



GUIDELINES ON FOREIGN PARTICIPATION IN DISTRIBUTIVE TRADE SERVICES IN MALAYSIA

MINISTRY OF DOMESTIC TRADE AND CONSUMER AFFAIRS

HISTORY

First Published : Guidelines on Foreign Participation in Wholesale and Retail Trade (1995)

Second Amendment : Guidelines on Hypermarket Opening (2002)

Third Amendment : Guidelines on Foreign Participation in The Distributive Trade Services
Malaysia (2004)

Fourth Amendment : Guidelines on Foreign Participation in Distributive Trade Services in
Malaysia (2010)



MINISTER'S FORWARD

MINISTER OF DOMESTIC TRADE AND CONSUMER AFFAIRS

Assalamualaikum dan salam sejahtera

The Ministry of Domestic Trade and Consumer Affairs, which was established in 27 October 1990, has an objective to promote the development of a viable, competitive and sustainable domestic economy, specifically in the Distributive Trade Sector (DTS).

DTS is the main contributor to nation's GDP and covers three broad sub-sectors: the motor, wholesale and retail trade sectors. Total revenue of service sector in 3rd quarter 2019 recorded RM449.7 billion, while the highest contribution was registered by wholesale and retail trade, food and beverage and accommodation segment accounted for RM358.6 billion.

From traditional shops to hypermarkets and from hypermarkets to convenience stores, the retail landscape is ever-changing and will continue to do so. All the reforms in the retail sector is to suit the changing lifestyle of the people. Hence, the Ministry is introducing the 'Guideline on Foreign Participation in Distributive Trade Services in Malaysia 2020'. This Guideline aims to continuously vitalize the industry and keep contributing to the national economic growth.

The Ministry encourages the creation of new high value stores and job opportunities, which produce positive spillovers throughout the supply chains. I hope that this Guideline will ensure an orderly and fair development of DTS whilst attracting Foreign Direct Investment into Malaysia.

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DATUK SERI SAIFUDDIN NASUTION BIN ISMAIL
MINISTER OF DOMESTIC TRADE AND CONSUMER AFFAIRS



**DEPUTY MINISTER OF DOMESTIC TRADE AND
CONSUMER AFFAIRS**

Salam sejahtera

The Distributive Trade Sector (DTS) is among the key contribution to our economic growth. It provides a link not only between producers and buyers but also between producers and buyers operating as exporters and importers on the global markets.

In this regard, new business formats as introduced in the Guideline on Foreign Participation in Distributive Trade Services in Malaysia 2020 is aimed to attract potential foreign investor to participate in the DTS.

The Ministry recognizes the enhancement of digital economy as part of DTS transformation in Malaysia and at present, Consumers are increasingly craving for immersive, real-life experiences. Thus, businesses must be creative in bringing the high value-added distributive activity and to combine with the latest technology to drive more intelligent data interpretation, allowing businesses to personalize, predict and recommend products and offers based on shopper habits and preferences. Businesses need to embrace technology to support consumer needs for efficient and quality services.

A handwritten signature in black ink, appearing to read 'Chong Chieng Jen', written over a dotted line.

.....
TUAN CHONG CHIENG JEN
MINISTER OF DOMESTIC TRADE AND CONSUMER AFFAIRS



**SECRETARY GENERAL MINISTRY OF DOMESTIC TRADE
CONSUMER AFFAIRS**

Assalamualaikum dan salam sejahtera

The Distributive Trade Sector (DTS) is a dynamic industry. Emergence of e-commerce, consumer behavior is now changing at an unprecedented rate due to the immense level of disruption to the retail landscape not just online but also in the “physical” sense as real-world retail also looks to reinvent itself.

As DTS is among the main segment in Malaysia’s economy, the Ministry believes that the Guideline on Foreign Participation in Distributive Trade Services in Malaysia 2020 (GP2020) will be referred by stakeholders. This GP2020 will facilitates stakeholders to accommodate to the current development.

We are welcoming all potential investor to be part of Malaysia in achieving sustainable growth and moving towards high-income nation.

.....
DATUK MUEZ BIN ABD AZIZ
SECRETARY GENERAL MINISTRY OF DOMESTIC TRADE AND CONSUMER
AFFAIRS

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1.0 INTRODUCTION

- 1.1 Recognizing that further liberalisation of the distributive trade sector promotes domestic economic development, these Guidelines on Foreign Participation in the Distributive Trade Services Malaysia (Guidelines) seek to ensure that a progressive liberalisation process can lead to a balanced growth beneficial to both local and foreign players.
- 1.2 These Guidelines are a revision of the Guidelines on Foreign Participation in the Distributive Trade Services Malaysia 2010.

2.0 OBJECTIVES

- 2.1 These Guidelines seek to:
 - 2.1.1 Ensure an orderly and fair development in the wholesale and retail industries, while ensuring the growth of local businesses;
 - 2.1.2 Encourage the modernization and increase the efficiency of the industry and its continued contribution to the growth of the economy; and
 - 2.1.3 Increase *Bumiputera* and Malay participation in the economic sector, in line with the National Development Policy.

3.0 COMPLIANCE

All foreign business operators engaged in distributive trade services in Malaysia are encouraged and recommended to obtain approval from the Ministry of Domestic Trade and Consumer Affairs (**MDTCA**) prior to commencing operation.

4.0 DEFINITION

4.1 Distributive Trade

4.1.1 Distributive trade means trade which comprises all linkage activities that channel goods and services from the supply chains to intermediaries for the purpose of resale or to the final buyers. The linkages may either be:

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

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

4.2 Wholesale Trade

Wholesale trade means the sale or resale of new and/or used goods and services to distributors who purchase such goods and services for the purpose of conducting businesses.

4.3 Retail Trade

Retail trade means the sale or resale of new and/or used goods and services to the general public for final consumption. This may include sale and resale of fast

consumable goods to organizational buyers who make the purchase for the purpose of conducting their organization's business whereby there is no clear distinction between final and business consumption.

- 4.4 Distribution of products and services governed by other relevant legislations for specific reasons including petroleum products, pharmaceutical, medicinal and orthopedic products, toxic substances and explosives, arms, ammunitions, agricultural raw materials as well as live animals are subject to requirements provided for in those legislations.

4.5 **Exemptions**

For the purpose of these Guidelines, the following distributive trades are exempted:

- 4.5.1 Companies with manufacturing licenses which only distribute products under the same production line; and
- 4.5.2 Companies which are granted the status of regional establishments by the Malaysian Industrial Development Authority (**MIDA**), which includes International Procurement Centres (IPC), Regional Distribution Centres (RDC), Operational Headquarters (OHQ) and Principal Hub (PH).

5.0 ADMINISTRATIVE CONDITIONS

- 5.1 Approval by the Distributive Trade Committee of MDTCA must be obtained for any applications on foreign involvement in the distributive trade, including the following applications:
- a. acquisition of interest;
 - b. mergers and / or takeovers by foreign participation;
 - c. opening of new branches / outlets / chain stores;
 - d. relocation of branches / outlets / chain stores;
 - e. expansion of existing branches / outlets / chain stores;
 - f. buying over / taking over of outlets of other operators; and
 - g. 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.
- 5.2 Any party who submits an application for foreign involvement in distributive trade is recommended to consult with Distributive Trade Committee of MDTCA prior to the submission of its application.
- 5.3 Notwithstanding the above, all approvals granted prior to the coming into effect of these Guidelines will continue to be in force and have its effect as if it had been made under these Guidelines.
- 5.4 All distributive trade companies with foreign involvement must adhere to the following recommendations:
- a. to appoint *Bumiputera* or Malay director/directors;
 - b. to hire local (Malaysian) personnel at all levels particularly for the management positions and above;
 - c. to have only 15 percent of the total workforce of low skilled foreign workers;

- d. to develop and provide transparent standard operating procedures for local suppliers to market their goods;
- e. to encourage *Bumiputera* or Malay participation in the distributive trade sector;
- f. to hire at least 1 percent of the total workforce of persons with disabilities in large formats;
- g. to increase the utilisation of local airports and ports in the export and import of goods;
- h. to encourage utilisation of local professional services which are available in Malaysia;
- i. to submit audited annual financial reports to MDTCA;
- j. to support the initiatives and the agenda for sustainable development as provided under the Sustainable Development Goals by the Government of Malaysia; and
- k. to comply with all the by-laws and regulations of the local authorities.

6.0 HYPERMARKET

6.1 Definition

Hypermarket means a self-service distribution store with a sales floor area of 5,000 square meters or more, selling a wide variety of mainly consumer goods, comprising a combination of food and non-food products and in different forms of packaging.

6.2 Incorporation, Capital and Equity Structure Conditions

Any foreign involvement in a hypermarket is recommended to be in compliance with the following conditions:

6.2.1. Local Incorporation

All hypermarket businesses with foreign equity must be incorporated locally under the Companies Act 2016 [Act 777]. This condition also applies to existing businesses operating under foreign branches of hypermarkets.

6.2.2 Minimum Capital Requirement

The capital investment in terms of a company's shareholders funds is RM50 million at the minimum, which includes paid-up capital.

6.2.3 Equity Structure

Hypermarket operators must provide at least 30 percent *Bumiputera* or Malay ownership in the company's equity structure. However, a grace period of three (3) years for compliance may be granted by the Distributive Trade Committee of MDTCA upon the approval of the applications made by the operators. This requirement also applies to

operations established prior to the coming into effect of these Guidelines. Henceforth, hypermarket operators are not allowed to open additional branches unless it has fulfilled the requirement of 30 percent *Bumiputera* or Malay ownership in the company's equity structure.

6.3 Operational Conditions

6.3.1 An application for additional branches must be submitted to the Distributive Trade Committee of MDTCA at least one (1) year before the proposed date of operation. Any non-compliance of this submission may cause the date of operation to be deferred.

6.3.2 A hypermarket must begin its operation within two (2) years from the date of approval by MDTCA.

6.3.3 It is recommended to obtain approval from MDTCA for any propose reduction or increase in the sales floor area.

6.3.4 A hypermarket is allowed to operate as a stand-alone or anchor tenant with basic amenities.

6.3.5 Operating Hours

6.3.5.1 Operating hours for all States except Kedah, Kelantan, Terengganu, and Johor are as follows:

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

6.3.5.2 Operating hours for Kedah, Kelantan, Terengganu and Johor are as follows:

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

6.3.5.3 Public Holidays

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

6.3.5.4 Major Festivals

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

6.3.5.5 Food courts under the management of hypermarket may start operating at 9 am.

6.3.5.6 Any other operating hours is subject to the approval of MDTCA.

6.3.6 At least 30 percent of total stock keeping unit (SKU) displayed on the shelf space are to be allocated for *Bumiputera* or Malay small medium enterprise's (SME) goods / products. A grace period of three (3) years for compliance may be given by MDTCA.

6.3.7 The report of SKU's percentage achievement must be submitted by the hypermarket to MDTCA by June and December annually.

6.4 Environment and Public Interest Conditions

- 6.4.1 A hypermarket must adhere to existing by-laws regarding provision of car parks for commercial areas according to the respective local authorities, subject to a minimum of 50 parking lots per 1000 square meters business floor, or whichever is higher.
- 6.4.2 A hypermarket may provide business space for ancillary businesses at a reasonable rental rate.
- 6.4.3 A hypermarket is not allowed to operate within 1.6 km radius of residential areas and town centres.
- 6.4.4 A hypermarket is only allowed to be constructed in locations under the jurisdiction of local authorities with the status of *City Council or Municipal Council*
- 6.4.5 Feasibility and impact studies on existing local retailers and residents must be carried out before any proposed opening of a hypermarket is considered. A minimum of 200 individuals which includes retailers and residents should be considered in the study.
- 6.4.6 Hypermarket operators must ensure a safe and clean environmental practice is in place (garbage disposal, recycling facilities, etc.) as well as the efficient use of energy.

7.0 DEPARTMENTAL STORE

7.1 Definition

Departmental store means 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 and generally under one common store management. A departmental store may include a supermarket of not less than 1,000 square meters or 15 percent of the total sales floor area with a maximum of 4,999 square metres.

7.2 Incorporation and Capital Conditions

Any foreign involvement in a departmental store is recommended to be in compliance with the following conditions:

7.2.1 Local Incorporation

All departmental store businesses with foreign equity must be incorporated locally under the Companies Act 2016 [Act 777]. This condition also applies to existing businesses operating under foreign branches of departmental store.

7.2.2 Minimum Capital Requirement

The capital investment in terms of a company's shareholders funds is RM20 million at the minimum, which includes paid-up capital and reserves.

7.3 Operational Conditions

7.3.1 An application for additional branches must be submitted to the Distributive Trade Committee of MDTCA at least one (1) year before the proposed date of operation. Any non-compliance to this submission may cause the date of operation to be deferred.

7.3.2 A departmental store must begin its operation within two (2) years from the date of approval from MDTCA.

7.3.3 It is recommended to obtain approval from MDTCA for any proposed reduction or increase of sales floor area.

7.3.4 Operating Hours

7.3.4.1 Operating hours for all States except Kedah, Kelantan, Terengganu and Johor are as follows:

- a. 10 am to 10 pm on Monday to Friday; and
- b. 10 am to 12 pm on Saturday and Sunday.

7.3.4.2 Operating hours for Kedah, Kelantan, Terengganu and Johor are as follows:

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

7.3.4.3 Public Holidays

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

7.3.4.4 Major Festivals

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

7.3.4.5 Food courts under the management of departmental store may start operating at 9 am.

7.3.4.6 Any other operating hours is subject to approval of MDTCA.

7.3.5 At least 30 percent of total SKUs displayed on the shelf space are to be allocated for *Bumiputera* or Malay SMEs goods/products. A grace period of three (3) years for compliance may be given by MDTCA.

7.3.6 A report of SKU's percentage achievement must be submitted to MDTCA by June and December annually.

7.4 Environment and Public Interest Conditions

7.4.1 A departmental store must adhere to existing by-laws regarding provision of car parks for commercial areas according to respective local authorities, subject to a minimum of 50 parking lots per 1000 square meters business floor, or whichever is higher.

7.4.2 A departmental store may provide business space for ancillary businesses at a reasonable rental rate.

7.4.3 A departmental store is not allowed to operate within 1.6 km radius of residential areas.

7.4.4 Feasibility and impact studies on existing local retailers and residents is to be carried out before the opening of a departmental store is considered. A minimum of 200 individuals, which include retailers and resident should be considered in the study.

8.0 SUPERSTORE

8.1 Definition

Superstore means a self-service distribution store with a 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 combination of food and non-food products. A superstore is allowed to operate sales floor area of 1,000 square meters at the minimum, at a location under the jurisdiction of either City Council or Municipal Council only.

8.2 Incorporation and Capital Conditions

Any foreign involvement in a superstore is recommended to be in compliance with the following conditions:

8.2.1 Local Incorporation

All superstore businesses with foreign equity must be incorporated locally under the Companies Act 2016 [Act 777]. This condition also applies to existing businesses operating under foreign branches of superstore.

8.2.2 Minimum Capital Requirements

The capital investment in terms of a company's shareholders funds is RM25 million at the minimum, which includes paid-up capital and reserves.

8.3 Operational Conditions

8.3.1 An application for additional branches must be submitted to the Distributive Trade Committee, MDTCA at least one (1) year before the proposed date of operation. Any non-compliance to this submission may cause the date of operation to be deferred.

8.3.2 A Superstore must begin its operation within two (2) years from the date of approval by MDTCA.

8.3. It is recommended to obtain the approval from MDTCA for any proposed reduction or increase of sales floor area.

8.3.5 Operating Hours

8.3.5.1 Operating hours for all States except Kedah, Kelantan, Terengganu and Johor are as follows:

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

8.3.5.2 Operating hours for Kedah, Kelantan, Terengganu and Johor are as follows:

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

8.3.5.3 Public Holidays

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

8.3.5.4 Major Festivals

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

8.3.5.5 Food courts under the management of superstore may commence at 9 am.

8.3.5.6 Any other operating hours is subject to approval from MDTCA.

8.3.6 At least 30 percent of total SKUs displayed on the shelf space are to be allocated for *Bumiputera* or Malay SMEs goods/products. A grace period of three (3) years for compliance may be given by MDTCA.

8.3.7 A report of SKU's percentage achievement must be submitted to MDTCA by June and December annually.

8.4 **Environment and Public Interest Conditions**

8.4.1 A superstore must adhere to existing by-laws regarding provision of car parks for commercial areas according to respective local authorities, subject to a minimum of 50 parking lots per 1000 square meters business floor, or whichever is higher.

8.4.2 A superstore may provide business space for ancillary businesses at a reasonable rental rate.

8.4.3 Feasibility and impact studies on existing local retailers and residents is to be carried out before the opening of a superstore is considered. A minimum of 200 individuals, which include retailers and resident should be considered in the study.

9.0 SPECIALTY STORE

9.1 Definition

9.1.1 Specialty store means stores dealing with one main brand name/product/line of goods associated with one product in the following categories:

- 9.1.1.1 Exclusive food and beverage business;
- 9.1.1.2 Food/drink/tobacco
- 9.1.1.3 household/personal goods;
- 9.1.1.4 exclusive furniture;
- 9.1.1.5 household appliances;
- 9.1.1.6 electrical appliances;
- 9.1.1.7 healthcare products;
- 9.1.1.8 optical goods;
- 9.1.1.9 footwear;
- 9.1.1.10 clothing and apparel;
- 9.1.1.11 sports goods;
- 9.1.1.12 books;
- 9.1.1.13 jewelry;
- 9.1.1.14 electronic goods;
- 9.1.1.15 motorcycles / motor vehicles;
- 9.1.1.16 small machinery (e.g. industrial, agricultural equipment for small users);
- 9.1.1.17 pharmacy, serviced by a pharmacist at each outlet (retailing only drugs, health and beauty care goods); or
- 9.1.1.18 others.

9.1.2 The criteria of specialty store as categorized under paragraph 9.1.1 are as follows:

- 9.1.2.1 contribution to the socio-economic development in Malaysia;
- 9.1.2.2 generate substantial foreign direct investment;
- 9.1.2.3 absence of local players in proposed formats;
- 9.1.2.4 create employment opportunities;
- 9.1.2.5 transfer of technology/skills to locals; and
- 9.1.2.6 unique/ exclusive nature of business.

9.2 **Incorporation and Capital Conditions**

Any foreign involvement in specialty store is recommended to be in compliance with the following:

9.2.1 **Local Incorporation**

All specialty store businesses with foreign equity must be incorporated locally under the Companies Act 2016 [Act 777]. This condition also applies to existing businesses operating under foreign branches of specialty store.

9.2.2 **Minimum Capital Requirement**

The capital investment in terms of a company's shareholders funds is RM1 million at the minimum, which includes paid-up capital.

9.3 **Operational Conditions**

9.3.1 An application for additional branches is subject to the approval by the Distributive Trade Committee of MDTCA.

9.3.2 Specialty store that intends to operate through franchise system must obtain the approval from MDTCA prior to applying for license under the Franchise Act 1998 [*Act 590*].

9.4 **Environment and Public Interest Conditions**

Feasibility and impact studies on existing local retailers and residents are to be carried out if the sales floor area is more than 5,000 square meters.

10.0 CONVENIENCE STORE

10.1 Definition

10.1.1 Convenience store means a distribution store which operates 24 hours and sells fast moving items.

10.1.2 Convenience store companies with foreign interests are companies that co-operates with a foreign distribution company which at all times must comply with the following requirements:

10.1.2.1 have any form of agreement, partnership, agent, service contract or supply; and

10.1.2.2 use or do not use foreign company distribution trademark as the name of convenience stores; or

10.1.2.3 have equity holders and/or board of directors from foreign distribution company.

10.1.3 Fast-moving items are items with a fast stock turnover rate, for examples cigarette, newspaper, magazine and bread.

10.2 Incorporation of Company, Paid-up Capital and Equity Structure Conditions

Any foreign involvement in convenience store is recommended to be in compliance with the following rules and conditions:

10.2.1 Local Incorporation

The convenience store companies must be locally incorporated under the Companies Act 2016 [Act 777].

10.2.2 Franchise Format For Convenience Stores Of Foreign Interest

The convenience store companies with foreign interest must operate through franchise system provided under the Franchise Act 1998 [Act 590].

10.2.3 Minimum Capital Requirement

The capital investment in terms of a company's shareholders funds is RM1 million at the minimum, which includes paid-up capital.

10.2.4 Equity Structure

- (a) a foreign interest is only allowed to hold a maximum of 30 percent out of the company equity structure and a minimum of 30 percent equity structure is reserved for *Bumiputera* or Malays; and
- (b) This condition must be fulfilled during submission of application to the Distributive Trade Committee of MDTCA.

10.3 Conditions of Convenience Store Operation

Convenience store with foreign interest is recommended to comply with the conditions as follows:

10.3.1 The operation of convenience stores is subject to Franchise Act 1998 [Act 590].

10.3.2 Only Malaysians are allowed to be the franchisees.

- 10.3.3 Convenience store must operate 24 hours daily. However, convenience store that operates in premises such as in the shopping complex, hospital, factory, education institutions and public areas are subject to conditions specified by the premise management.
- 10.3.4 Sales floor area must not exceed 180 square meters (1 shop lot or approximately 2,000 square feet).
- 10.3.5 Convenience store operates within metropolitan and urban area with the population of 10,000 and above (as defined by the Department of Statistics Malaysia in Population and Housing Census 2000, Malaysia).
- 10.3.6 Fresh, perishable, refrigerated and frozen products produced in proper and systematic packaging are allowed.
- 10.3.7 To allocate at least 30 percent from overall SKU for *Bumiputera* or Malay product from SME per outlet.

10.4 **Direct Outlets And Franchisees**

- 10.4.1 The companies which own convenience stores and/or their master franchisees are allowed to maintain 30 percent at the maximum as direct outlets from total outlets.
- 10.4.2 Franchisees are appointed immediately after the submission of three (3) consecutive years of company's audited account and must not exceed five (5) years from the first establishment of the first company's direct outlet.

10.4.3 Prior to the submission of application to the Distributive Trade Committee of MDTCA, the company must submit a comprehensive business plan.

10.5 Approval From The Distributive Trade Committee

All applications are subject to the approval by the Distributive Trade Committee of MDTCA.

10.6 By-Laws/ Regulations/ Requirements of State Governments and Local Authorities

Operation of convenience store with foreign interest must be in compliance with all by-laws, regulations or any other requirements imposed by the Local Authorities.

10.7 Environment and Public Interest Conditions

Operators for convenience store with foreign interest must ensure the safe, clean environment and is recommended to comply with the preservation of environment as required by any other government agency or local authority.

11.0 DISTRIBUTION CENTRE

11.1 Definition

Distribution centre means a specialized building designed to temporarily store goods for its group of companies and redistribution of goods to another location according to the outlet orders. Distributions centre is also caters for order fulfillment process, especially for online retailers and e-commerce businesses.

11.2 Incorporation and Capital Conditions:

Any foreign involvement in the distribution centre is recommended to be in compliance with the following conditions:

11.2.1 Local Incorporation

All various other distribution format businesses with foreign equity must be incorporated locally under the Companies Act 2016 [Act 777]. This condition also applies to existing businesses operating under foreign branches of distributive centre.

11.2.2 Minimum Capital Requirement

The capital investment in terms of a company's shareholders funds is RM1 million at the minimum, which includes paid-up capital.

11.3 The criteria of distribution center are as follows:

- 11.3.1 contribution to the socio-economic development in Malaysia;
- 11.3.2 generate substantial foreign direct investment;
- 11.3.3 create employment opportunities; and
- 11.3.4 transfer of technology/skills to locals.

11.4 **Operational Conditions**

- 11.4.1 An application for additional branches is subject to approval by the Distributive Trade Committee of MDTCA.

- 11.4.2 Provide site and floor plans for the application under this distribution center.

12.0 VARIOUS OTHER DISTRIBUTION FORMATS

12.1 Definition

12.1.1 Various other distribution formats mean other types of distributive formats and unregulated sector, including e-commerce.

12.1.2 The criteria of various other distribution formats are as follows:

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

12.2 Incorporation and Capital Conditions

12.2.1 Any foreign involvement in various other distribution formats are recommended to be in compliance with the following conditions:

12.2.1.1 Local Incorporation

All various other distribution format businesses with foreign equity must be incorporated locally under the Companies Act 2016 [Act 777]. This condition applies also to existing businesses operating under foreign branches.

12.2.1.2 Minimum Capital Requirement

The minimum capital investment in terms of a company's shareholders funds, which include paid-up capital is RM1 million.

12.3 **Operational Conditions**

12.3.1 An application for additional branches is subject to approval by the Distributive Trade Committee of MDTCA.

12.4 Feasibility and impact studies on existing local retailers and residents are to be carried out if the sales floor area is more than 5,000 square meters.

13.0 FRANCHISOR AND FRANCHISEE

13.1 Definition

13.1.1 A franchisor is the one who engages in distributive trade through its franchisees in accordance with the agreement entered into between the franchisor and franchisee. A franchisor is also defined under the Franchise Act 1998 [*Act 590*].

13.1.2 Franchise is defined under the Franchise Act 1998 [*Act 590*].

13.2 Incorporation and Capital Conditions:

Any foreign involvement in franchise businesses is recommended to be in compliance with the Franchise Act 1998 [*Act 590*].

13.3 The operational, environmental and public interest conditions are provided in Franchise Act 1998 [*Act 590*].

14.0 NON COMPLIANCE OF THE GUIDELINES

- 14.1 Failure to comply with any provisions under these Guidelines by the business operators and for the purpose of national security, the Distributive Trade Committee of MDTCA has the right to reject the application to open a new business branch and to revoke any previous approval given by the Distributive Trade Committee of MDTCA.

- 14.3 The MDTCA will only process applications submitted with complete supporting documents.

- 14.4 Any approval for foreign business operators to engage in the distributive trade services in Malaysia given by MDTCA will be valid for a period of three (3) years at the maximum and is subject for renewal. If the foreign business operators intend to renew its application, unless the application for renewal is submitted three (3) months prior to the expiry date, the application will be considered as a new application.

15.0 FOREIGN INVOLVEMENT

15.1 The involvement of foreign business operators is subject and limited to the distributive trade sector as mentioned above. Sectors which are not applicable to foreign business operators include the following (the list of which is not exhaustive):

- a. supermarket / mini market;
- b. provision shop / general vendor;
- c. news agent and miscellaneous goods store;
- d. medical hall (inclined towards traditional alternative medicines plus general dry foodstuff);
- e. fuel station;
- f. permanent wet market store;
- g. permanent pavement store;
- h. National Strategic Interest; and
- i. Non-exclusive textile, food and beverage, jewellery shops

16.0 THE COMMITTEE ON DISTRIBUTIVE TRADE

MDTCA 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 Distributive Trade Committee are as listed below:

- 1) Secretary General MDTCA – 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) Ministry of Economic Affairs;
- 9) Ministry of Entrepreneur Development; and
- 10) Other relevant agencies (if required).

17.0 DOCUMENTS AND PROCEDURE FOR APPLICATION

17.1 Applicants must complete and submit Form WRT 1 as referred to in Appendix 1 to the following address:

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

17.2 Applications must prepare documents as per checklist as referred to in Appendix 2.

17.3 All proposals and communications addressed to MDTCA will be treated as confidential.

18.0 GLOSSARY

18.1 Branch

Branch is a business outlet separates from company's corporate headquarters.

18.2 Definition of “*Bumiputera*” and “Malay”

- a) “*Bumiputera*” must have the same meaning as assigned to it in Article 161A of the Federal Constitution;
- b) “Malay” must have the same meaning as assigned to it in Article 160 of the Federal Constitution; and
- c) the expression “*Bumiputera*” or “Malay” includes a company, an association or a body of persons whether corporate or unincorporate, a majority part of whose capital is owned by and the management and employees are made up of Malays or *Bumiputera*.

18.3 Business floor area

Business floor area means total area of building / premise / outlet including shop lots / kiosk / food court.

18.4 Foreign participation / Foreign Business Operator

Foreign participation or foreign business operator means any interest, associated group of interests or parties acting in concert which comprises the following:

- i. individual (including permanent resident) who is not a Malaysian citizen;
- 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 percent of the voting rights in the company or institution.

18.5 **Fresh produce**

Sales item/products/goods, live or unalive stock, raw material, processed or unprocessed foods for examples vegetables, meat of livestock and poultry and seafood, need to go through several processes before consumption.

18.6 **Festivals**

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

18.7 **Paid up capital**

Paid up capital refers to the total issued share capital.

18.8 **Persons with Disability**

Persons with disabilities include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society as defined under section 2 of the Persons with Disabilities Act 2008 [Act 685].

18.9 **Properties**

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

18.10 **Public holiday**

Public holiday means a holiday established by law in Malaysia or any part of Malaysia as defined under section 2 of the Interpretation Acts 1948 and 1967 [Act 388].

18.11 **Sales floor area**

Sales floor area means part of a business on retail activities such as showroom or selling area of a shop or store. The sales floor area excludes warehouse, backroom, storeroom, food court and office.

18.12 Small and Medium Enterprises (SME)

The criteria to determine definition of small and medium enterprises are sales turnover and number of fulltime employees as well as the following:

- i. for the manufacturing sector, SMEs are defined as firms with sales turnover not exceeding RM50 million or whereby the number of fulltime employees does not exceed 200 employees.
- ii. for the services and other sectors, SMEs are defined as firms with sales turnover not exceeding RM20 million or the number of fulltime employees does not exceed 75 employees.

18.13 Stock Keeping Unit (SKU)

Stock Keeping Unit is a number assigned to a product by a retail store to identify the price, product options and manufacturer of the merchandise. It is also represented as a machine-readable bar code to assist vendors to scan and track the products expeditiously.