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- Operating a Franchise in Cambodia

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### 1. Introduction

Generally, franchising is known as a business model for companies who wish to expand their market share rapidly, and less expensively, than through a licensing relationship. In this regard, the owners (“the Franchisor”) of a company wishing to expand their business grant a license to a third party (“the Franchisee”), to conduct business under its trademark and business operating methods, within a specific territory, according to the agreed terms of a contract (“the Franchise Agreement”). In other words, franchising is also known as an investment model, where the franchisee uses the franchisor’s successful business operating methods and trademark, to operate a similar, or identical, business, by paying a fee, and/or royalties to the franchisor.

In international practice, there are two different types of franchise: a business format franchise, or a traditional or product distribution franchise. The former is more common, as the franchisor provides to the franchisee, not just its trade name, products and services, but an entire system for operating the business. The latter type is less common because it basically only involves the products manufactured, or supplied, by the franchisor to the franchisee.<sup>1</sup>

#### What make a successful franchise?

Before entering into a franchise agreement, it is recommended to review the following:

- The franchisee should have a clear understanding of the franchisor’s brand, since it is the franchisor’s most valuable asset.
- The franchisee, prior to concluding a franchise agreement, needs to understand what franchise system the franchisor is

actually offering. It would better to choose a franchise system where the franchisor provides full support in managing the evolution of the product and services.

This includes:

- a recognized brand name,
- site selection and site development assistance;
- training for the franchisee and his/her team;
- research and development of new products and services;
- headquarters and field support and;
- initial and ongoing marketing and advertising campaign.

- A franchise is a so-called contractual relationship, between the franchisor and the franchisee, allowing the business owner to use the franchisor’s brand, and method of doing business, in order to distribute products or services to the consumer. It is important to note that under the law, every franchise is a license, but not every license is a franchise.

When setting up a franchise in Cambodia, there are several questions that need to be addressed. While Cambodia has attracted a growing number of franchise businesses, it currently has no legal framework to regulate franchises, and no specific legal provision to govern franchise agreements in the Kingdom.

However, this type of franchise agreement is commonly used in business transactions throughout the country. An owner of a well-developed business (the franchisor), consents to his/her business partner (the franchisee) to operate an identical or similar business model, in accordance with the methods and procedures prescribed by the franchisor. The franchisor may provide the franchisee assistance, and business advice, throughout the duration of the agreement, in exchange for fees and/or royalties.

Since the franchise agreement is considered a contract, it falls under the general provisions governing contractual obligations.



1. <http://www.franchise.org/what-is-a-franchise>

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## ABOUT US

BNG Legal is a leading regional law firm providing comprehensive legal services to foreign and local clients in Cambodia and Myanmar.

Registered with the Bar Association of the Kingdom of Cambodia, our legal professionals combine international standards with local expertise.

We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

We facilitate business, investment and trade between Cambodia, Myanmar, and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed.

Conducting daily business in Cambodia and Myanmar, BNG Legal is up to date with the newest procedures and requirements, helping clients efficiently and successfully complete any project.

## CAMBODIAN LAW BLOG

[cambodianlaw.wordpress.com](http://cambodianlaw.wordpress.com)

BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals write a blog discussing recent developments in the legal landscape.

## LEGAL DATABASE

The laws and regulations in our database are based upon the Official Gazettes, law compendiums and other collections from the ministries and institutions of the Royal Government of Cambodia. These are available to the public through our partner site, [www.bnglaw.net](http://www.bnglaw.net).

Consequently, franchise agreements are not specifically regulated, but are covered by the law concerning Marks, Trade Names and Acts of Unfair Competition.

Certain fine points, nevertheless, are provided in the current legislation. For example, in order to have an effect on third parties, and not only between the franchisor and the franchisee, the license agreement has to be recorded with the Department of Intellectual Property (DIP) at the Ministry of Commerce. Furthermore, the failure to register increases the party's vulnerability, and significantly reduces their prerogatives, such as claims for damages, or licensee's rights to enforce against infringement.

In addition, a certain number of procedural clarifications have been added to the Law on Marks, Trade Names and Acts of Unfair Competition.

As previously noted, since a franchise agreement is not specifically defined under Cambodian laws and regulations, general rules governing contracts apply to such agreements. Under Cambodian Civil Code, parties to any contract must have legal capacity to enter into a contract, before a valid contract can be established. For this reason, to genuinely establish a franchise agreement, both parties must possess full legal competency, as defined by Cambodian law, to enter into a contract. Given that the Cambodian Law on commercial enterprises does recognize the legal personality of the foreign juristic person, we find no issue regarding the legal capacity, of either the franchisor or the franchisee, to bring to a conclusion a franchise agreement.

A draft law on commercial contracts is being prepared and, if enacted, would set up guidelines for contractual dealings of franchises. While awaiting specific regulations for regulating this kind of franchise agreement, all the above mentioned laws and regulations are being used to protect and guarantee the rights and benefits of both the franchisor and franchisee. International best practices, concerning this type of business model, have also been integrated into current franchising procedures in Cambodia.

In order to run a successful franchise, it is crucial to draw up a good franchise agreement, which should include the following:

- The franchise system;
- The territory;
- Rights and obligation of the franchisor and the franchisee;
- Terms of the franchise;

- Payment and royalties made by franchisee to the franchisor;

- Termination and/or the right to transfer the franchise; and,

- Training, assistance and advertising.

## Conclusion

Even though there is no specific provision governing franchising in Cambodia, this kind of business model is considered very popular, and its use is expanding rapidly. While most Cambodians enjoy the benefits of branded products and services, setting up a franchise is strongly recommended. To do so, the franchise agreement must comply with the rules of the license agreement, stipulated in the Law concerning Marks, Trade Names and Acts of Unfair Competition. Any franchise agreement concluded and exercised within the Kingdom of Cambodia must be in compliance with relevant laws and regulations, namely Civil Code, Law concerning Marks, Trade Names and Acts of Unfair Competition, Law on Taxation, Labor Law.

It is recommended that both the franchisor and the franchisee consult with a qualified lawyer, before concluding any franchise agreement.



## Legal Update

### **Prakas No 14.016.147 (NBC) dated 19 May 2016 on Membership of Fast and Central Shared Switch System**

This Prakas requires banking and financial institutions to register as a member of the Fast and Central Shared Switch System. This system is designed to make settlements between financial institution faster, more convenient, safer, more effective and more reliable.

FAST (Fast and secured transfers) is a settlement system, in Riel currency, among members of the financial institutions.

Central Shared Switch is the intermediary system connecting ATMs with EFTPOS for financial institution members

All financial institutions shall arrange its internal structure to fit with this system.

Failure to comply with this Prakas shall be subject to a penalty, as stated in article 52 on financial institution laws.