



AREEYA PORNWIRIYANGKURA
Attorney-at-Law
areeya.p@tillekeandgibbins.com

DRAFT FRANCHISING BUSINESS LAW IN THAILAND

Franchising has become a successful business model globally, and Thailand has been no exception. According to information from the Franchise & Thai SMEs Business Association, there are approximately 400 Thai franchisors seeking franchisees for businesses ranging from restaurants to daycares and from tutoring institutions to convenience stores. Currently, there are over 10,000 franchisees in Thailand. Franchising businesses are rapidly expanding, yet Thailand still lacks a specific regulatory law to govern such businesses. This is surprising, as a draft of the Franchising Business Act was first released to the public in 2006, but not until recently has it returned to public attention. A public hearing, organized by the Ministry of Commerce, was held in March 2011.

The Need for a Franchising Business Act

The draft Franchising Business Act has four main objectives:

1. To stipulate the criteria and reasons for providing regulations in relation to franchises;
2. To appoint a committee to be responsible for providing franchise business support and to submit promotion and development plans to the Minister of Commerce, as well as to consider complaints;
3. To stipulate protective measures aimed at protecting franchisors and franchisees, such as measures to prevent any exaggerated advertisements and to ensure the fairness of contracts, the availability of clear business operating manuals, and the disclosure of sufficient data to facilitate decision making relating to the purchase of franchises; and
4. To stipulate criminal and administrative penalties to be imposed for breach of the law.

Important Impacts

In the pending bill, the two most important issues affecting franchisor practice are provided in Chapter 3 (Sections 18-32), which focuses on restrictions of a franchise business operation, and Chapter 4 (Sections 33-50), which discusses registration of a franchise business operation.

Restrictions. Franchisors and franchisees will be required to comply with certain restrictions on business operations. For example, franchisors will be duty bound to disclose data necessary for the franchise business operation. Furthermore, franchise business agreements must be in writing and must specify the details required by law. Failure to comply with these requirements would void the agreement between the franchisor and the franchisee.

In addition, the draft law states that franchisors must provide clear working manuals for franchisees to follow. If the agreement places territorial limits on the right to operate a franchise business, franchisors must not operate franchise businesses, or similar businesses, in these territories.

However, franchisors are also protected. For example, franchisees are prohibited from disclosing data relating to business operations that have been disclosed by franchisors.

Registration. If the draft law is approved, any franchisor who wishes to offer a franchising business to franchisees in the future must register such business operation with the Thai Ministry of Commerce. All prospective applicants must possess the qualifications as required by law.

The Registrar must evaluate the accuracy of (i) applications for registration, (ii) draft franchise business operation agreements, (iii) the existence of working manuals, and (iv) business plans that would be used in the promotion and control of the franchise business operation.

Another particularly noteworthy qualification is that the franchisor is required to have operated the franchise business for at least two years. The business must have at least two branches that have recorded profits for at least two consecutive accounting years, prior to the date of filing the franchise business registration application, and evidence of such profits should be submitted as required.

Finally, if the business operators fail to comply with such agreements during operations or are otherwise disqualified, the Committee for the Consideration of Administrative Punishment is empowered to issue franchise revocation orders. Upon the revocation of a franchise, relevant solicitation or advertisements can no longer be made and no rights to operate new franchise businesses will be granted.

Intellectual Property Issues

Under the draft law, a franchise business must include some form of intellectual property. The draft law provides that the definition of a franchise means a business operation whereby a franchisor agrees to allow the franchisee to operate a business by using the franchisor's forms, systems, procedures, and intellectual property rights, or the ones which the franchisor has the right to allow another person to use for the purpose of operating a business, within a specified period of time or a specified area. This business operation is promoted and controlled under the franchisor's business operation plan, and the franchisee has the duty to pay remuneration to the franchisor.

Furthermore, Section 25 of the draft states that if the provisions of other laws require registration in order to grant the exercise of intellectual property rights by a third party, the franchisor shall have the duty to duly register the granting of these rights, as required by such other laws.

Scope of Enforcement

It is important to note that, as provided under Section 3, this draft law shall not be applicable to franchise businesses whose franchisors are domiciled, and who have entered into a relevant contract, outside the Kingdom. For example, a franchise agreement between a foreign franchisor and a Thai franchisee will not be subject to restrictions under this law.

However, if a foreign franchisor grants a master franchising agreement to a Thai franchisee allowing the Thai franchisee to grant a sub-franchising agreement to other Thai entrepreneurs, the draft law will not be applicable to the master franchising agreement, but will have enforcement effect against sub-franchising agreements between the master franchisee and the sub-franchisee.

Many practice standards that are laid out in the draft law are controversial, and will be subject to further review and discussions. However, given that many business operators stand to be potentially affected, the new law will undoubtedly be subjected to further intense scrutiny before its final enactment. 