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Tapping into Myanmar's Franchising Potential

Franchising has become very popular among international franchisors in the Greater Mekong Subregion. In particular, franchising in Myanmar's food and beverage sector has experienced tremendous growth, as the country's middle class continues to expand and tourists maintain a steady influx into the region.

In Myanmar, global franchise companies such as KFC, Yakun Coffee & Toast, Swensen's, Pizza Company, BBQ Chicken, and Lotteria, among many others, are already a common sight. Many of these global chains have even customized their menus and products to adapt to local preferences.

In this article, we examine the wealth of opportunities available by using the franchise model as a mode of business in Myanmar, as well as issues relating to trade, intellectual property, and emerging markets.

Investment Environment

The European Union and the United States continue to lift their sanctions on Myanmar, which has allowed more businesses to enter the Burmese market. In Myanmar, commercial relationships such as franchising, joint ventures, wholly foreign-owned enterprises, and distribution are primarily governed by the Foreign Investment Law, Foreign Investment Rules, Myanmar Companies Act, Contracts Act, and a range of notifications issued by different ministries.

Investment in the retail and food and beverage sectors can be made through a joint venture with local Myanmar corporate entities. There are no specific restrictions on share equity in joint ventures, and the Myanmar Investment Commission determines the ratio of share equity on a case-by-case basis.

The import, export, and sale of goods are almost exclusively reserved for local Myanmar citizens or 100 percent locally-owned Myanmar companies. Such trading may be afforded to large foreign businesses operating in special economic zones under the Special Economic Zones Law.

However, if a franchise outlet in Myanmar is owned by a foreign-owned subsidiary, it can engage in trading, including the import and sale of franchise products through the outlet, with the assistance of a local company or an individual. Franchising can therefore help overcome the current restrictions on foreigners operating in the Burmese market.

Competition

Exclusivity clauses are common to franchise relationships. In Section 27 of Myanmar's Contracts Act, however, it states that "every agreement by which any one is restrained

from exercising a lawful profession, trade, or business of any kind, is to that extent void." This would appear to prohibit the inclusion of an exclusivity clause in a franchise relationship.

In fact, the restriction imposed by Section 27 is not absolute, provided that the exclusivity clause is carefully worded to restrict such negative covenants to a specific type of business, term, and geographical area.

Although Myanmar's Competition Law was passed in February this year, it has not been fully implemented, as the bylaws have not yet been issued. However, as the country's economic climate is still maturing, franchising businesses are unlikely to raise any competition issues.

Advertising restrictions, such as comparative advertising of businesses with similar goods and services, dissemination of incorrect information, and deceptive advertising about a given product, are expressly prohibited under the Competition Law.

Intellectual Property Protection

There is no legal or regulatory framework for intellectual property (IP) in Myanmar, but the country's IP laws are currently being drafted. There are several provisions in the Code of Civil Procedure that deal with trademark infringement, such as passing off, which is a false representation that induces a person to believe that the goods and services of an owner are those of another.

In the absence of IP laws, it is important for brand owners to generate as much public awareness of their IP as possible. Filing and registering a declaration of ownership with the Registry of Deeds and Assurances is highly recommended, followed by publishing a cautionary notice to reserve any IP rights and to serve as evidence of such rights if the need arises. This includes filing trademark license agreements with the Registry, and if the Trademark Law is enacted, it would become compulsory to register trademark license agreements as well.

Pitfalls

While there is great optimism in Myanmar, it is important to be mindful of the challenges in developing jurisdictions. For example, the Arbitration Law has not yet been enacted, which has delayed Myanmar's ratification of its obligations under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Resolution of disputes through Myanmar's court system is highly protracted and generally avoided by the business community as the legal system has redundant, archaic laws that are ill-suited to modern business relationships.

Conclusion

The opportunities in Myanmar are endless, and the country's outlook is very positive. Consumer spending is increasing as average incomes continue to rise, Myanmar's developing telecommunications infrastructure has resulted in greater brand recognition among the populous, and the government has shown a strong commitment toward implementing economic and political reforms. Franchising will play a crucial role in Myanmar's continued development, as it generates jobs, enhances skill development, and grows small and medium-sized businesses. It has therefore been no surprise that international franchisors have scrambled to the country for a piece of the pie. 🍷