

Unfair Trade Practices in Franchise Business

Franchisors, amongst others, are prohibited from conducting any "unfair trade practices" that can cause damages to their franchisees under Section 57 of the Trade Competition Act B.E. 2560 ("TCA"). To implement Section 57 of the TCA, for franchise business, the Trade Competition Commission issued its Notification on Guidelines for Consideration of Unfair Trade Practices in Franchise Business ("**Notification**") dated 30th October 2019.

The Notification was published in the Government Gazette on 6th December 2019 and became effective from 5th February 2020. The Notification was amended twice: on 11th August 2020 and 13th July 2021.

We summarized the major provisions of the Notification (as amended) as follows:

1. Disclosure of Information

Before entering into a franchise agreement ("**FA**"), the franchisor must disclose to the franchisee the following information about the business activities of the franchisor:

- (1) the remunerations and business costs payable by the franchisee, such as the franchise fee, the royalty fee, the marketing expenses and the training costs;
- (2) the franchise business plan, such as management assistance, training, advice, number and locations of franchisees located in the neighborhood of the franchisee;
- (3) the essential information about the relevant trademark rights, patents and copyrights and their license terms; and
- (4) the terms and conditions for renewal, amendment and termination of the FA.

2. Opening a Branch to Compete with Franchisee

If the franchisor will open and operate a branch by itself or grant the right to open and operate a branch to a franchisee or any other person, the franchisor must notify its current franchisee whose branch is located in the nearest area (considered from the combination of the volume of the demand of the goods or the services, the related geographical areas and the level of the competition in the market) and offer such current franchisee the right of first refusal with a reasonable period of time, which shall not be less than 30 days, for the current franchisee to respond to the offer.

This requirement, however, does not apply if the current franchisee has failed to pass the performance requirements which the franchisor specified and notified to the current franchisee in advance, or in case of a franchise with an area development agreement that does not allow granting the right of first refusal to the current franchisee whose branch is located in the nearest area (resulting in the franchisor being able to grant the right to open a new branch to another appropriate franchisee, subject to the acceptable business, marketing or economic reasons).

3. Unfair Trade Practices and Damaging to Franchisee

To determine whether or not the franchisor's practice is unfair and damaging to the franchisee, the TCA will consider the followings:

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- (1) Unreasonable restrictions against the rights of the franchisee, such as requiring the franchisee to purchase from the franchisor or a producer, seller or service provider designated by the franchisor the products or services that are not related to the franchise or purchase the products or raw materials at the volume higher than the actual demand without allowing the franchisee to return the products or raw materials that exceed the demand.
- (2) Stipulating additional terms and conditions for the franchisee to purchase the products or services other than those originally specified in the FA after the execution date of the FA, except in case where there is an appropriate business reason or necessity for the franchisor to maintain its reputation, quality and business standards.
- (3) Unreasonably prohibiting the franchisee from purchasing products or services from other producers, sellers or service providers, who offer products or services of equivalent quality at a cheaper price, and requiring the franchisee to purchase them only from the franchisor and/or producers, sellers or service providers designated by the franchisor.
- (4) Unreasonably prohibiting the franchisee from selling perishable products or products the expiry dates of which are approaching without any discount.
- (5) Unreasonably stipulating different terms and conditions for different franchisees leading to a trade discrimination practice.
- (6) Stipulating any other inappropriate terms and conditions for purposes other than maintaining the franchisor's reputation, quality and standards as agreed under the FA.

The broad scope of the "unfair trade practices" under the Notification is broad is likely to encourage franchisees to file claims with the TCA and/or the court against franchisors for unfair trade practices.



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