

Harnessing the power of the franchise

By **CHARLOTTE YEN**
and **KEYO SOO EARN**

WITH the limited size of the domestic market, it is common for owners of local enterprises to explore overseas opportunities as a primary mode of business expansion. Franchising or licensing is usually the most considered mode of expansion due to limited financial resources faced by most local enterprises.

When properly structured and suitably managed, franchising will provide benefits and satisfaction to you and your franchisee. However, local enterprises must be cautioned that franchising is not an easy route to riches. Nor is it a panacea for your sick business. Franchising is a sophisticated form of licensing in which the franchisor licenses its brands, know-how, business concept, technologies, etc, to the franchisee and can be largely categorised into two major types:

- ◆ **Product and brand franchising.** This method of franchising allows the franchisee to use the franchisor's brand and to sell the franchisor's products. This type of franchising is prevalent among dealers of motor vehicles, consumer electronics, apparel as well as operators of fuel service stations.

- ◆ **Business format franchising.** This method of franchising involves the franchisor transporting its entire business concept to the franchisee and the franchisee is permitted to use the franchisor's trade mark, trade dress, know-how, trade secrets and so on, leveraging on the goodwill associated with the franchisor's business. This type of franchising is common in food and beverage franchises.

Generally, when you enter into a franchising agreement, the franchisee secures the rights to operate the business, includ-

ing the use of your intellectual properties, in a specific location or territory for a specific period. You, as the franchisor, are committed to train and support the franchisee in operating and managing the business in exchange for an ongoing fee.

As franchising involves sharing your intellectual properties with your franchisees, local enterprises are strongly encouraged to consider specific intellectual property issues before turning your business into a franchise system. There are many cases where franchisors suffered unnecessary losses due to inadequate planning or consideration being given to specific intellectual property issues.

Potential pitfalls

In one case we have come across, a franchisor lost his trade mark in a territory. Due to inadequate advice, this franchisor permitted the franchisee to register and own the trade mark for that territory.

In another case, the franchisor trained the franchisee and shared most of his trade secrets including his secret recipe. The franchisee, upon the expiry of the franchise period and not being bound by any contractual obligations, established his own business by leveraging on the know-how he has acquired during the franchise period.

To strengthen your franchise system and address specific intellectual property issues, local enterprises should consider the following:

- ◆ Ask yourself what makes your business successful? Is it your brand, your proprietary technology, your unique business method, your secret recipe or the few key personnel that you have?

- ◆ After knowing what contributes to your success, you need to consider how best to

protect them. Can you and should you protect them through registerable intellectual property rights such as patents or trade mark or leave them as unregistrable intellectual property rights such as copyright or confidential information?

Adopting an appropriate method to protect your key intellectual properties is not only effective business insurance for you but will also provide potential franchisees with confidence that the intellectual property rights that they are licensing from you is secure and can be used to restrict competitor's entry into the market.

In addition, you should consider strengthening your management process to minimise the risk of losing these intellectual properties. For example, registering your trade marks in different classes and territories that you plan to expand your business to, the use of copyright in your works and documentations, and the use of confidential agreement and clauses to protect your proprietary information.

- ◆ Your next decision will be to decide what intellectual properties you can share and what intellectual properties you can't share with your franchisee. For example, if you own a successful restaurant and your secret recipe is the key to the success of your business today, you will be advised not to share your secret recipe with your franchisee. As an alternative, your franchisee could be receiving on a periodic basis pre-mix ingredients sufficient to prepare your signature dish.

- ◆ The success of your franchisees is your business. The performance of your franchisees will affect the perception and value of your overall business. You will need to determine how you can control the quality and performance of your franchisees. Take the case of a wellness operator, in order to

maintain and improve the perception of its clients, the franchisor may require that all therapists, including those employed by the franchisees, be trained by the franchisor periodically to ensure that the service delivered will continue to meet the expectations of its clients.

- ◆ Implement your franchise system on your own outlets or operating units. The best method of securing objective feedback on your franchise system is to implement the system on your own outlets or operating units. Furthermore, implementing your franchise system on your operating units is a step towards standardisation of your procedures and policies across the operating units, be it self-owned or franchised. Your self-owned operating unit could also serve as a show-case to your potential franchisees.

Success factors

The establishment of a franchise system has to be undertaken with suitable expertise, patience and capital. The time taken for establishing a franchise system and preparing it for marketing can be as long as three years. It may take another three years before you, the franchisor, begin to see positive contributions from the investment you made in setting up the franchise system. Although franchising is one of the most effective means of exploiting your intellectual properties, local enterprises are strongly encouraged to first strengthen your business model, set up and implement a franchise system to test it on self-owned outlets, and consider various intellectual properties issues before taking the leap into the franchise world.

*The writers are partners of
Vanden Advisors LLP*