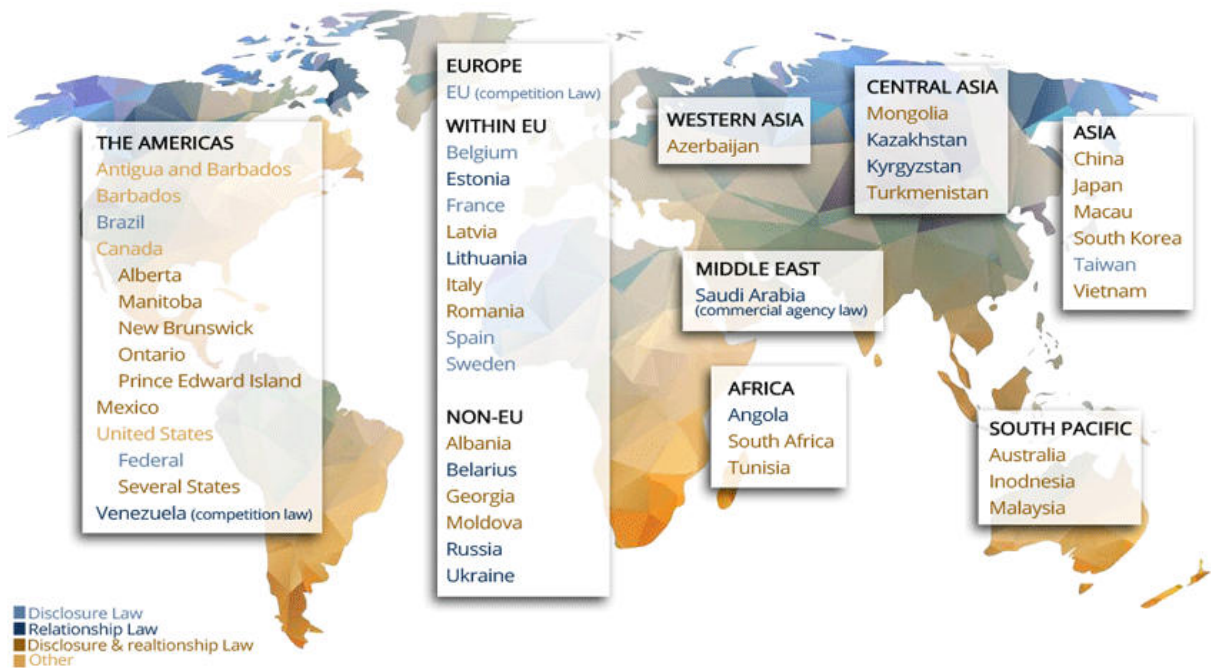




INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



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Which laws and government agencies regulate the offer and sale of franchises?

As mentioned previously, there are currently no laws that specifically regulate all aspects of the offer and sale of a franchise in Thailand. Nevertheless, there are multiple sources of law that contain relevant provisions, including the CCC (related to the establishment and enforcement of contract), the Trademark Act of 1991 (related to the licensing of the trademark), the Trade Secrets Act of 2002 (related to know-how), the Foreign Business Act (controlling the participation of businesses to be conducted by a foreign-owned company), the Trade Competition Act (restricting conditions of the agreement), the Unfair Contract Terms Act (related to standard form contract) and the Thai Revenue Code.

According to the draft Retail and Franchise Acts, the Central Commission on Retail Trade (Retail Commission) and the Central Commission on Franchise Business (Franchise Commission) will be created. The Franchise Commission will directly control the operation of franchise businesses and will regulate the type and wording of franchise agreements. The Retail Commission will control the retailers operating in the marketplace including the expansion of stores. Having said the above, it is also possible that the current draft Retail and Franchise Acts may be amended, or there may be new laws and regulations enforced in the future to be in line with the AEC in 2015.

What are the exemptions and exclusions from any franchise laws and regulations?

Since there is no specific franchise legislation, there are no exemptions or exclusions. Nevertheless, the most recent draft of the Franchise Act would exclude franchise agreements formed outside Thailand, and those where the franchisor has domicile abroad (although the franchise agreement will be exercised in Thailand).

Does any law or regulation create a requirement that must be met before a franchisor may offer franchises?

At present, there is no statutory requirement to be met by a franchisor before offering a franchise to a franchisee. Nevertheless, according to the draft franchise act, we expect that generally, a franchisor, if a juristic person, must be a company incorporated under Thai law. In addition, a franchisor must have conducted its business to be offered as a franchise for at least two years and have been earning profit from a minimum of two existing branches for at least two accounting years. If it meets those eligibility qualifications, it must also apply for a licence to operate a franchise business in Thailand. Once it has obtained the licence, the franchisor can then offer its franchise to a franchisee.

Are there any laws, regulations or government policies that restrict the manner in which a franchisor recruits franchisees or selects its or its franchisees' suppliers?

Yes, the Trade Competition Act prohibits or restricts the acts amounting to monopoly, reduction of competition or restriction of competition in the market of any particular goods or any particular services. Those acts include fixing of locations between the franchisor and the franchisee, which must be first approved by the Thai Trade Commission Committee.



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In the case of a sub-franchising structure, who must make pre-sale disclosures to sub-franchisees? If the sub-franchisor must provide disclosure, what must be disclosed concerning the franchisor and the contractual or other relationship between the franchisor and the subfranchisor?

Thai law does not specifically cover sub-franchising, and nor does the most recent draft of franchise legislation. Therefore, it seems likely that the same disclosure rules that apply to franchisors and franchisees will also apply in cases of sub-franchising.

Is there any obligation for continuing disclosure?

At present, there is no regulation obligating franchisees or franchisors to disclose or continue to disclose information. Nevertheless, the most recent draft of the Franchise Act requires the franchisor to reveal all necessary information for operating the franchise business within 60 days after the franchise agreement is made; otherwise, the franchisee has right to terminate the contract and claim from the franchisor all expenses and damages (if any).

How do the relevant government agencies enforce the disclosure requirements?

Since there is no legislation forcing specific information disclosure, no specific government agencies are responsible for enforcing disclosure requirements. Nevertheless, under the recent draft Franchise Act, the information to be disclosed by the franchisor must be in accordance with the details announced by the Minister of Ministry of Commerce.

In addition to any laws or government agencies that specifically regulate offering and selling franchises, what are the general principles of law that affect the offer and sale of franchises? What other regulations or government agencies or industry codes of conduct may affect the offer and sale of franchises?

The general principles of contract law and bargaining in good faith are applicable to the offer and sale of franchises. The courts in Thailand generally uphold contracts made between parties as long as they are demonstrated to be bargains at arm's length made in good faith. This is especially true with regard to franchise agreements under the current law, because there is no specific legislation differentiating franchise agreements from other kinds of contracts.

Another law which may be related to this franchise agreement is the Trade Competition Act. .

Do other laws affect the franchise relationship?

The laws listed in the first question may affect the franchise relationship, depending on the circumstances.