

## CAMBODIA

## Franchising regulation develops

Tilleke & Gibbins  
Bangkok



Nearirath Sreng and Shalini Ghosh

Cambodia has attracted a growing number of regional and international franchise businesses. Most of these franchises are in the restaurant and service sectors, and include well-known names such as Costa Coffee, Dairy Queen, Gloria Jean's Coffees, KFC, The Pizza Company, Ya Kun Coffee & Toast and Sarpino's Pizza, to name a few.

Although a number of franchise businesses are operating in Cambodia, there is no legal framework governing franchising in the country, and the laws that do apply (such as trade mark law and contract law) do not restrict franchising structures and allow parties to generally contract as they desire.

Section 52 of the Law Concerning Marks, Trade Names and Acts of Unfair Competition requires all licence agreements that relate to registered marks to be recorded. At present, there is a recordal process to record licence and franchise agreements with the Department of Intellectual Property Rights (DIPR) under the Ministry of Commerce in Cambodia.

If a licence agreement is not recorded with the DIPR, the licence agreement will still be valid and enforceable between the licensor and licensee. However, the drawback of not recording the licence agreement is that it will not have any effect against third parties. In addition, the failure to record a licence agreement may:

- bar a claim for damages and accounts of profits;
- bar the use of marks inuring to the benefit of the licensor, and make marks vulnerable to cancellation for non-use;
- prevent a licensee from participating in any infringement proceedings before the registry or bringing those proceedings; and

- preclude the licensee from having rights to enforce against infringement.

A draft Law on Commercial Contract is being contemplated which would guide contractual relations, including franchises, if enacted. The draft Law also requires franchise agreements to be registered with the relevant authorities in order to be enforceable against third parties.

The draft Law broadly requires franchise agreements to set forth the respective obligations and rights of the parties to the franchise; the provisions relevant to the use by the franchisee of the franchisor's IP rights, logo, store sign, or other distinguishing identification; and the provisions related to quality control, as well as duration, terms and termination of the franchise agreement.

In view of the draft Law, it is recommended to record a franchise agreement because registration has evidentiary value in the event of a dispute, and it allows franchise owners to enforce their rights against third parties. Moreover, Cambodian courts give substantial credit to official records of documents over unrecorded agreements.

Under the current practice, a short-form trade mark licence agreement arising from the franchise agreement may be submitted for recordal. The short-form trade mark licence agreement should contain relevant terms such as the marks being licensed, rights of the parties, terms, and so forth. A recent Notification on Licence Contract and Franchise Contract from the Ministry of Commerce, dated March 12 2015, provides that any applicants seeking recordal of their licensing agreement or franchise contract with the DIPR must submit the following documents:

- 1) An original form of request as provided in the Notification.
- 2) A franchise agreement signed by the parties and witnesses. (This does not need to be submitted if short-form licences are recorded.)
- 3) Short-form licences, if any, signed by the trade mark owner in favour of the franchisor. A Khmer translation of this agreement must be submitted.
- 4) Certificate(s) of trade mark registration issued by the DIPR.
- 5) A notarised power of attorney if the

parties choose to appoint an attorney in the matter.

- 6) Other documents that may be requested on a case-by-case basis.

Under the current practice, the DIPR requires franchise agreements and licence agreements to be translated into Khmer, and these translations must be certified by public notaries. Qualified translators may be Cambodian qualified lawyers, notaries public, trade mark agents or licensed translation companies.

For franchise agreements that relate to registered trade marks with the DIPR, the recordal process can be completed within two months or so from the date of submission. An official fee of \$30 must be paid for recordation. Once recorded, the DIPR will issue a Certificate of Recordal to the applicant. However, a recordal will remain pending if the IP rights have not yet been registered (including where a trade mark application is pending).

With the advent of the ASEAN Economic Community and the implementation of regional economic integration, Cambodia should continue to grow as an increasingly attractive market for franchisors. Potential new market entrants should closely monitor the progress of the draft Law and its practical implementation in the country.