



# Malaysia

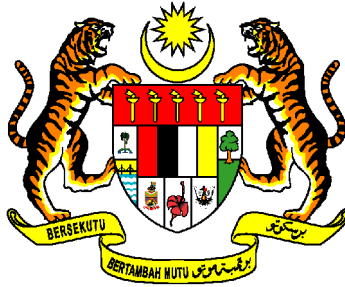
## Guidelines on Foreign Participation in the Distributive Trade Services

**DEZAN SHIRA & ASSOCIATES**

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

This document was downloaded from ASEAN Briefing ([www.aseanbriefing.com](http://www.aseanbriefing.com)) and was compiled by the tax experts at Dezan Shira & Associates ([www.dezshira.com](http://www.dezshira.com)).

Dezan Shira & Associates is a specialist foreign direct investment practice, providing corporate establishment, business advisory, tax advisory and compliance, accounting, payroll, due diligence and financial review services to multinationals investing in emerging Asia.



# **GUIDELINES ON FOREIGN PARTICIPATION IN THE DISTRIBUTIVE TRADE SERVICES MALAYSIA**



**MINISTRY OF DOMESTIC TRADE  
CO-OPERATIVES AND CONSUMERISM**

## INTRODUCTION

The Guideline on Foreign Participation in the Distributive Trade Services Malaysia requires foreign business operators engaged in the distributive trade services in Malaysia to obtain approval from Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC).

Recognizing that the further liberalisation of the distributive trade sector can promote domestic economic development, this guideline seeks to ensure a progressive liberalisation process that can lead to a balanced growth beneficial to both local and foreign players.

This Guideline is a **revision** of the *Guideline on Foreign Participation in the Distributive Trade Services Malaysia 2004*.

## OBJECTIVES

This Guideline seeks to:

- a) ensure an orderly and fair development of the industry, while ensuring the growth of local businesses;
- b) encourage the modernization and increase the efficiency of the industry and its continued contribution to the growth of the economy; and
- c) increase Bumiputera participation in the economic sector, in line with the National Development Policy.

## **DEFINITION**

### *Distributive Trade*

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

The linkages may be:

- direct or indirect between 2 parties (or levels) or more than 2 parties (or levels) within the chain;
- real physical processes or electronic transactions as defined under the relevant laws;
- in person or electronic transactions as defined under the relevant laws; and
- transactions that may or may not involve transference of title of ownership to the goods and services.

Distributive traders include wholesalers, retailers, franchise practitioners, direct sellers, suppliers, who channel their goods in the domestic market, and commission agents or other representatives including those of international trading companies.

For the purpose of this guideline, definition of distributive trade shall not include:

- a) manufacturing companies; and
- b) companies granted the status of regional establishments by the Malaysian Industrial Development Authority (MIDA), regional establishments include International Procurement Centres (IPC), Regional Distribution Centres (RDC) and Operational Headquarters (OHQ).

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

## **ADMINISTRATIVE CONDITIONS**

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

- acquisition of interest;
- mergers and/or takeovers by foreign participation;
- opening of new branches/ outlets/ chain stores;
- relocation of branches/ outlets/ chain stores;
- expansion of existing branches/outlets/ chain stores;
- buying over / taking over of outlets of other operators; and
- purchase and sale of properties to operate distributive trade activities prior to obtaining the approval / license from local authorities and other agencies to operate distributive trade activities.

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

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

All distributive trade companies with foreign equity shall:

- a) appoint Bumiputera director/directors;
- b) hire personnel at all levels including management to reflect the racial composition of the Malaysian population;
- c) formulate clear policies and plans to assist Bumiputera participation in the distributive trade sector.
- d) hire at least 1 percent of the total hypermarket workforce from persons with disabilities
- e) to increase the utilisation of local airports and ports in the export and import of the goods;
- f) to utilise local companies for legal and other professional services which are available in Malaysia;
- g) submit annual financial reports to the Ministry of Domestic Trade, Co-operatives and Consumerism; and
- h) comply with all by-laws and regulations of Local Authorities

### Wholesale Trade

The sale or resale of new and/or used goods and services to other distributors who purchase for the purpose of conducting the business of their organisation.

### Retail Trade

The sale or resale of new and/or used goods and services to general public for final consumption (may include sale and resale of fast consumable goods to organizational buyers who purchase for the purpose of conducting their organization's business where no clear distinction between final and business consumption is possible).

## **HYPERMARKET**

### **Definition**

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

### **Incorporation, Capital and Equity Structure Conditions:**

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

- **Local Incorporation**

All hypermarket businesses with foreign equity must be incorporated locally under the Companies Act 1965. This condition applies also to existing businesses operating under foreign branches.

- **Minimum Capital Requirement**

Minimum capital investment in terms of a company's shareholders funds, which include paid-up capital and reserves, is as follows:

RM 50 million for hypermarkets.

- **Equity Structure**

Hypermarket format shall provide at least 30% equity for Bumiputera.

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

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

## **Operational Conditions:**

- Indicative plans for additional branches of hypermarkets need to be submitted to MDTCC two (2) years before an application is to be considered.
- Hypermarket shall begin operation within two (2) years from the date of approval from MDTCC.
- Sales floor area of a hypermarket shall be 5,000 square metres and above.
- Addition of branch is subject to the approval of MDTCC.
- Approval from MDTCC must be obtained for any reduction or increase of sales floor area.
- Allowed only on standalone basis with basic amenities on outskirts of major towns.
- Normal Operating Hours  
Operating hours for all States except Kedah, Kelantan and Terengganu :
  - a. 10am to 10pm on Monday to Thursday and Sunday; and
  - b. 10am to 12 midnight on Friday and Saturday.Operating hours for Kedah, Kelantan and Terengganu :
  - a. 10am to 10pm on Sunday to Wednesday and Saturday; and
  - b. 10am to 12 midnight on Thursday and Friday.

### Public Holidays

Public holidays including eve of public holidays –10am to 12midnight.

### Major Festivals

7 days prior to major festivals –10am to 12midnight.

- At least 30% of total SKUs displayed on the shelf space are to be allocated for Bumiputera SMEs goods/products in each outlet within 3 years.
- Formulate and provide clear rules and criteria for suppliers to market their products/goods.



## **Environment and Public Interest Conditions:**

- Follow existing laws regarding provision of car parks for commercial areas according to respective local authorities or Town Councils, subject to a minimum of 50 parking lots per 1000 square meters business floor, or whichever is higher.
- Provide business space for ancillary businesses at a reasonable rental rate.
- Not allowed to operate within 3.5 km radius of residential areas and town centres.
- One hypermarket allowed for every 250,000 residents.
- Hypermarket is not allowed to be constructed in locations under the jurisdiction of Local Authorities that have less than 250,000 residents.
- Impact study on existing local retailers should be carried out before the opening of a hypermarket is considered.
- An early indicative study to be carried out incorporating the views of local traders and residents.
- Hypermarket operators should ensure a safe and clean environment (garbage disposal, recycling facilities, etc.) as well as efficient use of energy.

## **DEPARTMENTAL STORE**

### **Definition**

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

### **Incorporation, Capital and Equity Structure Conditions:**

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

- **Local Incorporation**

All departmental store businesses with foreign equity must be incorporated locally under the Companies Act 1965. This condition applies also to existing businesses operating under foreign branches.

- **Minimum Capital Requirement**

Minimum capital investment in terms of a company's shareholders funds, which include paid-up capital and reserves, is as follows:

RM 20 million for departmental stores (review every 3 years).

### **Operational Conditions:**

- Indicative plans for additional branches of departmental store need to be submitted to MDTCC two (2) years before an application is to be considered.
- Departmental Store shall begin operation within two (2) years from the date of approval from MDTCC.
- Addition of branch is subject to the approval of MDTCC.

- Approval from MDTCC must be obtained for any reduction or increase of sales floor area.
- Normal Operating Hours  
Operating hours for all States except Kedah, Kelantan and Terengganu :
  - a. 10am to 10pm on Monday to Thursday and Sunday; and
  - b. 10am to 12 midnight on Friday and Saturday.

Operating hours for Kedah, Kelantan and Terengganu :

- a. 10am to 10pm on Sunday to Wednesday and Saturday; and
- b. 10am to 12 midnight on Thursday and Friday.

#### Public Holidays

Public holidays including eve of public holidays – 10am to 12midnight.

#### Major Festivals

7 days prior to major festivals – 10am to 12midnight.

- At least 30% of total SKUs displayed on the shelf space are to be allocated for Bumiputera SMEs goods/products in each outlet within 3 years.
- Formulate and provide clear rules and criteria for suppliers to market their products/goods.

### **Environment and Public Interest Conditions:**

- Follow existing laws regarding provision of car parks for commercial areas according to respective local authorities or Town Councils, subject to a minimum of 50 parking lots per 1000 square meters business floor, or whichever is higher.
- Provide business space for ancillary businesses at a reasonable rental rate.
- Not allowed to operate within 3.5 km radius of residential areas.

- Impact study on existing local retailers should be carried out if a departmental store is to be operational in a standalone building or if the business floor area is not less than 5,000 square meters.
- An early indicative study to be carried out incorporating the views of local traders and residents.
- Departmental stores operators should ensure a safe and clean environment (garbage disposal, recycling facilities, etc.) as well as efficient use of energy.

## **SUPERSTORE**

### **Definition**

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

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

### **Incorporation, Capital and Equity Structure Conditions:**

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

- **Local Incorporation**

All superstore businesses with foreign equity must be incorporated locally under the Companies Act 1965. This condition applies also to existing businesses operating under foreign branches.

- **Minimum Capital Requirements**

Minimum capital investment in terms of a company's shareholders funds, which include paid-up capital and reserves, is as follows:

RM 25 million for superstores.

### **Operational Conditions**

- Indicative plans for additional branches of superstores need to be submitted to MDTCC two (2) years before an application is to be considered.
- Superstores shall begin operation within two (2) years from the date of approval from MDTCC.

- Sales floor area of a superstore shall be **3,000 square meters to less than 4,999 square meters retailing.**
- Addition of branch is subject to the approval of MDTCC.
- Approval from MDTCC must be obtained for any reduction or increase of sales floor area.
- Normal Operating Hours  
Operating hours for all States except Kedah, Kelantan and Terengganu :
  - a. 10am to 10pm on Monday to Thursday and Sunday; and
  - b. 10am to 12 midnight on Friday and Saturday.

Operating hours for Kedah, Kelantan and Terengganu :

- a. 10am to 10pm on Sunday to Wednesday and Saturday; and
- b. 10am to 12 midnight on Thursday and Friday.

#### Public Holidays

Public holidays including eve of public holidays –10am to 12midnight.

#### Major Festivals

7 days prior to major festivals –10am to 12midnight.

- At least 30% of total SKUs displayed on the shelf space are to be allocated for Bumiputera SMEs goods/products in each outlet within 3 years.
- One superstores allowed for every 200,000 residents.
- Superstore is not allowed to be constructed in locations under the jurisdiction of Local Authorities that have less than 200,000 residents.
- Impact study on existing local retailers should be carried out before the opening of a superstore is considered.
- An early indicative study to be carried out incorporating the views of local traders and residents.
- Superstore operators should ensure a safe and clean environment (garbage disposal, recycling facilities, etc.) as well as efficient use of energy.

## SPECIALTY STORE

### Definition

Stores dealing with one main brand name / product / line of goods associated with one product. They may specialise in:

- food catering and restaurant services outside hotel premises;
- *food-drink-tobacco (e.g. food and beverages)*;
- household/personal goods;
- furniture,
- household appliances,
- electrical appliances,
- healthcare products,
- optical goods,
- footwear,
- clothing and apparel,
- sports goods,
- books,
- jewellery,
- electronic goods;
- motorcycles-motor vehicles;
- small machinery (e.g. industrial, agricultural equipment for small users);
- pharmacy, serviced by a pharmacist at each outlet (retailing only drugs, health and beauty care goods); and
- others.

Specialty store may be allowed to operate in the above categories if it fulfils the following criteria:

- a) contribution to the socio-economic development of Malaysia ;
- b) generate substantial foreign direct investment ;
- c) absence of local players in proposed formats ;
- d) create employment opportunities;
- e) transfer of technology/skills; and
- f) unique/ exclusive nature of business.

## **Incorporation, Capital and Equity Structure Conditions:**

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

- **Local Incorporation**

All specialty store businesses with foreign equity must be incorporated locally under the Companies Act 1965. This condition applies also to existing businesses operating under foreign branches.

- **Minimum Capital Requirement**

Minimum capital investment in terms of a company's shareholders funds, which include paid-up capital and reserves, is as follows:

RM 1 million for each specialty outlet (review every 3 years).

## **Operational Conditions:**

- Addition of branch is subject to approval of MDTCC.

## **Environment and Public Interest Conditions:**

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



## **VARIOUS OTHER DISTRIBUTION FORMATS**

### **Definition**

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

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

- a) contribution to the socio-economic development of Malaysia;
- b) generate substantial foreign direct investment;
- c) absence of local players in proposed formats;
- d) create employment opportunities;
- e) transfer of technology/skills; and
- f) unique/ exclusive nature of business.

### **Incorporation, Capital and Equity Structure Conditions:**

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

- **Local Incorporation**

All various other distribution format businesses with foreign equity must be incorporated locally under the Companies Act 1965. This condition applies also to existing businesses operating under foreign branches.

- **Minimum Capital Requirement**

Minimum capital investment in terms of a company's shareholders funds, which include paid-up capital and reserves, is as follows:

RM 1 million for each outlet.

**Operational Conditions:**

Addition of branch is subject to approval of MDTCC.

**Environment and Public Interest Conditions:**

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

**No foreign involvement in the sector as below:**

- Supermarket/ mini market (less than, 3000 square meters sales floor area).
- Provision shop/General vendor.
- Convenience store (that opens for business for 24 hours).
- News agent and miscellaneous goods store.
- Medical hall (inclined towards traditional alternative medicines plus general dry foodstuff).
- **Fuel Station** with convenience store.

- **Fuel Station** without convenience store.
- Permanent wet market store.
- Permanent pavement store.
- National Strategic Interest.
- Textile, restaurant (non exclusive), bistro, jewellery shops.
- Others.

## **FRANCHISOR AND FRANCHISEE**

### **Definition**

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

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

A franchise is defined under the Franchise Act 1998.

### **Incorporation, Capital and Equity Structure Conditions:**

Any involvement in franchise businesses is subject to the Franchise Act 1998.

- **Local Incorporation**

All franchise businesses with foreign equity must be incorporated locally under the Companies Act 1965. This condition applies also to businesses operating under foreign branches.

- **Minimum Capital Requirement**

Minimum capital investment in terms of a company's shareholders funds, which include paid-up capital and reserves, is as follows:

Based on the merit of each case.

### **Operational Conditions:**

- Please refer to the Franchise Act 1998.

### **Environment and Public Interest Conditions:**

- Please refer to the Franchise Act 1998.

## **NON COMPLIANCE OF THE GUIDELINE**

MDTCC has the right to reject any application by business operators to open any new branch if they fail to comply with any provision of this guideline.

MDTCC reserves the right to reject any application or revoke any approval granted on grounds of national security or non compliance of this guideline.

## **THE COMMITTEE ON DISTRIBUTIVE TRADE**

MDTCC is the Secretariat to the Distributive Trade Committee and will be the main agency and reference for any query / application relating to foreign participation in distributive trade. Members of the Committee are as listed below:

- 1) Secretary General MDTCC – Chairman
- 2) Ministry Of Finance
- 3) Ministry of Home Affairs
- 4) Ministry of International Trade and Industry
- 5) Ministry of Federal Territories
- 6) Ministry of Housing and Local Government
- 7) Ministry of Agriculture and Agro-Based Industry
- 8) Economic Planning Unit, Prime Minister’s Department
- 9) Local Authority
- 10) Other relevant agencies (if required)

## **DOCUMENTS AND PROCEDURE FOR APPLICATION**

Applicants must complete and submit Form WRT 1 (Appendix 1) to:

**Secretary,  
Committee on Distributive Trade  
Ministry of Domestic Trade, Co-operatives and Consumerism  
No. 13, Persiaran Perdana, Presint 2  
Pusat Pentadbiran Kerajaan Persekutuan  
62623 Putrajaya  
Malaysia  
Tel: 603-8882 5838  
Fax: 603-8882 5941**

Applications must be accompanied by the following documents:

- a) relevant information of the individuals/companies involved in the equity structure;
- b) certified copy of incorporation of the company (for existing companies);
- c) a copy of the management, service and technical assistance agreements, joint-venture agreements and other agreements (for existing companies);
- d) projected profit for the first 3 years; and
- e) all other relevant information if any, that support the application.

All proposals and communications addressed to MDTCC will be treated confidential.

## **Application for Franchisor-franchisee Businesses**

Any distributive trade company that plans to do franchise must submit the application to Distributive Trade Committee before obtaining registration approval (Form BAF3) from the Registrar of Franchises.

Please refer to Franchise Act 1998 for application of franchisor-franchisee business.

## **Foreign Branch Companies**

With effect from 1 November 1995 a foreign branch is not allowed to establish a place of business or carry on business in wholesale and retail trade in Malaysia.

## **GLOSSARY**

### Foreign participation:

Means any interest, associated group of interests or parties acting in concert which comprises:

- i) individual who is not a Malaysian citizen including Permanent Resident;  
or
- ii) foreign company or institutions; or
- iii) local company or local institution whereby the parties as stated in item (i) and/or (ii) hold more than 50% of the voting rights in the company or institution.

### Paid up capital

Paid up capital refers to the ordinary share only.

### Sales floor area

The sales floor area excludes the warehouse / backroom / storeroom / food court and office.

### Business floor area

The total area of the building / premise / outlet.

### Small and Medium Enterprises

As defined by SMIDEC.



## Bumiputera

- (a) for Peninsular Malaysia;

Malay individual or aborigine as defined in Article 160(2) of the Federal Constitution.

- (b) for Sarawak;

Individual as defined in Article 161A (a) of the Federal Constitution.

- (c) for Sabah;

Individual as defined in Article 161A (b) of the Federal Constitution.

- (d) for a group / mixtures of individual(s), company(ies) or cooperative(s);

local company or institution whereby Bumiputera holds more than 50% of the voting rights in the company or institution.

## 30% of goods/products

Means 30% of total Stock Keeping Unit (SKU) and shelf space.

## Business floor area

Means total area of a premise including shop lots / kiosk / food court.

## Branch

A business outlet that is separate from a company's corporate headquarters.

### Person with Disability

Means any person who is unable to obtain for himself / herself, fully or partially, the normal requirements of an individual and / or is unable to participate fully in the community due to shortcomings either physically or mentally and whether it occurred since birth or later in life.

### Properties

Includes land with building and commercial unit (building or business premises).

### Weekly holidays

Saturday and Sunday, where a weekly holiday falls on Sunday, Friday and Saturday where a weekly holiday falls on Friday.

### Public holiday

Means a public holiday established by law in Malaysia or any part of Malaysia (Interpretation Act) (4/4/2009).

### Major Festivals

Hari Raya Puasa, Hari Raya Haji, Chinese New Year, Deepavali, Christmas, Kaamatan Festival, Gawai Day.