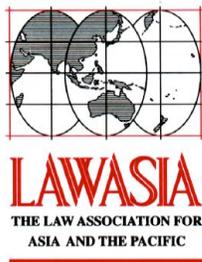




7th **LAWASIA** International Moot

RESPONSES TO REQUESTS FOR FURTHER CLARIFICATIONS



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Applicable Law

SR#1 LAWASIA provided document 120502 - Indonesian Franchise Regulations. (the Decree of the Minister of Industry and Trade No. 259/MPP/Kep/7/1997) which has been replaced by the Government Regulation No. 42 of 2007 and the Decree of the Minister of Trade No. 31/M-DAG/PER/8/2008. Which are to be used in this Moot?

Response: The applicable version of the law, even if different from the one provided by LAWASIA, should always be used.

Caveat: If the law was changed after the events to which the law is to be applied occurred, the new law *may not* be the “applicable version of the law” for several possible reasons including: (1) the effective date of the changes may make them applicable only to events taking place after the new law was adopted or possibly even some time thereafter and (2) a court or arbitral tribunal may decline to apply the “new law” if it significantly affects the rights and obligations of the parties under the earlier law.

SR#2 Article 3 of the Government Regulation on Franchise No. 42 of 2007 requires that a franchise arrangement must fulfill the following criteria:

- (a) The franchise must have a distinctive business character;
- (b) The franchise must be proven to be beneficial;
- (c) The franchise must have a written Statement of Purpose for goods and/or services being offered;
- (d) The franchising arrangement must be easy to apply, and should provide simple training procedures;
- (e) The franchisor must provide continuous support; and
- (f) The franchisor’s intellectual property rights must be registered or in the process of registration

The Moot Problem does not indicate whether all of these requirements have been satisfied - may Teams assume that all listed criteria have been met?

Response: Yes. All relevant government regulations have been complied with and Dr. Budiamman received the necessary Franchise Certificate [STUPW].

SR#3 Does the Applicable Law Clause (XII (B)) apply only to the Arbitration Clause or is it a part of the overall main contract itself?"

Response: It governs the entire contract.

SR#4 What does the phrase "in the alternative: i.e., under both Indonesian and Singaporean law if they are different" mean?

Response Since one of the most important questions – if not the most important basic question - is what law – Indonesia or Singapore (or possibly the laws of another country) governs the various issues raised in the Problem, Teams should explain what – if any - difference it makes to the outcome of the dispute if each is used to resolve the issue; i.e., (a) how would the issue be decided under Indonesian Law and (b) how would the issue be decided under Singapore law.

SR#5 Did Mr. Wang specifically mention the applicable law clause in the Franchise Agreement to Dr. Budiamman before the latter signed the contract?

Response: No, the only provisions of the Franchise Agreement that Mr. Wang specifically mentioned were Art V: A, B, D & E.

SR#6 Are ALL the issues listed on page 6 of the Moot Problem supposed to be argued to achieve the claims/counter claims as specified in page 5 of the Moot Problem (breach of franchise agreement and damage to reputation) OR may some of them be argued independently of the claims/counter claims.

Response: Teams may present their arguments – both written and orally – in the sequence that they believe is most appropriate; what is essential is that **all** be fully covered.

Caveat: During the oral portion of the Moot, the Presiding Arbitrator may determine the order in which the arguments re to be presented,

Arbitration

SR#7 Are Mr. Ji and Mr. Wang the Claimants in the present dispute or is GWNS the Claimant?

Response: The Notice of Arbitration was submitted and signed by both Mr. Ji and Mr. Wang in their capacities as Co-Managing Directors of GWNS LLC. The named Claimant is Great Wall Noodle Shop LLC and the named Respondent is Adi Budiamman, M.D.

SR#8. During the case management meeting or any time before, did the parties or the director of KLRCA discuss the applicability of the KLRCA Fast Track Rules, 2nd edition 2012 to this arbitration?

Response: Yes, the Assistant Director of KLRCA discussed them extensively and both parties indicated they fully understood them.

SR#9 Did any of the parties made any reservation on the provisions of KLRCA Fast Track Rules?

Response: No

SR#10 Article 3 of the KLRCA Rules requires that the notice of arbitration must be sent to the opposite party and a copy has to be sent to the director of the arbitration center. Did this notification reach the director? Did this notification reach the opposite party, i.e., Dr. Budiamman, in time?

Response: All documents were submitted and received in a timely manner.

Caveat: Note that The Problem on page 5 lists the **seven specific issues** to be covered at the Bali Hearing. Only #1 deals with the Arbitration itself: **“Is the Arbitration agreement valid and enforceable?”** i.e. Does the tribunal have the power/authority to resolve this dispute. The tribunal’s authority or “jurisdiction” is potentially an issue in all arbitrations which, by their nature, are consensual. Listing it as “an Issue” here does not indicate that either of the parties has challenged – or will challenge - the authority of the Arbitral Tribunal. **More importantly, none of the seven issues relate to procedural aspects of the arbitration, including compliance with the applicable Rules. Thus non-compliance with any KLRCA Rules should not be raised at this time.**

Menu

SR#11 What percentage of customers requested substitution of lamb for pork?

Response: No records were maintained at either restaurant but employees estimate that it was rather uncommon in the Jakarta restaurant (perhaps 1 in 40 or 50 customers) for customers to request the substitution but more common in the Medan restaurant (perhaps as many as 1 in 10 or 15 customers).

SR#12 What percent of the monthly sales were for “The Special of the Day?”

Response: Detailed records were not maintained and it varied quite substantially depending on the popularity of the particular “Special of the Day.” On some days, the “Special” represented as much as one half of the sales; on other days it was as little as 10% of the sales. Dr. Budiamman generally continued to offer Indonesian dishes even if they were not very popular as an option for customers who preferred Indonesian food.

SR#13 Did any of the other GWNS Franchisees complain about the dishes being offered at Dr, Budiamman’s two restaurants?

Response: No. [There is no reason to believe that they were aware he was serving dishes which were not included on the approved (Official) Menu.]

SR#14 Why did Dr. Budiamman decide to offer the Indonesian dishes that were not listed in the authorized menu?

Response: He believed that providing both types of cuisine would increase business, especially in the Medan restaurant. (He also personally enjoys several Indonesian dishes which he wanted to make available to customers in his restaurants.)

SR#15 Did Dr Budiamman's restaurant profits decline after he discontinued offering a wide range of Indonesian dishes and limited the non-Chinese dishes to the a single Indonesia “Special of the Day” following receipt of the email from GWNS on 4th November 2011?

Response: Yes, sales and profits declined by approximately 15%.

SR# 16 Do any of the Great Wall Noodle Shop in China serves local dishes that are not on the Authorized Menu?

Response: Yes, but they were specifically authorized by Mr. Ji.

Uniforms & Clothing

SR17a Was hijab the only unauthorized clothing worn by the female employees or were there other modifications to the uniform?

Response: It was the only non-conforming item that was noted by the GWNS representatives.

SR 17b Did the female employees of the two Indonesian restaurants generally wear a hijab in public before being employed by Dr. Budiamman?

Response: Most but not all did; it was the request of some employees that prompted Dr. Budiamman to allow the wearing of hijab while at work. To enhance uniformity Dr. Budiamman encouraged – but did not require - all female Muslim employees (virtually all female employees were Muslim) to wear the “approved” hijab; almost all did.

The Individuals

SR#18 Did the Chinese restaurant where Dr. Budiamman worked while he was a college student offer both Chinese and Indonesian dishes?

Response: No, it served only Chinese dishes, mainly Cantonese cuisine.

SR#19 What is Dr Budiamman's nationality and religion?

Response: He is Indonesian by birth and a Sunni Muslim.

SR#20 How long did he study in Singapore?

Response: He spent seven years studying in Singapore but did not reside in Singapore the entire time.

SR#21 How frequently have Wang or Ji been to Indonesia? Have either both traveled extensively in Indonesia? How aware are they of the customs and practices in Indonesia?

Response: Before opening the two GWNS restaurants, they had only traveled to Jakarta, Jogjakarta and, of course, Bali ...for pleasure. They had never been to Sumatra. It may be assumed that they were as familiar with “the customs and practices” as the average tourist.

SR#22 Is Mr. Ji's wife a partner/ director/ employee/ representative/ etc. of Great Wall Noodle Shop?

Response: No. She has worked part time in one of the restaurants in China.

SR#23 Has she accompanied Ji or Wang on any other business trips?

Response: She frequently accompanies her husband on business trips, regardless of whether he is accompanied by Mr. Wang.

Other Requests

SR#24 Is GWNS a member to Franchising and Licensing Association (FLA) Singapore?

Response: No.

SR#25. Does GWNS maintain a web site which provides information about 'Menu' and/or picture image of its employees?

Response: Unfortunately, NO!

SR#26 Does Issue B-7 include the violations of rights of *third parties* - in this case employees to the franchisee?

Response: Both the rights of **the employees** and Dr. Budiamman are at issue.

SR#27 Which communication should be considered as the actual notice of termination:
a) the email that was sent on November 4 or b) the letter sent after the 2nd inspection (on/about November 19)?

Response: The parties have agreed that the second letter should be treated as the notice of termination.

SR#28 Were the former employees of the two Indonesian GWNS restaurants (hired by Dr Budiamman) rehired by the new management?

Response: Many of the food preparers and servers were rehired but few if any of the "management team" (e.g., bookkeeper, advertising manager, Chief Cook, shift supervisors, etc.) were.

SR29 On or about November 22, 2011, Mr. Ji and Mr. Wang sent a letter to Dr. Budiamman terminating the franchise and directing him to close both restaurants and remove the signage within 15 days. He initially refused to comply with the request. Did Dr. Budiamman ever close the two restaurants and, if so, when?

Response: Immediately after the Case Management Meeting was held, Dr. Budiamman – on advice of counsel – closed and vacated both restaurants.

SR#30 Did Dr. Budiamman respond to Mr. Wang after receiving a copy of the Franchise Agreement he had signed?

Response: He did not “respond” or formally acknowledge its receipt but he did proceed to open and operate the two restaurants and has made all required payments in a timely manner.

SR#31 The Franchisors are seeking “damages for breach of Franchise Agreement, trademark infringement and damage to the reputation of the Great Wall Noodle Shop.” (Page 5 of **Moot Problem**). Are mooters expected to deal with the latter two issues at this time – in the Memorials or in the Bali arbitration hearing?

Response: NO! Mooters are directed to deal with the seven specific issues listed on page 6 of the Problem; damages are NOT to be addressed at this time. See p. 7.

Errors/Corrections

C-1 Art XIV(A) of the Franchise Agreement refers to Art VIII D for "post-term noncompete obligations." There is no Art VIID; the noncompete obligations are contained in Art VI D.

C-2 Roman numerals [e.g., Art XIV(A) and Art VI D] and Arabic numbers [e.g., Art 14 and Art 6 D] are frequently used interchangeably. The Author apologizes for the inconsistency – they both should be treated as referring to the same provisions in the Franchise Agreement.

Section G of the (initial) Responses to (first) Requests for Clarifications states:

5. Are the “local dishes” such as “maize cake, wild vegetable cake, millet gruel...” alternative names for the dishes on the authorized menu or totally different dishes?

R. They are not alternate names for authorized items; **they are Indonesian dishes** – the “authorized menu” is limited to Chinese dishes.

However, as paragraph 1 of the **Moot Problem** explains that these dishes were “**local dishes**” served at the Great Wall Noodle Shop in **China**.

CORRECTION: They **are local Chinese dishes** – not local Indonesian dishes. However, there are NOT included on the “Authorized Menu” and therefore may not be served in any GWNS without specific permission from Mr. Ji or Mr. Wang, which has been given for some of the restaurants in China.

Wednesday, 1 August 2012