

Malaysia is the ultimate franchise “frontier”

As John O’Brien, chairman of Asian Pacific Franchise Confederation, recently declared “the franchise industry in Malaysia is exciting”: it has been growing at a rapid pace of 12 to 15% in the past five years following the Government’s efforts in emphasizing the need to go into franchising. The franchise industry contributed about 6 billion euro to the nation’s Gross Domestic Product, which is about 2.5%.

There are 670 franchise brands in Malaysia, out of which 70% are local. Sectors that top the list are food and beverage, retailing, education and beauty and health, among other businesses.

September 20th franchise fair in Kuala Lumpur was a success

The Franchise International Malaysia fair, which took place on September 20th participation of 110 local and overseas franchise companies, was a great success. It is the largest annual franchising exhibition and conference in Southeast Asia and it is the tangible proof of the importance of the Malaysian franchise market in the international scene.

Local franchise brands have a big potential in exploring the international market considering that there are now 49 of them in 51 countries and having established almost 1,500 branches. They are the new potential conquerors of the global franchise market!

The Malaysian Franchise Law

In Malaysia, franchising has been insistently promoted and supported by the government since the early 1990s and this allows us to think about Malaysia as one of the fastest growing franchise markets in Asia today.

The Malaysian Franchise Act, adopted in 1988 and amended in 2012, which applies throughout Malaysia and to the sale and operation of any franchise in Malaysia, was introduced to facilitate and monitor the growth of the franchise industry. For that purpose, under section 6(a) and 54 of the Franchise Act, franchisors, master franchisees and franchisees of foreign franchisors are required to seek an approval from or register with the Registrar of franchise before they can offer to sell or buy franchises in Malaysia.

One requirement that is highly unpopular among franchisors and local master franchisees is that they must be in operation for at least three years before they are permitted to appoint sub-franchisees. The Authorities have taken that it is one of the prescribed requirements under law due to Section 18 of the Disclosure Document, which requires the franchisors or master franchisees to submit audited financial instrument of the past three years. However, under a customary law, foreign franchisors can get the approval from the Registrar as long as they are already in a franchise business before offering the business in Malaysia and if they represent a well-known brand at least in their national market.

From the jurisdictional point of view, it could be useful to bear in mind the mechanism offered by the Commonwealth system, in particular the Singapore’s Reciprocal Enforcement of Commonwealth Judgments Act (chapter 264). The foreign franchisor who wants to sign a franchise fair in Kuala Lumpur was a success master franchise agreement in Malaysia can include in the master franchise contract a clause conferring jurisdiction to the Singaporean courts. The value of this “move” is evident because of the chance to enforce in Malaysia any decision of the competent tribunal, since Malaysia has also embodied in its legislative body the Reciprocal Enforcement of Judgments Act and given that Singaporean courts have a stronger legal tradition than the local courts in Kuala Lumpur, even if the Malaysia commercial law is shaped on the UK model.

The Government has set a strategic goal of making Malaysia the regional franchise center in 2016

The National Franchise Development Blueprint sets a strategic direction towards making the country a regional franchise center in Southeast Asia by 2016. This is a five-year program, spanning the period from 2012 to 2016, which aims to contribute toward national economic development agenda and creation of a high income society. This program has three main phases: the first aims to strengthen franchise players and develop the network; the second intends to create a “vibrant” and “robust” domestic franchise industry and the last is to transform Malaysia in a franchise hub in the South East Asia.

Malaysia has created several governmental programs to enhance franchising

The Government of Malaysia strongly believes in the potential of the local franchise system but at the same time it recognizes the need of a strong financial support to let the system grow and develop as much as possible.

Realizing this fact, the Government has taken five initiatives to assist and facilitate local business and to remain competitive:

- 1) The Franchise Financing Scheme allows interested entrepreneurs to take part in a franchise business, obtaining financing through specific financial institutions. The total available fund is 17 million euro to be allocated on a case by case basis.
- 2) The Franchise Development Aid Fund aims to provide assistance to the individual entrepreneurs or local companies and to promote the export of local products. If the entrepreneur qualifies, his investments can be reimbursed by this fund up to 90% of costs with a maximum of 23,000 euro.
- 3) The Government introduced also two franchisees’ development program: the Graduated Franchise Program and the Women Franchise Program that are reserved respectively to participants that possess at least a diploma and to women.
- 4) Moreover the Ministry of Commerce offers to the local franchisee a maximum funding of 11.550 euro to help finance the franchisee’s opening. The Micro-Financing Scheme is open to franchisees from 21 to 65 years old.

The moral of the story is that thanks to the Government’s efforts and to the acumen of the Malaysian entrepreneurs, Malaysia is building a “Franchise Country”, which is now in its infancy stage but has shown already its great potential.

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