

Franchising in Thailand: overview

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MARKET

1. What have been the main developments in the franchising market over the past 12 months?

The year 2015 was a year of special importance for Thailand and all Association of Southeast Asian Nations (ASEAN) member states, as it marked the establishment of the ASEAN Economic Community (AEC), as agreed on by the country leaders at the 2007 ASEAN Summit.

The following five core elements make up the goal of having a single market and production base for the ASEAN region (section 9, AEC Blueprint):

- Free flow of goods.
- Services.
- Investment.
- Capital.
- Skilled labour.

This should prove encouraging for regional franchise opportunities by way of recent free trade agreements.

There are currently more than 400 franchisors (majority foreign-owned) and more than 12,000 franchisees in Thailand. Most franchise operations are in the food and restaurant sector, followed by services, education and retailing (*Thai Department of Internal Trade*). Recent well-known examples include:

- Zara, Uniqlo, and Gap (clothing and accessories).
- Krispy Kreme and Godiva (food).
- Ikea (home accessories).

2. What are the most commonly used methods of local and international franchising?

Local franchising

The most commonly used method of local franchising is direct franchising through a master franchise relationship. However, regional franchise establishments are growing in popularity as well.

There are currently no local laws that regulate franchises. There is, however, a draft Franchise Business Act, which has been pending enactment for a few years.

International franchising

The most commonly used method of international franchising is also direct franchising.

The Association of Southeast Asian Nations (ASEAN) Economic Community (AEC) integration (see *Question 1*) should also lead to more regional franchise operations within the trading bloc and within Thailand.

Foreign nationals are generally permitted to start a business in Thailand. However, the Foreign Business Act B.E. 2542 (1999) (FBA) places restrictions on the types of business that can be conducted by foreign nationals and provides licensing requirements for other types of businesses. Thailand has several foreign investment schemes that operate as exceptions to the FBA. The most notable of these schemes are administered by the Board of Investment and the Industrial Estate Authority of Thailand. Several free trade agreements also permit certain types of businesses to be undertaken by foreign nationals.

There are no local issues that limit the use of franchising as a technique for the international expansion of a domestic brand outside Thailand. However, international expansion throughout ASEAN is promoted by the AEC integration.

3. Are there any specific reasons for an overseas franchisor to use a separate entity for entering into a franchise agreement with a franchisee in your jurisdiction?

Generally, there are no specific reasons for an overseas franchisor to use a separate entity to enter into a franchise agreement with a franchisee in Thailand. However, some foreign franchisors may require a Thai franchisee to set up a new business purely for the operation of the franchised business. This is likely to occur if due diligence reveals unacceptable issues in the existing business, for example, if the franchisee cannot import Food and Drug Administration-regulated goods.

REGULATION OF FRANCHISING

4. What is the legal definition of franchising and/or a franchise?

Thailand does not currently have any specific legislation regulating franchise agreements. Therefore, there is no legal definition of franchising or a franchise. However, there is a draft Franchise Business Act, which has been pending enactment for a few years.

5. What are the laws regulating franchising?

Thailand does not currently have any specific legislation regulating franchise agreements. However, there is a draft

Franchise Business Act, which has been pending for a few years. Thailand is generally a "freedom of contract" jurisdiction where judges rarely attempt to look beyond the specific terms of a mutually agreed written contract to determine the intent of the parties at the time of agreement. However, there are mandatory provisions in franchise agreements such as quality control provisions and written grants of trade mark usage rights.

The courts refer to the following laws in respect of contracts and business operations to govern franchise agreements:

- Civil and Commercial Code.
- Trademark Act B.E. 2534 (1991), as amended by the Trademark Act (No 2) B.E. 2543 (2000) and the Trademark Act (No 3) B.E. 2559 (2016).
- Patent Act B.E. 2522 (1979), as amended by the Patent Act (No 2) B.E. 2535 (1992) and Patent Act (No 3) B.E. 2542 (1999).
- Copyright Act B.E. 2537 (1994), as amended by the Copyright Act (No 2 and 3) B.E. 2558 (2015).
- Trade Secrets Act B.E. 2545 (2002).
- Unfair Contract Terms Act B.E. 2540 (1997).
- Trade Competition Act B.E. 2542 (1999).
- The Act Relating to Price of Merchandise and Service B.E. 2542 (1999).
- Revenue Code B.E. 2481 (1938).
- Direct Sales and Direct Marketing Act B.E. 2545 (2002).
- Product Liability Act B.E. 2551 (2008).
- Foreign Business Act (1998) B.E. 2542 (1999).
- Personal Data Protection Bill (2001 draft).

Ministerial regulations that execute and supplement these Acts are also helpful to the courts in handling franchising disputes. However, after the franchisor and the franchisee finalise terms in a franchise agreement and commence executing those terms, Thai courts will generally defer to the contract's terms, unless doing so would violate law or public policy.

Thai courts have great discretionary power in determining whether contract terms unreasonably restrict the right of (or excessively create a burden on) a contracting party (*section 5, Unfair Contract Terms Act (UCTA)*). However, UCTA does provide general guidelines under which the court must consider whether certain terms are unfair or unreasonable. For example, the court must consider:

- The time and place of making or complying with the contract.
- Whether one party has a much heavier burden than the other.
- The normal practice within the industry concerned.
- The integrity, bargaining power, economic positions and adeptness of the parties.

Although many franchise agreements provide strong protection to the franchisor, some terms are generally forbidden by law in Thailand. For example, an agreement made in advance, exonerating a debtor from his own fraud or gross negligence, is void as a matter of law.

The Trade Secrets Act affects the ongoing franchise relationship in that a franchisor must be vigilant in identifying

and carefully controlling the use and disclosure of its proprietary trade secrets, such as:

- Secret know-how.
- Formulae.
- Recipes.
- Inventions.
- Client lists.
- Sales data.

This can be done either in a separate non-disclosure or a confidentiality agreement, an airtight confidentiality provision within the franchise agreement itself or preferably both.

The Act Amending Civil and Commercial Code (No.20), B.E. 2557 (2014), effective from 12 February 2015, has amended the law on suretyships. The new provisions require a creditor to send a notice to the guarantor within 60 days from the date of default of the debtor and the guarantor's obligation to pay will begin only on actual receipt of the notice. This amendment is important, as on expiry of the 60-day period, the guarantor is no longer obligated to pay interest chargeable after this period. These amendments essentially put the burden on the creditor to ensure adequate notice is sent to the guarantor, failing which, it forfeits its right to pursue the guarantor for payment of interest, costs and expenses incurred after the 60-day notice period.

The new laws require guarantees to clearly specify the duration and amount of the guaranteed obligation and also to specify the main agreement that is being guaranteed. The law also states that any provision providing that the creditor is jointly liable with the debtor is void.

The Foreign Business Act encourages franchising in that foreign entities are restricted from operating certain businesses in Thailand in particular, all retail and many service businesses, which are strictly forbidden to foreign nationals that have paid up capital of less than THB100 million.

It is also important to consider that multi-level marketing businesses must be licensed before they can commence operations.

6. What is the regulatory authority responsible for enforcing franchising laws and requirements in your jurisdiction?

There is currently no regulatory authority that is responsible for enforcing franchising laws and requirements in Thailand.

7. Must the franchisor be registered with a professional or regulatory body before setting up a franchise system?

Thailand does not currently have any specific legislation regulating franchise agreements. Therefore there are no franchise disclosure requirements, governmental approval requirements, or registration or other filing requirements.

The draft Franchising Business Act (FBA) has been pending enactment for a few years. Under the FBA, a franchisor seeking to establish a franchise business with a Thai franchisee must meet specified qualifications and register with the Ministry of Commerce. The FBA follows the Chinese model (outlined in the People's Republic of China's Ministry of

Commerce's *Administrative Measures on Commercial Franchising 2005* and the *Franchise Regulations 2007*) by further mandating that before filing a registration application, a franchisor must have profitably operated two franchise business outlets for at least two years.

Under the FBA, if the parties fail to comply with the above, the Committee for the Consideration of Administrative Punishment may revoke the franchise, which will prevent the business operator not only from engaging in further relevant solicitations or advertising, but also from operating a new franchise business in the future.

8. Is there a code of ethics or other means of promoting ethical franchising in your jurisdiction?

There is currently no code of ethics or other means of promoting ethical franchising in Thailand.

9. Do franchisees benefit from any laws designed to protect consumers or small businesses?

Franchisees can benefit from the Consumer Protection Act B.E. 2522 (1979) (CPA), which was passed to protect consumers by requiring truth in advertising and full disclosure in labelling. The CPA empowers the concerned authorities to take corrective measures against unscrupulous business operators.

10. Are there any other requirements which must be met before a business can sell a franchise?

There are no other requirements, which must be met before a business can sell a franchise.

FRANCHISE AGREEMENT

Pre-contract disclosure requirements

11. Is the franchisor subject to any general or formal pre-contract disclosure requirements?

Thailand has no specific legislation or set of regulations which deal with franchising, so the franchisor is not subject to any general or formal pre-contract disclosure requirements.

An overseas franchisor or IP owner is not currently required to participate in any way in the local disclosure process.

12. Must the franchisor disclose fairly and in good faith all facts material to the prospective franchisee's decision to enter into the arrangement, or must the prospective franchisee rely on its own due diligence?

The prospective franchisee must rely on its own due diligence. Due diligence on a potential franchisee is of significant importance, not only to confirm that prospective franchisees are trustworthy and will responsibly build a business in Thailand, but also to make sure the franchisees have the relevant knowledge and experience to conduct the business as the franchisor directs.

Formalities

13. What are the formal contractual requirements to create a valid and binding franchise agreement?

Thailand has no specific legislation or set of regulations which deal with franchising. There are no requirements for franchise agreements to be in Thai.

An unregistered trade mark or patent licence is void and therefore unenforceable under Thai law. A practical problem arises when the Trademark Registrar at the Department of Intellectual Property (DIP) sometimes refuses to record a franchise agreement based on the reasoning that a franchise agreement is not equivalent to a trade mark or patent licensing agreement. Although franchise agreements are not currently required to be registered under the law, the Thai courts have varying views on this issue. Some judges consider that trade mark licensing is inseparable from franchising relationships and therefore if the franchising agreement is not registered, the whole agreement is void. Other judges, however, consider that the licence of trade mark user rights forms part of a broader commercial agreement between the parties. Therefore, if the trade mark licence has not been registered properly, the terms regarding trade mark licensing are void, but other commercial terms will survive.

For legal compliance, some clients enter into a separate trade mark or patent licensing agreement in Thai with the franchisee, and register the agreement with the DIP. The DIP allows the parties to conceal parts of the agreement that are irrelevant to trade mark licensing and conditions required under the trade mark law (short-form recordal).

Parties' rights and obligations

14. Is there a general obligation to behave fairly, reasonably or in good faith to the other party during the term of the franchise agreement?

Obligations of the franchisee

Thailand is a civil law jurisdiction. Therefore, the common law notion of "implied terms" that gives effect to the parties' intention does not apply. However, in limited circumstances, some terms from the Civil and Commercial Code (such as, payment and default terms) may be implied in the absence of stipulated contract provisions.

Obligations of the franchisor

See above, *Obligations of the franchisee*.

An overseas franchisor may be held liable for the wrongful acts of a local sub-franchisor if they are both found to be in a relationship of principal and agent.

15. Does local law require that particular provisions must be expressly included in a franchise agreement?

Local law does not require particular provisions to be expressly included in a franchise agreement.

16. Are exclusion and entire agreement clauses enforceable in your jurisdiction? If so, are they effective to protect the franchisor?

Standard exclusion of liability and entire agreement clauses are enforceable under Thai law, provided that they do not violate the Unfair Contract Terms Act.

An overseas franchisor may be held liable for the wrongful acts of a local sub-franchisor if they are found to both be in a principal and agent relationship. It is advisable that there are sufficient provisions in the franchise agreement where the franchisee indemnifies the overseas franchisor for any wrongful conduct.

17. Can the franchisor impose product tying or other purchasing restrictions and non-compete obligations on the franchisee during the term of the agreement?

Restrictions on purchasing and product tying

The Trade Competition Act expressly forbids any company from "fixing persons from whom business operators may purchase goods or services."

Non-compete obligations and transfer restrictions

A franchisor must be reasonable in setting terms, or the term may be held to be unenforceable as an unfair limitation on competition. For example, in the context of a franchising arrangement involving the use of technology, a tying arrangement may be prohibited under the Ministerial Regulations B.E. 2540 (1997), dated 14 February 1997, issued under the Copyright Act. In a tying arrangement, the franchisor establishes a requirement that the franchisee must purchase materials from the franchisor (or his agent) for use in the production of a particular item. This type of tying arrangement may be seen as anti-competitive and may be unenforceable.

Thai courts generally uphold non-competition provisions, assuming those provisions are reasonable and do not practically deny an individual from working in his profession or industry of choice.

There are three general limitation categories that the courts will consider in determining whether a non-competition provision is enforceable:

Fees and payments

18. What fees are usually payable by the franchisee? Are there any restrictions on the parties' freedom to set the fees and payments, or any other payment requirements?

Under Thai law, money debts bear interest during default at 7.5 % per annum. If the creditor has the legitimate right to demand higher interest (for example, through a contractual provision) it will be regarded as a stipulated penalty. If the stipulated penalty is disproportionately high, the Thai courts can exercise their discretion to reduce the stipulated penalty to a reasonable amount.

Initial fees, continuing fees (or management charges), advertising contributions, required advertising spend, and other customary franchisee fees are common in Thailand franchise relationships. Fees associated with the application for and maintenance of licences required for the import and distribution

of products regulated by the Thailand Department of Essential Drug and Food may be required of the franchisee at the franchisor's direction.

Thai law does not currently restrict initial fees, continuing fees or charges, advertising contributions, or required advertising spend. However, advertising contributions and required advertising spend are generally deemed as royalties payable to the franchisor under Thailand's tax law.

Term of agreement and renewal

19. Are parties free to agree on the term of the franchise agreement? What is the typical term of a franchise agreement in your jurisdiction?

Thailand is generally a "freedom of contract" jurisdiction and so the franchise agreement terms may vary.

20. What rights of renewal are usually included in the franchise agreement? Are fees paid on renewal?

Commercial practice

Rights of renewals are usually included in franchise agreements provided that the franchisee has fulfilled its material obligations during the initial term of the agreement.

Local law

There are no statutory provisions giving the franchisee a right to renew. A right of renewal is governed by the terms of the franchise agreement, and the franchisee's sole recourse if a franchisor fails to comply with a contractual right of renewal is to sue the franchisor for breach of contract.

Termination

21. Are there any limitations on the right of a franchisor to terminate the agreement?

There are no specific statutory limitations on the right of a franchisor or franchisee to terminate a franchise agreement. Termination rights (including compensation for early termination) must be governed by the terms of the agreement.

Liquidated damages clauses are generally enforceable, provided that they are reasonably proportional to the actual damages resulting from the breach.

22. Are post-term restrictive covenants enforceable?

Non-compete clauses will generally be enforced by the Thai courts, provided they are reasonable and do not effectively bar an individual from seeking employment and/or conducting business in their particular profession or industry.

23. Can the franchisor or a replacement franchisee continue to sell to the former franchisee's customers?

Thai law does not expressly prohibit a franchisor or replacement franchisee from continuing to sell to a former franchisee's customers, or require compensation be paid to the former franchisee.

Choice of law and jurisdiction

24. Will local courts recognise a choice of foreign law in a franchise agreement for a business operating in your jurisdiction?

A foreign franchisor's choice of law of a foreign jurisdiction is likely to be upheld by the Thai courts in governing a master franchise agreement.

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OPERATIONS MANUAL

26. How does the franchisor ensure that the franchisee complies with the business standards, systems and requirements?

Typically, by creating a clearly worded operations manual, and ensuring that all the necessary terms are included in the franchise agreement.

27. Can the franchisor change the Operations Manual unilaterally, as is usually required?

The franchisor can update and change its operations manual without the consent of the franchisee. However, any updates should be communicated to the franchisee and training provided, if required.

LIABILITY ISSUES

28. What are the franchisee's remedies against the franchisor for deceptive or fraudulent selling practices?

The franchisee can rescind the franchise agreement and claim damages for fraudulent misrepresentation.

29. How can third-party claims against the franchisee be brought successfully against the franchisor?

Indemnity

Both the franchisor and the franchisee can bring indemnity claims against the other party. Rights of indemnification should be provided for in the franchise agreement. In general, unilateral indemnities are acceptable, provided there are no clauses that waive the licensor's liability with respect to injury to life, body, or health of a third person caused by a deliberate or negligent act committed by either:

- The party who sought to restrict or be exempted from such liability.
- Other persons to whom that party also must be liable.

Precautions

Even if the franchising agreement states to the contrary, if a court determines that the parties are in a principal/agent relationship, the franchisor may be held liable. Therefore, indemnity clauses are essential.

INTELLECTUAL PROPERTY

30. What provisions are usually made in relation to intellectual property rights (IPRs), including know-how?

Franchisors typically grant franchisees the right to use the franchisor's trade marks, systems, logos, advertisements, know-how and so on, in connection with the franchised business. Rights that are typically reserved include the right to sub-licence to a third party without the franchisor's consent, the use of trade marks for a different business purpose from the franchise agreement, anti-reverse engineering terms and so on.

There are no statutory limitations on the franchisor's ability to limit the use of the IPRs, know-how, show-how and/or confidential information.

31. What are the registration requirements for licensing IPRs?

Trade mark licence agreement

The registration requirements for a trade mark licence agreement are either:

- An original licence agreement executed by the authorised directors of the licensor and licensee that is duly notarised before a notary public. If the licensee is a Thai company it only requires the signature of authorised representative(s) in the presence of two witnesses and the affixing of the company seal.
- A certified copy of the licence agreement with a notary public's certification that the document is a true copy of the original agreement. In addition, the licensor and licensee companies must still exist under their incorporated laws and the signatures provided must be from authorised signatories.

Foreign licensor/licensee

Powers of attorney from the licensor and licensee must be duly notarised before a notary public. They must be signed by the same authorised directors of the licensor and licensee who executed the licence agreement to avoid being rejected by the Registrar.

Thai licensee

The registration requirements for a Thai licensee are:

In Thai courts, there are two opposing points of view. Some judges consider the trade mark licence agreement to be inseparable from the franchising relationship. In this case, if the franchise agreement (including the trade mark licence) is not registered, the agreement is void. However, other judges consider the trade mark licence agreement as part of the franchise agreement.

Therefore, if the provisions regarding trade mark use are not registered, they will be void, but the franchise agreement will survive. Generally, franchisors will enter into a separate short form trade mark licence agreement with the franchisee and

register that agreement with the Department of Intellectual Property.

REAL ESTATE

32. Are consents from landlords difficult to obtain when transferring leases or granting subleases from a franchisor to a franchisee?

Unless otherwise agreed in the lease agreement, the landlord's written consent must be obtained when transferring leases or granting subleases. The process, payment and time for obtaining the landlords' consent will generally depend on the landlord's individual discretion, consideration and policy.

33. How can a franchisor prevent the franchisee from occupying the premises after the franchise agreement has ended?

As retail is a restricted business in Thailand, any attempt by a foreign national to take over the premises of a leased franchise business must be done by way of a takeover by a Thai nominee. The takeover of the leased premises must be dealt with in the franchise agreement. In addition, the lease or sub-lease agreement and the franchise agreement should include cross-default and cross-termination provisions, so that the expiration or termination of the franchise agreement constitutes the automatic termination of the lease agreement.

34. How can the franchisor effectively acquire the franchisee's premises at the end of the franchise relationship?

A lease of real property is not assignable to a third party unless it is expressly provided for (*section 544, Civil and Commercial Code*). The franchisor should ensure that any lease of retail space to a franchisee expressly permits the lease to be assigned back to the franchisor or its Thai nominee (*see Question 33*), as long as foreign retail restrictions are in place.

35. If the franchisor leases or subleases its own site to its franchisee, can it pass on all related costs to the franchisee? Can the franchisor charge its franchisee tenant a rent expressed as a percentage of the franchisee's sales?

Thai law does not expressly prohibit these arrangements.

COMPETITION LAW

36. What is the effect of competition law rules on franchising agreements? Are there any available exemptions?

Competition law

Thailand's Trade Competition Act (1999) has a direct impact on many of the common terms contained in franchise agreements, such as:

- **Price fixing.** Some franchise agreements will set retail prices or minimum and maximum price ranges for franchisees. If the agreement is improperly drafted, this limitation on a franchisee's freedom to set its own price for

goods can be deemed a violation of the rules of the Trade Competition Act against price fixing.

- **Exclusive supplier.** The nature of a franchise is to create a unique product or service that is identical or similar from one franchise outlet to another. One means used by franchisors to ensure uniformity is to contractually bind the franchisee to purchase supplies exclusively from a particular manufacturer, or directly from the franchisor or the franchisor's affiliate. The Trade Competition Act expressly forbids any company from fixing persons from whom business operators may purchase goods or services.
- **Exclusive product line.** Franchisors will almost always restrict their franchisees from expanding their product lines to carry products other than the specific franchise products, or those approved by the franchisor. A franchisee is normally limited to selling only franchise products. However, such a limitation also may potentially violate the terms of the Trade Competition Act against exclusivity.
- **Geographic exclusivity.** Another means that franchisors utilise to maintain the value of their franchise is to grant exclusive licences to the franchise for a geographical region to one or more franchisees. This is to provide the franchisees with comfort for their capital investment in introducing or expanding the franchise into a new market.

Exemptions

Only Thai entities must abide by the provisions of the Trade Competition Act. Therefore, it is not possible to enforce this Act against foreign entities that do not maintain any presence in Thailand. This is consistent with Thailand's historical interpretation of law to apply only within Thailand (which contrasts with the extra-territorial effect applied to the interpretation of US laws, for example).

As a result of this limited enforcement, foreign franchisors without any presence in Thailand can enter into agreements with Thai franchisees which may, on the face of it, violate the terms of the Trade Competition Act as described above.

Online/e-commerce restrictions

Thai courts generally uphold anti-competitive provisions, assuming those provisions are reasonable and do not practically deny an individual from working in his profession or industry of choice.

There are three general limitation categories that courts will consider in determining whether an anti-competitive provision is enforceable:

- The definition of competing operation.
- The geographic effect.
- The chronological term.

EMPLOYMENT ISSUES

37. Can a franchisee be regarded as an employee of the franchisor?

A franchisee can be regarded as an agent of the franchisor. The franchise agreement should include indemnity clauses or standard no agency terms to minimise the risk.

DISPUTE RESOLUTION

38. How are franchising disputes typically dealt with? What provisions for handling disputes are usually included in domestic franchise agreements?

In the case of conflicts among the parties, the following dispute resolution options are available under Thai law:

- **Litigation.** A trade mark, patent or copyright infringement lawsuit is filed with the Central Intellectual Property and International Trade Court. The claimant can claim damages and request the court to issue a permanent injunction against the infringers. Preliminary injunctions and Anton Piller orders are available in the Thai system and have been issued in recent years.
- **Mediation.** The venue for pre-litigation mediation is the Office of Dispute Prevention and Settlement at the Department of Intellectual Property. After the case is filed, a party can file a request the Office of Mediation at the Central Intellectual Property and International Trade Court to propose mediation with the opposing party. A mediating judge who is not involved with the main trial will be appointed to mediate the case. In practice, mediation frequently leads to successful outcomes in Thailand.
- **Arbitration.** The last option is the arbitration clause in a franchise/licensing agreement, which specifies the venue and jurisdiction for arbitration. These clauses in contractual agreements are recognised and enforced by the Thai courts under Thailand's Arbitration Act. It may therefore be preferable for the franchising/licensing agreement to refer all disputes to arbitration before a defined arbitration panel in the defined jurisdiction.

39. How are foreign judgments or foreign arbitral awards enforced locally?

Unlike foreign judgments, a foreign arbitral award can be enforced in Thailand if it is governed by a treaty, convention, or international agreement, which Thailand is a party to. Thailand is a signatory to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

EXCHANGE CONTROL AND WITHHOLDING

40. Are any exchange control or currency regulations applicable to payments to an overseas franchisor?

Thai law restricts the ability of local franchisees to convert Thai baht into US dollars. The rules regulating exchange control in Thailand are prescribed by the Exchange Control Act B.E. 2485 (1942) and Ministerial Regulation No. 13 B.E. 2497 (1954) issued under this Act. These laws set out the principles of controls under which notifications of the Ministry of Finance and notices of the Competent Officer were issued to regulate the conversion of Thai baht into foreign currencies. Commercial banks are authorised by the Bank of Thailand (BOT) to approve the remittance of certain foreign exchange transactions. Remittance of foreign currencies for purposes other than those approvable by commercial banks must be approved by the BOT.

41. Is there a withholding obligation on payments made to an overseas franchisor?

Franchise fees and royalties paid by Thai franchisees or licensees to overseas franchisors or licensors are subject to Thai income tax (in the form of a withholding tax) at a rate of 15%. The franchisee or licensee must deduct the 15% withholding tax and remit the same to the Thai Revenue Department within the seventh day of the month following the month in which the franchise fees and royalties were paid.

Thailand has entered into Double Taxation Avoidance Agreements (DTAs), which are now effective in 59 countries. Under some of these DTAs, the 15% withholding tax may be reduced to a lower rate. In eliminating double taxation, some DTAs provide for the credit method to be used, while in other DTAs, the exemption method is to be applied.

REFORM

42. Are there any proposals to reform the laws affecting franchising?

Although there are no specific regulations that govern franchising in Thailand, the Ministry of Commerce regularly announces plans to commence drafting regulations. In March 2011, the Ministry of Commerce held a public hearing of a draft Franchise Business Act.

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Professional qualifications. New York, Attorney; New Jersey, Attorney

Areas of practice. IP; regulatory affairs; life sciences; commercial transactions; M&A and government relations

Non-professional qualifications. JD, Syracuse University College of Law/Columbia Law School; MA, University of Hawaii; BA, Wingate College

Recent transactions

- Engaged by an American global doughnut company, Krispy Kreme Doughnut Corporation, to advise on franchise operation as well as IP and regulatory matters in Thailand. Tilleke & Gibbins is also advising Krispy Kreme on their franchise entry into Laos and Vietnam. As for regulatory matters, the firm is advising on Thai FDA product registration and safekeeping of trade secret information.
- Acted for Jetts Fitness, Godiva, Charlotte Olympia, Carl's Jr., Burger & Lobster, and Circle K to review and localise their franchise agreements in Thailand and Cambodia. The firm is presently handling its necessary short-form trade mark licence agreement records with the relevant authorities.

Languages. English, Chinese

Professional associations/memberships.

- American Chamber of Commerce in Thailand's Food & AgriBusiness Committee (Co-Chair).
- International Trademark Association Emerging Issues Committee (Member).