SPECIAL STUDIES

FRANCHISING IN MALAYSIA

I. Malaysia : essential data.

Malaysia, with an area of 329,758 km2, consists of two geographical regions divided by the South China Sea. It shares a land border with Thailand on the northwest, Singapore on the east and Indonesia on the south. The federal capital is Kuala Lumpur with 3 million residents for a total population of 26 million. Malaysia's population is comprised of three main ethnic groups consisting of 65.1% Malays, 26% Chinese and 7.7% Indians. The Malays, all Muslims, are included in administrations and important public companies. The Chinese population plays a dominant economic role. The rate of urbanization is about 86% in Peninsular Malaysia and the rate of literacy is 89.70%. "Bahasa Malaysia" is the national language of the country, largely similar to Indonesian. Islam is the country's official religion, but religious freedom is guaranteed by the Malaysian Constitution.

On the political level, Malaysia was formerly a British colony until its independence in 1957. Malaysia is a federal constitutional monarchy. Power is vested in the Prime Minister who commands the majority in parliament. Principle of separation of the executive, legislative and judiciary powers is established under the Constitution. The judiciary system is based on the British system, in particular commercial law.

II. Economy in Malaysia and the sector of distribution.

In 2005, the Malaysia's Gross Domestic Product was estimated to be 131 billion USD (agriculture accounted for 8.5%, 41.1% for the manufacturing, mining and construction, 50.4% for services), or about 5,000 USD per inhabitant. Growth of the last ten years rose 5% on average per year. Growth for 2006 is predicted to be about 6%. The savings rate is maintained at a high level (35% of the GDP) and Malaysia achieves high level of current surpluses (15% of the GDP in 2005). The unemployment rate is low (3.5%) and the inflation rate is about 3.1% in 2005, knowing that on July 21, 2005, Malaysia abandoned the fixed exchange rate in favour of a managed floating system. The dynamism of the economy remains dependent on foreign investments and exports.

The sector of the distribution is structured mainly through the 158 shopping centers representing approximately 3.4 million km2 of sales surface. For instance, in the Klang Valley, which surrounds the capital, the great shopping centers form nearly 70% of the distribution.

There 4 other existing networks :
(a) **hypermarkets and supermarkets,** the principal actors being the trade signs Giant (group of Hong-Kong), Makro (Dutch and Malayan group), Carrefour (French group), Parkson and Tesco (British group),
(b) **department stores,** which usually rent space in shopping centers, offer a broad range of products from foodstuff, furniture, clothing, toys to homeware,
(c) **convenience stores** and tankers (mini supermarkets). The principal trade signs are Mobil, Shell, Esso, Caltrex, Petronas, Hop In, 7-Eleven. These stores have in common a very limited range of products. The majority are opened 24 hours a day and 7days/7,
(d) **night markets.** These markets are located in residential districts. They offer all types of foodstuff as well as articles for the house, clothing and costume jewelry.

Franchise in Malaysia is very active. To this day, there exist 321 Malay franchisors and 124 foreign franchisors. The five most active sectors are : food (22%), clothing (21%), the beauty and the care of the body (20%) hotel trade (17%).

III. The Franchise Act 1998

In 1998, Malaysia adopted a legislation relevant to franchising, the Franchise Act 1998. This legislation, coming from an American inspiration, deals with the execution, obligations and termination of the franchise agreement that is to be operated within Malaysia. Penalties are envisaged in case of violation of the law.

The Franchise Act created the *"Registrar of Franchises"*, a public officer entrusted with the responsibility for matters relating to (a) registration franchise agreements who may (b) approve or refuse the registration.

Requirements for the execution of the agreement are the same as those provided in the French law, subject to three characteristics: (a) drafting and transmission of pre-contractual information documents are not required, (b) a cooling off period of 7 days is provided in favour of the franchisee who may terminate, without reason, the franchise agreement after signing it, (c) the franchise term can't be less than five years.

Requirements to obligations of the franchise agreement are similar to the French contractual mechanisms: good faith in the performance of contractual obligations, reciprocal performance of parties' obligations, in the event of contractual breach prior notice of termination, duly justified and in writing to the other party.

However, a characteristic exists: the franchisor who refuses to renew the franchise agreement has to compensate the franchisee if he has undertaken a post-contractual non-competition obligation. Requirements about the compensation have to be envisaged in the franchise agreement.

In case of violation of the law, several criminal sanctions are envisaged: in the event of defect of answer or cooperation with the "Registrar" the sanction is a fine of 2,000 ringgit (US$ 545) and/or a prison sentence of six months maximum. Moreover, if the law has been violated, the first offence involves a fine sanction of 5,000 to 50,000 ringgit ($ 1,350 to 13,500), the second offence or all subsequent offence involves a fine of 10,000 ringgit ($ 2,700) minimum and/or a prison sentence of 5 years maximum.

In addition, the Court can nullify the franchise agreement, order financial restitutions, prohibit the franchisor to sign any new franchise agreement.

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