

## **FRANCHISING DISPUTE RESOLUTION: WHAT'S NEXT AFTER MEDIATION?**

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### **ABSTRACT**

This paper examines the viability of setting up an administrative tribunal to resolve complaints or disputes in franchising. The complexity of franchising relationship causes it to be structurally vulnerable to conflict. In Malaysia, the franchisors and franchisees are usually advised to resolve their complaints or disputes by mediation process. Be it as it may, an empirical data from the Franchise Clinic of the MECD shows, however, that not all complaints or disputes in franchising can be resolved by mediation process. Evidence from case laws up to the date of this writing also suggests that the knowledge on franchising law is still lacking by those handling the franchising disputes. It is deemed, therefore, that in addition to mediation and as a substitute to court litigation, an administrative tribunal such as the Consumer Tribunal should be set up specifically to hear disputes in relation to franchising.

**Keywords:** *franchising, mediation, administrative tribunal*

### **How Complex Is Franchising?**

Franchising normally involves a franchisor who grants a package of rights to a selected franchisee for a term in return for a fee or other form of consideration. The franchisor could be a local or foreign franchisor. Usually a foreign franchisor will appoint a master franchisee for a particular region or territories, for example McDonald's, KFC and Kenny Rogers Roasters. The master franchisee is the franchisor for the franchisees in that particular region or territories. The franchisee obtains a package of rights that should contain the rights to operate a business according to the franchise system, to use the intellectual property and trade secret or confidential information, and to receive assistance. In addition to that the franchisor possesses the right to administer continuous control over the franchisee's business operations during the franchise term.<sup>1</sup> The franchisee is selected because only a suitable person according to the eye of franchisor can become part of its system. Although franchising appears to adopt the nature of

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<sup>1</sup> Section 4 of the Franchise Act 1998.

agency, partnership or employment, the truth is franchising is none of them. The law acknowledges that the franchisee operates the franchise business separately from the franchisor. They operate separate business but they are still interdependent with each other.

The complexity of franchising causes the franchisor and franchisee to perceive differently the nature of franchising and the process of developing their franchise into a better business. In their perceptions and during the process of developing their franchise, they may not legally understand or foresee the impact of the multidimensional and relational nature of franchising. Franchising is multidimensional because it is a specific form of contract that consists of the interplay of many branches of laws,<sup>2</sup> which also include the civil law's notion of perfect usufruct. The complexity of franchising is unlike other generic contractual relationships such as licensor/licensee, principal/agent, employer/employee, supplier/customer and others. Franchising is relational because its contractual obligation is said as "often modified, supplemented or completely supplanted by the norms of an ongoing relation."<sup>3</sup> Another reason is the practice of controls in the system and on the franchisees, though is inevitably necessary for a successful system and uniform presentation,<sup>4</sup> give a wide discretion to the franchisor in formulating and enforcing the franchising agreement.<sup>5</sup>

## **Mediation**

The Franchise Clinic of the Ministry of Entrepreneur and Cooperative Development (after this referred to as "the MECD") prefers to use mediation process to resolve franchising disputes. As explained by Miranda, through mediation "many franchise disputes are resolved through innovative business arrangements not previously contemplated."<sup>6</sup> Confidentiality of the details of each disputes referred to the Franchise Clinic of the MECD apparently are strictly observed by them.

There are 9 types of franchising complaints according to the issues categorized by the MECD, which are as follows:

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<sup>2</sup> ZM Ishan 'The Multi-dimensional Nature of Franchising' [2006] 1 MLJ lxxxv; [2006] 1 MLJA 85.

<sup>3</sup> GK Hadfield 'Problematic Relations: Franchising and the Law of Incomplete Contracts' (1990) 42 Stan L Rev 927, 929. Similar view that franchising is an ongoing relationship is given by W Pengilley 'The Franchising Code of Conduct: Does Its Coverage Address the Need?' (modified version of a background paper presented at the CLE Centre on The New Franchising Code of Practice Seminar 6th August 1998) 13.

<sup>4</sup> W Pengilley 'The Franchising Code of Conduct: Does Its Coverage Address the Need?' (modified version of a background paper presented at the CLE Centre on The New Franchising Code of Practice Seminar 6th August 1998) 13.

<sup>5</sup> GK Hadfield (n 3).

<sup>6</sup> G Miranda *Guide to a Successful Franchise Business* (Leeds Pub KL 1997) 198.

**Table 1**  
**Types of Franchising Complaints (Until 15 March 2006)**

<b>FRANCHISING COMPLAINTS</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>Total</b>
<b>Fee &amp; Royalty</b>	1	0	1	0	1	3
<b>Territorial right</b>	0	0	3	1	0	4
<b>Obligation of franchisor and franchisee under the agreement</b>	1	7	5	4	0	17
<b>Fraud</b>	0	1	4	0	0	5
<b>Non-registered franchisor</b>	1	2	3	2	0	8
<b>Franchisee carrying on similar business</b>	2	0	0	0	0	2
<b>Breach of compulsory practices under section 15</b>	0	1	1	2	0	4
<b>Registered franchisor offering packages pending approval (or unapproved) by the RoF</b>	0	0	0	0	0	0
<b>Miscellaneous</b>	7	22	16	31	13	89
<b>Total</b>	<b>12</b>	<b>33</b>	<b>33</b>	<b>40</b>	<b>14</b>	<b>132</b>

(Source: Franchise Unit, MECD)

It appears that each type of complaints under Table 1 follows the statutory requirements provided in the FA. The statutory requirements are on fee and royalty (sections 19, 21 and 30(2)); territorial right (section 18(2)(b)); obligation of franchisor and franchisee under the agreement (section 30); fraud (section 37); non-registered franchisor (section 6); franchisee carrying on similar business (section 27); breach of compulsory practices (section 15); registered franchisor offering packages pending approval (or unapproved) by the Registrar of Franchises (after this referred to as “RoF” or “Registrar”) (section 7); and miscellaneous under other relevant provisions (sections 20, 26 and 31).

The percentage for each types of complaints for the five years are as follows: fee and royalty (2.27%); territorial right (3.03%); obligation of franchisor and franchisee under the agreement (12.88%); fraud (3.79%); non-registered franchisor (6.06%); franchisee carrying on similar business (1.52%); breach of compulsory practices under section 15 (3.03%); miscellaneous (67.42%).

Table 1 shows that most of the complaints on franchising in Malaysia falls under the miscellaneous type (67.42%). The miscellaneous type of complaint includes unfair termination, discrimination between franchisees, breach of confidential information and others. The least type of complaint is on franchisee carrying on similar business, while no complaint has been made during the past four years on registered franchisor offering packages pending approval (or unapproved) by the RoF.

In particular, complaints that are clearly brought by franchisees are on territorial rights, non-registered franchisor and breach of compulsory practices (12.12%) while complaint

clearly brought by franchisors is on franchisee carrying on similar business (1.52%). Base on this finding alone, it shows that franchisees are bringing more complaints than franchisors.

Even the percentage of each type of the franchisees complaints is greater than that of the franchisor. The other types of complaints listed are brought either by the franchisors or franchisees. It seems that linking the type of complaints to the respective provisions of the FA alone shows that the franchisees are the greater group in bringing complaints, although this kind of statement may be inaccurate. As the MECD keep the fact of the data in Table 1 confidential, the argument on this point should better be kept at rest.

Table 1 also shows that the total number of franchising complaints per year increases drastically from 2002 to 2005. There is no difference in the total number of complaints for years 2003 and 2004. The total number of complaints received by the MECD on the first quarter of year 2006 also indicates a higher number of complaints than those received in year 2002 alone.

The status of the complaints for the five years is shown in Table 2:

**TABLE 2**  
**Status of the Franchising Complaints (Until 15 March 2006)**

<b>STATUS OF FRANCHISING COMPLAINTS</b>	<b>Completed</b>	<b>Not Yet Completed</b>	<b>Beyond Rof's Jurisdiction</b>	<b>No Merit</b>	<b>Total</b>
<b>2002</b>	3	3	0	2	8
<b>2003</b>	10	7	0	3	20
<b>2004</b>	6	7	3	1	17
<b>2005</b>	8	4	1	0	13
<b>2006</b>	0	2	0	0	2
<b>TOTAL</b>	<b>27</b>	<b>23</b>	<b>4</b>	<b>6</b>	<b>60</b>

(Source: Franchise Unit, MECD)

Apparently, Table 2 shows that the total numbers of complaints that are actually brought before the RoF's attention for mediation purposes within the five years period are less by more than half the number of complaints actually lodged with the MECD. This indicates that not all complaints are mediated. It also indicates that mediation could become time consuming, looking at the number of franchising complaints not yet completed, if the parties are not being cooperative and not the right method if the issues involve legal matters that are outside the RoF's jurisdiction.

## Litigation

Litigation in courts apparently is an unpopular course to settle the disputes in franchising because of the active roles played by the Franchise Unit of the MECD and the MFA in promoting mediation as the ADR.<sup>7</sup> There are some cases found relating to franchising.

In *Neeta's Herbal (M) Sdn. Bhd. v. Lim Bak Hiang*,<sup>8</sup> the plaintiff claimed against the defendant for damages for breach of an exclusive distributorship agreement and for false representations in connection with a range of cosmetic herbal products. The defendant denied the breaches and counterclaim for damages for wrongful termination by the plaintiff of the agreement. The plaintiff alleged that the defendant was in breach of the agreement in the following aspects:- (i) failing to protect and conform with the plaintiff's intellectual property rights; (ii) displaying a signboard with the words "Caryn Hair Loss Treatment" without the consent and/or permission from the plaintiff; (iii) adulterating and/or tampering with the plaintiff's product; (iv) conducting business in a manner prejudicial to the business and marketing of the plaintiff's product; (v) failing to place the minimum Performance Orders; and (vi) commencing business in the State of Sabah without obtaining the prior written consent of the plaintiff. However, the court found that the defendant had committed no breach in any grounds whatsoever. While claim of infringement of the intellectual property rights was decided based on the law of intellectual property, the other decisions made by Ian H.C. Chin J. apparently were solely decided upon the four corners of the parties' agreement. None is helpful, however, for the purpose of this study. It is also important to note that the fact of *Neeta's Herbal* had vaguely described the defendant as a franchisee of the plaintiff. However, it can be inferred from the fact of *Neeta's Herbal* that the plaintiff is a franchisor and the defendant is its franchisee based on the following statement:

"The Plaintiff claimed for loss of profit for the period for which the agreement was to run if not for the termination and this period is respectively 37,38 and 39 months and involving the franchise areas of Sibul, Miri and Kuching."<sup>9</sup>

It also appears that the franchise in this case is not a business format franchising but merely product/distributorship franchise.

The other cases relates to issues involving third party's claim over matters such as trademark infringements, companies winding-up and tenancy. For example, in *Thrifty Rent-A-Car System Inc. v. Thrifty Rent-A-Car Sdn. Bhd. & Anor*,<sup>10</sup> the opposition by one franchise system against the registration of 'Thrifty mark' by a third party was agreed by the High Court that "this is a clear and simple case of an unscrupulous local trader riding unfairly on the goodwill and reputation of a well-known foreign mark for the sole

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<sup>7</sup> The fact that the MECD favours mediation is seen in the Franchise Mediation Relationship Program with the Office of Mediation Adviser (OMA), Australia and a proposed amendment to expressly include mediation in the FA.

<sup>8</sup> [2000] 6 MLJ 321.

<sup>9</sup> *Neeta Herbal's* case (n 8) at 321.

<sup>10</sup> [2004] 7 MLJ 567.

purpose of benefiting itself at the expense of the Malaysian public and trade by deceiving and/or confusing them.” The court also referred such conduct as irresponsible and unconscionable.

In *Tan Kim Hor & 9 Others v. Tan Heng Chew & 9 Others*,<sup>11</sup> Shiseido franchise was one of the several businesses operated by Warisan (the 10<sup>th</sup> respondent), which is one of the four public listed companies controlled by TCC (the 9<sup>th</sup> respondent). As a result of misunderstandings that arose between the shareholders of TCC, the petitioners who are also shareholders of TCC petitioned to wind-up TCC under section 218 of the Companies Act 1965. This petition was struck out by the High Court. Pending that the petitioners appealed and also applied for an injunctive order that TCC appoint two proxies representing the petitioners at the EGM of Warisan. The court found that the petitioners actually wanted to change the Board of Directors of Warisan as they believed that the business of the so-called Shiseido franchise can only be saved by them. The court refused to grant the injunction because the petitioners failed to show that they will suffer an irreparable harm and that damages would not be an adequate remedy. The petitioners will not suffer any direct loss even if the Shiseido franchise is lost.

In *Leong Hup Holdings Bhd. v. Tuan Haji Ishak bin Ismail & Ors*,<sup>12</sup> the issue relates to Leong Hups' alleged entitlement to representation on the board of directors of KFC Holdings (Malaysia) Berhad, and to a right thereby to participate in the management of the affairs of this company. In that case the Court of Appeal struck out as disclosing no cause of action a section 181 of the Companies Act 1965 petition wherein a shareholder of a public listed company asserted a right or expectation to participate in the management of the company in the absence of any express agreement amongst the shareholders to that effect.

In *Wah Chan Consolidated Sdn. Bhd. v. Sasidaran A/L Damoo Kunjiraman*,<sup>13</sup> the duty of franchisee/sub-tenant to pay rent of the premise leased by a landlord/third party to franchisor/tenant was held by the court as not absolved by the franchisor's misrepresentation in the principal agreement because the rental liability has to be ascertained from the sub-tenancy agreement itself, not the franchise agreement. In *Allianz General Insurance Malaysia Bhd v. Navis Shim Lee Hiong*,<sup>14</sup> the assessment by the franchise holder of the Volvo car was brought forth by the insurance company to determine the market value of a vehicle at the time of loss while in *Seasiana Sdn. Bhd. v. Saab Scania Ab & Anor*,<sup>15</sup> the plaintiff's appointment as the Saab Car franchise holder for the whole of Malaysia was revoked by defendants who reside abroad. The issue of *Seasiana* points to the plaintiff's non-compliance with Order 6 rule 6 of the Rules of the High Court and Practice Direction No. 2 of 1982.

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<sup>11</sup> [2002] MLJU LEXIS 1128; [2002] 582 MLJU 1; [2003] 1 CLJ 472.

<sup>12</sup> [1995] MLJU LEXIS 881; [1995] 334 MLJU 1.

<sup>13</sup> [2005] 1 MLJ 747.

<sup>14</sup> [2004] 1 MLJ 437.

<sup>15</sup> [1986] 1 MLJ 430.

## **Franchise Tribunal**

The advantages of mediation is not disputed and not the concern of this paper. However, it is found that not all parties in mediation are satisfied with the outcome of the mediation (see Appendix 1). It is also found that not all franchising disputes are being mediated as shown in Table 2. According to Freedman and Bartle, mediation is not suitable after the breakdown of any negotiations such as where the relationship of the franchising parties is at an end or where the franchisee's conduct is diluting the franchise concept. Mediation is also not suitable when the disputes involved with claims of fraud. This is because mediation process depends on both parties acting in good faith. Freedman and Bartle consider that court litigation is more suitable after negotiations fail and when there are claims of fraud.<sup>16</sup>

With the increasing number of franchises in Malaysia and the likely increasing number of franchising disputes between the franchisors and franchisees, it is recommended that a tribunal for franchising should be set up as another alternative method to resolve disputes in franchising in addition to mediation and as a substitute to court litigation.

It should be noted that the term 'tribunal' here refers to an administrative adjudicating body with specialized roles. According to MP Jain:

"This system is characterized in different ways: it can be called as administrative adjudication or administrative justice because it is concerned with administration to some extent; the system is adopted to help promote the administrative process in the country.... They are administrative only in the sense that most of them deal with matters in which the administration has an interest. These bodies may also be designated simply as 'tribunals' to distinguish them from the courts. But the connotation of the term 'tribunal' is vague. The term may include all adjudicatory bodies outside the court structure which means even the officials and Ministers when adjudicating upon disputes, or it may only be used in a restrictive sense as indicating a body deciding disputes, being outside and independent of the administrative department but binding the same by its decisions. This use of the term 'tribunal' will exclude officials and Ministers in their adjudicative capacity and this is, perhaps, a more acceptable and more appropriate sense."<sup>17</sup>

Obviously, the term 'tribunals' is used to distinguish them from courts but with adjudicatory function outside the court structure and may also be independent of the administrative departments. Some writers place tribunals as part of ADR explicitly<sup>18</sup> or

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<sup>16</sup> C Freedman and P Bartle 'Franchising Disputes' in R Caller (ed) *ADR and Commercial Disputes* (Sweet & Maxwell London 2002) 78.

<sup>17</sup> MP Jain *Administrative Law of Malaysia and Singapore* (MLJ (Pte) Ltd Singapore 1980) 129.

<sup>18</sup> Property Times 'Tribunal on Trial?' News Straits Times (KL Malaysia 26 July 2003) <<http://www.nst.com.my/Weekly/PropertyTimes/News/Viewpoint/20030729140641/Article>> (5 July 2007).

by placing it as a court-annexed arbitration,<sup>19</sup> while others are silent on the point of whether a tribunal is an ADR.<sup>20</sup> However, to simply state that tribunal is part of the ADR will be too simplistic because the ADR and tribunals are based on different philosophies, approaches and functions. In relation to ADR, Brown and Marriott suggest that 'ADR complements litigation and other adjudicatory forms, providing processes which can either stand in their own right or be used as adjunct to adjudication'.<sup>21</sup> In relation to administrative or statutory tribunal, Brown and Marriott place it somewhere between litigation and ADR, and differ it from the court-annexed arbitration.<sup>22</sup> However, for the purpose of this study the writer believes that apart from the argument whether tribunals should be under the ADR or not, which is not the concern of this study, the usefulness of tribunals as shown in other areas of law merits a separate treatment for it as a remedial retribution.

Generally, the formation of tribunals depends on the express provision in the Acts of Parliament. The tribunal for consumer claims, for example, is established under Part XII of the Consumer Protection Act 1999. In relation to its function, tribunals are not restricted to consider claims or hear appeals made by departments or administrative officials<sup>23</sup> but can also adjudicate claims by individuals as demonstrated by the Consumer Tribunal and Housing Tribunal. It usually has to decide facts and apply legal rules to the cases impartially, without considering executive policy.<sup>24</sup> Clearly, tribunal is an effective method of dispute resolution because it provides the combination of expert knowledge, cheapness, speed, flexibility and informality provided that it is properly structured and supervised.<sup>25</sup> It is, therefore, advantageous to those who wish for a binding adjudication much like court litigation but based on statutory requirements with simplified procedures.

The disadvantageous side of tribunals, clearly, depends much upon the procedures if not properly structured and supervised. It may also seem that the tribunal's procedure, as in the Consumer Tribunal and the Housing Tribunal, gives the rights to lodge claims only to one party who is also consumers. However, even though only one party brings the claim, another party will still be given the right to be heard. Both parties will be given the right to be represented.

The writer also believes that tribunal is suitable to settle franchising disputes even if franchising involves business-to-business relationships. This is because the nature of franchising relationship is very proximate and more than just a business. It is not an arm's length transaction.

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<sup>19</sup> KVV Stone *Private Justice: The Law of Alternative Dispute Resolution* (Foundation Press NY 2000) 3, 8.

<sup>20</sup> C Freedman and P Bartle (n 16); O.Hood Philips, P Jackson and P Leopold *O. Hood Phillips & Jackson: Constitutional and Administrative Law* (8<sup>th</sup> edn Sweet & Maxwell London 2001) 684.

<sup>21</sup> HL Brown and AL Marriott *ADR Principles and Practice* (2<sup>nd</sup> edn Sweet & Maxwell Ltd London 2002) 13.

<sup>22</sup> HL Brown and AL Marriott (n 21) 16-18.

<sup>23</sup> MP Jain (n 17) 129.

<sup>24</sup> HWR Wade *Administrative Law* (3<sup>rd</sup> edn Clarendon Press London 1971) 255, 258.

<sup>25</sup> MP Jain (n 17) 129; HWR Wade (n 24) 254; O.Hood Philips, P Jackson and P Leopold (n 20) 686, 687; HL Brown and AL Marriott (n 21) 17.

It is important, therefore, for the FA to provide for an express provision on the formation of a Franchising Tribunal. The structure of the Franchising Tribunal should include important matters such as the Tribunal's composition,<sup>26</sup> scope and jurisdictions. For the purpose of consistency, the composition of the Franchising Tribunal could follow the Consumer Tribunal's composition, where it consists of a Chairman, a Deputy Chairman and five members. Generally, the power to appoint the Tribunal panels is left with the Minister. Both Chairman and Deputy Chairman should be appointed from amongst members of the Judicial and Legal Service, while five other members should be appointed from amongst persons who are members of the Judicial and Legal Service or advocates and solicitors of the High Court in Malaya and have practiced for not less than seven years. Needless to say, the Tribunal's composition should be of persons knowledgeable in franchising law. It would also be the more reason for the five other members to be appointed if the person possesses expert qualifications relevant to franchising such as being an experienced franchise consultant.

The Franchising Tribunal should also have a defined scope, which protects the interest of franchisors and franchisees. The Tribunal should have jurisdiction to handle a claim where the total amount in respect of which an award of the Tribunal is sought does not exceed RM200,000 (Ringgit Two hundred thousand). This amount apparently exceeds the amount allowed by the Consumer Tribunal and the Housing Tribunal. Be it as it may, the two Tribunals tend to be pettier because they deal with consumer cost of transaction while franchising cost of transaction usually involves between few thousands to millions of Ringgit.<sup>27</sup> The maximum limit of RM200,000 is for one cause of action. Therefore, the same party can bring different causes of action to the Tribunal.

The Franchising Tribunal should also have jurisdiction to hear any claims in respect of any matters within its jurisdiction provided under the FA. For example, the Tribunal is recommended to hear disputes, among other, on the followings:

- a) False and misleading representations on a franchise.
- b) Breach of the franchise agreements.
- c) Matters not determined by the franchise agreements but are crucial as they affect the conscionability and ethical practices in the franchise such as encroachment of the territory, unreasonable delay in the delivery of supplies, insufficient franchisor's support and training, soliciting a staff of another outlet within the franchise system, unfair termination due to franchisee's refusal to opt for franchise renewal, and unfairly and unreasonably withholding franchisee's right to surrender the franchise.

In order to avoid unnecessary massive amount of complaints, which may arise due to the

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<sup>26</sup> The composition of a tribunal, especially an appeal tribunal, will typically consist of three persons: HWR Wade (n 24) 258.

<sup>27</sup> For example, the MECD *Franchise Directory 2006* at item no. 33 shows that the initial capital to start a franchise under the trademark Mc Donald's is RM2,322,000. The franchise fee is RM171,000 and the advertising and promotion fee is 5% from the sales. At item no.86, it is shown that the initial capital to start a franchise under Edaran Otomobil Nasional Bhd-Eon Service Franchise is RM750,000 (Autocare), RM400,000 (Dealer), or RM200,000 (Kiosk). Service fee is upon the franchisor's discretion and royalty imposed is 2% from the monthly gross income.

complex hybrid nature of franchising, claims involving the followings should be outside the scope of the tribunal:

- a) Matters on employment and termination of staffs.
- b) Infringement of intellectual property rights by the franchisor against third party, or vice versa.
- c) Dispute relating to direct selling.
- d) Dispute relating to the entitlement of any person under a will or any intestacy.
- e) Dispute relating to any chose in action.
- f) Where any other tribunal has been established under any written laws to hear and determine claims on matters that are under the jurisdiction of that other tribunal.

It is deemed that like other specialized tribunals, the Franchising Tribunal may not be interested in the issue of law. However, the Franchising Tribunal's Chairman can still say that the conduct is unconscionable from the conduct point of view, not from the legal point of view. By referring to the FA, the Tribunal's Chairman can see whether the conduct is unconscionable or not and order the remedy, similar to the procedure in the Consumer Tribunal. From a broad perspective, the Consumer Tribunal issues not the law itself but on unethical practices affecting consumer's interest due to, among others, failure to comply with any guarantees implied by the Consumer Protection Act 1999, or false and misleading representations, or misleading or deceptive conducts; but still they can order the remedy.

## **APPENDIX 1**

### **Case Study 1**

#### Complaint

1. The complaints by the franchisee are as follows:
  - i. Franchisor had sent three employees to search the franchisee's premise and forfeited several items therein;
  - ii. Franchisor had served termination notice of the franchise agreement on the ground of the franchisee's delay/failure to submit a report to the franchisor; and
  - iii. Franchisor had sent five employees to forfeit teaching devices used by the franchisee to continue the learning session for the month of August.

#### Issue

2. The franchisee claimed that the termination notice is unfair and against the franchise agreement on the following reasons:
  - i. the notice failed to state accurately the relevant clause used by the franchisor as the basis to terminate the agreement;
  - ii. the notice is against sections 30(1) and 31(1) of the Franchise Act 1998, which provide that the franchisee should be given time to remedy the breach;
  - iii. the notice failed to state the clause used by the franchisor to terminate the agreement on the ground that the franchisee had no opportunity to remedy the breach;

- iv. the notice failed to give opportunity for the franchisee to remedy the breach;
- v. nowhere in the agreement provides that delay/failure to submit a report will result in abrupt termination of the franchise agreement without any notice or without the opportunity to the franchisee to remedy the breach.

#### Claim

3. The franchisee requested the franchisor to withdraw the termination notice as it is against section 31(3) of the Franchise Act 1998.

#### Franchisor's counterclaim

4. The franchisee had committed fraud for failure to submit the report to the franchisor causing the latter to accept less royalty payment from the franchisee. Therefore, the franchisor claimed that there is no longer trust in their relationship.

#### Registrar of Franchises' Decision

5. This complaint should be brought to the court's attention because it relates to the issue of interpretation of law. Section 31(3) listed the circumstances where termination without notice is allowed, those are:

"Good cause" shall include, but without the requirement of notice and an opportunity to remedy the breach, circumstances in which the franchisee –

- (a) makes an assignment of the franchise rights for the benefit of creditors or a similar disposition of the assets of the franchise to any other person;
- (b) voluntarily abandons the franchised business;
- (c) is convicted of a criminal offence which substantially impairs the goodwill associated with the franchisor's mark or other intellectual property; or
- (d) repeatedly fails to comply with the terms of the franchise agreement.

However, the list is non-exhaustive. In relation to that, the Registrar viewed that an occurrence that affects the foundation of a contractual relationship would justify the termination without the requirement of notice.