

Abstract

Franchise is one of the most interesting businesses which are rapidly expanding in the United States' economy. Franchise is popular because the model of the business is very efficient in assisting the expansion of franchise. On the one hand, the franchisor can increase his/her network without investing his/her own money. On the other hand, the franchisee also gains the benefit from the renown of the business which already attracts the consumers and at the same time it also reduces the risk of starting new business.

The difficulties which the franchisee normally encounters are...

1. The lack of the provisions relating to the disclosure of the documents before the franchisee decides to participate in the business.

2. Some of the existing clauses in the franchise contract is unfair to the franchisee, for instance there is a provision giving the franchisor the right to terminate the contract immediately, conversely there is no such right for the franchisee.

3. The franchise contract may impose too many burdens on the franchisee, for example tie-ing in the franchise contract.

There is no specific Act regarding a franchise contract under the Thai law. In considering the rights and the duties of the parties in such contract, a lawyer has to refer to

the existing laws to apply with the franchise contract. Those laws sometimes are not inadequate to solve the arising problems. Moreover, it does not prevent the law from occurring since the existing laws can only come into play after the franchise contract has already done. Additionally, the franchisor and the franchisee are lacking of the understanding in the franchise system, for example most of the franchisees do not really understand why do they have to pay massive royalties to do franchise business, or in some cases the franchisor creates unclear business plan resulting in the difficulties to create an effective marketing strategy to compete with the rival's company.

Currently, there are approximately 20 countries which have already enacted the franchise regulations to specifically govern franchise businesses within the countries. The approach of controlling franchise business can be summarized in 3 methods which are...

- (1) The disclosure of document
- (2) The registration of franchise business and,
- (3) The provision governing the franchisor and the franchisee's relationship

Additionally, there is a law to administer franchise business in an international level called the UNIDROIT¹ Guide to International Master Franchise Agreement 1998 which

¹ UNIDROIT is an international organization founded in 1926. The memberships are now from 59 countries. The objective is to create the uniformity of the civil law by pushing the members to research and do comparative studies. The next step is to

set out the important issues to be considered in entering into an international franchise agreement, the other one is the UNIDROIT Model Franchise Disclosure Law 2001 relating to the disclosure obligation that the franchisor owes to the prospective franchisees before they decide to participate in the business.

Department of business development, Ministry of Commerce Thailand has proposed the Thai Franchise Bill B.E. ... to control the franchise business and to support the expansion of franchise business. However, the Thai Franchise Bill still contains some defects which are needed to be analyzed and discussed as follow...

1. The franchise registration: the Franchise Bill provides that the qualified prospective franchisee has to submit an application to the registrar. The author agrees with the registration system because the authorities are able to control the franchise business more effectively. However, the author would like to suggest an exception for small business, primary business and local business which should let them naturally develop by marketing mechanism, there should be no restriction to obstruct the growth of such business and when the business is big enough it has to comply with the law. Besides the Bill does not impose any standard or method to apply with the franchise registration, thus the author proposes the drafted notification as an example of setting some guidelines to use in the franchise registration.

cooperatively draft the regulations in order to encourage the members to adopt those regulations resulting in the universal standard of the law internationally.

2. Form of the contract: the Franchise Bill provides that the franchise agreement has to be in the written form and specify the details in accordance with the law. The author agrees with the Bill providing that it allows small businesses to do the contract orally.

3. The franchisee's right to terminate the contract: the author suggests that the law should provide cooling-off period (the right to terminate the contract within 7 days after entering into franchise agreement or making any payment). However, the franchisor still retains the right to request the damages in the expense that the franchisor has already paid.

4. Term of the contract: the author suggests that the law should state that the term of the franchise agreement should be at least 5 years because that period is reasonable for the franchisee to be able to regain all the cost that he/she has invested.

5. The franchisor's duties

5.1 The Franchise Bill provides that the franchisor has to disclose all the necessary information to run franchise business to the franchisee, but the Bill does not identify what kind of the information which is needed to be disclosed. The author analyses the information which the franchisor has the duty to disclose and drafts the notification to be a guideline.

5.2 The Franchise Bill identifies that the franchisor has to provide a work instruction which is clear, precise and complete for the franchisee to be able to follow the franchise business model. However, the Bill does not specify the details which are needed

to be in the franchisor's work instruction. The author analyses the necessary information which should be inserted into the work instruction and also proposes a drafted notification as a guideline.

6. The franchisee's duties: the Franchise Bill only prohibits the franchisee to disclose any information that he/she has been subrogated to the rights of the franchisor. The author suggests that the Bill should add the clause to restrict the franchisee from disclosing an information in case that the franchisee involves in the same or similar business competing with the franchisor's business.

7. Termination of the contract: the Franchise Bill provides the franchisee's right to terminate the contract only in limited cases, for instance the franchisee can terminate the contract if the franchisor does not disclose the documents within 60 days after the franchisee decided to do the business, or in the case that the registrar revoked the franchise registration of the franchisor. The author thinks that the Bill should add the franchisee's right to terminate the contract in the situation where the franchisor does not disclose the information before the franchisee entered into the business. Besides, the Franchise Bill does not provide any right for the franchisor to terminate the contract. The author analyses and suggests that the Bill should specify franchisor's right to terminate the contract. For example, the law should identify the cases where the breach of the franchisee gives the franchisor the right to terminate the contract without giving notice and the cases in

which the franchisor has to inform the franchisee to rectify the defect before ending the contract.

8. The duties of the parties after the termination of the contract: the Franchise Bill does not state any detail about this point. The author would like to propose that in the situation where the franchisor does not want to renew the contract, the franchisor owes the duty to inform the franchisee in writing or else the franchisor has to pay the damages. While in the case where the term of the contract is already end but the franchisee still runs the business and the franchisor already knows that yet takes no action. The franchise contract in such a case is deemed to be renewed automatically.

9. Dispute resolution: the Franchise Bill does not state any detail about this issue. The author analyses and proposes the method to settle the dispute between the parties which can be done by one of the parties submit the motion to the franchise committee to resolve the dispute by arbitration.