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Regional Guide to Franchising Law in Mainland Southeast Asia

CAMBODIA

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Cambodia's steady, robust economic growth continues to draw foreign direct investment (FDI), in addition to increasing the purchasing power of the country's population. The World Bank puts the growth rate of Cambodia's economy at 7.7% between 1995 and 2018, and during that time, Cambodia has transitioned from being classified as a low income country to a lower-middle income country and has developed a sizable middle class, in particular in Phnom Penh. Along with economic growth, an expanding middle class, and a welcoming investment framework, Cambodia has witnessed the entrance of a number of international franchises, especially in the food and consumer goods sectors.

Local franchising typically consists of direct franchising—often involving home businesses such as laundry services—whereby the franchisee is given training and provided with systems to operate successfully and economically. Most international franchising in the country takes place through master franchise agreements. Master franchising can save a franchisor the expense and uncertainty of setting up infrastructure in an unfamiliar setting like Cambodia.

Cambodia has not yet enacted a comprehensive franchising law. While the Ministry of Commerce is currently developing a Law on Commercial Contracts, which will likely include a section on franchise agreements, there is no clear timeline for the law's enactment. In the meantime, franchising is governed primarily by the Civil Code, the Law Concerning Marks, Trade Names and Acts of Unfair Competition ("Trademark Law"); and the Notification on the Recordal of License Contracts and Franchise Contracts, dated March 12, 2015 ("Franchise Contract Notification").

Franchise Agreements and Fees

Though an overseas franchisor is not required to use a separate entity to enter into a franchise agreement with a franchisee in Cambodia, this can simplify audit procedures and avoid the disclosure of the parent company's confidential information.

For franchise agreements prepared in a foreign jurisdiction, franchisors should carefully localize the following provisions to ensure they are enforceable in Cambodia:

- Dispute resolution clauses
- Intellectual property provisions
- Guarantee provisions
- Non-complete obligations
- Real estate provisions
- Tax-related clauses

While Cambodian law does not provide any requirements on pre-contract disclosure, all information provided in the franchise agreement must be accurate. If a party enters into a contract on the basis of another party's misrepresentation, the Civil Code stipulates that they are entitled to rescind the contract and claim for damages from the party who made the misrepresentation. Further, under the same legislation, a personal guarantee is invalid if the guarantor was not fully informed of all material information on the guaranteed obligation at the time the guarantee was provided.

Cambodia does not currently have specific competition legislation. Although the Ministry of Commerce is working on a draft Competition Law, there is no timeline for its enactment. However, it is common for foreign companies to insert non-competition provisions in their franchise agreements to restrict franchisees from engaging in any activities that compete with the franchisor.

Initial fees, continuing fees (management charges), advertising contributions, required advertising spend, and other customary franchisee fees are common in franchise agreements in Cambodia. The franchisor can also request fees for licenses for the import and distribution of products regulated by the Cambodia Department of Essential Drug and Food.

There is no restriction on the amount that can be charged for initial fees, continuing fees or charges, advertising contributions, or required advertising spend. However, for tax purposes, advertising contributions and required advertising spend will generally be treated as royalties payable to the franchisor.

Interest on overdue payments is allowed under the Civil Code, with a default interest rate of 5% per year unless specified otherwise. There is no maximum interest rate that can be charged on overdue payments, except in the context of a loan. If interest accrues unpaid for over one year despite payment being demanded of the franchisee, the franchisor can add the overdue interest to the principal amount. There are no specific statutory limitations on the right of a franchisor to terminate a franchise agreement. Termination rights (including compensation for early termination) are governed by the terms of the agreement, and breach of a contractual provision concerning termination may be subject to a civil action for damages. Any contractual provision that purports to limit a defaulting party's liability for intentional non-performance, or non-performance resulting from gross negligence, is deemed to be void and unenforceable. In addition, a contractual provision providing for the payment of liquidated damages does not preclude a claim for additional damages arising from a breach or termination of the contract.

Typically, liquidated damages clauses are enforceable in Cambodia as long as the damages amount reasonably correlates to the anticipated losses resulting from a breach. Liquidated damages fixed by the parties that are deemed punitive or grossly higher than the amount of damages actually suffered may be lowered by the court. The court is likewise authorized to award additional damages if the actual damages exceed the liquidated damages provided under the contract.

Intellectual Property

Intellectual property is another key part of franchise agreements, with franchisors typically granting franchisees the right to use trademarks, systems, logos, advertisements, patents and industrial designs, and know-how in connection with the franchised business.

Trademark owners need to register their trademarks with the Department of Intellectual Property Rights (DIPR) to receive protection under local law for a term of 10 years (renewable). Since Cambodia is a member of the Paris Convention for the Protection of Industrial Property, a trademark priority claim period of six months is applicable. To maintain registration and avoid cancellation, the owner of the trademark must file an Affidavit of Use/Non-Use for the mark within one year following the fifth anniversary of the date of registration (or of the renewal date). In 2015, Cambodia became a member of the Madrid System; thus, trademark registration applications initiated at a national or regional IP office of another party to the system can also be designated for filing in Cambodia.

Under article 19 of the Trademark Law, any license agreement for trademarks—including a franchise agreement with provisions on trademark licenses—must impose the obligation on the licensor to effectively control the quality of the goods or services in connection with the mark used; otherwise, the contract will not be valid.

In theory, the Trademark Law requires all trademark license agreements to be registered with the DIPR. However, in practice it is only necessary to register a trademark license agreement—or a franchise agreement that contains trademark license provisions—if the licensor wants to allow the licensee the right to enforce the agreement against third parties (e.g., persons in Cambodia infringing on the licensor's trademarks). The official fee to record a franchise agreement is KHR 400,000 (approx. USD 100) per trademark.

Similarly, patent and industrial design licenses should be registered with the Ministry of Industry and Handicrafts (MIH). Cambodia is a member of the Paris Convention for the Protection of Industrial Property, a contracting state of the Patent Cooperation Treaty (PCT), and a contracting party to the Hague Agreement on the International Registration of Industrial Design. Although Cambodia lacks the infrastructure to examine patent applications, the MIH has made it possible to obtain patent protection in Cambodia through a number of agreements with other governments that set out an accelerated process that can be completed in months, not years. These agreements have been made with the Intellectual Property Office of Singapore, the Japan Patent Office, the European Patent Office, the China National Intellectual Property Administration, and, more recently, with the Korean Intellectual Property Office.

Foreign copyrights are not protected in Cambodia unless the work is created by a person who is resident in Cambodia, created by a legal person with a registered office in Cambodia, or first published abroad and registered in Cambodia within 30 days of the first communication to the public. This means that franchisors' manuals and other similar materials may not be protected in Cambodia through copyrights, and other means of protection (e.g., by keeping it as a trade secret or through the patent process) should be sought.

Cambodia does not currently have any law governing trade secrets. A draft law on trade secret is still in the negotiation stage, and there is no specific timeline for its enactment. Mostly, franchisors use non-disclosure clauses in their franchise agreements to secure and protect their know-how from third parties.

Dispute Resolution

Choosing a foreign country's law as the governing law for a franchise agreement does not contravene Cambodian law. However, in practice, local courts may be unwilling to apply foreign law to disputes before them. In addition, certain subject matter (such as advertisement approval requirements, real estate, and zoning) can only be governed by Cambodian law.

Foreign franchisors should carefully consider the dispute resolution mechanism provided in their franchise agreements. Under Cambodian law, foreign court judgments are not enforceable in

Cambodia, unless, among other requirements, there is a guarantee of reciprocity between Cambodia and the country in which the court is based. Cambodia has only entered into such an agreement with Vietnam.

Cambodia is, however, a member of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, so foreign arbitration awards are enforceable in Cambodia. Further, Cambodia has its own domestic arbitration institution called the National Commercial Arbitration Center. Foreign parties almost always include arbitration clauses in their franchise agreements, and they usually require arbitration to be conducted under the rules of an established foreign arbitration body such as the Singapore International Arbitration Centre (SIAC). Nevertheless, most foreign parties tend to conclude their disputes by arriving at a settlement.

LAOS

Dino Santaniello

Eclipsed by its more prominent neighbors—China, Thailand, and Vietnam—Laos has often been overlooked by foreign investors seeking to capitalize on investment opportunities in the region. However, thanks to an increased commitment from the government to ease restrictions on foreign direct investment (FDI) and efforts to create a more well-rounded economy that is less dependent on natural resources, Laos has witnessed a surge of new franchise operations over the past few years. From food and beverage operators to car rental providers and clothing retailers, these new franchises represent a variety of different industries and help to diversify the Lao economy.

While there are no specific franchising regulations in Laos, there are a number of other pieces of legislation that govern franchises in the country.

The Decision on Wholesale and Retail Businesses 2015 No. 1005/MOIC.ITD, dated May 22, 2015, defines the term “franchise” and stipulates that general wholesale and retail activities can be carried out under this definition. While there are no prohibitions on foreigners who wish to invest in a franchise business, there are specific requirements and restrictions on FDI. For example, the minimum registered capital imposed on foreign investors will depend on the share equity held in the company carrying out the franchise. Depending on the business activities of the franchise, additional restrictions on the ratio of shares between foreigners and Lao nationals may apply.

Because there is no law on franchising, there are no specific provisions that must be included in franchise agreements in Laos. However, all franchise agreements are governed by the common rules of the Law on Contract and Tort No. 01/NA, dated December 8, 2008 (Contract and Tort Law), and the Law on Notary No. 11/NA, dated November 26, 2009 (the Notary Law). The latter law provides that a contract (a Lao-language version will be requested) must be certified by the Notary Office of the Ministry of Justice or one of its related departments. This certification is important because it proves that a contract is valid and, thus, enforceable against a third party. There are no statutory pre-contract disclosure requirements in Laos.

Franchise Agreements

With respect to franchise agreements particularly, there are no requirements that the agreement be registered with the local Trademark Office. A draft regulation on trademarks and trade names expected soon would make it obligatory for franchise agreements be registered with the local Trademark Office. The Contract and Tort Law provides for a duty of good faith in the performance of contracts. Though "good faith" in negotiations of franchise agreements is not legally defined or described, it can generally be construed as performing a contract without the intention to defraud the other party, or to act without malice.

Clauses that could be deemed anti-competitive should also be treated very carefully. For instance, imposing different prices or terms of purchase/sale for the same goods or services is prohibited by the Law on Business Competition, No. 60/NA, dated July 14, 2015. Similarly, this law prohibits the imposition of terms and conditions through a sale or purchase agreement, as well as the act of forcing the performance of obligations that are not required by contract. This provision aims to protect franchisees from franchisors who may attempt to abuse their power during negotiations or during the performance of the contract. Finally, the Law on Business Competition expressly prohibits price fixing. Franchisors are thus not permitted to impose a price related to their goods or services upon franchisees, except in very particular circumstances.

Non-compete clauses that amount to an absolute or excessive restraint of trade are not permitted. What is usually permissible, however, is a reasonable restraint that is narrow in scope and specific to the circumstances. Despite the absence of case law defining a reasonable scope for a non-compete provision, provisions with a very narrow scope relating to specific circumstances would likely be enforceable. For these reasons, post-contractual non-compete clauses should be drafted carefully, identifying a reasonable and clearly defined scope.

Intellectual Property

Issues surrounding the protection of all forms of intellectual property are important in franchisor-franchisee relationships. There is no requirement to register trademarks under Lao law prior to circulating goods or services in the country; however, franchisors may benefit from doing so. Laos uses the first-to-file system for trademark registrations, meaning that the first person to file a trademark will own the exclusive rights over that mark. According to the Law on Intellectual Property No. 38/NA, dated November 15, 2017, registration of a trademark gives the registered owner the ability to act against infringers and to enforce their rights. For instance, a franchisor or franchisee in Laos can seek assistance from authorities to conduct seizures of counterfeit or imitation goods, provided that the mark owner has provided certified evidence that the goods are indeed fake.

Copyrights do not need to be registered in order to be protected by law, as the rights arise automatically when a work is created. However, an official notification claiming copyright ownership can be useful as evidence in case of a violation or dispute.

Trade secrets are expressly mentioned under the law on intellectual property and also do not require registration in order to be protected. They will remain protected as long as the information (1) remains confidential, (2) has trade value, and (3) is not easily accessible. However, it would be prudent to set out contract provisions regarding the relationship of the franchisor and franchisee regarding trade secrets and their protection.

Similarly, it can also be beneficial to ensure that franchise employees (including third-party contractors) are contractually informed of IP issues—for instance, through standard confidentiality and IP acknowledgment and assignment, and contingency clauses in employment contracts.

Taxation and Dispute Resolution

Under the Law on Tax No. 70/NA, dated December 15, 2015, a 10% withholding tax applies to payments made with respect to dividends and a 5% withholding tax applies to intellectual property royalty fees. Taxation rates may differ from those prescribed in the law (and outlined above), if the recipient of the payment is from a country that has signed a double taxation agreement with Laos. Currently, this applies to Brunei, China, Luxembourg, Malaysia, Myanmar, North Korea, Russia, Singapore, South Korea, Thailand, and Vietnam.

In Laos, there is no dispute resolution body with specific responsibility for handling franchise disputes. Generally, franchise operators in Laos prefer to remedy disputes by filing complaints with the relevant administrative bodies (determined by the nature of the dispute), instead of filing complaints with the Lao People's Court. Mediation is often considered a prerequisite to filing a complaint with the Lao People's Court, which is an option if the administrative remedy of the mediation process fails.

Laos is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Accordingly, foreign arbitral awards are recognized and enforceable in Laos, as long as they do not affect the sovereignty of Laos, contradict the country's laws, or affect the "peace and orderliness" of Lao society.

MYANMAR

Sher Hann Chua

The relaxation of foreign investment restrictions and a growing, aspiring middle class have encouraged new players to enter Myanmar's franchising industry in recent years. Previously, both Western and Asian franchises in Myanmar predominantly operated in the food and beverage industry; however, in the last few years, the country has witnessed a growth spurt of franchise operations in the services and education sectors. Local franchising is still relatively uncommon. International franchise brands typically enter the Myanmar market by appointing a local master franchisee—which helps in dealing with legal and regulatory restrictions applicable to foreign investors, as well as the challenges of understanding local business frameworks and infrastructure.

Myanmar does not currently have any specific legislation regulating franchise relationships, and there are no statutory, pre-sale disclosure requirements. Nevertheless, franchise relations are subject to other relevant legislation on contracts and business operations, such as the Competition Law 2015, the Consumer Protection Law 2019, the Contract Act 1872, the Myanmar Companies Law 2017, and the Trademark Law 2019.

Franchise Agreements and Fees

Therefore, in drafting, negotiating, and executing franchise agreements, a franchisor should be careful to observe the existing laws. Abusing bargaining power or imposing conditions that interfere in the franchisee's business operations may violate provisions of local law. For instance, charging different franchise fees to different franchisees may raise anti-competitive concerns, while requiring franchisees to buy products and services only from nominated suppliers may also be deemed a violation of the Competition Law 2015 in certain cases. In addition, restrictive covenants prohibiting franchisees from engaging in a similar business upon the expiration or termination of a franchise relationship need to contain carefully drafted limitations on the applicable term and geographical area.

Parties are free to set the fee and payment requirements in a franchise agreement. Typically, franchisees pay the initial and continuing fees (or management charges), as well as advertising contributions, required advertising spend, training fees, and other customary franchisee fees.

Initial fees and ongoing royalty fees are subject to a withholding tax payable by a non-resident foreign franchisor at a rate of 15%, and by a resident foreign or local franchisor at a rate of 10%. For goods sold or services rendered as part of a franchise transaction by the franchisor, such as operational equipment and training fees, a withholding tax of 2.5% is applicable for a non-resident foreign franchisor; for a resident foreign or local franchisor, no withholding tax is payable. If there are existing double-taxation agreements in place, the withholding tax amount payable by non-resident foreigners may be reduced or exempted, subject to the discretion of the Ministry of Planning and Finance and the Internal Revenue Department. To date, Myanmar has entered into double-taxation agreements with India, Laos, Malaysia, Singapore, South Korea, Thailand, the United Kingdom, and Vietnam. Double-taxation agreements with Bangladesh and Indonesia have also been concluded but have yet to be ratified.

Intellectual Property

As in any jurisdiction, intellectual property should be a central concern in a franchise relationship in Myanmar. Many franchisors are rightly concerned that a former franchisee will utilize the knowledge and experience gained from running a franchise operation to open a competing business. To prevent this, it is vital for franchisors to protect themselves by using clear and comprehensive language in their franchise agreements. As part of this, franchise agreements should contain robust provisions prohibiting the disclosure and use of information, knowledge, and trade secrets obtained from operation of the franchise. Disclosure of trade secrets is punishable under the Competition Law 2015 by imprisonment for up to two years, a fine of up to MMK 10 million (approx. USD 7,700), or both.

In 2019, Myanmar enacted a suite of IP legislation, comprising a Trademark Law, Industrial Designs Law, Patent Law, and Copyright Law. Under the new IP system, trademarks, industrial designs, and patent licenses must be recorded with the intellectual property office to be deemed enforceable in Myanmar. Similarly, under the Science, Technology, and Innovation Law 2018, all agreements on technology transfers must comply with the terms set by the National Council for Science, Technology, and Innovation Development, and must be registered with the designated registrar to be deemed enforceable.

Dispute Resolution

It is common for foreign franchisors in Myanmar to opt for the franchise agreement to be governed by foreign laws, and for disputes to be settled via arbitration outside of Myanmar, such as in Singapore under the Singapore International Arbitration Centre rules. Under the Arbitration Law 2016 and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (to which Myanmar is a signatory), foreign arbitral awards are recognized and enforceable by Myanmar courts, except in certain cases. Therefore, unless the dispute arising from a franchise agreement falls within one of the limited exceptions of the Arbitration Law 2016, Myanmar courts are required to honor an election of international arbitration dispute resolution where an arbitration clause has been incorporated into the franchise agreement.

A foreign civil court judgment is enforceable in Myanmar under the Civil Procedure Code if it was issued by a court of competent jurisdiction, was decided on merits, was not obtained by fraud, is not against the principles of natural justice, is in accordance with the principles of international law, and does not contradict any law in force in Myanmar.

THAILAND

Alan Adcock ● Sher Hann Chua

Industry research indicates that there are currently more than 350 franchisors (the majority of which are foreign-owned) and more than 15,000 franchisees in Thailand. Some of the most popular franchise operations are in the food and restaurant sector, services, education, and retailing.

While there are no specific statutes governing franchising in Thailand, the Trade Competition Commission of Thailand has issued a set of guidelines in 2019 to regulate unfair trade practices in franchise businesses. The government has also been contemplating the enactment of the Franchising Business Act. It is widely considered that Thailand may follow the China model as set out in the 2005 PRC Ministry of Commerce's Administrative Measures on Commercial Franchising and the subsequent 2007 Franchise Regulations. An important point to watch here will be whether Thailand follows the China model by requiring a franchisor to prove the viability of its business model by showing a record of profitability at two or more outlets before selling a franchise contract to a franchisee.

Franchise Agreements

The terms of a franchise agreement in Thailand will generally need to conform to the following laws:

- Civil and Commercial Code
- Trademark Act B.E. 2534 (1991), as amended by Trademark Act (No. 2) B.E. 2543 (2000) and Trademark Act (No. 3) B.E. 2559 (2016)
- Patent Act B.E. 2522 (1979), as amended by Patent Act (No. 2) B.E. 2535 (1992) and Patent Act (No. 3) B.E. 2542 (1999)
- Copyright Act B.E. 2537 (1994), as amended by Copyright Act (No. 2) B.E. 2558 (2015) and Copyright Act (No. 3) B.E. 2558 (2015)
- Trade Secrets Act B.E. 2545 (2002), as amended by Trade Secrets Act (No. 2) B.E. 2558 (2015)
- Unfair Contract Terms Act B.E. 2540 (1997)
- Trade Competition Act B.E. 2560 (2017)
- Act Relating to Price of Merchandise and Service B.E. 2542 (1999)
- Revenue Code B.E. 2481 (1938)

Each act cited above is implemented by a set of ministerial regulations, and they each touch on only a few basic aspects of franchise arrangements. The parties must therefore be well aware of all relevant local regulations when negotiating the terms of a given agreement. A deal between parties of equal bargaining power will generally not be disturbed by the Thai courts unless there is a clear public policy reason to do so.

A franchisor must be reasonable in setting terms, or the term may be held to be unenforceable as an unfair limitation on competition. For example, in the context of a franchising arrangement involving use of technology, a "tying arrangement"—whereby the franchisor requires the franchisee to purchase materials from the franchisor (or his or her agent) for use in production of a particular item—may be seen as anticompetitive and might be unenforceable.

Empowered under the Trade Competition Act B.E. 2560 (2017), the Office of the Trade Competition Commission of Thailand recently issued its Guidelines for the Consideration of Unfair Trade Practices in Franchise Businesses in December 2019 (Franchise Guidelines), which is aimed at preventing franchisors from adopting overly restrictive and unfair contractual conditions that could cause damage to franchisees. For example, franchisors are prohibited from stipulating unjustified restrictions on the franchisees, such as forcing the latter to exclusively buy products or services that are irrelevant to the operation of the franchise business from a source designated by the franchisors. Franchisors are also not allowed to prevent franchisees from offering discounts on perishable items which are close to their expiration, and neither are franchisors allowed to discriminate its franchisees by stipulating different conditions without justifiable reasons.

Notably, the Franchise Guidelines also impose pre-contractual disclosure requirements on the franchisor, specifying that franchisors must provide details on matters concerning franchise fee payments, intellectual property rights, renewal and termination terms, and the model of the franchising system, to the franchisee. Under the Franchise Guidelines, franchisors who wish to enter into the market by setting up a branch by their own are also required to offer to right of first refusal to the franchisee operating in that area.

Intellectual Property

One of the most important components of a franchise system is the trademark portfolio of the franchisor. The proprietor of a registered trademark may grant a license to other persons to use it for any or all of the goods or services for which it was registered.

A trademark license agreement, which is typically a separate stand-alone agreement but may also be contained within the franchise agreement itself, must be registered with the Department of Intellectual Property (DIP). The unrecorded use of a trademark by a franchisee or licensee will not be considered as proof of use of that trademark for the purposes of defending the franchisor or licensor's registered trademark from a third-party trademark cancellation action based on alleged non-use of the trademark. Both the franchisor/licensor and the franchisee/licensee may take action against infringers, although the franchisee's/licensee's ability to take action is restricted by the terms of the agreement. Since Thailand is a freedom-of-contract jurisdiction, the contracting parties can adopt any terms or conditions they deem appropriate concerning the ability to take action, as long as the terms and conditions legal, possible, and not contrary to public order or good morals.

Another important component of the franchise is the franchisor's patented technology. In Thailand, the law of patents is primarily enshrined in the Patent Act B.E. 2522 (1979), as amended, together with various ministerial regulations. Section 41 of the current Patent Act requires that a patent license agreement be similarly registered with the DIP.

A franchisor must be vigilant to identify and carefully control the use and disclosure of its proprietary trade secrets, such as secret know-how, formulas, recipes, inventions, client lists, and sales data. This can be done in a separate nondisclosure or confidentiality agreement or with an airtight confidentiality provision within the franchise agreement itself (or both). In Thailand, trade secrets are protected under the amended Trade Secrets Act B.E. 2545 (2002). Provisions in this law protect against unauthorized disclosure of trade secrets and enable the court to issue injunctions against disclosure of trade secrets. The TSA provides for broad protection and severe penalties for trade secret infringement. However, one can only resort to the TSA for enforcement purposes if careful, demonstrable steps have been taken to maintain the secrecy of whatever proprietary information is in dispute. The expansion of such protection should be viewed as a benefit for trade secret owners in seeking remedial action for unauthorized disclosure of secrets.

VIETNAM

Thao Thu Bui ● Tu Ngoc Trinh ● Waewpen Piemwichai

Franchising has become increasingly commonplace in in Vietnam in recent years. International franchise brands are now commonly seen in Vietnam's major cities, with particular prominence in the fields of food and beverages, fashion, and convenience stores. In addition to foreign franchises, local restaurant groups have seen tremendous growth. By May 2019, the Ministry of Industry and Trade had granted over 230 franchise licenses. With the franchise model now well established in restaurants and retail, areas such as services, entertainment, and technology are expected to develop in the near future. Direct franchising is usually used in domestic franchises. Overseas franchisors expanding into Vietnam have used a variety of franchising models, ranging from direct franchising methods (for example, multi-unit or development agreements) to master franchise agreements. Single-unit franchising methods are uncommon.

There are no specific laws in Vietnam to encourage franchising. Franchising is governed by the Commercial Law, along with the following implementing legal instruments:

- Decree 35/2006/ND-CP, as amended by Decree 120/2011/ND-CP and Decree 08/2018/ND-CP
- Decree 185/2013/ND-CP, as amended by Decree 125/2015/ND-CP and Decree 141/2018/ND-CP
- Circular 09/2006/TT-BTM, as amended by Circular 04/2016/TT-BTC

The Commercial Law vests control of the business operations with the franchisor, and the financial obligation to perform such business operations with the franchisee. This arrangement can create a significant financial burden for the franchisee if the franchisor decides to change the layout or design of the operation outlet, resulting in a substantial change to the franchisee's financial obligations. Regulations do require the franchisor to inform its franchisees of any potentially consequential changes, but they do not provide legal means for franchisees to refuse the changes or escape from the resulting obligations.

The offer and sale of franchises is also likely to trigger Vietnam's rules relating to mergers and acquisitions. Since there is no single body of legislation governing mergers and acquisitions, several areas of law (such as investment, company, competition, securities, tax, and foreign exchange law) may apply. The ongoing relationship between a franchisor and franchisee is also likely to be affected by several areas of law, including intellectual property and contract law.

The most recent Law on Competition, which took effect on July 1, 2019, contains a number of provisions that could potentially restrict franchising activities. It is especially restrictive of agreements that restrain technical or technological development, or agreements barring trade with outside parties, and prohibits various price fixing, supply, exclusivity, and other potentially competition-lessening arrangements if such agreements "have or potentially have the effect of significantly restricting competition in the market."

The primary regulatory authority responsible for enforcing franchising laws and requirements in Vietnam is the Ministry of Industry and Trade (MOIT). All franchising activities from overseas into Vietnam must first be registered with the MOIT before they are carried out.

Franchise Agreements

When preparing to enter into a franchising agreement, which franchising regulations require to be made in Vietnamese, the general rule is that franchisors and franchisees have the right to freely negotiate the terms and conditions of the franchise agreement, including their rights and obligations toward one another.

The franchisor must provide a copy of the franchise agreement form and a franchise disclosure document to the proposed franchisee at least 15 business days before the signing of the agreement. The franchise disclosure document should include general information on the franchisor (such as incorporation details), initial costs to be paid by the franchisee, rights and obligations of the franchisor and the franchisee, and a description of the franchise system. However, it does not include any information on the franchisee. In addition, the proposed franchisee is responsible for providing all reasonably requested information to the franchisor. As for local sub-franchising, only the local sub-franchisor will be under these various regulatory obligations, rather than the overseas franchisor and IP owner.

Non-compete covenants are not expressly prohibited by law and are commonplace in franchise agreements. However, enforcement of these covenants is relatively untested.

A franchisor can restrict a franchisee's freedom to sell, transfer, assign or otherwise dispose of the franchised business. It is key to ensure that franchisors have a broad discretion to reject the sale, transfer, or assignment of the franchised business. Vigilance and responsiveness are equally important—Vietnamese law presumes that the franchisor has given its approval if it does not give a written response to the franchisee within 15 days of receipt of a request for an assignment.

Parties may freely decide on the payment of fees, such as franchisee or initial fees, continuing fees, and advertising contributions. Interest can be charged on overdue payments, and if the governing law of the franchise agreement is Vietnamese law, there should be a limitation on the amount of interest that can be charged.

Intellectual Property

The assignment of intellectual property rights is part of the franchising agreement terms and can thus be decided freely by the parties. Licenses for trademarks, industrial design rights, and patent rights can be registered with the Intellectual Property Office of Vietnam (IP Office). Under the amended IP Law of 2019, a trademark license agreement is binding on the involved parties as well as third parties, even without recordal at the IP Office. However, licenses for other industrial property rights, such as patents, must still be recorded with the IP Office to be legally binding on a third party.

Vietnamese law does not have any specific definitions of know-how, but generally, business secrets are protected by law and by nature are not registered.

Dispute Resolution

For the settlement of disputes that may arise in relation to franchising operations, the Civil Code allows for a transaction involving at least one foreign organization to be governed by the laws of a foreign country if the parties so agree. However, the foreign law must not be contrary to the "basic principles of Vietnamese law"—and in the past this phrase has been interpreted very broadly. Even seemingly minor inconsistencies could render contract terms unenforceable. Therefore, choosing foreign law the governing law requires that the franchise agreement be closely reviewed to ensure compliance with Vietnamese law.

Foreign arbitral awards and some foreign court judgments can be enforced in Vietnam. As Vietnam is a member of the New York Convention, dispute resolution by foreign arbitration can be enforced in Vietnam if it is recognized by a Vietnamese court. However, a foreign court judgment may be enforced in Vietnam on a treaty or reciprocal basis. The particular dispute resolution forum thus needs to be selected carefully, as the choice of forum can greatly impact the chances of successfully enforcing an award against a local franchisee.

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