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*Franchising in Thailand* is the 15th article in Wiley Rein's International Franchise Development Series. The International Franchise Development Series offers a broad overview of franchise regulation and the legal issues confronting franchisors seeking to expand into certain countries from the combined legal perspective of U.S. and local counsel.

## Franchising in Thailand

By Robert A. Smith, Areeya Pornwiriyangkura, and Christine E. Connelly

The Kingdom of Thailand has a well-developed infrastructure and has boasted one of the strongest Eastern Asian economies over the past decade. Approximately one-third of its 68 million people live in urban areas, with almost 10 million in the capital of Bangkok. Franchising is experiencing rapid growth in Thailand and some of the best businesses are franchised.

Currently, there are no specific laws that govern franchising in Thailand. The parties' rights and obligations are primarily governed by the Thai Civil and Commercial Code. Efforts have been ongoing for almost ten years to specifically regulate franchising as it is in other countries in the region, such as Malaysia and Vietnam.

A draft of Thailand's Franchising Business Act was first released to the public in 2006. While the bill is not currently being considered by the National Legislative Assembly, it is worth reviewing the current draft of the Act to see the changes that the country's policymakers would like to enact.

### Important Impacts

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

**Restrictions.** Under the Act, franchisors and franchisees would be required to comply with certain restrictions on business operations. For example, franchisors will be required to disclose

data necessary for the franchised business operation. In addition, franchise agreements must be in writing and must specify the details required by law. Failure to comply with these requirements would void the agreement.

The draft law also requires that franchisors must provide clear working manuals for franchisees to follow. If the agreement places territorial limits on the right to operate a franchised business, franchisors must not operate the franchised business, 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 franchise must register the 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 agreements; (iii) the existence of working manuals; and (iv) business plans that would be used in the promotion and control of the franchised business operation.

Another noteworthy qualification is that the franchisor is required to have operated the franchised business for at least two years. The business must have at least two branches that have recorded profits for at least two consecutive

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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 the 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 franchised businesses will be granted.

### **Intellectual Property Issues**

Under the draft law, a franchised 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 those 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 area. This business operation is promoted and controlled under the franchisor's business operation plan, and the franchisee has the duty to pay monies to the franchisor.

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

### **Scope of Enforcement**

It is important to note that, as provided under Section 3, the draft law will not be applicable to franchised businesses whose franchisors are domiciled, and who have entered into a relevant contract, outside of the Kingdom. For example, a

franchise agreement between a foreign franchisor and a Thai franchisee will not be subject to restrictions under this law.

Accordingly, if a foreign franchisor grants a master franchise agreement to a Thai franchisee allowing the Thai franchisee to grant subfranchise rights to other Thai entrepreneurs, the draft law will not be applicable to the master franchising agreement, but will be applicable to the agreements between the master franchisee and the subfranchisees.

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. ■

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