



The first part of this article explores the commercial law environment in Singapore in the context of franchises. The second part, which will be published in the next issue, is an environment scan of franchise-specific laws and practices adopted in some other countries, together with the rationale behind those laws. The author believes that this article would benefit both lawyers and local SMEs in their understanding of the fragmented world of franchise-specific legal requirements, procedures, pitfalls and more importantly, the business cost of franchising before bringing the home-grown brands to overseas markets, as encouraged by the Singapore government.<sup>1</sup> Given that this article is not a policy paper, one may also consider it an academic musing to appreciate the issues that may arise if franchise-specific legislation were to be introduced in Singapore.

## The Legal Environment of Franchising in Singapore and a Comparative Overview of Franchise Laws in Some Other Countries – Part 1: Existing Singapore Laws

in respect of a substantial part of the goods or services in question. Such an agreement will be excluded by virtue of section 35 of the Act, no prior decision by the CCS to that effect being required.

### Securities and Futures Act (Cap 289)

Previously, the protection for members of the public from being misled into participating in any interest, defined by the old Companies Act as any right to participate in any profits, assets or realisation of any financial or business undertaking or scheme, whether in Singapore or elsewhere, used to be found in the Companies Act.<sup>21</sup> The then Companies Act<sup>22</sup> mandated that if an investment scheme falls within the definition of interest under the Act and an offer is made to the public for subscription or purchase of that interest, the company making such an offer must issue a prospectus. A 1998 amendment to the Companies Act has clarified that franchisees are excluded from the ambit of the then s107 of the Companies Act.

In 2001, these provisions were exported to the Securities and Futures Act ("SFA"), amongst other things, to create a new regulatory regime for collective investment schemes. Division 6 of Part IV of the Companies Act containing s 107 were then repealed.<sup>23</sup> SFA specifically states that a franchise is excluded from the definition of a collective investment scheme<sup>24</sup> and, therefore, the Code on Collective Investment Schemes issued by the Monetary Authority of Singapore does not apply to franchisees. It is, therefore, clear that it was intended for franchises to be unregulated by the new SFA.

Prime Minister Lee Hsien Loong (then Deputy Prime Minister) clarified this in Parliament:

The public will be reminded time and again that the primary responsibility for making investment decisions lies with themselves and, over time, they will be able to learn to be able to look out for their own interest. There is no alternative. We have to shift. We cannot go on the basis that the regulator, or MAS, or the Exchange will make sure that every investment is safe and sure to make money. If you want to invest, you have to make your own judgement, find out your own information and make your own decisions.<sup>25</sup>

► **Constance Leong\***  
Goh Phai Cheng LLC  
E-mail: [constanceleong@gohpc.com](mailto:constanceleong@gohpc.com)

\*LLM (London); Advocate & Solicitor (Singapore); Barrister-at-law (Middle Temple), Solicitor (England & Wales).

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### Notes

- 1 International Enterprise Singapore Annual Report 2009/2010, p 38. [http://www.iesingapore.gov.sg/wpl/wcsm/connect/8646940043e39e578983cd7a20a387772010\\_ARV2.pdf?MOD=AJPERES](http://www.iesingapore.gov.sg/wpl/wcsm/connect/8646940043e39e578983cd7a20a387772010_ARV2.pdf?MOD=AJPERES)
- 2 [2009] SGHC 266.
- 3 [2009] SGHC 290.
- 4 [2009] SGDC 221.
- 5 [2010] 2 Singapore Law Review (SLR) 386; [2010] SGCA 3.
- 6 Section 11(1) of the Unfair Contract Terms Act (Cap 396).
- 7 Section 11(2) of the Unfair Contract Terms Act (Cap 396).
- 8 Section 11(4) of the Unfair Contract Terms Act (Cap 396).
- 9 [2010] SGHC 188.
- 10 [2004] SGHC 267.
- 11 The Competition Commission of Singapore ("CCS") Competition Philosophy published in the CCS website [http://app.ccs.gov.sg/AboutUs\\_CEPPhilosophy.aspx](http://app.ccs.gov.sg/AboutUs_CEPPhilosophy.aspx).
- 12 <http://app.ccs.gov.sg/CompetitionAct.aspx>.
- 13 Section 47(3) of the Competition Act, "dominant position" means a dominant position within Singapore or elsewhere.
- 14 Paragraph 8(2) of the Third Schedule of Competition Act, and paragraph 3.10 of the CCS Guidelines on the Treatment of IPRs. The CCS Guidelines on the Treatment of IPRs was published in June 2007, post-public consultation of the CCS Draft Guideline on the Treatment of IPRs. It is found at [http://app.ccs.gov.sg/cms/user\\_documents/main/pdf/IPR\\_Jul07FINAL.pdf](http://app.ccs.gov.sg/cms/user_documents/main/pdf/IPR_Jul07FINAL.pdf).
- 15 Paragraph 8(1) of the Third Schedule of Competition Act and para 3.10 of the CCS Guidelines on the Treatment of Intellectual Property Rights.
- 16 Paragraph 4 of the CCS Guidelines on the Treatment of IPRs.
- 17 Paragraph 5 of the CCS Guidelines on the Treatment of IPRs.
- 18 Paragraph 6 of the CCS Guidelines on the Treatment of IPRs.
- 19 Paragraph 21 of the Competition Regulations 2007.
- 20 Annex C of the CCS Guidelines on the Section 34 Prohibition sets out how the CCS will determine if an agreement meets the criteria for the exclusion of individual agreements under the Third Schedule.
- 21 Division 6 and s 107 of the Companies (Amendment) Act 1998, as it then was. It is now repealed.
- 22 Section 113 of the Companies Act, as it then was in 1998.
- 23 Securities and Futures Bill No 33/2001, Explanatory Statement.
- 24 Section 2(1) of the Securities and Futures Act 2001.
- 25 Hansard Report, sitting date 5 October 2001, title "Securities and Futures Bill".
- 26 [www.asiawidefranchise.com](http://www.asiawidefranchise.com). Asia-wide Franchise Consultants Pte Ltd has strategic partner and franchise offices in Australia, Brazil, Cambodia, Canada, China, England, Germany, Greece, Hong Kong, India, Indonesia, Italy, Japan, Korea, Lithuania, Malaysia, Mexico, Middle East, Mongolia, New Zealand, Philippines, Russia, South Africa, Thailand, UK, USA, and Vietnam.