

Abstract

The franchise business is a popular business expansion around the world and possesses huge values nowadays. Its advantage is to offer the opportunity to franchisors to expand their businesses requiring low investments, having low costs and mitigating investment risks. On the same time, franchisees are able to have some businesses not requiring their own business establishments. The expansion of the franchise business has significantly affected patterns of businesses and entrepreneurs. Especially, at the international level, it has not only affected economies but affected living cultures of people in each country as well.

Since the franchise business has become more popular, franchise contracts made by and between franchisors and franchisees have been made widely. In general, both parties are able to negotiate under “the Autonomy of Will and the Freedom of Contract”. Accordingly, the main element supporting the aforementioned methods is that both parties should have equal bargaining power but, in practice, franchisors are often well-known and accepted businesses. As a result, they have high bargaining power regarding contract matters and are in positions that can choose to purchase certain goods/products and can determine marketing approaches for their franchisees. In addition, as the franchise business is inevitably relevant to providing intellectual rights of franchisors, franchisors, then, have often established strict requirements specified in franchise contracts to protect their own benefits. Some agreements in franchise contracts may set limited business frameworks to franchisees or may take some advantage from franchisees. In many cases, franchisors who have higher bargaining power over franchisees intend to use franchise contracts as tools to cheat and to take advantage from franchisees regardless of franchisees' troubles. Hence, there are many unfair franchise contracts between franchisors and franchisees. These are considered important issues causing franchisees lose huge incomes to franchisors. In some case, franchisees have recorded losses or have run out of businesses. Especially, regarding

international franchises with high values of investments, benefits that each party intends to obtain become much higher.

Presently, many countries have issued specified laws to govern and supervise the franchise business to ensure the efficiency and fairness of its expansion to all relevant parties. They focus on the enforcement of the Disclosure Rule of the franchise business. The aforementioned disclosure assists franchisees understanding rights and duties of both franchisors and franchisees occurring when engaging in the franchise system. This will reduce any problems relating to unfair franchise contracts and assist franchisees understanding agreements that they agree to abide by, especially benefit distributions. Moreover, the aforementioned disclosure provides opportunities to general people to study actual information before entering into contracts, increases bargaining power of franchisees, enhancing contract preparation in accordance with Freedom of Contract, supporting both parties honestly enter into contract as well as encouraging franchisors to seriously comply with their information disclosed.

In case of Thailand, there is no certain law governing the franchise business, for both domestic and international franchises. Therefore, the franchise business shall be supervised by laws relating to each matter. The law governing international franchise contracts regarding the unfair contract is Unfair Contract Act and Antitrust Act. Both Acts have some limitations and gaps for applying to enforce franchise contracts which have specific characteristics and are complicated. The persons who obtain severe impact from a lack of applicable laws are Thai entrepreneurs purchasing foreign franchises. Those people are often taken advantage of by international franchise contracts. It is necessary for Thailand to issue a specific law for supervising the franchise business directly in order to enhance the expansion of the franchise business to ensure the transparency and fairness to all parties.