

DISTRIBUTIVE TRADE





Introduction

This booklet is one of a series of 20 booklets prepared by MIDA for the purpose of providing investors with relevant information on establishing projects in the identified services sub-sectors in Malaysia. The complete list of booklets is as follows:

- Booklet 1:** General Policies, Facilities and Guidelines
- Booklet 2:** Regional Operations
- Booklet 3:** Research and Development (R&D) Services
- Booklet 4:** Logistics Services
- Booklet 5:** Specialised Technical Support Services
- Booklet 6:** Information and Communication Technology Services
- Booklet 7:** Environmental Management Services
- Booklet 8:** Distributive Trade Services
- Booklet 9:** Tourism and Travel Related Services
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- Booklet 13:** Architectural Consultancy Services
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- Booklet 15:** Medical and Healthcare Services
- Booklet 16:** Engineering and Energy Consultancy Services
- Booklet 17:** Management Consultancy Services
- Booklet 18:** Market Research Services
- Booklet 19:** Advertising Services
- Booklet 20:** Quick Reference

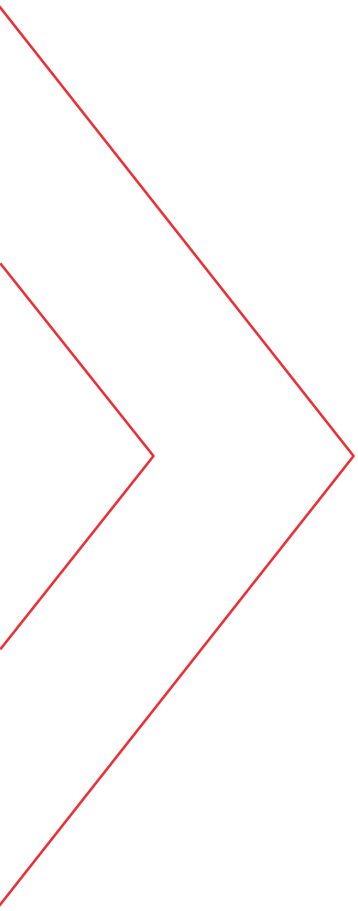
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DISTRIBUTIVE TRADE SERVICES

The Malaysian Government recognises the importance of the distributive trade subsector to the national economy, and encourages all players within the subsector to ensure sustainability in their business practices.

To bolster domestic demand and assist the distributive trade sector, the Ministry of Domestic Trade and Consumer Affairs (KPDNHEP) conducts annually the 'Buy Malaysian Products' campaign, and the 'Mega Sales Programme'. Brick-and-mortar retail businesses are increasingly extending their service offerings online, and embracing e-commerce activities, in order to thrive during these challenging times.

Distributive trade comprises all linkage activities that channel goods and services down the supply chain to intermediaries for resale or to final buyers.

The linkages may be:

- direct or indirect between two parties (or levels) or more than two parties (or levels) within the chain;
- real physical processes or electronic transactions as defined under the relevant laws;
- in person or electronic transactions as defined under the relevant laws; and
- transactions that may or may not involve the transfer of title of ownership to the goods and services.

Foreign business operators engaged in the distributive trade services in Malaysia are subject to the Guidelines on Foreign Participation in the Distributive Trade Services issued by KPDNHEP. Distributive traders include wholesalers, retailers, franchise practitioners, direct sellers, suppliers who channel their goods in the domestic market, and commission agents or other representatives including those of international trading companies. The following businesses are excluded from the definition of distributive trade:

- Manufacturing companies; and
- Companies granted the status of regional establishments by the Malaysian Investment Development Authority (MIDA).

Products and services governed by other Acts: petroleum products, pharmaceutical, medicinal and orthopaedic products, toxic substances and explosives, arms, ammunitions, agricultural raw materials, and live animals are subject to other acts and regulations for specific reasons.

Administrative Conditions

With effect from 6 January 2010, all proposals for foreign involvement in distributive trade shall obtain the approval of KPDNHEP. These include:

- Acquisition of interest;
- Mergers and/or takeover by foreign participation;
- Opening of new branches/outlets/chain stores;
- Relocation of branches/outlets/chain stores;
- Expansion of existing branches/outlets/chain stores;
- Buying over/taking over of outlets of other operators; and
- Purchase and sale of properties to operate distributive trade activities prior to obtaining the approval/licence from local authorities and other agencies to operate distributive trade activities.

Any ancillary business carried out by foreign business operators shall obtain prior approval of KPDNHEP.

Notwithstanding the above, any approvals under the repealed guidelines shall continue in force and have effect as if it had been made under the guideline.

All distributive trade companies with foreign equity shall:

- Appoint Bumiputera director/directors;
- Hire personnel at all levels including management to reflect the racial composition of the Malaysian population;
- Formulate clear policies and plans to assist Bumiputera participation in the distributive trade sector;
- Hire at least 1 per cent of the total hypermarket workforce from persons with disabilities;
- Increase the utilisation of local airports and ports in the export and import of the goods;
- Utilise local companies for legal and other professional services which are available in Malaysia;
- Submit annual financial reports to the KPDNHEP;
- Comply with all by-laws and regulations of Local Authorities.

1. HYPERMARKETS

1.1 Understanding The Sub-Sector

A hypermarket is a standalone self-service distribution store with sales floor area of 5,000 square metres or more, selling a very wide variety of mainly consumer goods, comprising a mix of food and non-food products, in a range of transaction sizes or quantities and in different forms of packaging.

1.2 Setting Up Your Business

Any foreign involvement in hypermarket is subject to the following rules and conditions;

(i) Local Incorporation

All hypermarket businesses with foreign equity must be incorporated locally under the Companies Act 2016. This condition also applies to existing businesses operating under foreign branches.

(ii) Minimum Capital Requirement

The minimum capital investment in terms of shareholders' funds (which include paid-up capital and reserves) is RM50 million.

1.3 Equity Policy

Hypermarket format shall provide at least 30 per cent equity for Bumiputera.

A grace period of three (3) years for compliance may be given by KPDNHEP upon approval. This requirement also applies to operations established prior to the coming into effect of this guidelines.

Hypermarket operators are not allowed to open a new branch unless it has fulfilled the requirement of 30 per cent Bumiputera ownership in the company's equity structure.

1.4 Operational Conditions

- Indicative plans for additional branches of hypermarkets need to be submitted to KPDNHEP within two (2) years before an application is to be considered.
- Hypermarket shall begin operation within two (2) years from the date of approval from KPDNHEP.
- Sales floor area of a hypermarket shall be 5,000 square metres and above.
- Addition of branches is subject to the approval of KPDNHEP.
- Approval from KPDNHEP must be obtained for any reduction or increase of sales floor area.
- Allowed only on stand-alone basis with basic amenities on outskirts of major towns.
- At least 30 per cent of total Stock Keeping Unit (SKU) displayed on the shelf space is to be allocated for Bumiputera SMEs' goods/products in each outlet within three (3) years.
- Formulate and provide clear rules and criteria for suppliers to market their products/ goods.
- Normal Operating Hours

Operating hours for all States except Kedah, Kelantan and Terengganu:

- (a) 10 a.m. to 10 p.m. on Monday to Thursday and Sunday; and
- (b) 10 a.m. to 12 midnight on Friday and Saturday.

Operating hours for Kedah, Kelantan and Terengganu:

- (a) 10 a.m. to 10 p.m. on Sunday to Wednesday and Saturday; and

(b) 10 a.m. to 12 midnight on Thursday and Friday.

Public Holidays

Public holidays including eve of public holidays from 10 a.m. to 12 midnight.

Major Festivals

7 days prior to major festivals from 10 a.m. to 12 midnight

1.5 Environment and Public Interest Conditions

- Follow existing laws regarding provision of car parks for commercial areas according to respective local authorities or Town Councils, subject to a minimum of 50 parking lots per 1,000 square metres business floor, or whichever is higher.
- Provide business space for ancillary businesses at a reasonable rental rate.
- Not allowed to operate within a 3.5 km radius of residential areas and town centres.
- One hypermarket is allowed for every 250,000 residents.
- Hypermarkets are not allowed to be constructed in locations under the jurisdiction of Local Authorities that have fewer than 250,000 residents.
- An impact study on existing local retailers should be carried out before the opening of a hypermarket is considered.
- An early indicative study is to be carried out incorporating the views of local traders and residents.
- Hypermarket operators should ensure a safe and clean environment (garbage disposal, recycling facilities, etc), as well as efficient use of energy.

2. DEPARTMENTAL STORE

2.1 Understanding The Sub-Sector

A departmental store is a distribution store with sales floor areas of varying sizes, usually engaged in retailing an extensive assortment of consumer goods that are departmentalised by gender, age, or lifestyle, through self-service or with sales assistance, generally under one common store management. A departmental store may include a supermarket of not more than 2,000 square metres.

2.2 Setting Up Your Business

Any foreign involvement in a departmental store is subject to the following rules and conditions:

(i) Local Incorporation

All departmental store businesses with foreign equity must be incorporated locally under the Companies Act 2016. This condition also applies to existing businesses operating under foreign branches.

(ii) Minimum Capital Requirement

The minimum capital investment in terms of shareholders' funds (which include paid-up capital and reserves) is RM20 million, to be reviewed every three (3) years.

2.3 Equity Policy

The Government encourages joint-ventures between Malaysian and foreign investors to increase local participation in business.

2.4 Operational Conditions

- Indicative plans for additional branches of departmental stores need to be submitted to KPDNHEP within two (2) years before an application is considered.
- The departmental store shall begin operation within two (2) years from the date of approval from KPDNHEP.
- Addition of branches is subject to the approval of KPDNHEP.
- Approval from KPDNHEP must be obtained for any reduction or increase of the sales floor area.
- At least 30 per cent of total SKUs displayed on the shelf space is to be allocated for Bumiputera SMEs' goods/products in each outlet within three (3) years.
- Formulate and provide clear rules and criteria for suppliers to market their products/ goods.

2.5 Environment and Public Interest Conditions

- Follow existing laws regarding provision of car parks for commercial areas according to respective local authorities or Town Councils, subject to a minimum of 50 parking lots per 1000 square metres business floor, or whichever is higher.
- Provide business space for ancillary businesses at a reasonable rental rate.
- Not allowed to operate within 3.5 km radius of residential areas.
- An impact study on existing local retailers should be carried out if a departmental store is to be operational in a stand-alone building or if the business floor area is not less than 5,000 square metres.
- An early indicative study is to be carried out incorporating the views of local traders and residents.
- Departmental stores operators should ensure a safe and clean environment (garbage disposal, recycling facilities, etc), as well as the efficient use of energy.

3. SUPERSTORES

3.1 Understanding The Sub-Sector

A superstore is a self-service distribution store with a sales floor area of 3,000 square metres to less than 4,999 square meters retailing a very wide variety of mainly consumer goods, comprising a mix of food and non-food products.

Only companies operating a hypermarket may apply to operate in a superstore format.

3.2 Setting Up Your Business

Any foreign involvement in superstore is subject to the following rules and conditions:

(a) Local Incorporation

All superstore businesses with foreign equity must be incorporated under the Companies Act 2016. This condition also applies to existing businesses operating under foreign branches.

(b) Minimum Capital Requirement

The minimum capital investment in terms of shareholders' funds (which include paid-up capital and reserves) is RM25 million.

3.3 Equity Policy

There is no specific equity condition for companies operating superstores. However, the Government encourages joint-ventures between Malaysian and foreign investors to increase local participation in business.

3.4 Operational Conditions

- Indicative plans for additional branches of superstore need to be submitted to KPDNHEP within two (2) years before an application is to be considered.
- Superstore shall begin operation within two (2) years from date of approval from KPDNHEP.
- Sales floor area of a superstore shall be 3,000 square meters to less than 4,999 square meters retailing.
- Any addition of branches is subject to the approval of KPDNHEP.
- Approval from KPDNHEP must be obtained for any reduction or increase of the sales floor area.
- At least 30 per cent of total SSKUs displayed on the shelf space is to be allocated for Bumiputera SMEs' goods/products in each outlet within three (3) years.

3.5 Environment and Public Interest Conditions

- One superstore is allowed for every 200,000 residents.
- Superstore is not allowed to be constructed in locations under the jurisdiction of Local Authorities that have less than 200,000 residents.
- An impact study on existing local retailers should be carried out before the opening of a superstore is considered.
- An early indicative study is to be carried out incorporating the views of local traders and residents.
- Superstore operators should ensure a safe and clean environment (garbage disposal, recycling facilities, etc), as well as the efficient use of energy.

4. SPECIALTY STORE

4.1 Understanding The Sub-Sector

Specialty stores deal with one main brand name/product/line of goods associated with a single product. They may specialise in:

- Food catering and restaurant services outside hotel premises;
- Food-drink-tobacco (e.g. food and beverage);
- Household/personal goods;
- Furniture;
- Household appliances;
- Electrical appliances;
- Healthcare products;
- Optical goods;
- Footwear;
- Clothing and apparel;
- Sport goods;
- Books;
- Jewellery;
- Electronic goods;
- Motorcycles/motor vehicles;
- Small machinery (e.g. industrial and agricultural equipment for small users);
- Pharmacy, serviced by a pharmacist at each outlet (retailing only drugs, health and beauty care goods); and
- Others.

Specialty stores may be allowed to operate in the above categories if they fulfil the following criteria:

- (a) Contribute to the socio-economic development of Malaysia;
- (b) Generate substantial foreign direct investment;
- (c) Absence of local players in proposed formats;
- (d) Create employment opportunities;
- (e) Transfer of technology/skills; and
- (f) Unique/exclusive nature of business.

4.2 Setting Up Your Business

Any foreign involvement in these activities is subject to the following rules and conditions:

(i) Local Incorporation

All specialty store businesses with foreign equity must be incorporated locally under the Companies Act 2016. This condition also applies to existing businesses operating under foreign branches.

(ii) Minimum Capital Requirement

The minimum capital investment in terms of shareholders' funds (which include paid-up capital and reserves) is RM1 million for each specialty outlet, to be reviewed every three (3) years.

4.3 Equity Policy

The Government encourages joint-ventures between Malaysian and foreign investors to increase local participation in business.

4.4 Operational Conditions

Addition of branches is subject to approval of KPDNHEP.

4.5 Environment and Public Interest Conditions

- Impact study on existing local retailers should be carried out if a specialty store is to be operational in a stand-alone building or if the business floor area is not less than 5,000 square metres.
- Specialty store operators should ensure a safe and clean environment (garbage disposal, recycling facilities, etc), as well as the efficient use of energy.

5. OTHER DISTRIBUTIVE TRADE ACTIVITIES

5.1 Understanding The Sub-Sector

Other types of businesses not specified will be considered on the merit of each case with particular reference to their contribution to the socio-economic development of Malaysia.

Various other distribution formats may be allowed to operate in the above categories if they fulfil the following criteria:

- (a) Contribute to the socio-economic development of Malaysia;
- (b) Generate substantial foreign direct investment;
- (c) Absence of local players in proposed formats;
- (d) Create employment opportunities;
- (e) Transfer of technology/skills; and
- (f) Unique/exclusive nature of business.

5.2 Setting Up Your Business

Any foreign involvement in these activities is subject to the following rules and conditions:

(i) Local Incorporation

All various other distribution businesses with foreign equity must be incorporated locally under the Companies Act 2016. This condition applies also to existing businesses operating under foreign branches.

(ii) Minimum Capital Requirement

The minimum capital investment in terms of shareholders' funds (which include paid-up capital and reserves) is RM1 million for each outlet.

5.3 Equity Policy

Foreign participation is allowed in other distributive trade activities except the following:

- Supermarket/mini-market (less than 3,000 square meters sales floor area);
- Provision shop/general vendor;
- Convenience store (that opens for business for 24 hours);
- News agent and miscellaneous goods store;
- Medical hall (inclined toward alternative/traditional medicines plus general dry foodstuff);
- Fuel station with convenience store;
- Permanent wet market store;
- Permanent pavement store;
- National Strategic Interest;
- Textile, restaurant (non-exclusive), bistro, jewellery shops; and
- Others.

5.4 Operational Conditions

Addition of branches is subject to approval of KPDNHEP.

5.5 Environment and Public Interest Conditions

- Impact study on existing local retailers should be carried out if the business is to be operational in a stand-alone building or if the business floor area is 5,000 square metres.
- Businesses should ensure a safe and clean environment (garbage disposal, recycling facilities, etc), as well as the efficient use of energy.

6. DIRECT SELLING BUSINESS

6.1 Understanding The Sub-Sector

Direct selling is defined as sale of goods door-to-door or through mail order or through electronic transactions. Direct selling companies generally appoint dealers who undertake direct contact with consumers.

The three (3) types of marketing plans are as follows:

Marketing Plan	Definition
Multi Level	<ul style="list-style-type: none">• The company appoints individuals as members/distributors to market its products.• The members/distributors then appoint other individuals (down lines) to expand their networks. The recruitment of members/distributors can be on-going/extended up to a certain level.• Each member/distributor receives commission/bonus/incentives from personal sales and sales made under his/her network (overriding bonus).
Single Level	<ul style="list-style-type: none">• The company appoints sales representatives/agents and pays them a salary/commission/combination of salary and commission on the total sales made.• Sales representatives/agents are not permitted to appoint/sponsor other sales representatives/agents.
Mail Order	Sales of products or services by individuals on their own or other authorised persons via mail or any other means of delivery, including by electronic means.

6.2 Setting Up Your Business

6.2.1 Application Procedure

(i) Qualification

A company incorporated under the Companies Act, 2016.

(ii) Paid Up Capital

CATEGORY	Non 100 per cent Bumiputera	100 per cent Bumiputera
Multi-Level-Marketing	RM1,500,000	RM500,000
Single-Level-Marketing	RM 500,000	RM100,000
Mail Order Sales	RM 500,000	RM100,000
Foreign-Owned Companies	RM 5,000,000	NA

NA – not applicable, as foreign-owned companies by definition do not have bumiputera equity participation

(iii) Marketing Plan

- The marketing plans shall have the following characteristics:
 - (a) The business does not carry on or involved in a pyramid scheme as specified under Section 7 DSAPS 1993; and
 - (b) Comply with the Direct Sales (Scheme and Conduct) Regulations 2001, which came into operation effective 15 August 2001.
- Presentation of scheme not to be misleading
 - (a) In the presentation of the direct sales scheme, a person who undertakes any direct sales business shall not mislead participants by over-emphasising on high bonus or bonus pay out; and
 - (b) Each participant shall be provided with sales kit that includes marketing plan and code of conduct of the company.
- Payment of incentives
 - (a) Any company that undertakes a direct sales business shall provide an incentive based on the volume or quantity of goods sold or services rendered by each participant and not based on recruitment of persons into the scheme;
 - (b) Participants are not allowed to purchase goods or services at an unreasonable price/amount; and
 - (c) Each participant is required to purchase goods or pay for services in any amount that can be expected to be resold or consumed within a reasonable period of time.
- Agreement

Any person who undertakes any direct sales business shall provide each participant with a written contract or statement which contains the terms and conditions of the agreement. The agreement shall provide the following:

 - (a) The participant shall be given not less than 10 working days from the date of the recruitment to cancel his membership (Cooling Off Period);
 - (b) Upon the cancellation of his membership under Paragraph 'a' the participants shall be refunded all of payment as specified in the agreement;
 - (c) The Company must have a buy back policy. A company which undertakes any direct sales business shall buy back any marketable goods sold to the participant within the period of 6 months after goods purchase date, at the price not less than 90 per cent of the amount paid; and
 - (d) Any person who fails to comply with any provision of this regulation commits an offence.

6.2.2 Application Procedure for a New Licence

An application for a licence shall be made by submitting one copy of the completed AJL-1 form (typed) with the company's seal.

Supporting documents to be submitted together are as follows:

- Company's Memorandum and Articles of Association verified by a statutory declaration and made by a director;

- Company information (Original SSM print out);
- Background/profile of all board of directors and shareholders of the company (resume and copy of IC/passport);
- Complete explanation on the company's marketing plan;
- Buy-back policy (for multi-level/single level marketing plans only);
- Products/services price structure form;
- Brochure/leaflet/print material/ description of the product/services;
- Quotations/invoices/services from suppliers of the product/services;
- A sales contract sample (for single level and multi-level marketing plans only);
- A mail order advertisement sample (for mail order sales only); and
 - Copy of licence from Local Authority (if related)
 - Copy of latest product approval letter.

(i) Eligibility Criteria of Product/Services

Products/services permitted/encouraged for sale under a direct selling system:

- The product possesses its own strength which makes it difficult to be marketed through the normal sales system or a product which requires detailed explanation from the sales person.
- Priority will be given to products which have been granted the following certification and approval from local and foreign bodies with regards to the product's safety and quality, such as ISO 9000, MS (SIRIM), halal label, etc.
- Product from the factories with GMP (Good Manufacturing Practices) certification.
- The following products are not permitted to be marketed under a direct sales business:
 - Product in the form of insurance, unless the company has obtained authorised agency status from PIAM/LIAM, and is not permitted to be packaged with other products;
 - Landed property; any immovable products; and
 - Virtual product such as websites.

(ii) Additional Requirements

- For health foods/food supplements/traditional medicines, the following prerequisites must be satisfied:
 - Submit a product registration approval with the National Pharmaceutical Regulatory Agency (NPRA), Ministry of Health (MOH);
 - If the product certified as "Registration Not Required" or categorised as "Food", the product must be referred to and received classification letter from the Food Safety and Quality Division (FSQD), and it is in compliance with labelling regulation under the MOH.
- Display the approval serial number of the Medicine Advertisement Board, MOH on all brochures/advertisement print materials of health food/ traditional medicines with medical claims.

- Cosmetic products must be registered and in compliance with the Regulation 29 of the Control of Drugs and Cosmetics Regulation, 1984 in relation to the Cosmetics Notification Implementation and this regulation shall be enforced by MOH effective as of 1 January 2008.
- Petroleum based product must possess the PDA (Petroleum Development Act, 1974) licence.
- Electrical products must obtain approval from the Energy Commission and for certain electrical products must obtain the import and manufacturing approval from the Department of Electricity and Gas Supply.
- Health care services programmes must be registered with the Medical Practice Division, MOH.
- The marketing plan presentation session shall only be attended by the board of directors or shareholders of the company.

(iii) Direct Sales Regulatory (DSRC)

The DSRC committee will make deliberations and suggest the results of application to the Direct Sales Controller in accordance with:

- Background/information of company;
- Marketing plan of company;
- Products/services of company; and
- Complaints about company.

(iv) Jurisdiction Under The Direct Sales Act

The Direct Selling Controller can:

- Approve the licence application;
- Reject the licence application;
- Revoke the licence; and
- Impose additional conditions and regulations of the licence.

Minister can:

- Receives and considers the licencing appeal cases.

(v) General Conditions on Licencing

- Licencees shall not practice a marketing plan which has not been approved by the Controller of Direct Sales;
- Only market products which has been approved by the Ministry;
- Licencees must seek approval from the Controller of Direct Sales before amending any parts within the marketing plan, approved product range or approved product price list ;
- The companies are not allowed to amend any part of the marketing plan for at least two (2) years once the licence has been obtained;

- Licencees must ensure that all the distributors/sales agents do not practice sales by coercion/pressure/fraud which includes lucky draws, promise of free gifts, discounts on sponsorship and that they do not issue any leaflets other than those issued by the company;
- Obtain approval from the Ministry before commencing on any campaign, promotion, or any type of advertisement for the purpose of marketing the company's products;
- Obtain approval from the Ministry regarding any proposals in marketing new products, amending the product's price structure and any other matters related to products, before marketing the products;
- Submit the latest audited Financial Statement, Form 24 and 49 (both certified by Companies Commission of Malaysia) and original print issued by the Companies Commission of Malaysia on an annual basis to the Ministry;
- Licencees must provide training to their distributors/members. There shall not be any charges for promotion training or courses to the distributors/members;
- Licencees must provide exhibition area which is sufficiently spacious to accommodate the public;
- Licencees must attach price tags to all displayed products;
- Licencees must display their official direct sales licence number on all billboards, all types of advertisements, print materials and company letterheads;
- Licencees who carry out sales via mail order must ensure that their mail order advertisements comply with the provisions of the Direct Sales Act, Act 1993;
- Licencees with Single Level marketing plan need to submit a list of all sales agent and branch addresses to KPDNHEP;
- Licencees need to immediately acknowledge KPDNHEP about any amendments with regards to business premise address or company equity structure within 14 days from the date of amendment;
- Licencees must always provide complete and accurate information/explanation when requested by the Direct Sales Controller within fourteen (14) days from the date of letter received;
- Licencees are required to display the original Direct Sales Licence at an appropriate place on the company premise/management office with copies of the original licence on every company stockist premise for public viewing;
- The Direct Sales licence is not transferable without the approval of KPDNHEP;
- The Licencees must immediately surrender the licence to the Direct Sales Controller when a licence is revoked or when the Licencees cease a direct sales business;
- Direct Sales companies can only pay bonuses after the cooling-off period;
- Direct Sales companies are not allowed to implement any marketing plan which contains product package as a compulsory purchase for bonus payment;
- Direct Sales companies are not allowed to organise/run/allow any element of lot (position)/re-entering purchase within the company marketing plan;
- The company needs to submit the Company Information and Performance Form annually (latest by 30 April); and
- Licencees are required to comply with all the conditions herein as stated above.

(vi) Payment

- Licence fee is RM500 per annum;
- Payment must be made in the form of bank draft or money order payable to the Secretary-General, Ministry of Domestic Trade and Consumer Affairs;

(vii) Collection of Licence

Licence must be collected by the Managing Director or Top Management of Company and shall acknowledge acceptance of the licence terms at the office of Domestic Trade Division, Ministry of Domestic Trade and Consumer Affairs.

A. Renewal of Direct Selling Licence

- (i) An applicant for a licence shall be made by submitting one copy of the completed AJL-1 form (typed) with the company's seal.
- (ii) The necessary supporting documents to be submitted together are as follows:
 - Form 32A (If there is a change of shareholders);
 - Company's Memorandum and Articles of Association verified by a statutory declaration and made by a director;
 - A copy of the existing licence;
 - Audited financial statement for the preceding year;
 - Original company information (SSM print out);
 - Copy of license from Local Authority;
 - Company information form and latest performance;
 - Copy of company registration letter by Human Resource Development Berhad (for companies with 10 national workers and above);
 - Brochure/leaflet/print material/description of the product/services;
 - Products /services price structure form;
 - Copy of latest product approval letter;
 - Complete explanation on the company's marketing plan;
 - Quotation/invoices/services from suppliers of the products/services;
 - Buy-back policy (for multi-level/single level marketing plans only);
 - A sales contract sample (for single level and multi-level marketing plans only); and
 - A mail order advertisement sample (for mail order sales only).

B. Application for Marketing Plan Amendments

- (i) Submit the marketing plan amendment information in the form;
- (ii) Detailed explanation on the new marketing plan; and
- (iii) Consent of marketing plan amendments from the company leader/agent/distributor.

C. Application to Organise Campaigns/Promotion/Incentives

- (i) Complete information on the campaigns/promotions/incentives, including their implementation procedures and duration;
- (ii) The campaigns/promotions/incentives are not used as a tactic/means of coercing / inducing the public to become company members; and
- (iii) Applications must be submitted at least one month prior to the execution of campaigns/promotions/incentives.

D. Application to Add New Products

- (i) Submit the products price structure form;
- (ii) Brochures/print materials on the new products/services; and
- (iii) Submit quotations/products invoices/services invoices from suppliers.

E. Application for Price Changes of Existing Product

- (i) Submit product price structure form; and
- (ii) Submit quotation/product invoice/services from suppliers.

6.3 Equity Policy

There is no specific equity condition for companies undertaking direct selling. However, the Government encourages joint-ventures between Malaysian and foreign investors to increase local participation in business.

7. FRANCHISE BUSINESS

7.1 Understanding The Sub-Sector

Franchising is a method of doing business by which a Franchisee is granted the right to operate a business according to the franchise system as determined by the Franchisor. With this system, a Franchisor grants to the Franchisee the right to use a mark, trade secret, any confidential information and intellectual properties owned or related to the Franchisor. The Franchisor shall provide assistance to the Franchisee to operate his business and in return for the grant of rights, the Franchisor has the right to impose a certain fee or other form of consideration to the Franchisee.

Franchising is a system where the Franchisor and the Franchisee must be honest and practise the Franchise Code of Ethics. The Franchisee carries the brand and reputation of the Franchisor's business. It follows that the Franchisor will have to protect and nurture their Franchisees. Such a business commitment ensures success of the system.

According to the European Franchise Federation (EFF), franchising is a system of marketing goods and/or services and/or technology which is based upon a close and on-going collaboration between legally, and financially separate and independent undertakings, the Franchisor and its individual Franchisees, whereby the Franchisor grants its individual Franchisee the right, and in return imposes an obligation, to conduct a business in accordance with the Franchisor's concept.

The right entitles and compels the individual Franchisee, in exchange for a direct or indirect financial consideration, to use the Franchisor's trade name, and/or trademark and/or service mark, know-how, business and technical methods, procedural system, and other industrial and/or intellectual property rights, supported by continuing provision of commercial and technical assistance, within the framework and for the term of a written franchise agreement, concluded between parties for this purpose.

There are four types of franchises as follows:

Type of Franchises	Definition
Franchisor	A person who grants a franchise to a franchisee and includes a master franchisee and his relationship with a sub-franchisee.
Master Franchisee	A person who has been granted the rights by a franchisor to sub-franchise to another person, at his own expense, the franchise of the franchisor.
Franchisee of Foreign Franchisor	A person who has been granted the rights by a foreign franchisor but does not sub-franchise to another person.
Franchise Broker	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.

A franchisor engages in distributive trade mainly through franchisees according to the contractual agreement between them.

A franchisee engages in distributive trade according to the contractual agreement with the franchisor up the supply chain.

7.2 Setting Up Your Business

(i) Local Incorporation

All franchise businesses with foreign equity must be incorporated locally under the Companies Act 2016. This condition applies also to businesses operating under foreign branches.

(ii) Registration under the Franchise Act 1998

Franchise arrangements in Malaysia are governed by the Franchise Act 1998. According to the Act, a franchise means a contract or an agreement, either expressed or implied, whether oral or written, between two or more persons.

This Act applies to the sale of franchises throughout Malaysia. Compliance with the Act and thus the need to register also covers companies previously registered under the Prime Minister's Department or KPDNHEP.

The sale of a franchise is deemed to be in Malaysia where an offer to sell or buy a franchise

- is made in Malaysia and accepted within or outside Malaysia;
- is made outside Malaysia and accepted within Malaysia; and
- the franchised business is or will be operating in Malaysia.

Under the Franchise Act 1998, there are three (3) categories of registration:

Type of Registration	Definition
Section 6 • Franchisor • Master Franchisee	A person who grants a franchise to a franchisee and includes a master franchisee and his relationship with a sub-franchisee.
Section 6A • Master franchisee	A person who has been granted the rights by a franchisor to sub-franchise to another person, at his own expense, the franchise of the franchisor.
Section 6B • Franchisee of Foreign Franchisor	A person who has been granted the rights by a foreign franchisor but does not sub-franchise to another person.
Section 14 • Franchise Broker	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.
Section 54 • Foreign Franchisor	Registration for foreigners intending to sell its franchise in Malaysia or to any Malaysian citizen.

(iii) Application for Registration of Franchises

A Franchisor must make an application to register his franchise with the Registrar of Franchise under KPDNHEP, by submitting an application to the Registrar, together with the required documents and information.

The registration can also be submitted through MyFEX online system at www.myfex.gov.my.

Check List for Registration under Section 6, Franchise Act 1998

Among documents required are:

- Disclosure Document/BAF 1;
- Form BAF 2;
- A copy of the business' Operations Manual (BM & English Version);
- A copy of the Training Manual (BM & English version);
- The latest three (3) years of Audited Accounts of the franchise business;
- Projected cash flow of the franchise business for five (5) years;
- Photographs of the prototype outlet(s) operated for the last 6 months or more;
- Certified copy of company incorporation certificates (Form 9/13, 24, 44 & 49) OR certified copy of business registration (Form D, Rules 13);
- Company's profile and/or business profile from the Companies Commission of Malaysia (SSM);

- Certified copy of documents/certificate of Trade Marks together with its registered field of business in the event the trade marks is assigned to the applicant. Applicant to enclose the certified copy of the instrument/legal document which has been executed and stamped.;
- Brochures/pamphlets/company annual report and other additional information or document as may be required by the Registrar for the purpose of evaluating the application;
- Number of Outlet(s)/Branch along with details of date of opening, closing date (if it's closed);
- Initial costs of franchise based on the prototype outlet(s) (state its location and the date of opening);
- Audited account or prototype outlet(s) management account for the years of operation. (The said management account must be certified);
- Details in regard to the initial franchise costs (e.g. list of the costs elements such as equipment, fixtures and fittings, initial inventory, working capital and other costs involved); and
- Accounting and justification used in putting up fees which is to be charged to the franchisee such as franchise fee, royalty and advertisement fee and other fees.

(iv) Franchise Agreement

A franchise agreement must be in writing. The agreement should contain, but is not limited to:

- The name and description of the product and business under the franchise;
- The territorial rights granted to the franchisee;
- The fee which may be imposed on the franchise;
- The obligation of the Franchisor;
- The obligation of the Franchisee;
- The right to use the mark or any other intellectual property by the Franchisee;
- The conditions under which the Franchisee may assign the right under the franchise;
- A statement on the cooling-off period;
- A description pertaining to the mark or any other intellectual property owned or related to the Franchisor which is used in the franchise;
- If the agreement is related to a Master Franchisee, the Franchisor's identity and the rights obtained by the Master Franchisee from the Franchisor;
- The types and particulars of assistance provided by the Franchisor;
- The duration of the franchise and the terms of renewal; and
- The effect of the termination or expiration of the franchise agreement.

(v) Annual Report

The franchisor or master franchisee who is registered under Section 6 of the Franchise Act 1998, must submit the Annual Report of Business by completing Form BAF 6 within 180 days from the date of the financial year end.

Among the information required in Form BAF 6 is as follows:

- a. The following number/name/address franchise outlets :
 - Outlet belonging to the company;
 - Outlet belong to franchisees in the country; and
 - Outlet belong to franchisees;
- b. The annual return;
- c. The latest disclosure document; and
- d. The latest audited financial statement.

All applications should be submitted to KPDNHEP.

(vi) Minimum Capital Requirement

Minimum capital investment in terms of shareholder funds (which include paid-up capital and reserves) is based on the merit of each case.

7.3 Equity Policy

There is no specific equity condition for companies undertaking franchise businesses. However, the Government encourages joint-ventures between Malaysian and foreign investors to increase local participation in business.

7.4 Operational Conditions

Please refer to the Franchise Act, 1998.

7.5 Environment and Public Interest Conditions

Please refer to the Franchise Act, 1998.

8. EMPLOYING EXPATRIATE PROFESSIONALS

Applications for expatriate posts should be submitted to the Immigration Department. In processing the application, the Immigration Department will follow the guidelines and conditions as imposed in the Guidelines on Foreign Participation in the Distributive Trade Services Malaysia (Amendment 2010).

There is no limit of expatriate post for Distributive Trade/Direct Selling activities. The number of expatriates permitted per company is given based on the justification provided to the Expatriate Committee, Immigration Department. Minimum salary for the expatriate must be at least RM5,000 per month and there is no age limit.

For distributive trade activity:

Minimum capital requirement:

- 100 per cent local owned company (Malaysia) – RM250,000
- Foreign owned company (i.e. more than 51 per cent shareholders are foreigners) – RM1 million

For direct selling activity:

Minimum capital requirement:

- Local owned company:
 - Single level/mail order activity: Bumiputera company – RM100,000
Non-Bumiputera company – RM500,000
 - Multilevel activity: Bumiputera company – RM500,000
Non-Bumiputera company – RM1.5 million
 - Foreign owned company:
 - All direct selling activities – RM5 million
- (For joint ventures with foreign companies, the set-up is considered as foreign companies)

9. OBTAINING FINANCIAL ASSISTANCE

Local Franchise Product Development Programme (PPFT)

The Local Franchise Product Development Programme (PPFT) provides a platform to turn conventional businesses into a systematic franchise business, all set and ready for expansion.

The PPFT is targeted at assisting local entrepreneurs with franchise-worthy products to turn their conventional business into franchise business through the appointment of qualified franchise consultants to develop and guide the participating companies in the setting up of a franchise system, documentation of work processes and procedures, the opening of a prototype outlet and the appointment of franchisees. The cost of the consultants' services is funded by the programme.

Scope of Product Development

Product development applications may be considered if it is through the following methods:

- From scratch;
- Business potential franchise;
- Products available for conversion into franchise's product; and
- Collaboration between PNS and potential business.

Time frame and product development phase

It takes approximately seven (7) to ten (10) months to develop a new franchise product/business. The product development phases are as follows:

- Preparation of proposals for franchise business screening;
- Preparation of the franchise concept;
- Research prototype;
- Development of franchise package;
- Registration as a franchisor; and
- Creation of franchisees.

10. OBTAINING TAX INCENTIVES

(i) Tax Deduction on Franchise Fee

Among other expenses imposed on franchisees undertaking the franchise business are franchise fees, royalties, promotion fees and advertisement fees, training fees, and service fees. These expenses are allowed to be deducted for purposes of income tax computation (except the franchise fee, as it is an expenditure incurred before commencing a business).

To further develop a local product brand to become strong in the domestic market and accepted in overseas markets, tax deduction is given for franchise fees. This incentive is applicable for local franchise brands.

This tax deduction is effective from year of assessment 2012.

(ii) Incentive for the Implementation of RosettaNet

RosettaNet is an open Internet-based common business messaging standard for supply chain management link-ups with global suppliers.

To encourage local small and medium scale companies to adopt RosettaNet in order to become more competitive in the global market, the expenditure, and contributions incurred by companies in the management and operation of RosettaNet Malaysia and in assisting local small and medium scale companies to adopt RosettaNet, are eligible for income tax deduction.

The eligible expenditure and contributions are those on equipment (computers and servers) and salaries for full-time employees seconded to RosettaNet Malaysia, contribution of software, sharing of software and programming, as well as the training of the staff of local small and medium scale companies to use RosettaNet.

Claims should be submitted to IRB online at <https://www.hasil.gov.my/en/forms/download-forms/download-form-incentive-claim>.

11. GENERAL AGREEMENT ON TRADE IN SERVICES (GATS), ASEAN FRAMEWORK AGREEMENT ON SERVICES (AFAS) AND FREE TRADE AGREEMENTS (FTAs)

Updates and information regarding the Schedule of Specific Commitments of GATS, AFAS, and FTAs are available from MITI's website at www.miti.gov.my.



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