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**Artificial Intelligence and Data Privacy**

フィリピン国家プライバシー委員会は、2024年12月19日、個人データを処理するAIシステムに対する2012年データプライバシー法及びその施行規則の適用に関するガイドラインを発行した。近年の人工知能の急速な進歩によりフィリピンでも人工知能に関する法整備が追いついていない状況にあるが、同ガイドラインは人工知能の開発において利用される個人データの処理に関して、データプライバシー法の適用可能性に関する指針を提供することを企図するものである。

In recent years, artificial intelligence (“AI”) has become the forefront of innovation. The ability of AI systems to continuously “learn” from analyzing vast and multiple data sets has made it a powerful and indispensable tool for businesses. However, as companies are using more sophisticated AI technologies within their organizations, there are also rising concerns about the misuse of AI and the risk it poses on data privacy.

The rapid advancements in the field of AI admittedly outpace the development of AI regulatory frameworks across jurisdictions. For the Philippines, while there is no legislation on AI that has been enacted as of date, the National Privacy Commission of the Philippines has, on 19 December 2024, issued Advisory No. 2024-04, or the Guidelines on the application of the Data Privacy Act of 2012 and its implementing rules and regulations on AI systems processing personal data (the “**Advisory**”).

The Advisory seeks to provide guidance on the applicability of data privacy principles with respect to the processing of personal data in the development or deployment, including training and testing of AI systems, and highlights obligations of personal information controllers (“**PICs**”) when using such AI systems.

**Obligations of PICs**

Based on the Advisory, among the obligations of PICs when using AI systems to process personal data is to observe:

**a) Transparency**

Consistent with the data subject’s rights to be informed, PICs must clearly explain to the data subject the purpose and risks associated with processing using the AI systems, the expected outputs and impacts of the AI systems, as well as the dispute mechanisms available, among others.

**b) Accountability**

Since PICs remain primarily accountable for compliance with the Data Privacy Act of 2012 and for personal data under their control and custody, they are required to institute effective governance mechanisms, as may

be appropriate under the circumstances, that ensure responsible and ethical processing of personal data by AI systems, even when processing activities are subcontracted or outsourced to their personal information processors.

These governance mechanisms can include the conduct of privacy impact assessments, integration of privacy-by-design, privacy-by-default, or common industry security standards, creation of a dedicated AI ethics board, and continuous monitoring or retraining of the AI systems. Further, when the AI systems involve automated decision making (i.e., use of wholly or partially automated processing operation that serves as the sole basis for making decisions that would significantly affect a data subject) the PICs should implement as additional safeguards, mechanisms that (i) allow for human intervention by individuals with the necessary competence and authority, and (ii) allow the data subjects to question and contest the automated decisions which pose a significant risk to their rights and freedoms.

**c) Fairness**

To maintain fairness in processing, PICs are required to adopt measures that identify, monitor and limit biases of AI systems (e.g., based on systemic, human or statistical bias) so that the processing methods do not become manipulative or unduly oppressive to data subjects. PICs are also prohibited from using misleading practices such as AI washing, where they overstate to the data subjects the involvement of AI systems in their data processing activities.

**d) Lawful basis for processing**

Prior to processing personal data in the development or deployment of AI systems, PICs should also determine whether there is a lawful basis for processing (e.g., based on consent, legitimate interest, etc.). This requirement applies even if the personal data to be processed is publicly accessible or already made public, since these do not result in such personal data losing the protection extended by the Data Privacy Act of 2012.

**e) Accuracy and data minimization**

PICs should also ensure that personal data processed by AI systems are accurate and up to date and proportionate for the purposes intended by excluding the processing of personal data that is unlikely to enhance the development, deployment, testing, or training of the AI systems.

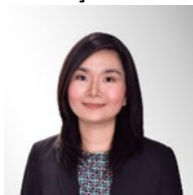
**f) Rights of data subjects**

Finally, PICs should ensure that data subjects will be able to exercise their data privacy rights before, during, and after the development or deployment of the AI systems. Privacy-Enhancing Technologies (e.g., encryption, anonymization, access controls, etc.) are mechanisms recommended by the Advisory to be adopted by PICs to ensure proper exercise of the data subject's rights while maintaining responsible and ethical processing of personal data.

**Conclusion**

Although there may be a need for more robust laws that address the other evolving risks and challenges posed by AI innovation, in so far as AI intersects with data privacy, the Advisory signals the importance of balancing the protection of data privacy rights and the continued development of AI systems. It also serves as a reminder to PICs of the critical role they play in achieving responsible and ethical use of AI systems with respect to processing of personal data and ensuring that AI is used as a tool to enhance data protection.

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## Indonesia

## New Franchise Regulatory Framework

インドネシアでは、2024 年 9 月 2 日、フランチャイズに関する政令 2024 年第 35 号が施行された。同政令は、従前のフランチャイズ規制の枠組を維持しつつ細かい要件の整備やロゴの使用を義務づける等のアップデートが図られている。特に、同政令がインドネシア企業だけではなくフランチャイザーとなる外国企業も適用対象としている点には注意が必要となる。本稿では、新政令を踏まえたインドネシアのフランチャイズに関する規制の概要について紹介する。

On 2 September 2024, a new franchise regulation, Government Regulation No. 35 of 2024 on Franchise ("**Regulation 35/2024**") came into force which has effectively revoked and replaced Government Regulation No. 42 of 2007 ("**Previous Regulation**"). Regulation 35/2024 expands the scope of franchise business, clarifies the requirements to be a franchise, promotes partnerships between franchise owners and the micro, small, and medium scale enterprises ("**SME**"), and mandates the usage of franchise logo. Meanwhile, the relevant implementing regulation which was enacted in 2019, Ministry of Trade Regulation No. 71 of 2019 on the Implementation of Franchise, continues to remain in effect until a new ministerial regulation is issued to replace it. This article will cover the material changes in franchise industry brought by the introduction of Regulation 35/2024.

**Franchise Criteria**

Regulation 35/2024 revises and clarifies the criteria that must be met by franchisors/sub-franchisors for operating a franchise business:

- a. it must have a business system that includes operating standards and procedures for human resources management, administration, operational management, standard operating methods, marketing strategy, design of the business premises, marketing strategy, hiring requirement, and business location selection. Such business system must be in writing and notified to the franchisee, have a clear structure, and should be easy to be taught and implemented. The business system must also be reflected in the franchise prospectus and the franchise agreement.
- b. the franchise business has generated profits. Regulation 35/2024 deems a business to have already generated profits if the franchise business has been operating for at least for 3 (three) consecutive years; *and* its last 2 (two) years audited financial statements show that the business is profitable. This replaces the standard stipulated in the Previous Regulation that requires franchisors, not the business, to have experience for at least 5 (five) years.
- c. it has registered or protected intellectual property. While the Previous Regulation allows the franchisee to operate the business regardless whether the intellectual property has been registered or is in the process of registration, Regulation 35/2024 has a stricter requirement which mandates that the intellectual property (including brands or trademarks, copyrights, patents, industrial designs and others) be registered and recorded/certified prior to the commencement of the franchise and such intellectual property must be valid and protected upon the signing of the franchise agreement; and
- d. it provides continuous support to the franchisee. The continuous support can be in the form of training, operational management, promotions, research, market development, and others.

**Creation of Franchise**

The relationship between the franchisor and the franchisee is established with the execution of the franchise agreement. Unlike the Previous Regulation, Regulation 35/2024 stipulates a more detailed process for the creation of franchise, with the following changes:

Previous Regulation	Regulation 35/2024
<p>1. Franchisor shall offer to the franchisee a franchise prospectus that contains, at least the following:</p> <ul style="list-style-type: none"> <li>a. identity of the franchisor/ sub-franchisor;</li> <li>b. legality of the franchise business;</li> <li>c. the history of the franchise business;</li> <li>d. organization structure of the franchisor;</li> <li>e. financial statements for the last 2 (two) years;</li> <li>f. total number of business locations;</li> <li>g. list of franchisees/ sub-franchisees; and</li> <li>h. rights and obligations of the franchisor and franchisee.</li> </ul>	<p>1. Franchisor shall provide a written franchise prospectus to the franchisee at the <b>latest 14 (fourteen) calendar days</b> before the execution of the franchise agreement, which contains at least the following:</p> <ul style="list-style-type: none"> <li>a. identity of the franchisor/ sub-franchisor;</li> <li>b. legality of the franchise business;</li> <li>c. the history of the franchise business;</li> <li>d. organization structure of the franchisor;</li> <li><b>e. business system;</b></li> <li>f. financial statements for the last 2 (two) years;</li> <li>g. number of franchise stores;</li> <li>h. list of franchisees/sub-franchisees;</li> <li>i. rights and obligations of the franchisor and franchisee; and</li> <li><b>j. certificate or registration of the intellectual property rights.</b></li> </ul>
<p>2. Franchisor must register the franchise prospectus before entering into the franchise agreement with the franchisee. While, franchisee must register the franchise agreement to obtain the Franchise Registration Certificate ("<b>STPW</b>").</p> <p>The STPW is valid for 5 (five) years. If the franchise agreement has not expired, the STPW can be extended for another 5 (five) years.</p>	<p>2. Both the franchisor and franchisee shall obtain the STPW prior to the execution of the franchise agreement. The STPW will be issued via Online Single Submission system.</p> <p>The franchisor/sub-franchisor must obtain the STPW by attaching the Franchise Prospectus. In applying for STPW, a foreign franchisor shall submit: (a) a legalized or apostilled business license issued by the competent authority in the franchisor's origin country; and (b) certificate of business continuity issued by the Indonesian trade attaché or a designated Indonesian representative.</p>
<p>3. Franchise agreement shall be translated into Bahasa Indonesia and contain at least the following clauses:</p> <ul style="list-style-type: none"> <li>a. Name and address of the parties;</li> <li>b. Type of intellectual property rights;</li> <li>c. Business activities;</li> </ul>	<p>3. Franchise agreement shall contain at least the following clauses:</p> <ul style="list-style-type: none"> <li>a. Name and address of the parties;</li> <li>b. Currently registered/protected intellectual property rights (or certificate of the intellectual property rights);</li> <li>c. Business activities;</li> </ul>

Previous Regulation	Regulation 35/2024
<ul style="list-style-type: none"> <li>d. Rights and obligations of the parties;</li> <li>e. Support, facility, operational support, training, and marketing provided by the franchisor to the franchisee;</li> <li>f. Business area;</li> <li>g. Term of franchise;</li> <li>h. Payment/consideration;</li> <li>i. Ownership, change of ownership, and assignee;</li> <li>j. Dispute settlement; and</li> <li>k. Termination and renewal or extension of the franchise.</li> </ul>	<ul style="list-style-type: none"> <li><b>d. Business system;</b></li> <li>e. Rights and obligations of the parties;</li> <li>f. Support, facility, operational support, training, and marketing provided by the franchisor/sub-franchisor to the franchisee/sub-franchisee;</li> <li>g. Business area;</li> <li><b>h. Guarantee from the franchisor/sub-franchisor in favor of the franchisee/sub-franchisee in the form of compensation or transfer of the rights to the franchisee conditional upon the occurrence of suspension or termination of business activity by the franchisor/sub-franchisor;</b></li> <li>i. Term of franchise;</li> <li>j. Payment/consideration;</li> <li>k. Ownership and transfer of franchise;</li> <li>l. Dispute settlement;</li> <li>m. Termination and renewal or extension of the franchise;</li> <li><b>n. Guarantee from the franchisor/sub-franchisor to perform its obligation to the franchisee/sub-franchisee; and</b></li> <li><b>o. Number of stores to be managed by the franchisee/sub-franchisee.</b></li> </ul>
N/A	<p>4. Franchisors and franchisees are mandated to use official franchise logos to be displayed or placed in an open and visible spot in every franchise branch and its relevant headquarters. The franchise logos will be issued by the Ministry of Trade after the relevant parties obtain the STPW.</p> <p>Any failure to comply with this obligation will result in the imposition of administrative sanctions in the form of written warnings, temporary suspensions of business activities and/or revocations of STPW. Furthermore, individuals or business entities are prohibited from using the term or name without holding an STPW and prohibited from using or abusing the franchise logo without authorization.</p>

**Reporting Obligation**

Under Regulation 35/2024, franchisors/sub-franchisors and franchisees/sub-franchisees are required to file annual reports on the implementation of franchise activity to the Ministry of Trade via Online Single Submission system.

The report shall include the following items:

- a. number of franchisee/sub-franchisee;
- b. number of franchise stores;
- c. financial statements containing the balance sheet;
- d. turnover;
- e. consideration/price of the franchise;
- f. information regarding the management of raw materials in Indonesia;
- g. number of human resources;
- h. status of the intellectual property rights; and
- i. forms of continuous support received by the franchisee/sub-franchisee.

Failure to comply with this reporting obligation will result in the imposition of administrative sanctions in the form of written warnings, temporary suspensions of business activities and/or revocations of STPW.

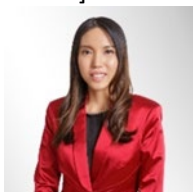
**Use of Domestic Products**

Regulation 35/2024 requires all franchisors, except foreign franchisors, to utilize domestic goods and/or services as long as it fulfils the written quality standard stipulated by the franchisor/sub-franchisor. The franchisors and franchisees shall also cooperate with domestic SMEs for the sourcing of goods and/or services. The franchisors and franchisees shall also prioritize conducting the processing of raw materials domestically.

**Conclusion**

Regulation 35/2024 provides more detailed and comprehensive steps in securing and/or entering into a franchise relationship. It also promotes the domestic market and SMEs to be involved in franchise industry. The implementation of Regulation 35/2024 while introducing new compliance obligations is expected to create business fairness and legal certainty within Indonesia's franchise industry.

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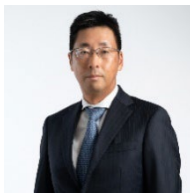
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