

Independent Study Paper Title : Franchise Law in Thailand: Disclosure Requirement

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ABSTRACT

Nowadays, franchise is a popular option for business owner or entrepreneurs who are running to expand their own businesses. An important thing when entering a franchise business is the franchise contract. The consideration between the parties under the franchise agreement is subject to the relevant laws such as the provisions on juristic and contract act under the Civil and Commercial Act, Intellectual Property Law, Trade Secret Law, Unfair Contract Terms Act, and Competition Law. The various issues related to franchise business arise in Thailand because there is no specific law available which lead to contracting parties not being able to follow a guideline of practices. Consequently, relevant laws have been used to resolve disputes. The current draft franchise business bill still contains insufficient provisions on the definition of rights and obligations of the franchisor especially in terms of disclosure before entering a franchise agreement because franchisor in Thailand generally have higher negotiation power over the franchisee since there are no rules. If Thailand allows for information to be disclosed to the franchisee before entering into an agreement, it will reduce the chance for the franchisee to be exploited.

When considering the law of America and Australia, it can be concluded that in order to supervise the franchise business in the country better, one will need to realize that other countries gives importance to disclosing information before entering a contract. Whereas they specify the period of time in advance, as well as, set exceptional conditions when not to disclose information.

There is also another interesting international law which is the model law by the International Institute for the Unification of Private Law (UNIDROIT). On the UNIDROIT Model Franchise Disclosure Law which is a model law that requires franchisors to disclose information before entering into a franchise agreement. The

model law determines the type of information that must be disclosed and that can affect the decision of prospective franchisee in entering into an agreement such as, background information about the franchisor, franchise business, business experience, financial statements, collection of fee, intellectual property, bankruptcy background, revenue, branch, etc. The intention of the UNIDROIT is to be applicable to any franchise agreement in the present or in the future because UNIDROIT' s intention is to assist and protect franchisee from bad franchise business with no potential.

When analyzing the problem of franchise business in Thailand, the researcher acknowledges that whenever a dispute related to franchise business in Thailand arise, relevant or similar laws have been used for application. Using such laws to solve a dispute, nevertheless, make it impossible to address the true issue of the problem; it will only resolve the tip of the iceberg. The researcher would therefore like to propose that Thailand should be a law specifically for franchise business and the franchise law should specify that a disclosure document should be provided to the prospective franchisee by use the UNIDROIT model which defines the subject matter of disclosure, as well as, the terms and conditions of the franchise agreement.

