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## Franchising in Myanmar: Navigating the Local Requirements

Take a walk along Bogyoke Aung San Road in downtown Yangon, and you will see *longyi*-clad men and teenagers in school uniforms with *thanaka*-painted faces digging their fingers into golden pieces of fried chicken in Myanmar's first KFC outlet. Across the street from KFC, patrons of Yakun Coffee & Toast, a popular Singaporean chain, can be seen devouring their kaya and butter toast as the sweet aroma of Hainanese coffee lingers in the afternoon air.

After emerging from decades of international isolation, Myanmar has seen a huge influx of foreign businesses attracted to the country's wealth of resources, emerging middle class, and youthful population. Global food and beverage franchises such as the famous Swensen's ice cream parlor, South Korea's Lotteria fried chicken, Taiwanese bubble tea chain Chatime, and Australian-owned Gloria Jean's Coffees have also entered the market in the past few years. Most recently, Burger King opened its first outlet in the new Yangon International Airport Terminal One.

In the context of this growing trend for franchises in Myanmar, it is essential for franchisors to have a firm understanding of the local requirements. This article discusses the process for establishing a franchise business in Myanmar and the pitfalls to avoid when entering this market.

### Business Vehicles

Myanmar does not have franchise-specific legislation. Commercial relationships, including franchises, are mainly governed by the Contract Act 1872, Myanmar Companies Act 1914, Foreign Investment Law 2012, and Foreign Investment Rules 2013, along with a range of notifications issued by various ministries from time to time.

While it is common for foreign franchisors to want to retain absolute control over their local operations, or at least have a stake in the locally incorporated master franchisee, this may not be feasible for certain types of business. For instance, the import, export, and sale of goods are almost exclusively reserved for local Myanmar citizens or 100 percent locally owned Myanmar companies. And under Notification 26/2016 of the Myanmar Investment Commission, foreign investment in the retail and food and beverage sectors can only be made through a joint venture with a local partner.

Not all sectors, however, are bound by these restrictions. Under Notification 26/2016, foreign franchisors in certain service sectors, including fitness centers, hair salons, and laundry, are allowed to incorporate a 100 percent foreign-owned local entity to act as a master franchisee in Myanmar.

### Tax Liabilities

Foreign franchisors should be aware of tax liabilities in Myanmar, such as withholding taxes on royalties for licenses and the use of intellectual property (IP) rights such as trademarks and patents. Under Notification 167/2011 of the Ministry of Planning and Finance, the current withholding tax rates for such royalties are 15 percent for resident foreigners and 20 percent for nonresident foreigners.

Franchise fees are also subject to 2 percent withholding tax for resident foreigners and 3.5 percent withholding tax for nonresident foreigners. Myanmar has existing double tax agreements with seven countries—the United Kingdom, Laos, Malaysia, the Republic of Korea, Singapore, Thailand, and Vietnam—although foreign investors who want to obtain relief under these double tax agreements will have to apply to the Ministry of Planning and Finance separately.

### IP Protection

There is currently no legal or regulatory framework for IP protection in Myanmar. Pending the enactment of relevant IP laws, owners of IP rights, such as trademarks and patents, can record such rights by filing a declaration of ownership at the Office of Registration of Deeds.

Enforcement of IP rights can be based both on common law and on a number of provisions in old legislation such as the Code of Criminal Procedure, Myanmar Penal Code 1860, Specific Relief Act 1877, and Merchandise Marks Act 1889, although authorities are typically reluctant to attend to cases where the plaintiff or claimant does not have a declaration of ownership over the IP rights concerned.

Franchisors must be diligent in protecting their IP rights in a country that does not have an intellectual property framework. All core trademarks to a franchise should be filed with the Office of Registration of Deeds, followed by the publication of trademark cautionary notices in local newspapers and journals. Copies of franchise agreements and trademark license agreements should also be recorded at the Office of Registration of Deeds.

### Online Presence

Franchisors who want to have a localized website with a “.mm” country code top-level domain should secure their domain name registrations with the Myanmar Network Information Center as soon as possible. With increased public access to the Internet, enabled by rapid developments in telecommunications infrastructure, there has been a rise in domain name squatters in Myanmar. And because there is a lack of legislation governing activities in cyberspace, as well as a lack of domain name dispute resolution mechanisms, international businesses do not have a proper avenue to institute claims over their domain names registered by third parties in bad faith.

Foreign franchisors should also put in place a comprehensive social media policy to govern their online presence through their local franchisees. If customers make public reviews and complaints on social media, there is a significant risk of a public relations crisis if they are not handled appropriately.

In addition, businesses should be careful when launching marketing campaigns—the Competition Law 2015, which will enter into force on February 24, 2017, according to Notification 69/2015 of the President's Office, restricts comparative advertising of businesses with similar goods and services, and it prohibits deceptive advertising.

### Importation and Product Registration

As discussed above, foreign-owned businesses are not allowed to import products into Myanmar—this is only allowed if the imported products are for their internal operational use. Therefore, if a foreign franchisor wants to import a product for sale, it is necessary to rely on a local partner to do this.

Registration with the relevant authorities is also required for certain products, such as food. Applications to the Food and Drug Administration in Myanmar can only be lodged by a local entity. Therefore, foreign franchisors will again need to entrust their local counterparts, such as a local master franchisee, with such registration matters.

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### Confidential Information

The protection of post-termination interests should begin even before the start of a business relationship. Franchisors should sign nondisclosure agreements with potential franchisees prior to sharing their franchise disclosure documents.

As to exclusivity and noncompete clauses, which are inherent features of franchise relationships, Section 27 of the Myanmar Contract Act 1872 appears to prohibit the inclusion of such clauses in franchise agreements by stating 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.”

However, while post-termination restrictions are generally difficult to enforce, exclusivity clauses applicable during the term of an agreement can be carefully worded to restrict

negative covenants to a certain type of business and geographical area.

### Dispute Resolution

Including arbitration clauses in franchise agreements is increasingly common these days. With the enactment of the Arbitration Law 2016 in January this year, foreign arbitral awards are now enforceable in Myanmar in accordance with the country’s obligations under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This is positive news for the business community, which often elects to have disputes resolved outside the country due to Myanmar’s archaic legal regime.

Foreign investors that want to expand their geographical footprint into Myanmar should tread carefully in navigating the country’s regulatory landscape. Although the growing Myanmar market is attractive for business, there are a number of important differences to franchising in Myanmar that foreign franchisors should carefully observe. 🏠