



Berbisnis di Australia: Mendirikan Perusahaan, Membuat Franchise dan Licence Agreement

Melbourne, 9 November 2022

ALUR PEMBAHASAN

1. **Mendirikan Perusahaan di Australia**
2. **Kepengurusan Perusahaan**
3. **Dokumen yang Diperlukan dan Tahapan Awal Dalam Franchise di Australia**
4. ***Licence Agreement***

1| Mendirikan Perusahaan Di Australia

STRUKTUR BISNIS YANG DAPAT DIGUNAKAN DI AUSTRALIA

1

SOLE TRADER

- Struktur bisnis yang sederhana, murah dan biasanya tidak banyak aturan hukum yang mengikatnya
- Tidak ada pemisahan tanggung jawab hukum antara anda dengan struktur bisnis ini. Tegasnya, utang dan segala kewajiban yang timbul menjadi tanggung jawab pendiri
- Tidak perlu melakukan pendaftaran ke ASIC (kecuali jika bisnis dimaksud dijalankan dengan bukan nama pendiri)

3

TRUST

- Perwalian (*trust*) adalah struktur di mana wali menjalankan bisnis atas nama anggota perwalian (atau penerima manfaat)
- Wali amanat (*trustee*) dapat berupa orang atau perusahaan, dan bertanggung jawab atas segala sesuatu dalam perwalian, termasuk pendapatan dan kerugian
- Struktur perwalian mahal dan rumit untuk dibentuk, dan umumnya digunakan untuk melindungi aset bisnis bagi penerima manfaat.

2

PARTNERSHIP

- Dua orang atau lebih atau badan yang melakukan usaha sebagai mitra atau menerima penghasilan secara bersama-sama
- Tidak ada pemisahan tanggung jawab hukum antara anda dengan struktur bisnis ini. Tegasnya, utang dan segala kewajiban yang timbul menjadi tanggung jawab anda
- Biasanya ada perjanjian kemitraan, namun tidak penting

4

COMPANY

- Badan hukum yang memisahkan tanggung jawab hukum antara perusahaan dengan anda.
- Struktur bisnis yang lebih kompleks dibandingkan dengan *sole trader*, dengan biaya pengaturan dan administrasi yang lebih tinggi dan tingkat tanggung jawab hukum yang lebih tinggi yang dibebankan pada perusahaan dan direktur.
- Struktur perwalian mahal dan rumit untuk dibentuk, dan umumnya digunakan untuk melindungi aset bisnis bagi penerima manfaat.

PERBEDAAN STRUKTUR BISNIS DI AUSTRALIA

Differences between a sole trader, partnership, company and trust

Here is a snapshot of the key differences between each type of business structure:

Component	Sole trader	Partnership	Company	Trust
Complexity of business structure	Simple	Moderate	Complex	Highly complex
Cost	Low	Medium	Medium to high	High
Legal obligations	Low	Low to medium	High	Medium
Separate legal entity	No	No	Yes	Yes
Liability	Unlimited	Unlimited	Limited	Limited (with a corporate trustee)

Sumber: <https://asic.gov.au/for-business/small-business/starting-a-small-business/setting-up-a-business-structure/>

ATURAN-ATURAN DI AUSTRALIA YANG BERKAITAN DALAM KEGIATAN PERUSAHAAN

- Corporations Act 2001 (berlaku)
- Fair Work Act 2009 (berlaku)
- Competition and Consumer Act 2010 (berlaku)
- Competition and Consumer (Industry Codes—Franchising) Regulation 2014 (berlaku)
[made under section 51AE of the Competition and Consumer Act 2010]

Corporations Act 2001



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5C Application of the Acts Interpretation Act 1901

Part 1.1A—Interaction between Corporations legislation and

State and Territory laws

Part 1.2—Interpretation



Corporations Act 2001

No. 50, 2001

Compilation No. 120

Compilation date: 1 October 2022

Includes amendments up to: Act No. 35, 2022

Registered: 20 October 2022

This compilation is in 7 volumes

Volume 1: sections 1–260E
Volume 2: sections 283AA–600K
Volume 3: sections 601–742
Volume 4: sections 760A–994Q
Volume 5: sections 1010A–1369A
Volume 6: sections 1370–1697
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Endnotes



Fair Work Act 2009

No. 28, 2009

Compilation No. 45

Compilation date: 11 September 2021

Includes amendments up to: Act No. 104, 2021

Registered: 8 October 2021

This compilation is in 2 volumes

Volume 1: sections 1–536H
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Each volume has its own contents

Fair Work Act 2009



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Competition and Consumer (Industry Codes—Franchising) Regulation 2014



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Competition and Consumer (Industry Codes—Franchising) Regulation 2014

Select Legislative Instrument No. 168, 2014

made under section 51AE of the

Competition and Consumer Act 2010

Compilation No. 8

Compilation date: 15 April 2022

Includes amendments up to: F2022L00471

Registered: 26 April 2022

This compilation includes commenced amendments made by F2022L00336

Competition and Consumer Act 2010



- C2022C00212
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4A Subsidiary, holding and related bodies corporate

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Competition and Consumer Act 2010

No. 51, 1974

Compilation No. 140

Compilation date: 1 July 2022

Includes amendments up to: Act No. 111, 2021

Registered: 21 July 2022

This compilation is in 3 volumes

Volume 1: sections 1–110
Volume 2: sections 10.01–186
Volume 3: Schedules
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Each volume has its own contents

This compilation includes commenced amendments made by Act No. 54, 2021

About this compilation

ALUR PROSES PEMBUATAN PERUSAHAAN BERDASARKAN CORPORATIONS ACT 2001

Section 112

Chapter 2A—Registering a company

Part 2A.1—What companies can be registered

112 Types of companies

Types of companies

(1) The following types of companies can be registered under this Act:

Proprietary companies	Limited by shares
	Unlimited with share capital
Public companies	Limited by shares
	Limited by guarantee
	Unlimited with share capital
	No liability company

Note: Other types of companies that were previously allowed continue to exist under the Part 10.1 transitionals.

No liability companies



1. Menentukan Jenis Perusahaan: *Proprietary* atau *Public Company*

Proprietary Company

Section 45A

Division 5A—Types of company

45A Proprietary companies

Berdasarkan 'ukurannya', terbagi atas:

- (1) A proprietary company is a company that is registered as, or converts to, a proprietary company under this Act.

Note 1: A proprietary company can be registered under section 118 or 601BD. A company can convert to a proprietary company under Part 2B.7.

Note 2: A proprietary company must:

- be limited by shares or be an unlimited company with a share capital
- have no more than 50 non-employee shareholders
- not do anything that would require disclosure to investors under Chapter 6D (except in limited circumstances).

(see section 113).

Berdasarkan bentuknya, terbagi atas:

Limited by shares;

Tanggung jawab pemegang saham sebesar nilai sahamnya

Unlimited with share capital;

Pemegang saham bertanggung jawab secara penuh terhadap perusahaan

Small Proprietary Company;

Mengacu Section 45A (2), perusahaan digolongkan sebagai *Small Proprietary Company* jika selama satu tahun keuangan memenuhi dua dari kondisi berikut:

- memiliki pendapatan operasional kotor kurang dari \$25 juta;
- memiliki aset kotor konsolidasi kurang dari \$12,5 juta;
- mereka memiliki kurang dari 50 karyawan.

Small Proprietary Company tidak harus mengajukan laporan keuangan tahunan yang telah diaudit, kecuali jika diminta oleh ASIC atau anggota, dan petugas dari perusahaan kecil dapat bertindak sebagai auditor

Large Proprietary Company;

Perusahaan yang tidak memenuhi ciri-ciri *Small Proprietary Company* di atas, maka akan diklasifikasikan sebagai *Large Proprietary Company* dan harus memenuhi persyaratan pelaporan keuangan yang lebih ketat [Subsection 324CA – 324CD].

1. (...Lanjutan) Menentukan Jenis Perusahaan: *Proprietary* atau *Public Company*

Proprietary Company

Seperti di Indonesia, perusahaan yang berbentuk *Proprietary Company* merupakan perusahaan/perseroan tertutup yang di dalamnya terbagi atas saham-saham. Selain itu, *Proprietary Company* juga perlu memperhatikan hal-hal berikut:

- dapat dibentuk hanya dengan satu orang [Section 114];
- dibatasi tidak lebih dari 50 pemegang saham non-karyawan. Namun, jumlah pemegang saham dapat melebihi 50 jika beberapa pemegang saham dimaksud adalah pemegang saham karyawan;
- tidak boleh terlibat dalam aktivitas apa pun yang memerlukan pengungkapan (misalnya, prospektus) kepada investor;
- Jika perusahaan terbatas, maka nama perusahaan harus memuat kata "Proprietary" atau "Pty" disisipkan sebelum "Limited" atau "Ltd" [Section 148(2)]. Sedangkan jika perusahaan tak terbatas, maka nama perusahaannya tetap harus ada kata "Proprietary" atau "Pty" di akhir namanya atau dengan kata lain tidak ada "Limited atau "Ltd" [Section 148 (3)].

1. (...lanjutan) Menentukan Jenis Perusahaan: *Proprietary* atau *Public Company*

Public Company

Terbagi atas:

Public Company merupakan perusahaan terbatas terbuka yang di dalamnya terbagi atas saham-saham. 'Terbuka' yang dimaksud di sini ialah perusahaan dapat menawarkan sahamnya kepada masyarakat umum. *Public Company* juga perlu memperhatikan hal-hal berikut:

- diatur lebih ketat daripada *Proprietary Company*;
- dapat dibatasi atau tidak dibatasi oleh saham;
- harus memiliki tiga direktur dan satu pemegang saham, dan karena itu tidak dapat menjadi perusahaan satu orang;

Limited by shares;

Tanggung jawab pemegang saham sebesar nilai sahamnya

Unlimited with share capital;

Pemegang saham bertanggung jawab secara penuh terhadap perusahaan

Limited by guarantee;

digunakan untuk organisasi nirlaba dan amal di Australia. Juga biasa digunakan untuk rekreasi (klub olahraga dan bowling) hingga organisasi budaya.

Karakteristiknya sebagai berikut:

- mereka tidak dapat membayar dividen;
- mereka tidak dapat menerbitkan saham dan oleh karena itu tidak ada orang yang dapat memperoleh kepentingan pengendali atau keuntungan dari penjualan saham;
- setiap anggota perusahaan memiliki satu suara.

[sumber: <https://asic.gov.au/about-asic/contact-us/how-to-complain/companies-limited-by-guarantee-disputes-about-members-rights/>]

No liability company;

Yakni perusahaan yang di dalam AD/ART-nya hanya memuat untuk melakukan kegiatan pertambangan. Perusahaan jenis ini juga tidak dapat memaksa anggotanya (pemegang saham) untuk memenuhi 'calls' atas modal yang belum dibayar [Section 112(2) – (3)]

2. Menentukan Nama Perusahaan

Nama perusahaan dan bisnis di Australia dikelola oleh Australian Securities and Investments Commission (ASIC). Adapun terdapat beberapa ketentuan yang harus diperhatikan dalam memilih nama perusahaan yang akan didaftarkan, yakni:

- a. tidak boleh sama dengan perusahaan yang telah terdaftar dapat memanfaatkan fasilitas pencarian nama pada laman yang disediakan oleh ASIC sebagai berikut https://connectonline.asic.gov.au/RegistrySearch/faces/landing/NameAvail.jspx?_af.ctrl-state=14okfzciue_4
- b. nama perusahaan tidak boleh bersifat offensive atau memiliki makna illegal activity atau mengandung kalimat yang menyesatkan publik terhadap kegiatan bisnis
- c. untuk perusahaan proprietary menggunakan nama tambahan yang disematkan di belakang nama perusahaan yakni Pty Ltd
- d. mengajukan permohonan pendaftaran nama



2. (...lanjutan) Menentukan Nama Perusahaan

Meskipun nama perusahaan sudah terdaftar, namun hal itu tidak memberikan hak eksklusif bagi pemilik perusahaan terhadap produk yang dipasarkan. Nama perusahaan hanya sekedar untuk mengidentifikasi atau sebagai tanda pengenal bahwa perusahaan dimaksud sudah dan masih tetap *exist*.

Memang, ketika nama perusahaan sudah terdaftar di ASIC, pihak lain tidak dapat menggunakannya lagi sebagai nama perusahaan, **namun perlu diingat, pihak lain masih dapat memakainya sebagai hak merek.**

Hak eksklusif terhadap produk yang dipasarkan baru dapat diperoleh ketika produk dimaksud telah didaftarkan hak merek-nya. Oleh karena itu, menjadi penting pula bagi perusahaan untuk segera mendaftarkan hak merek terhadap produknya.



  ASIC Australian Securities & Investments Commission	Australian Company INTEGRITY LAWYERS PTY LTD ACN 663 545 668
Extracted from ASIC's database at AEST 21:51:37 on 08/11/2022	
Company Summary	
Name: INTEGRITY LAWYERS PTY LTD	
ACN: 663 545 668	
ABN: 66 663 545 668	
Registration Date: 02/11/2022	
Next Review Date: 02/11/2023	
Status: Registered	
Type: Australian Proprietary Company, Limited By Shares	
Locality of Registered Office: MELBOURNE VIC 3000	
Regulator: Australian Securities & Investments Commission	

Kendati demikian, tidak serta merta INTEGRITY LAWYERS memegang hak merek dengan nama dan logo seperti di atas.

3. Menentukan alamat kantor

Pendaftaran Perusahaan di Australia harus menyertai alamat kantor yang terdaftar di ASIC

Part 2B.5—Registered office and places of business

142 Registered office

- (1) **A company must have a registered office** in this jurisdiction. Communications and notices to the company may be addressed to its registered office.

Note 1: A document may be served on a company by leaving it at, or posting it to, the company's registered office (see subsection 109X(1)).

Note 2: Communications and notices from ASIC may also be addressed to the company's contact address (see section 146A).

- (2) A company must lodge notice of a change of address of its registered office with ASIC not later than 28 days after the date on which the change occurs. The notice must be in the prescribed form.

Note: If the company is not to be the occupier of premises at the address of its new registered office, the notice must state that the occupier has consented to the address being specified in the notice and has not withdrawn that consent (see section 100).

- (2A) An offence based on subsection (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) A notice of change of address takes effect from the later of:
- (a) the seventh day after the notice was lodged; or
 - (b) a later day specified in the notice as the date from which the change is to take effect.

4. Menyusun regulasi manajemen internal: constitution (AD/ART), replacable rule, atau kombinasi keduanya

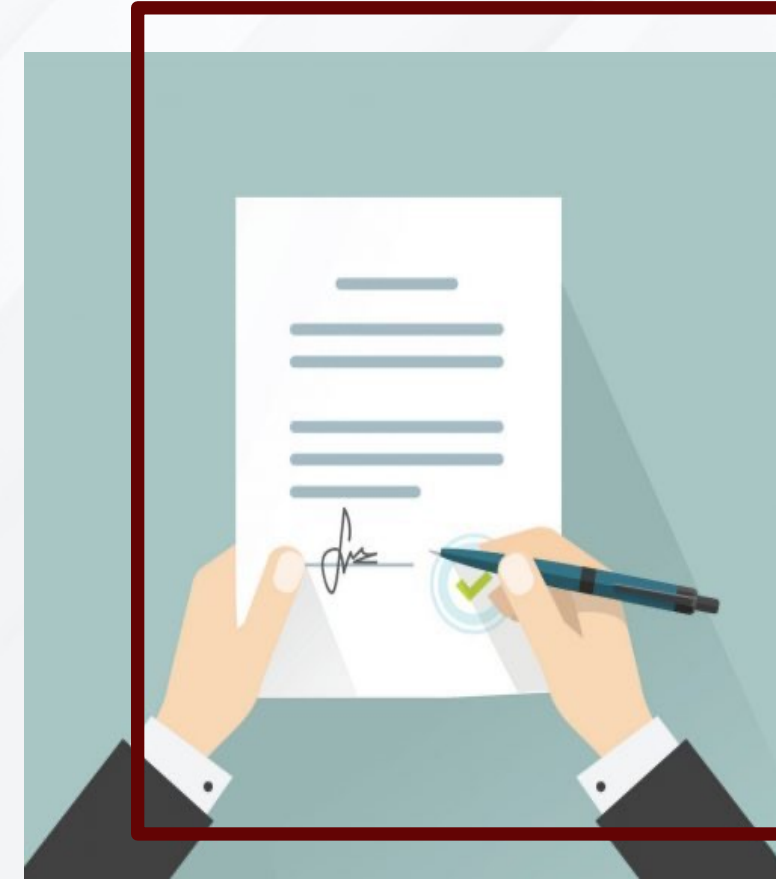
Terdapat 3 (tiga) pilihan untuk pengelolaan sebuah perusahaan di Australia, sebagai berikut:

- AD/ART perusahaan (*company constitution*)
- Peraturan yang dapat dirubah (*replaceable rules*)
- Kombinasi keduanya (*combination of both*)

AD/ART perusahaan (*company constitution*) pada dasarnya mengatur tentang hubungan kegiatan bisnis perusahaan dengan direksi dan para pemegang saham. Hal tersebut juga pada umumnya mengatur tentang petunjuk bagaimana pertemuan-pertemuan dalam perusahaan dijalankan (baik pertemuan direksi maupun para anggota), serta hal-hal lain yang berkaitan dengan pelaksanaan peraturan pemerintah yang berlaku.

Jika perusahaan tidak memiliki AD/ART, maka dapat mengadopsi peraturan-peraturan yang dapat dirubah (*replaceable rules*) tentang dasar-dasar menjalankan perusahaan, sebagaimana diatur dalam *Corporations Act*.

Walaupun demikian, dalam praktiknya, AD/ART tidak dimintakan pada saat mendaftarkan nama perusahaan di ASIC.



CONTOH AD/ART PERUSAHAAN AUSTRALIA (1)

THE CONSTITUTION

OF

SAMPLE PTY LTD

ACN: 000 000 000



Prepared for:
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 Sample VIC 3000
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Corporations Act 2001
 A Company Limited by Shares

THE CONSTITUTION OF

SAMPLE PTY LTD
ACN 000 000 000

This Constitution is dated 03/10/2016

Definitions and interpretation

1. (a) Definitions

"Alternate Director" means person made an Alternate Director under these Articles.

"Appointing Director" means a Director who appoints an Alternate Director under these Articles.

"Articles" means the articles of this Constitution.

"Board" means the Directors of the Company.

"Cash" includes cheques, bank cheques and bank drafts.

"Chairman" means a Director or other person appointed to chair a meeting under these Articles.

"Company" means this company.

"Constitution" means the Company's Constitution as originally adopted and as amended from time to time.

"Corporation" means a "Corporation" as defined in the Law.

"Directors" means all or any of the directors of the Company.

"Dividend" means any payment out of the Company's profits including a liquidator's dividend.

"Law" means the Corporations Act 2001 (Cwth) as currently enacted and as amended from time to time.

"Managing Director" has the meaning given in these Articles.

"Member" means a Shareholder and or a Director of the Company.

"Minute" means a minute referred to in these Articles.

"Paid" includes credited as paid.

"Proprietary Company" has the meaning given in the Law.

"Replaceable Rules" has the meaning given under the Law.

Sample Accountants | PO Box 123, Sample VIC 3000
 Telephone: (03) 1234 1234 | info@sampleaccountants.com.au

Discovery

156. No Member may require discovery of any information regarding the Company's trade secrets or other intellectual property that relates to the business of the Company or which the Directors believe should not be made available to a Member. No Director or any person claiming through a Director shall have any right or claim on any information regarding the Company's trade secrets or other intellectual property that relates to the business of the Company except as agreed in writing with the Company.

Obligation to maintain secrecy

157. Every Director, Member, Shareholder, officer of the Company and Auditor shall keep secret all information regarding the Company except as is necessary to complete the duties of their office or as required by the Law or any other law relating to the disclosure of Company information.

Indemnity

158. Every Director, employee, or officer or Auditor shall be indemnified out of the property of the Company against all liability incurred as a Director, employee, officer or Auditor in defending any legal proceedings in which judgement is given in that person's favour or in which that person is acquitted provided that to do so does not breach the Law.

Amendment

159. These Articles may be amended by a properly executed deed signed or approved of in writing by 75% or more of the Shareholders provided that all procedures for amending company constitutions set out in the Law are observed and the amendment does not breach the Law.

Remuneration of Company and Directors

160. Whilst the Company is acting in the capacity of a trustee of a Regulated Self-Managed Superannuation Fund, neither the Company nor any Director may accept any remuneration from the Fund or from any other person for any duties or services performed in relation to the Fund.

Dividends and Transfers

161. Whilst the Company is acting in the capacity of a trustee of a Regulated Self-Managed Superannuation Fund, the Company may not pay Dividends or transfer any Cash or property to shareholders.

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CONTOH AD/ART PERUSAHAAN AUSTRALIA (2)

NEW COMPANY CONSTITUTION PTY LTD
ACN XXX XXX XXX

CONSTITUTION

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A directors' meeting may be called by a director giving reasonable notice individually to every other director.

A director who has appointed an alternate director may ask for the notice to be sent to the alternate director.

4.5 Chairing director's meetings

The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair. The directors must elect a director present to chair a meeting, or part of it, if:

- a director has not already been elected to chair the meeting; or
- a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.

4.6 Quorum

Unless the directors determine otherwise, the quorum for a directors' meeting is 2 directors and the quorum must be present at all times during the meeting. No resolutions must be passed unless a quorum is present.

If the company only has 1 director, the director may pass a resolution by recording it and signing the record.

If the company only has 1 director, the director may make a declaration by recording it and signing the record.

The passage of a resolution or the making of a declaration must be recorded in the company's minutes book in accordance with clause 4.1 and the Corporations Act.

4.7 Passing of directors' resolutions

A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.

The chair has a casting vote if necessary in addition to any vote they have in their capacity as a director.

The chair may be precluded from voting, for example, by a conflict of interest.

4.8 Director may vote despite interest

If the Director has complied with clause 1.13 and the Corporations Act in relation to disclosing his material personal interest, he may vote on matters that relate to the interest, and any transactions that relate to the interest may proceed.

If a disclosure is given after the transaction has been entered into, the director may retain benefits under the transaction even though the director has the interest, and the company cannot avoid the transaction merely because of the existence of the interest.

5. Pengajuan Aplikasi

1. Jenis perusahaan;
2. Nama perusahaan;
3. Nama dan alamat masing-masing pemegang saham;
4. Identitas seluruh direktur (nama, tempat dan tanggal lahir)-present dan former;
5. Identitas seluruh sekretaris perusahaan-present dan former;
6. Alamat direktur dan sekretaris perusahaan;
7. Alamat perusahaan;
8. Alamat perusahaan melakukan kegiatan usaha yang utama (jika tidak ada alamat perusahaan).

5. Pengajuan Aplikasi (Lanjutan...)

9. Data mengenai:
 - a. Nomor dan klasifikasi saham masing-masing (akan diterangkan dalam silde berikutnya);
 - b. Jumlah masing-masing saham;
 - c. Penjelasan mengenai apakah saham tersebut akan dibayar secara penuh pada saat registrasi;
 - d. Jika tidak dibayar penuh, jumlah yang disetujui untuk tidak dibayar penuh pada masing-masing saham;
 - e. saham yang disetujui oleh masing-masing anggota secara tertulis untuk diambil atau tidak akan dimiliki oleh anggota pada saat pendaftaran.
10. *State* atau *Territory* yurisdiksi perusahaan;
11. Harus terdapat persetujuan dan perjanjian atas dokumen-dokumen di atas. Adapun setelah perusahaan terdaftar, pemohon harus menyerahkan persetujuan dan perjanjian tersebut ke perusahaan dimaksud. Perusahaan secara hukum wajib untuk menyimpannya.

KLASIFIKASI SAHAM

Ordinary shares

- ***Ordinary shares***

Saham yang paling umum. Jenis saham ini adalah saham yang disetor secara penuh (FPO/*fully paid ordinary*).

Preference shares

- ***Preference shares***

Berada di atas saham biasa, pemegang saham jenis ini mendapatkan prioritas atas pembagian dividen. Dalam hal likuidasi pun pemegang saham preferen menerima prioritas untuk pembayaran kembali.

Contributing shares

- ***Contributing shares***

Dikenal sebagai saham yang dibayar sebagian. Jenis saham ini biasanya diterbitkan sedemikian rupa sehingga sebagian dari harganya harus dibayar segera dan sisanya dibayarkan kemudian.

Focus on franchisee, not franchisor, profits

Shares in franchisee-owned groups are held by the franchisees and are generally only traded when a franchisee sells their business, or in some cases, cancelled altogether with a new share issued to the new owner. Consequently there is little or no capital growth, and dividends may rarely – if ever – be paid.

Instead of being rewarded by share growth and dividends, franchisee shareholders are instead rewarded by their franchisor's focus on growing franchisee profitability and improving franchisee welfare.

Mainstream franchisors with royalties based on franchisees' sales will be naturally inclined to focus on sales growth, potentially to the detriment of franchisee profit. This was exemplified by one of the findings of the franchise Inquiry which noted that mainstream franchisors can potentially manipulate their business models in order to transfer profits from the franchisees to the franchisor.

Umumnya, saham *franchisee* dipegang oleh *franchisee* itu sendiri. Namun secara normatif, sejauh ini tidak ditemukan larangan bagi *franchisor* untuk memiliki sebagian saham *franchisee*.

6. Proses Sertifikat Registrasi oleh ASIC (Proses Akhir)

Jika proses aplikasi selesai, ASIC dapat melakukan:

- a. Mengeluarkan Australian Company Numbers (ACN);
- b. Meregister perusahaan;
- c. Mengeluarkan sertifikat yang menyatakan:
 - i. Nama Perusahaan;
 - ii. Jenis Perusahaan;
 - iii. Perusahaan tersebut telah teregister;
 - iv. *State* atau *Territory* yurisdiksi perusahaan;
 - v. Tanggal teregister.
- d. Mengeluarkan Australian Business Number (ABN).



ASIC
Australian Securities &
Investments Commission

2| Kepengurusan Perusahaan

1. Member

Member merupakan pemilik perusahaan yang tercatat di dalam registrasi ASIC. *Member* memiliki makna yang lebih luas dari pemegang saham. Sebab, definisi *member* juga meliputi pemilik perusahaan yang berjenis *company by guarantee*.

Tidak ada persyaratan umur untuk menjadi *member*. Entitas yang dapat menjadi *member* juga terbilang luas, meliputi orang perseorangan, perusahaan, atau entitas politik (*body politic*).

Proprietary companies	Limited by shares
	Unlimited with share capital
Public companies	Limited by shares
	Limited by guarantee
	Unlimited with share capital
	No liability company
Corporate collective investment vehicles	Limited by shares

OTHER BUSINESS-RELATED INVESTMENTS

P: STARTING A BUSINESS IN AUSTRALIA

See also the *National Security Guidance Note*.

Generally, a foreign person is not taking a notifiable action or a significant action when they start an Australian business (unless the foreign person is a foreign government investor, see further below), but they may be taking a notifiable national security action or reviewable national security action.

Foreign persons must notify the Treasurer before starting a national security business if the action constitutes a notifiable national security action under section 55B(1)(a) of the Act.

A foreign person is not obliged to notify the Treasurer that they are proposing to take a reviewable national security action. However, under the Act the Treasurer may call-in and review an action of this kind if the Treasurer considers that the action may pose a national security concern (see section 66A of the Act). The Treasurer has the power to make a range of orders in relation to a reviewable national security action that a person is proposing to take or has already taken, even if they do not inform the Treasurer about the action. A foreign person may voluntarily notify the Treasurer, and in doing so, extinguish the Treasurer's call-in power.

Foreign government investors

Foreign government investors require foreign investment approval before starting a new Australian business (section 56(1)(b) of the Regulation).

A foreign person starts an Australian business if (see section 8B of the Act):

- the foreign person starts to carry on an Australian business; or
- for a foreign person that already carries on an Australian business – the business starts a new activity. Some factors which may help to determine whether a business activity is sufficiently different from activities already carried out by the investor include:
 - Whether the new activity is in a different division under the ANZSIC Codes, noting changes in activity within ANZSIC codes may still constitute starting a national security business;
 - Whether new licences or approvals are required;
 - Whether new employees with different skillsets need to be engaged;
 - Entering into business contracts or investment in a new product or service that is not incidental to the current business activity; or
 - The new activity results in a materially different product, input or service than previously provided.

However, a foreign person does not start an Australian business merely because the foreign person, alone or together with one or more persons, establishes a new entity:

- that carries on the same Australian business; or

1. Member (Lanjutan ...)

Tidak ada persyaratan khusus untuk menjadi *member*, termasuk bagi orang asing. Persetujuan FIRB (*Federal Investment Review Board*) baru diperlukan jika memulai usaha yang berkaitan dengan *national security business* atau membeli saham perusahaan yang sudah ada di Australia.

Namun, persetujuan FIRB diperlukan jika bisnis usaha didirikan oleh pemerintah negara asing.

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1. Member (Lanjutan ...)

Adapun yang dimaksud dengan *national security business* dapat dilihat pada gambar di samping

1. *Member* (Lanjutan ...)

Setiap perusahaan wajib memiliki setidaknya 1 *member*. Untuk *proprietary* jumlah maksimal *member* adalah 50 orang dan tidak ada batasan untuk *public company*.



2. Direktur

Menurut *Section 9*, direktur adalah orang yang ditunjuk sebagai direktur atau pengganti direktur yang bertindak dalam kapasitas direktur.

Untuk menjadi direktur, seseorang harus memenuhi persyaratan sebagai berikut:

- Harus berusia di atas 18 tahun;
- Tidak terkualifikasi sebagai orang sebagaimana dimaksud dalam section 206B;



206B Automatic disqualification—convictions, bankruptcy and foreign court orders etc.

Convictions

- (1) A person becomes disqualified from managing corporations if the person:
 - (a) is convicted on indictment of an offence that:
 - (i) concerns the making, or participation in making, of decisions that affect the whole or a substantial part of the business of the corporation; or
 - (ii) concerns an act that has the capacity to affect significantly the corporation's financial standing; or
 - (b) is convicted of an offence that:
 - (i) is a contravention of this Act and is punishable by imprisonment for a period greater than 12 months; or
 - (ii) involves dishonesty and is punishable by imprisonment for at least 3 months; or
 - (c) is convicted of an offence against the law of a foreign country that is punishable by imprisonment for a period greater than 12 months.

The offences covered by paragraph (a) and subparagraph (b)(ii) include offences against the law of a foreign country.

- (2) The period of disqualification under subsection (1) starts on the day the person is convicted and lasts for:
 - (a) if the person does not serve a term of imprisonment—5 years after the day on which they are convicted; or
 - (b) if the person serves a term of imprisonment—5 years after the day on which they are released from prison.

Bankruptcy or personal insolvency agreement

- (3) A person is disqualified from managing corporations if the person is an undischarged bankrupt under the law of Australia, its external territories or another country.
- (4) A person is disqualified from managing corporations if:
 - (a) the person has executed a personal insolvency agreement under:
 - (i) Part X of the *Bankruptcy Act 1966*; or
 - (ii) a similar law of an external Territory or a foreign country; and
 - (b) the terms of the agreement have not been fully complied with.
- (5) A person is disqualified from managing corporations at a particular time if the person is, at that time, disqualified from managing Aboriginal and Torres Strait Islander corporations under Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Foreign court orders

- (6) A person is disqualified from managing corporations if the person is disqualified, under an order made by a court of a foreign jurisdiction that is in force, from:
 - (a) being a director of a foreign company; or
 - (b) being concerned in the management of a foreign company.

Offence	Legislative section	Maximum penalties for individuals
Failure to have a director ID when required to do so	s1272C	\$13,200 (criminal); \$1,100,000 (civil)
Failure to apply for a director ID when directed by the Registrar	s1272D	\$13,200 (criminal); \$1,100,000 (civil)
Applying for multiple director IDs	s1272G	\$26,640, 1 year imprisonment or both (criminal); \$1,100,000 (civil)
Misrepresenting director ID	s1272H	\$26,640, 1 year imprisonment or both (criminal); \$1,100,000 (civil)

2. Direktur (Lanjutan ...)

Selain itu, Direktur wajib memiliki *director ID*. Jika ketentuan ini tidak dipenuhi, maka yang bersangkutan terancam denda sebagaimana tabel disamping.

2. Direktur (Lanjutan ...)

Tidak setiap waktu dapat mengajukan permohonan *director ID*. Menurut laman ASIC, berikut adalah jadwal permohonan *director ID*:

Date you first become a director	Date you must apply
On or before 31 October 2021	By 30 November 2022
Between 1 November 2021 and 4 April 2022	Within 28 days of appointment
From 5 April 2022	Before appointment

2. Direktur (Lanjutan...)

Pengangkatan Direktur

Jenis perusahaan berpengaruh pada cara pengangkatan direktur. Pada perusahaan publik, pengangkatan dan pemberhentian direktur hanya dapat dilakukan melalui *ordinary resolution of shareholders*. Namun, pada *proprietary company* pengangkatan dan pemberhentian direktur lebih fleksibel karena bergantung pada aturan internal perusahaan.



2. Direktur (Lanjutan...)

Jumlah Direktur

- *Proprietary company* setidaknya memiliki 1 orang direktur yang *ordinarily reside* di Australia. Jika usahanya berkaitan dengan *crowd-sourced funding*, perusahaan tersebut harus memiliki minimal 2 direktur
- Bagi perusahaan publik, minimum terdapat 3 orang direktur, dua diantaranya harus *ordinarily reside* di Australia.



2. Direktur (Lanjutan...)

Ordinarily Reside

The Act does not define the term 'ordinarily reside' and ASIC has provided little guidance regarding the criteria that directors must satisfy to fulfill this residential requirement. Ordinarily residing in Australia can be interpreted to mean being settled or regularly living in Australia. It does not translate to Australian citizenship. Therefore, a permanent resident or non-citizen can become a director where they can demonstrate an element of permanence to their residence in Australia. An individual can also satisfy this requirement where he or she is registered in Australia for tax purposes.

Corporation Act tidak memberikan definisi mengenai *ordinarily reside*.

Istilah *Ordinarily reside* sering digunakan oleh Australia Tax Office yang diukur berdasarkan faktor *resides test*, *domicile test*, *183-day test*, dan *The Commonwealth superannuation test*.

2. Direktur (Lanjutan...)

Resides test

- › physical presence
- › intention and purpose
- › family
- › business or employment ties
- › maintenance and location of assets
- › social and living arrangements.

Domicile test

You're an Australian resident if your domicile (the place that is your permanent home) is in Australia, unless we are satisfied that your permanent place of abode is outside Australia.

A domicile is a place that is considered to be your permanent home by law. For example, it may be a domicile by origin (where you were born) or by choice (where you have changed your home with the intent of making it permanent).

2. Direktur (Lanjutan...)

183-day test

This test only applies to individuals arriving in Australia. You will be a resident under this test if you're actually present in Australia for more than half the income year, whether continuously or with breaks.

Domicile test

This test applies to Australian Government employees working at Australian posts overseas and who are members of the CSS or PSS schemes. It does not apply to members of the PSSAP scheme. If this is the case, you (and your spouse and children under 16) are considered to be a resident of Australia regardless of any other factors.

3. Sekretaris Perusahaan (*company secretary*)

Proprietary company tidak diwajibkan untuk memiliki sekretaris perusahaan. Namun, memperkerjakan sekretaris perusahaan di *proprietary company* sudah menjadi hal yang umum terjadi. Seorang *company secretary* minimal berusia 18 tahun dan *ordinarily reside* di Australia (jika berjumlah 2 atau lebih, minimal 1 di antaranya *ordinarily reside* di Australia).

Karena pentingnya peran sekretaris perusahaan, sebagian besar orang beranggapan bahwa sekretaris perusahaan mempunyai kewenangan untuk bertindak atas nama perusahaan dalam hal hubungan perusahaan dan administrasi, namun buat dalam membuat kontrak



4. *Public Officer*

Setiap perusahaan yang melakukan kegiatan usaha di Australia wajib memiliki *Public Officer* sebagaimana diatur di dalam *Section 2 Income Tax Assesment Act 1936*. Pelanggaran terhadap ketentuan ini menyebabkan perusahaan terancam sanksi denda sampai dengan \$110 per hari. Perusahaan dapat menunjuk *corporate secretary* sebagai *public officer*.

Adapun syarat untuk menjadi *public officer* adalah:

- Berusia minimal 18 tahun;
- *Ordinarily resident* di Australia; dan
- Memahami tugas sebagai *public officer*.



Perubahan Data Kepengurusan

Perubahan member, direktur, dan sekretaris perusahaan harus diberitahukan ke ASIC selambat-lambatnya 28 hari setelah penggantian. Selain itu, terdapat perubahan data lain yang juga harus dilaporkan ke ASIC.



Patuhi *Corporation Act* !!!

Perusahaan harus menjaga kepatuhan terhadap *Corporation Act*. Sebab, *Section 1 Australian Securities and Investment Commission Act* memberi kewenangan ke ASIC untuk “*take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of Commonwealth that confer functions and powers on it*”



3| Dokumen yang Diperlukan dan Tahapan Awal Dalam Franchise di Australia

1. *Franchise Agreement*

Sebagaimana di atur oleh ***Australian Competition & Consumer Commission***, perjanjian *franchise* merupakan dokumen terpenting dalam suatu hubungan *franchise* karena memiliki klausul yang umumnya memberikan jawaban atas pertanyaan-pertanyaan yang muncul seperti:

- **Biaya dan pembayaran** apa yang harus dibayar oleh *franchisee*
- Apa saja **isi dari** perjanjian *franchise*
- **Hak dan batasan** apa yang berlaku untuk penggunaan merek pemilik *franchise* dan kekayaan intelektual lainnya
- Apakah *franchisee* harus membeli **peralatan dan produk** tertentu untuk bisnis?
- Apakah penerima *franchise* harus berpartisipasi dalam promosi dan persyaratan **pemasaran** area lokal?
- Aturan apa yang harus diikuti oleh *franchisor* jika mereka **ingin menjual bisnis franchise** mereka?
- Bagaimana seharusnya **perselisihan atau sengketa** diselesaikan?
- Kapan *franchisee* dapat **diberhentikan**?
- Aturan apa yang harus diikuti oleh *franchisee* **ketika franchise berakhir**?

FRANCHISE
AGREEMENT

1. Franchise Agreement (Lanjutan)

Franchise agreement wajib meliputi:

- Satu orang (pemberi *franchise*) memberi orang lain (penerima *franchise*) **hak untuk menjalankan bisnis** di Australia yang memasok barang atau jasa di bawah sistem atau rencana pemasaran tertentu. Bisnis secara substansial ditentukan, dikendalikan, atau disarankan oleh pemilik *franchise* atau rekanannya.
- Bisnis ini terkait dengan **merek dagang**, iklan, atau simbol komersial tertentu yang dimiliki, digunakan, dilisensikan, atau ditentukan oleh pemilik *franchise* atau rekannya.
- Penerima *franchise* harus melakukan, atau setuju untuk melakukan, jenis **pembayaran** tertentu kepada pemilik franchise atau rekannya, sebelum memulai atau melanjutkan bisnis.

5 Meaning of franchise agreement

(1) A **franchise agreement** is an agreement:

- (a) that takes the form, in whole or part, of any of the following:
 - (i) a written agreement;
 - (ii) an oral agreement;
 - (iii) an implied agreement; and

(b) in which a person (the **franchisor**) grants to another person (the **franchisee**) the right to carry on the business of offering, supplying or distributing goods or services in Australia under a system or marketing plan substantially determined, controlled or suggested by the franchisor or an associate of the franchisor; and

(c) under which the operation of the business will be substantially or materially associated with a trade mark, marketing or a commercial symbol:

- (i) owned, used or licensed by the franchisor or an associate of the franchisor; or
- (ii) specified by the franchisor or an associate of the franchisor; and

(d) under which, before starting or continuing the business, the franchisee must pay or agree to pay to the franchisor or an associate of the franchisor an amount including, for example:

- (i) an initial capital investment fee; or
- (ii) a payment for goods or services; or
- (iii) a fee based on a percentage of gross or net income whether or not called a royalty or franchise service fee; or
- (iv) a training fee or training school fee;

but excluding:

- (v) payment for goods and services supplied on a genuine wholesale basis; or
- (vi) repayment by the franchisee of a loan from the franchisor or an associate of the franchisor; or
- (vii) payment for goods taken on consignment and supplied on a genuine wholesale basis; or

(viii) payment of market value for purchase or lease of real property, fixtures, equipment or supplies needed to start business or to continue business under the franchise agreement.

(2) For subclause (1), each of the following is taken to be a franchise agreement:

- (a) the transfer or renewal of a franchise agreement;
- (b) the extension of the term or the scope of a franchise agreement;
- (c) a motor vehicle dealership agreement.

(3) However, none of the following in itself constitutes a franchise agreement:

- (a) an employer and employee relationship;
- (b) a partnership relationship;
- (c) a landlord and tenant relationship;
- (d) a mortgagor and mortgagee relationship;
- (e) a lender and borrower relationship.

2. Disclosure Statement

Formulir yang ditentukan oleh ACCC, yang merangkum kewajiban dan informasi perjanjian *franchise*. Ini mencakup informasi tambahan seperti:

- Sejarah litigasi
- Situasi finansial pemberi *franchise*
- Daftar penerima *franchise* saat ini dan sebelumnya
- Estimasi biaya menjalankan bisnis *franchise*
- Struktur perusahaan pemberi *franchise*

Pada umumnya, pemberi *franchise* wajib memberikan *disclosure statement* kepada penerima *franchise* setidaknya 14 hari sebelum:

- a) memasuki *franchise agreement*
- b) melakukan pembayaran yang *non - refundable*

2. Disclosure Statement

Format Disclosure Statement yang disediakan oleh ACCC



Franchising model disclosure document

Guidance

9 September 2022

Doc ID 29687983v1

<https://www.accc.gov.au/business/industry-codes/franchising-code-of-conduct/beginning-a-franchise-agreement/franchise-disclosure-document>

TIP: To comply with the code requirement to provide *details* of the specified matters, information that is likely to be considered to be important and significantly relevant to a franchisee about the specified matter should be disclosed.
This means if an item refers to "details", sufficient details should be provided to support the answer.

1. First page

1.1 (a) **DISCLOSURE DOCUMENT FOR FRANCHISEE OR PROSPECTIVE FRANCHISEE**

(b) the franchisor's:

(i) name; and	
(ii) business address; and phone number; and	
(iii) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor).	

(c) (d)

Franchisor/director/officer/ authorised agent of the franchisor	Date of preparation
--	---------------------

TIP: If you intend to send the disclosure document in electronic form you must obtain the consent of the prospective franchisee or franchisee to delivery in that format. You may then attach an electronic signature document.

TIP: The following warning statement (e) must appear on the first page of the disclosure

(e) This disclosure document contains some of the information you need in order to make an informed decision about whether to enter into a franchise agreement. It should be read together with the key facts sheet and the information statement you have received.
Entering into a franchise agreement is a serious undertaking. Franchising is a business and, like any business, the franchise (or franchisor) could fail during the franchise term. This could have consequences for the franchisee.
A franchise agreement is legally binding on you if you sign it.
You are entitled to a waiting period of 14 days (not 14 business days) before you enter into this agreement.
If this is a new franchise agreement (not the renewal of a franchise agreement, nor the extension of

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TIP: The numbering and headings of the items in the disclosure document must remain the same. If a particular item in the disclosure document is not applicable, the item should be removed from the body of the disclosure document, and noted in an attachment to the disclosure document which sets out the headings and numbering of the non-applicable items. Disclosure documents must have a table of contents based on the items in Annexure 1, indicating the page number on which each item begins.

3. Key Fact Sheets

Pada dasarnya, *Key Fact Sheets* merupakan rangkuman dari *Disclosure Statement*. Dokumen ini wajib di sediakan oleh pemberi *franchise* untuk lebih mudah memahami *Disclosure Statement* dari perusahaan pemberi franchise.

Format yang diberikan oleh *Australian Competition & Consumer Commision*

Key Facts Sheet

IMPORTANT NOTE TO PROSPECTIVE FRANCHISEES

The Key Facts Sheet contains information specific to the franchise agreement you are proposing to enter into – but it does not cover everything you need to know.

The Key Facts Sheet is a starting point – it is not a substitute for carefully reading the Disclosure Document and other documents given to you by the franchisor.

The Key Facts Sheet should be used as a guide to reading the Disclosure Document.

More resources to help you decide if you are ready to become a franchisee and if this is the right franchise business for you are available at business.gov.au/franchising and www.accc.gov.au/business/industry-codes/franchising-code-of-conduct.

It's important to get legal, accounting and business advice from independent professionals with expertise in franchising. They will see risks you can't and will help you in your decision making.

A. About the franchisor

The Franchising Code usually requires franchisors to provide financial reports for the last 2 completed financial years in the Disclosure Document. Details about the financial viability of the franchisor can be found in items 211-216 of the Disclosure Document.

Name of franchisor

How long has the franchisor operated the franchise system in Australia?

Financial viability: does the franchisor have reasonable grounds to believe it will be able to pay its debts when they are due?

☐ Yes ☐ No

B. Major disputes

Details about legal proceedings can be found in items 43-4.4 of the Disclosure Document.

Current legal proceedings: Is the franchisor currently involved in any disclosable legal proceedings?

☐ Yes ☐ No

Final judgments: Has the franchisor been subject to a final judgment in civil proceedings in the last 5 years (which is required to be disclosed under the Franchising Code), or declared bankrupt, been insolvent under administration or a Chapter 5 body corporate in Australia or elsewhere in the last 10 years?

☐ Yes ☐ No

Form version control: November 2021

Franchisor-franchisee disputes: What percentage of franchisees in your franchise system were party to a mediation, conciliation or arbitration process in the last financial year? (Includes matters that went to or were awaiting mediation, conciliation or arbitration in the last financial year and disputes initiated by franchisors, franchisees and multi-party disputes.)

C. Current and past franchisees

Details about businesses in the franchise system and a list of current and former franchisees you can talk to as part of your research can be found in items 61-6.5 of the Disclosure Document.

Number of franchise businesses in the franchise system.

Franchisee owned

Corporate owned

Last 3 financial years (as required in the Disclosure Document)

Event	Number of occurrences
A franchise was transferred (ownership changed to a different franchisee)	
A franchised business ceased to operate (closed)	
A franchise agreement was terminated by the franchisor	
A franchise agreement was terminated by the franchisee	
A franchise agreement was not extended	
A franchise business was bought back by the franchisor	
A franchise agreement was terminated and the business was acquired by the franchisor	

Form version control: November 2021

D. The territory or site for the business

Details about the site or territory can be found in items 9.1-9.2, 111, 121-12.5 and 131-13.4 of the Disclosure Document.

As well as reading all the information the franchisor provides on leasing, you should seek legal advice before entering a contract.

Details of the territory or site: Tick all that apply

The franchisee can only operate the business at a particular site (limited to premises only) ☐

The franchisee can operate the business anywhere but may be competing with other franchised businesses (no territory) ☐

No other franchised business will operate in the franchisee's defined territory (exclusive territory) ☐

You may encounter competition from other franchisees or the franchisor in your defined territory (non-exclusive territory) ☐

other – (add details below) ☐

Can the franchisor change the territory or site of the franchise? ☐ Yes ☐ No

Could the franchisee face competition from one or more businesses that sell goods or services that are substantially the same as the franchisee, including via online sales? Tick all that apply

Yes, but only from businesses not associated with the franchisor ☐

Yes, from another franchisee with the same brand ☐

Yes, from the franchisor ☐

Yes, from a third party authorised by the franchisor ☐

Can the franchisee sell goods or services of the same type or brand online? ☐ Yes ☐ No

Does the franchisor have an interest in a lease that will be used for the operation of the franchised business? (For example, as landlord, head lessee or another interest disclosed under clause 13 of the Franchising Code.)

☐ Yes ☐ No

E. Supply of goods and services to the franchisee

Details about the supply of goods or services to operate your franchise, including the rebates and other financial benefits received by the franchisor, can be found in items 101-10.3 of the Disclosure Document.

Are there restrictions to franchisees choosing suppliers?

☐ Yes ☐ No

Form version control: November 2021

4. Dokumen *Property Lease*

Jika suatu tempat disewakan kepada franchisor atau rekanannya dan franchisor menyewakan tempat tersebut kepada franchisee, franchisor harus memberikan semua dokumen sewa yang relevan, termasuk:

- Salinan *property lease*,
- Dokumen komersil utama lainnya; dan
- Pernyataan pengungkapan sewa yang relevan.

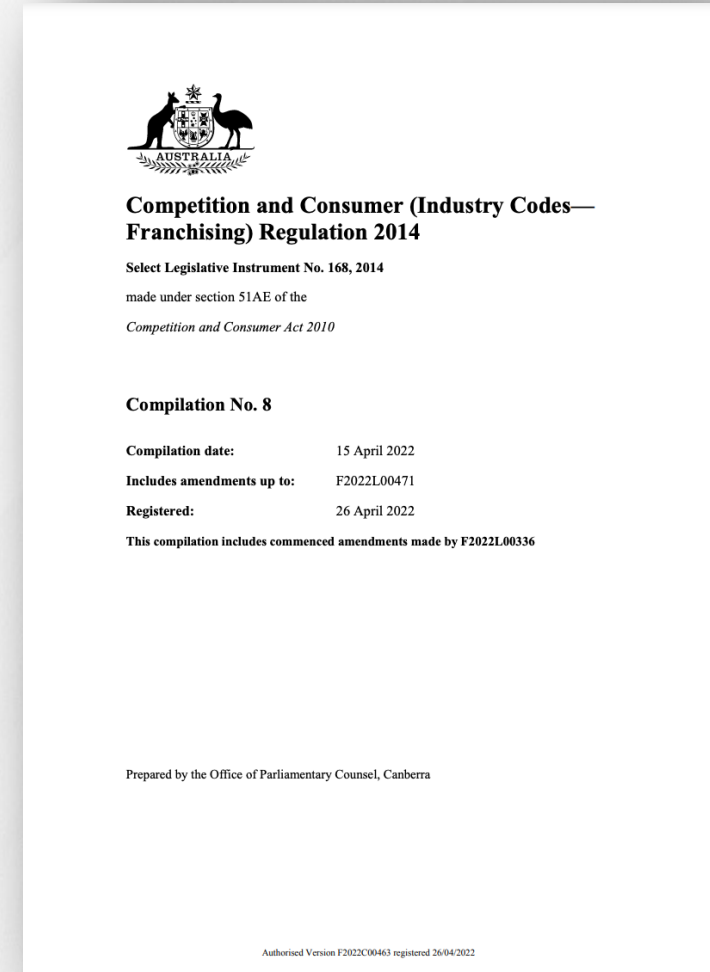


5. Salinan *Franchising Code of Conduct*

Australian Competition & Consumer Commission merupakan sebagai lembaga yang mengatur regulasi dan peraturan terkait dengan *franchising*.

Sebagai lembaga yang mengatur peraturan franchise, *Australian Competition & Consumer Commission* mewajibkan kedua pihak baik pemberi dan penerima *franchise* untuk mengetahui *Franchising Code of Conduct*

<https://www.legislation.gov.au/Details/F2022C00463>



Pemberi Franchise berdasarkan *Code of Conduct* terbaru wajib mendaftarkan informasi *franchise* nya kepada <https://franchisedisclosure.gov.au/> sebelum 14 November 2022



Terdapat *penalty* yang cukup signifikan jika tidak dapat memenuhi *deadline*.

Pertimbangan Sebelum Membeli Franchise

1. **Riset dan Verifikasi** - Tinjau semua dokumen yang diberikan, seperti pernyataan informasi, dokumen pengungkapan perjanjian franchise dan Kode Waralaba, mencari nasihat hukum, akuntansi, dan bisnis. Verifikasi informasi penghasilan. Periksa posisi keuangan franchisor. DLL.
2. **Memahami *Franchise Agreement*** - Seringkali perjanjian franchise ditulis sehingga menguntungkan pemilik franchise, pembeli franchise akan sering memiliki kewajiban yang jauh lebih banyak daripada pemilik franchise. Terkadang ini mencerminkan franchise sebagai model bisnis, dan terkadang ini adalah kesepakatan bisnis yang buruk. Penting untuk mendapatkan saran untuk memahami mana yang akan ditanda tangani.
3. **Memahami kewajiban hukum** – Merujuk kepada *Franchising Code of Conduct, Australian Consumer Law, Fair Work Act, & Contract Law*.
4. **Memahami kewajiban membayar pajak** – Merujuk kepada *Australian Taxation Office*.

5. Mempekerjakan Staff - Gaji minimum dan tunjangan karyawan seperti cuti panjang kewajiban pencatatan, pelanggaran dan hukuman finansial untuk pelanggaran undang-undang tempat kerja, termasuk mereka yang membayar lebih rendah kepada karyawan, gagal menyimpan catatan waktu dan upah yang benar, gagal mengeluarkan slip gaji yang sesuai atau yang memaksa karyawan untuk membayar kembali gaji.

6. Memahami syarat sewa tempat usaha - Penting untuk mengajukan pertanyaan tentang sewa sebelum menandatangani perjanjian *franchise*:

Apakah perjanjian *franchise* termasuk sewa tempat usaha?

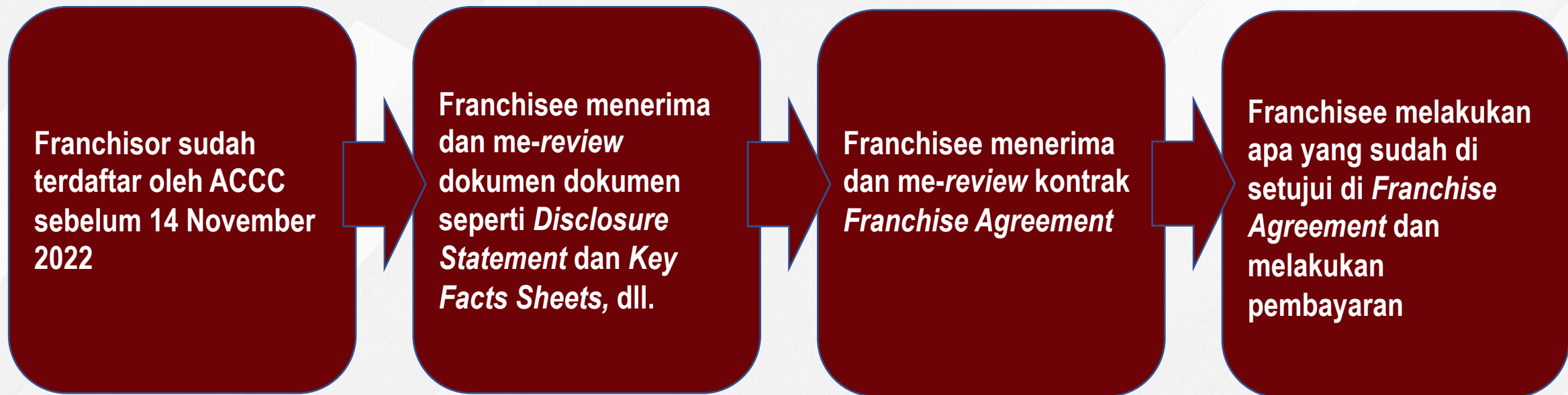
Siapa yang memegang sewa atas tempat, *franchisee* atau *franchisor*?

Bisakah sewa dihentikan sementara dan tetap memegang hak *franchise*?

Apa hak dan kewajiban berdasarkan perjanjian sewa?

Kesimpulan dan Tahapan *Franchising*

Melihat dari pihak penerima *franchise* atau *franchisee*, tahapan awal membuka *franchise* sebagai berikut:



Setelah *Franchise Agreement* ditanda tangani, berdasarkan *Code of Franchising*, pemilik *franchise* tidak dapat mengubah perjanjian *franchise* untuk diterapkan pada situasi sebelumnya atau untuk menangani masa lalu, kecuali jika penerima *franchise* menyetujui hal ini secara tertulis.

4| *Licence Agreement*

1. Memahami Perbedaan Dasar Licence dan Franchise Agreement

Licence Agreement

Kontrak yang memberikan hak kepada penerima lisensi untuk menggunakan properti pemberi lisensi, tetapi tidak mengalihkan kepemilikan. Dalam hal kekayaan intelektual, ini bisa berupa merek dan logo perusahaan. Penerima lisensi umumnya membuat sistem operasi dan rencana pemasaran mereka sendiri.

Di atur oleh Australian Intellectual Property laws: Commercialising trademark.

VS

Franchise Agreement

Perjanjian *franchise* juga merupakan jenis kontrak, tetapi berbeda dari perjanjian lisensi dengan memberi pemilik *franchise* lebih banyak kendali atas bagaimana penerima *franchise* menggunakan properti pemilik *franchise*. Perjanjian franchise umumnya berisi pedoman khusus tentang bagaimana *franchisee* harus menjalankan bisnisnya.

2. Ketentuan Utama dari Licence Agreement

Wilayah atau Ruang Lingkup

Wilayah izin harus dibedakan dengan jelas, karena izin biasanya diberikan untuk wilayah yang tidak jelas batasnya. Salah satu manfaat dari lisensi adalah, karena fleksibilitas area lisensi dapat diperluas atau dikurangi dengan mudah jika kedua belah pihak setuju.



Jangka Waktu (Term)

Jangka waktu selama pemegang izin diizinkan untuk menggunakan area berlisensi penting untuk ditetapkan dengan jelas.



Biaya

Sebagian besar lisensi akan meminta penerima lisensi untuk membayar biaya sebagai imbalan atas penggunaan area berlisensi. Baik dalam bentuk lump sum atau royalty setiap produk yang terjual.



3. Hal Hal Yang Perlu Di Perhatikan Dalam Licence Agreement

Penting untuk menghindari masalah atau sengketa di masa yang akan datang

1. Identifikasi *IP Licence*

Mengidentifikasi jenis kekayaan intelektual yang terlibat. Alasannya adalah karena dapat dikaitkan dengan informasi rahasia atau rahasia dagang, selain bentuk-bentuk seperti, merek dagang (*trademark*), hak cipta (*copyright*), paten, dan desain.

2. Apakah lisensi akan beroperasi untuk jangka waktu tertentu atau terus-menerus?

Pilihannya adalah memiliki lisensi terbatas pada jangka waktu tertentu dengan menyatakan kapan lisensi akan dimulai dan berakhir. Akibat dari hal ini adalah ketika jangka waktu berakhir, perjanjian berakhir. Pilihan lain adalah memberikan lisensi abadi, yang efeknya adalah lisensi akan berlanjut tanpa batas waktu, kecuali diakhiri oleh para pihak.

3. Apakah dapat dicabut atau tidak dapat dibatalkan?

Ketentuan pencabutan harus diatur dalam perjanjian lisensi, apakah perlu ada nya ketentuan atau peristiwa khusus untuk pencabutan lisensi atau lisensi selamanya tidak dapat dibatalkan. Meskipun pada umumnya perjanjian lisensi merupakan perjanjian jangka pendek

3. Hal Hal Yang Perlu Di Perhatikan Dalam Licence Agreement

4. Pengalihan Pemegang Licence

Adapun pengaturan pengalihan transfer pemegang lisensi yang perlu diatur dalam *Licence Agreement*. Begitu juga ketentuan untuk sewa tambahan kepada pihak ketiga (sub lease).

5. Wilayah

Jika *trademark* terdaftar di Australia dan di berikan izin lisensi kepada Licencee di Victoria, ketentuan pemakaian lisensi atau IP di suatu wilayah, makai zin lisensi hanya dapat digunakan di Victoria. Untuk menentukan ruang lingkup pemakaian IP.

6. Jaminan dari Penerima Lisensi Kepada Pemberi Lisensi

Penerima lisensi harus memberikan jaminan tertentu, termasuk, namun tidak terbatas pada hal-hal berikut:

- a. semua hak, kepemilikan, dan kepentingan dalam properti berlisensi dipertahankan oleh pemilik lisensi
- b. pemberi lisensi, tunduk pada pemberian lisensi dalam perjanjian lisensi;
- c. semua materi IP akan disimpan di lokasi yang aman;
- d. semua materi IP tidak akan disalin atau diduplikasi untuk tujuan apa pun selain tujuan berlisensi; dan
- e. penerima lisensi tidak akan dengan tindakan atau kelalaian apa pun merugikan kekayaan intelektual dalam properti berlisensi atau berurusan dengan properti berlisensi, sehingga pihak ketiga mana pun dapat memperoleh hak gadai atau hak atau klaim lain apa pun yang tidak sesuai dengan hak pemberi lisensi

3. Hal Hal Yang Perlu Di Perhatikan Dalam Licence Agreement

7. Kerahasiaan

Ini adalah salah satu aspek terpenting dari lisensi IP. Penting untuk melindungi rahasia dagang dan informasi lain yang tidak tersedia untuk umum.

8. Pemberhentian

Menyertakan klausul penghentian yang menyatakan dapat mengakhiri perjanjian lisensi jika penerima lisensi melanggar persyaratan materi perjanjian. Hal yang juga perlu di perhatikan adalah keadaan yang akan menimbulkan hak untuk mengakhiri.

Perlu menentukan konsekuensi penghentian perjanjian lisensi.

Contoh: klausul penghentian harus menyatakan bahwa Penerima Lisensi harus menyerahkan semua dokumen dan materi lain (termasuk semua salinan) yang dimiliki terkait dengan IP dan melakukan hal-hal lebih lanjut yang mungkin diperlukan secara umum oleh pemberi lisensi untuk melindungi hak, kepemilikan, dan kepentingan IP.

4. Kesimpulan dan Tahapan *Licence Agreement*

1. Mengidentifikasi Pemilik Lisensi

Australian Trademark Search adalah registri yang tersedia untuk umum yang merinci semua merek dagang yang terdaftar di IP Australia. Setiap entri pada registri menyertakan nama pemilik merek dagang dan alamat bisnis mereka. Hal ini membuat proses menghubungi pemilik merek dagang menjadi lebih mudah dalam proses pembelian.



2. Melakukan *Background Research*

Tahapan yang penting untuk mengetahui jika ada alasan lain mengapa IP dikomersilkan, juga dapat dilakukan dari *Australian Trademark Search*



3. Pertimbangkan Kelayakan Komersial

Pertimbangan lain yang perlu diingat adalah apakah merek dagang akan berguna untuk bisnis. Merek dagang didaftarkan sehubungan dengan kelas barang atau jasa tertentu. Oleh karena itu, memperhatikan nilai jual yang diberikan oleh pemilik lisensi perlu di pertimbangkan.

4. Kesimpulan dan Tahapan *Licence Agreement*

4. Menentukan Harga Lisensi

Negosiasi antara pembeli dan penjual menentukan harga jual akhir suatu merek dagang.



5. Menyelesaikan Perjanjian

Penting untuk diingat bahwa merek dagang tidak memiliki harga tetap. Sebaliknya, biaya merek dagang sangat tergantung pada berbagai faktor, seperti niat baik bisnis yang diwakili merek dagang dan keunggulan kompetitif yang dicapai bisnis di pasar. Umumnya, semakin besar niat baik suatu bisnis, semakin tinggi nilai merek dagangnya.



4. Kesimpulan dan Tahapan *Licence Agreement*

6. Masa Peralihan

Setelah menegosiasikan perjanjian penjualan, pemilik lisensi atau merek dagang harus mentransfer atau memberikan merek dagang kepada pembeli lisensi.

Peralihan lisensi atau merek melibatkan pemilik merek yang mendaftarkan perubahan kepemilikan merek. Dalam situasi sebagai berikut:

- a. menjual merek dagang kepada orang lain; atau
- b. menambah atau menghapus pemilik merek dagang saat ini dari registri.

Jenis Jenis peralihan:

Keseluruhan (*Exclusive Licence*) dan Sebagian (*Non-Exclusive Licence*)

Pendaftaran dilakukan melalui IP Australia <https://portal.ipaustralia.gov.au/login>



4. Kesimpulan dan Tahapan *Licence Agreement*

6. Masa Peralihan (lanjutan)

Proses pendaftaran akan mengharuskan pemilik lisensi untuk mengisi beberapa dokumen, antara lain:
Formulir permintaan peralihan; dan bukti peralihan.

Ada dua formulir terpisah untuk peralihan penuh dan peralihan sebagian. Umumnya, formulir ini membutuhkan:

- a. detail pribadi pemilik lisensi
- b. rincian dan tanda tangan penerima hak; dan
- c. nomor identifikasi merek dagang yang di tetapkan.

Bukti tambahan yang harus di berikan dapat mencakup:

- a. surat tugas yang ditandatangani; atau
- b. perjanjian penjualan.



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