IP certificates.

III. **New Provisions under the Franchise Agreement**

Under Article 6(1) of GR 35/2024, franchise activities shall be based on franchise agreements entered into by the franchisor/sub-franchisor and franchisee/sub-franchisee. Similar to GR 42/2007, GR 35/2024 requires franchise agreements to include mandatory provisions, expanding these provisions to include business systems, IP registration, and mandatory compensation and/or franchise rights from the franchisor if the franchisor ceases its business activities.⁷

IV. **Emphasis on Using Domestic Goods and Services**

GR 35/2024 strengthens the requirement under GR 42/2007 which mandates that franchisors and franchisees prioritize qualified locally produced goods and services and conduct the processing of raw materials domestically.

V. **Franchise Registration Certificate (STPW)**

To operate a franchise in Indonesia, franchisors, sub-franchisors, franchisees, and sub-franchisees must obtain a franchise registration certificate (Surat Tanda Pendaftaran Waralaba, "STPW").⁸

For franchisors and sub-franchisors, STPW must be obtained before entering into a franchise agreement.⁹ As for franchisees and sub-franchisees, STPW must be obtained after entering into a franchise agreement and prior to operating the franchise business.¹⁰

⁴Article 4(5) of GR 35/2024.

⁵Elucidation of Article 3(f) of GR 42/2007.

⁶Article 4(2)c of GR 35/2024.

⁷Article 6(2) of GR 35/2024.

⁸Article 12 of GR 35/2024.

⁹Article 13(1) of GR 35/2024.

¹⁰Article 14(1) of GR 35/2024.

The following are several updates regarding the STPW:

a) Requirements for a Foreign Franchisor

While GR 42/2007 did not impose additional requirements on foreign franchisors seeking to apply for an STPW, GR 35/2024 now mandates the submission of a legalized or apostilled business license issued by the competent authority in the franchisor's country of origin. In addition, a certificate of business continuity issued by the Indonesian Trade Attaché or a designated Indonesian representative is also required.¹¹

b) Revocation of STPW Validity Period

The STPW validity period has undergone a significant change. Previously, the STPW validity was limited to five years, requiring renewal upon expiration.¹² However, under GR 35/2024, the fixed validity period has been eliminated, and renewal processes are no longer necessary. The franchisor's STPW shall remain valid until revoked for the following reasons: (i) the franchisor ceases its business activities; or (ii) the IP registration expires in accordance with prevailing laws and regulations.¹³

All STPWs issued prior to the promulgation of GR 35/2024 will remain valid until the end of their respective validity periods.

VI. Sanctions

Failure to comply with the requirements under GR 35/2024 may result in administrative sanctions, including written reprimand, temporary suspension of business activities, or revocation of the STPW. The regulation also prohibits individuals or business entities from using the term or name of franchise without holding an STPW or from using or abusing the franchise logo without authorization.¹⁴

Conclusion

The issuance of GR 35/2024 aims to create a more favorable franchise business environment in Indonesia, provide more legal certainty, and foster partnerships between franchisors, franchisees, and micro, small, and medium-scale businesses. This new regulation is expected to unlock numerous opportunities and contribute to the improvement and dynamic growth of the franchise sector in Indonesia. Moving forward, franchisors and franchisees in Indonesia must adhere to the requirements set out in GR 35/2024, including provisions related to franchise agreements, prospectuses, and STPW applications made after the regulation's effective date.

¹¹Article 13(3) of GR 35/2024.

¹²Article 12(5) of GR 42/2007.

¹³Article 16 of GR 35/2024.

¹⁴Article 38 of GR 35/2024.

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