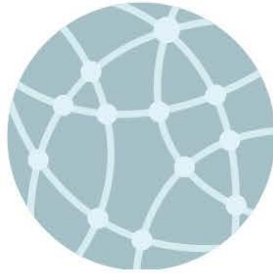




The State of Franchising in Southeast Asia: A Snapshot



Introduction

Businesses have long regarded franchising as the fastest and most effective method of creating awareness of their brand and expanding their business model in new territories. Running a franchise provides an opportunity to be part of a well-known brand, or even be a first market mover, in a new territory. It offers the chance to get on-the-job training on how to run a tried and tested business model.

With a new and growing generation of consumers, the savvy franchisor cannot ignore Asia, in particular Southeast Asia, as a good potential market.

This summary sets out a snapshot of the regulation of franchises in Southeast Asia, the importance of protection of Intellectual Property (IP) as a franchisor, and some possible predictions for the region in the near future.



The importance of Intellectual Property in Franchising

In all of the countries in the Association of Southeast Asian Nations (ASEAN), the intellectual property rights linked to the franchise are an important element of the franchise. Some of the countries, such as in Malaysia, and Indonesia require trade marks associated with the franchise to be protected, usually in the form of registered trade marks. This will help maintain the integrity of the franchise.

When considering IP rights in a franchise agreement, there are several things businesses should consider.

Firstly, a franchisor must claim ownership of trade marks linked to the franchise. Ownership should be clear within the franchise agreement.

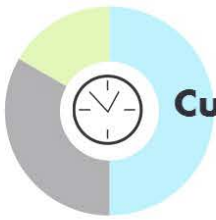
In addition, use of trade marks must be agreed between parties in advance – the franchisee should use trade marks only as an authorised licensee, and nothing more.

Some unethical franchisees may claim trade marks ownership and rights through use or by attempting to register such trade marks themselves. However clarity of ownership from the beginning reduces this risk and also allows the franchisor to take action against infringers more easily. Formally registering the trade mark in the franchisors name also adds weight to their proper ownership.

Franchisors should consider formal registration in country. With local trade mark registration, parties in a franchise agreement benefit not only from the terms and conditions of their own agreement, but also from protection offered by local laws.

There are clear benefits of local trade mark registration. This applies even in countries where registration is not mandatory for franchises. Registration allows the trade mark owner to take action against infringers, licence their mark and maximise the value of their brand.

Formal trade mark protection is invaluable to franchising and worth including in your business strategy.



Current State of Franchising

There is no common standard of regulating franchises in ASEAN. The systems of franchising in Southeast Asia can be categorised into three main types.

1. Self-regulation

At one end of the scale, countries like Brunei, Singapore, Myanmar and Thailand have no specific franchising regulation, and broadly take a minimalist approach to legislative intervention in franchising matters.

In these countries, the industry is encouraged to regulate itself according to market conditions and requirements, and as a result of which, may be appealing to international franchises that may prefer a more entrepreneurial approach towards franchising.

2. Strong regulation

At the other end of the scale, countries like Indonesia, Malaysia and Vietnam have a more prescriptive and regulated environment for franchises. Businesses are required to do more than basic prior disclosure. Detailed disclosures, as well as some further requirements are needed to regulate the relationship and other elements in their legislative framework.

3. Somewhere in-between

Then there are those who lie somewhere in between the largely unregulated and the very formerly regulated. This would apply to the systems currently in place in Cambodia, the Philippines and in Laos.



The Foreseeable Future

The start of the ASEAN Economic Community in December 2015 brings the promise of greater economic integration throughout the whole of Southeast Asia. This would in turn present opportunities to parties interested to quickly expand their business throughout the region through franchising. It remains to be seen how the various countries would try to reconcile or harmonise their laws relating to franchising throughout the region.



For questions or more information,
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