

**GUIDELINES FOR IMPLEMENTATION OF
PROVISIONS OF ARTICLE 50 Point b
ON EXEMPTIONS TO THE IMPLEMENTATION OF
LAW NUMBER 5 YEAR 1999
CONCERNING PROHIBITION OF MONOPOLISTIC PRACTICES
AND UNFAIR BUSINESS COMPETITION
TO AGREEMENTS RELATED TO FRANCHISE**

**CHAPTER I
INTRODUCTION**

A. Background

The franchise business system has shown a steady growth in Indonesia which covers several fields of business among others like fast food operations, telecommunication services, mini-market operations, medical services, recreation and entertainments as well as educational system. Franchising is unavoidable in line with rapid economic growth in the globalization era. In that end, the government realizes the need to provide opportunities to the development of franchising with a view that the community is able to actively participate in promoting the economic growth. Therefore, the Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition provides for the exemptions to the implementation of the provisions of the Law to the agreements related to franchise, as stipulated in Article 50 point b.

The franchise, in Article 1 point 1 of Government Regulation Number 42 Year 2007 on Franchise is defined as: “special right that owned by individual or business entity in a business system with distinctive feature in the framework of marketing of goods and/or service that already proved successful and able to be benefited and/or used by other party based on the franchise agreement.”

This definition is principally different from that in the previous Government Regulation, namely the Government Regulation Number 16 Year 1997 on Franchise Business which has been replaced with the Government Regulation Number 42 Year 2008 on Franchise. In Article 1 point 1 of Government Regulation Number 16 Year 1997 on Franchise Business, the Franchise is defined as: “an alliance in which one of the parties is granted the right to benefit and/or use the right in the intellectual property

right or invention or business distinctive feature which is owned by other party for a compensation on the basis of the requirements specified by the other party, in the frame work of provision or sale of goods and/or service". In consideration of the relationship between the franchisor and franchisee which is established after the establishment of the alliance, the definition as illustrated in Government Regulation Number 16 Number 1997 is considered more relevant.

The franchisee in running its business uses the business system as directed by the franchisor on the basis of an agreement. The agreement entered into by and between the franchisor and franchisee set outs the rights and obligations of each party pursuant to the agreement. The freedom in contract is one of the basic principle which shall be observed by each of the parties. However, as franchise business is a vertical marketing system, the franchisor is willing to provide all franchise systems to the franchisee; therefore, the franchise agreement also includes license agreement which is one of the types of the Intellectual Property Rights.

Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Business Competition excludes the implementation of the provisions thereof to agreements related to franchise as stipulated in Article point b. Also excluded from the provisions of Article 50 point b of Law Number 5 Year 1999 is agreements related to the Intellectual Property Rights, among others, the license.

It is necessary to be noted that in practice that there are agreements related to franchise which may lead to monopolistic practice and/or unfair business competition. These agreement are obviously not included in the category as referred to in the provisions of Article 50 point b. Realizing the fact that there may be agreements related to franchise which may lead to monopolistic practice and unfair business competition, the exemptions to the provisions of Article 50 point b of Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Business Competition shall be applied with due care and wisdom in order that it deviates from the objectives of the establishment of Law Number 5 Year 1999 as stipulated in the provisions of Article 3 thereof, among others, to achieve a conducive business climate. Therefore, **the agreements which are excluded shall be those which provide for the franchise system and transfer of license rights from the franchisor to the franchisee.** Meanwhile, agreements which may result in monopolistic practice and unfair business competition, **though it relates to franchise, shall not included in the exemptions.** Therefore, if an agreement related to franchise contains elements which obviously lead to the monopolistic practice and unfair business competition, the provisions of Law Number 5 Year 1999 shall remain applicable to the business actors who become a party in the agreement. The implementation of provisions of Law Number 5 Year 1999 shall be principally in line with the provisions of Article 36 paragraph (1) of Law Number 20 Year 2008 on Micro, Small and Middle Scale Business which provides for that: In

establishing a partnership as stipulated in Article 26, the parties shall have an equal stance before the law and they shall be subject to the laws of the Republic of Indonesia. Article 26 among others provides the partnership under franchise system (Article 26 point c). Furthermore, being subject to the “law of the Republic of Indonesia in the business arrangement shall mean to refer to the Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Business Competition.

In order to provide a clarity in the implementation of the provisions of Article 50 point b of Law Number 5 Year 1999, the Commission enacts the Decision on the Guidelines for Implementation of Provisions of Article 50 point b on Exemptions to the Implementation of Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Business Competition to Agreements related to Franchise.

B. Objectives of the Guidelines

1. To implement the provisions of Article 35 point f of Law Number 5 Year 1999, that the Commission for the Supervision of Business Competition is assigned among others to prepare guidelines and/or publications related to Law Number 5 Year 1999.
2. To provide a guidance to the members of the Commission for the Supervision of Business Competition so as to share vision and understanding in implementing the provisions of Article 50 point b of Law Number 5 Year 1999.
3. To provide clarification and clarity to the franchisor and franchisee and other related parties in understanding the provisions of Article 50 point b of Law Number 5 Year 5, in order that they can give due attention in executing agreements related to franchise and therefore avoid monopolistic practice and unfair business competition. In the event of this circumstance, the provisions stipulated in Law Number 5 Year 1999 shall be applicable.

C. Materials of the Guidelines

The guidelines for implementation of provisions of Article 50 point b on exemptions to the implementation of Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition is prepared with due attention of the background, philosophy and objectives of the establishment of Law Number 5 Year 1999 as contemplated in the provisions of Articles 2 and 3 which say:

Article 2

Business activities of business actors in Indonesia must be based on economic democracy, with due observance of the equilibrium between the interests of business actors and the interests of the public.

Article 3

The purpose of enacting this Law shall be as follows:

- a. to safeguard the interests of the public and to improve national economic efficiency as one of the efforts to improve the people's welfare;
- b. to create a conducive business climate through the stipulation of fair business competition in order to ensure the certainty of equal business opportunities for large-, middle- as well as small-scale business actors in Indonesia;
- c. to prevent monopolistic practices and or unfair business competition that may be committed by business actors; and
- d. the creation of effectiveness and efficiency in business activities.

In addition, these guidelines are prepared with due observance of the provisions stipulated in other related laws and regulations, among others, such as Law Number 20 Year 2008 on Micro, Small and Middle Scale Business and Government Regulation Number 42 Year 2007 on Franchise.

D. Systematic Order

The Guidelines for Implementation of Article 50 point b are prepared under the following systematic order:

CHAPTER I INTRODUCTION

CHAPTER II UNDERSTANDING AGREEMENTS RELATED TO FRANCHISE ON THE BASIS OF PROVISIONS OF ARTICLE 50 point b

A. Definition of Agreement

B. Definition of Franchise

C. Terms and Conditions of Franchise Agreement

D. Elements in Article 50 point b, especially regarding agreements related to Franchise

CHAPTER III APPLICATION OF ARTICLE 50 point b, ESPECIALLY REGARDING AGREEMENTS RELATED TO FRANCHISE

CHAPTER IV CASE SAMPLES

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CHAPTER II
UNDERSTANDING AGREEMENTS RELATED TO FRANCHISE ON THE BASIS OF PROVISIONS
OF ARTICLE 50 point b

A. Definition of Agreement

The definition of agreement with relation to Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Business Competition shall refer to the provisions of Article 1 point 7 of the Law which defines as follows:

“Agreement shall be the action of one or more business actors for binding themselves to one or more other business actors under whatever name, either in writing or not in writing”.

In addition, in entering into an agreement, one shall also refer to the principles of agreements as contemplated in Articles 1320 and 1338 of Indonesian Civil Code.”

B. Definition of Franchise

The definition of franchise in these Guidelines refer to that as contemplated in Article 1 point 1 of Government Regulation Number 42 Year 2007 on Franchise.

Article 1 point 1 of Government Regulation Number 42 Year 2007 on Franchise defines the franchise as: “special right that owned by individual or business entity in a business system with distinctive feature in the framework of marketing of goods and/or service that already proved successful and able to be benefited and/or used by other party based on the franchise agreement.”

The following elements can be identified from this definition of franchise:

- a. There is special right that owned by individual or business entity;
- b. There is a business system with distinctive feature in the framework of marketing of goods and/or service that already proved successful; and
- c. Such business system can be benefited and/or used by other party based on the franchise agreement.

It shall be noted that in the definition, “business entity” shall not necessarily be a legal entity nor Indonesian legal entity.

Further, **Article 3 of the Government Regulation Number 42 Year 2007** on Franchise determines that a franchise shall meet the following criteria:

- a. having distinctive feature of business;
- b. already proved to generate profits;
- c. possess the standard on servicing and goods and/or services that offered and made in writing;

- d. easy to be trained and applied;
- e. availability of sustainable supports; and
- f. Intellectual Property Right has been registered.

In the **Elucidation to Article 3**, each of the criteria is explained as follows:

Point a

What is meant by "distinctive feature of business" is a business having prominence or difference that is inimitable compared with other similar business, and consumers always going behind distinctive feature mentioned. For example, management system, sale method and servicing, or structuring or distribution method that constitute special characteristic from Franchisor.

Point b

What is meant by "already proved to generate profits" is to indicate the Franchisor's experiences for more or less five years and already have strategies of business to handle the problems in running its business, and it is proven by the sustainability and growth of profitable business.

Point c

What is meant by "standard on servicing and goods and/or services that offered and made in writing" is the written standard enabling the Franchisee to undertake the business in a clear and same framework (Standard Operational Procedure).

Point d

What is meant by "easy to be trained and applied" is easy to undertake so that Franchisee who still lacks of experiences or knowledge on similar business is able to implement the business in accordance with operational guidance and sustainable management provided by Franchisor.

Point e

What is meant by "sustainable supports" is the supports provided by the Franchisor to the Franchisee on a continuous basis such as operational guidance, training and promotion.

Point f

What is meant by "Intellectual Property Right has been registered" is the Intellectual Property Rights related to the business such as mark, copy right, patent and business secret have been registered and has certificate or being in the process of registration at the competent authorities.

C. Terms and Conditions of Franchise Agreement

As illustrated above that the definition of franchise as contemplated herein is that the definition as defined in Article 1 point 1 of Government Regulation Number 42 Year 2007 on Franchise, i.e. “the special right that owned by individual or business entity in a business system with distinctive feature in the framework of marketing of goods and/or service that already proved successful and able to be benefited and/or used by other party based on the franchise agreement.”

In a franchise agreement, the franchisor usually specifies some terms and conditions applicable to the franchisor which are aimed at maintaining the distinctive feature of the business, service standard and goods and/or business to be marketed. Such terms and requirements are usually aimed at safeguarding the Intellectual Property Rights and the concept of the franchise itself, thereby it can be excluded from the implementation of Law Number 5 Year 1999. **However, in practice, some terms and conditions of franchise agreement often contains clauses which can hinder or limit the franchisee in running its business, thereby potentially cause monopolistic practice and unfair business competition.** In case of the existence of such terms and requirements, the stated franchise agreement shall not be excluded from the implementation of Law Number 5 Year 1999.

Partnership under a franchise system in the form of Micro, Small and Middle Scale Business is encouraged by **Law Number 20 Year 2008 on Micro, Small and Middle Scale Business. Article 7 paragraph (1)** of the Law sets out that the Government and Local Governments shall promote business climate by establishing the laws and regulations as well as policies which covers the following aspects:

- a. funding;
- b. facilities and infrastructure;
- c. business information;
- d. partnership;
- e. business permit;
- f. business opportunity;
- g. trade promotion; and
- h. institutional support.

The partnership aspect as referred to in Article 11 points f and g of the Law is aimed at:

- f. to encourage the achievement of market structure which guarantees the growth of fair business competition and protection of consumers;
- g. to prevent the market control and business monopoly by certain individual or group which may

result in an adverse impact to the Micro, Small and Middle Scale Business.

In the elucidation of Article 11 point g, it is stated that: "Market control and business monopoly shall be prevented in order that they will not harm the Micro, Small and Middle Scale Business.

Stipulations on Franchise Agreement as a basis of the implementation of franchise business are set out in Article 4 up to Article 6 of the Government Regulation Number 42 Year 2007 on Franchise and Article 26 point c and Article 29 of Law Number 20 Year 2008 on Micro, Small and Middle Scale Business.

1. Article 4 provides that:
 - (1) Franchise is executed on the basis of written agreements entered into by and between Franchisor and Franchisee with due observance of the laws of the Republic of Indonesia.
 - (2) If the agreement as referred to in paragraph (1) is made in any foreign language, it shall be translated into Bahasa Indonesia.
2. Article 5 provides that Franchise Agreement shall at least contain the following provisions:
 - a. names and addresses of the parties;
 - b. types of Intellectual Property Rights;
 - c. business activities;
 - d. rights and obligations of the parties;
 - e. assistance, facility, operational guidance, training and marketing to be provided by the franchisor to the franchisee;
 - f. business area;
 - g. period of agreement;
 - h. method of compensation payment;
 - i. ownership, change of ownership, and right of beneficiaries;
 - j. settlement of dispute; and
 - k. procedures of renewal, expiry and termination of agreement.
3. Article 6 provides that:
 - (1) Franchise agreement may contain clauses providing for the transfer of rights to the Franchisee to appoint other franchisees.
 - (2) Franchisee who is granted the right to appoint other franchisees shall have and manage at least one (1) business premise.
4. Article 26 point c of Law Number 20 Year 2008 on Micro, Small and Middle Scale Business provides that:

Article 26

A partnership can be administered under the following pattern:

- a. cooperation (*inti-plasma*);
- b. sub-contract;
- c. **franchise**;
- d. general trade;
- e. distribution and agency; and
- f. other forms of partnership, such profit-sharing, operational cooperation, joint venture, and outsourcing.

5. Article 29 of Law Number 20 Year 2008 on Micro, Small and Middle Scale Business which relates to the franchise provides as follows:

- (1) Large scale business which expands its business by way of franchise as referred to in Article 26 point c, shall provide opportunities and put a priority to Micro, Small and Middle Scale Business Micro, Small and Middle Scale Business which are competent.
- (2) Franchiser and franchisee shall prioritize on the use of domestic goods and/or materials to the extent that they meet the standard of quality for the goods and/services provided and/or sold under the franchise agreement.
- (3) Franchisor shall provide guidance in the form of training, operational and managerial guidance, marketing, research, and development to the franchisee on a sustainable basis.

The provisions on the use of domestic products are not only contemplated in Article 29 paragraph (2) of Law Number 20 Year 2008, but also in Article 9 of **Government Regulation Number 42 Year 2007 on Franchise** which stipulates that:

- (1) The Franchisor and Franchisee shall prioritize on the use of **domestic goods and/or services** to the extent that they meet the standard of quality for goods and/or services as set out by the Franchisor.
- (2) The Franchisor shall establish cooperation with small and middle scale entrepreneur at the local area as Franchisee or supplier of goods and/or services to the extent that they meet the terms and requirements specified by the Franchisor.

In the framework of empowering Micro, Small and Middle Scale Business and promoting the use of domestic products, the application of Article 50 point b of Law Number 5 Year 1999, especially on the exemption to the agreements related to franchise, **shall keep observing the principles of prohibition of monopolistic practice and unfair business competition**, with a view to assuring business opportunities for all business actors, creating conducive business climate as contemplated in

Law Number 5 Year 1999. The principle is reiterated in the provisions of **Article 4 paragraph (1) of Government Regulation Number 42 Year 2007 on Franchise** providing that: “franchise shall be administered by virtue of written agreement entered into by and between Franchisor and Franchisee **with due observance of laws of the Republic of Indonesia.**” Therefore, **the implementation of franchise business shall not violate the provisions stipulated in the laws of the Republic of Indonesia, among others, the provisions stipulated in Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Business Competition.**

D. Elements in Article 50 point b, Especially Regarding Agreements related to Franchise

Elements in the provisions of Article 50 point b especially regarding agreements related to franchise, include:

1. Agreement

As illustrated above, agreement shall refer to the provisions of Article 1 point 7 of Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Business Competition which provides for that: “agreement shall be the action of one or more business actors for binding themselves to one or more other business actors under whatever name, either in writing or not in writing”.

Further, with regard to the principle of execution of the agreement shall refer to the provisions of Articles 1320 and 1338 of Indonesian Civil Code.

2. “Related to”

The phrase “related to” shall be able to proven that the agreement entered into by and between the franchisor and franchisee fully meet the franchise criteria as stipulated in the applicable laws and regulations. Currently applicable laws and regulations shall be as follows:

1. Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Business Competition;
2. Law Number 20 Year 2008 on Micro, Small and Middle Scale Business (see : Article 26 point c, Article 29, Article 35, Article 36 paragraph (1), Article 39 paragraph (1) and paragraph (2), and Article 40);
3. Government Regulation Number 42 Year 2007 on Franchise.

3. Franchise

The definition and criteria of franchise, provisions to be set out in the franchise agreement, and other matters related to franchise shall refer to the provisions stipulated in Government Regulation Number 42 Year 2007 on Franchise. Article 1 point 1 defines the franchise as follows:

“Franchise is special right that owned by individual or business entity in a business system with distinctive feature in the framework of marketing of goods and/or service that already proved successful and able to be benefited and/or used by other party based on the franchise agreement”. These three elements shall receive due attentions either by the franchisor or franchisee in preparing a franchise agreement in order that the provisions of Article 50 point b of Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Business Competition can be observed.

CHAPTER III
IMPLEMENTATION OF ARTICLE 50 point b, ESPECIALLY REGARDING AGREEMENTS
RELATED FRANCHISE

1. Some Considerations in Implementation

In implementing the provisions of Article 50 point b, especially agreements related franchise, the Commission for Supervision of Business Competition shall render wise consideration in order not to violate the objectives of the formulation of Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Business Competition. Such considerations shall include among others as follows:

1. Franchise criteria as stipulated in Article 3 of Government Regulation Number 42 Year 2007 on Franchise shall be met;
2. Franchise agreement constitutes a form of partnership as stipulated in Article 26 point c in conjunction with Articles 29, 35, and 36 paragraph (1) of Law Number 20 Year 2008 on Micro, Small and Middle Scale Business;
3. The contents of Franchise agreement shall not have a potency to violate the principles of Prohibition of Monopolistic Practice and Unfair Business Competition; and
4. The execution of the agreement shall remain to refer to the provisions of Article 1 point 7 of Law Number 5 Year 1999 and Article 1320 and Article 1338 of Indonesian Civil Code.

2. Some samples of criteria in franchise agreement which has a potency to violate the principles of Prohibition of Monopolistic Practice and Unfair Business Competition, the provisions of Article 50 point b cannot therefore be implemented:

a. Specifying Resale Price (Resale Price Maintenance)

The franchisor enters into an agreement with the franchisee specifying the resale price which shall be observed by the franchisee. The franchisee as an independent business actor basically has a discretion to specify the resale price of goods and/or service provided by the franchisor. Based on the business competition perspective, resale price maintenance in a franchise **is prohibited as it will eliminate price competition among the franchisees**. It will lead to the same price among the franchisors and, consequently, consumers have to buy with the same price as well. Such resale price maintenance **is not excluded** from the implementation of Law Number 5 Year 1999. However, in order to maintain the economic value of franchise business, the franchisor is permitted to give recommendation on resale price to the franchisee, to the extent that such recommendation does not bind the franchisee.

b. Provisions on procurement of goods and/or services from Franchisor or other party appointed by the Franchisor

Franchise Agreement contains provisions requiring the franchisee to procure goods and/or services which forms part of the franchise concept from the franchisor or other party appointed by the franchisor. Such provisions can be excluded to the extent that it is done to maintain the identity and reputation of the franchise and promote the franchise concept developed by the franchisor. However, **the franchisor shall not prohibit the franchisee to procure goods and/or services from other parties to the extent that such goods and/or services meet the quality standard specified by the franchisor.** Procurement requirements stipulated by the franchisor or certain party may hinder other business actors who are able to supply the goods and/or services with the same quality. Therefore, **the franchisor is not permitted to absolutely specify the access for supply needed by the franchisee to the extent that it does not harm the concept of franchise business.**

c. Provisions on procurement of goods and/or services from franchisor

The franchisor obligates the franchisee to be willing to procure other goods and/or services from the Franchisor (*tie-in*). Franchise agreement which contains obligations of the franchisee to procure other products from the franchisor does not constitute a violation to business competition, to the extent that it is intended to maintain the identity and reputation of the franchise. It is necessary to note that, **the obligation to procure other products which does not include in the franchise package is not excluded from the implementation of Law Number 5 Year 1999.**

d. Area Limitation

The franchisor imposes area limitation by way of specifying certain area to the franchisee. The franchise agreement usually contains clauses on the business area. The aim of the clause is to establish the franchise network system. In such a case, the area arrangement is not considered as a violation to the business competition, therefore, it can constitute as an exception. However, **the area limitation which is imposed not in the framework of the establishment of the franchise network system, but to limit the market and consumers shall not be excluded from the implementation of provisions of Law Number 5 Year 1999.**

e. Provisions on not conducting the same business within certain period upon the expiry of the franchise agreement.

The franchisor requires that the franchisee shall not conduct the same business activities as

the franchise business within certain period of time upon the expiry of the franchise agreement. Such provisions can be excluded from Law Number 5 Year 1999 provided that it is intended to protect the franchisor's Intellectual Property Rights or to maintain the identity and reputation of the franchise. However, **such provisions in long term may hinder the business competition and advancement of the technology.** Therefore, **the provisions on not conducting the same business activities as the franchise business within long period of time is not excluded from** implementation of Law Number 5 Year 1999. In determining the period of time considered to have a potency to violate the Law Number 5 Year 1999, the Commission considers some matters among others the technology of the franchise product, cost required to produce the franchise product, characteristics of the franchise product (whether in the *public domain* or not).

CHAPTER IV

CASE SAMPLES

1. Sample of Contents of Franchise Agreement

Mini market franchisor enters into franchise agreement with franchisee in relation to the establishment of a mini market by using the brand owned by the franchisor which has been registered with the Directorate General of Intellectual Property Rights, Ministry of Laws and Human Rights of the Republic of Indonesia. The franchise granted to the franchisee deals with the rights to use the trade name/brand owned by the franchisor as well as all concepts and work mechanism and system in accordance with the operational standard developed by the franchisor. Franchise right received by the franchisee from the franchisor either directly or indirectly cannot be transferred to other party with any reasons and ways whatsoever and places wherever, except the franchise agreement contains the clause as referred to in Article of the Government Regulation Number 42 Year 2007. Franchise agreement usually provides for as follows:

a. Obligations of Franchisor are as follows:

1. To assist the franchisee during the pre-operation of the mini market with regard to:
 - a. recommendation on the location of the concerned mini market;
 - b. assistance in selecting employees in accordance with the required qualification for P. Mini Market.
 - c. planning, implementation and supervision of the renovation in accordance with the standard of P. Mini Market.
2. To provide training to the franchisee and all employees of the mini market in an integrated training program with materials and schedules as specified.
3. To provide administrative and operational guidance as reference for the franchisee in carrying out the routine operation of the mini market.
4. To deliver goods as per the request of the franchisee with reference to the terms and conditions of Stock Management as stipulated in the agreement.
5. To provide consultancy assistance to the franchisee in order that the P. Mini Market can be operated in accordance with the specified operational standard.
6. To provide the routine supplies for the mini market such as plastic bags, stickers, computer equipment and others in accordance with the operational standard of P. Mini Market.

The franchise agreement provides for the management of the merchandises to be supplied by the franchisor to the franchisee which constitutes the rights of the franchisor as follows:

1. Determining the merchandises including its composition, types, resale price and source;
2. All merchandises shall be procured from the franchisor and sold maximum at the price

illustrated in the list applicable from the supplier (franchisor) and plus the mark up of 2% two percent.

3. If the franchisor sees a potential prospect value or as a preventive measure, there is a need to open a new mini market at the radius of one hundred (100) meters from the location of the franchisee's mini market actions, the franchisee will be given a priority in the form of the first written offer before it is offered to other party or opened by the franchisor.

b. Obligations of Franchisee are as follows:

1. To pay the amount of merchandises procured to the franchisor in accordance with the quantity of goods received by the franchisee.
2. To inspect the salability of all merchandises in the P. mini market..
3. Not to receive, store, display and sell other merchandises than those specified in the agreement.
4. To implement the administration of the merchandises in accordance with the mini market's operational and administrative guidance.
5. In operating the P mini market, to use the hardware and software as well as telecommunication network system as per the standard specified by the franchisor, which will be periodically improved by the franchisor as per the current requirement and technology..
6. To operate the mini market in accordance with the Operational and Administration Guidelines as specified.
7. To provide information/transaction evidences in case of an internal audit is conducted by the franchisor.

2. Analysis of Settlement of Case Samples

Conceptually, franchise agreement is excluded if it meets the terms and conditions of franchise agreement as provided for in Article 3 of Government Regulation Number 42 Year 2007 on Franchise. The above illustrated agreement sample contains terms and conditions which may result in unfair business competition, such as the clause on **resale price maintenance** as specified by the franchisor.

In the agreement, the franchisee is obliged to sell the franchised merchandises as per the price list specified by the franchisor plus a mark up of 2%. Such price maintenance does not violate the violations stipulated in Law Number 5 Year 1999, despite of the resale price maintenance, the franchisee has a discretion to increase the resale price of 2%. However, final resale price maintenance may be in the contrary to the provisions of Law Number 5 Year 1999 as it does not give a discretion to the franchise as an independent business actor to specify the resale price of its

merchandise. If the mark up of 2% is specified in an absolute manner, in other words, it shall be complied with the franchisee, the franchisee shall therefore have no discretion in specifying the resale price and no intra-brand competition, such requirements shall be subject to the provisions of exemptions pursuant to Article 50 point b of Law Number 5 Year 1999.

The franchise agreement as referred to in the above sample, there is no provisions requiring the procurement of the goods and/or services from the franchisor or other party appointed by the franchisor only nor area limitation nor requirement on prohibition of conducting the same business activities for a certain period of time upon the expiry of the franchise agreement.

Therefore, the exemptions by virtue of Article 50 point b shall be applicable to such franchise agreement.

CHAPTER V

CLOSING

1. Article 50 point b of Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Business Competition provides for the exception to the implementation of Law Number 5 Year 1999 to agreements related to franchise.
2. The exception as stipulated in Article 50 point b cannot be implemented in an absolute manner as it is not impossible that the execution of agreements related to franchise whose clauses may result in monopolistic practice or unfair business practice.
3. The exception as provided for in Article 50 point b can be implemented provided that it meet the criteria of franchise as contemplated in Article 26 point c, Article 29, Article 35, and Article 36 paragraph (1) of Law Number 20 Year 2008 on Micro, Small and Middle Scale Business and provisions provided for in the Government Regulation Number 42 Year 2007 on Franchise.
4. The provisions stipulated in Article 50 point b cannot be implemented in an absolute manner in consideration that the objective of the establishment of Law Number 5 Year 1999 as provided for in Article 3 thereof will not be futile. Therefore, the attitude of business actors related to franchise which may result in monopolistic practice and unfair business competition are not excluded from the provisions as stipulated in Article 50 point b.