

# Tilleke & Gibbins

HANOI AND HO CHI MINH CITY

## FRANCHISING IN VIETNAM

### 1. Introduction

With Vietnam's entry into the WTO, it is expected that franchising activity in the country will increase markedly over the next few years. There are presently a handful of major franchises operating in the country, including Kentucky Fried Chicken, Lotteria, Jollibee, Pho 24, Gloria Jean's Coffees, Buntamita and Cartridge World. In the past, Vietnamese law did not provide a clear basis for franchising arrangements, but the passage of Decree No. 35 and Circular No. 09 in 2006 laid the groundwork for franchising to develop in Vietnam.

### 2. Laws and Regulations

The current laws and regulations governing franchising in Vietnam include the following:

- Commercial Law No. 36/2005/QH11 passed by the National Assembly on 14 June 2005 ("**Commercial Law**");
- Decree No. 35/2006/ND-CP of the Government dated 31 March 2006 detailing implementation of the Commercial Law 2005 regarding franchising ("**Decree No. 35**");
- Circular No. 09/2006/TT-BTM of the Ministry of Trade dated 25 May 2006 providing guidelines on procedures for registration of franchising activities ("**Circular No. 09**"); and
- Decision No. 106/2008/QD-BTC of the Ministry of Finance dated 17 November 2008 on regulating collection rates, policies for collection, payment, management and use of fees collected from registration of franchising ("**Decision No. 106**").

### 3. Requirements for Foreign Franchisors

A foreign franchisor is not required to have a legal presence in Vietnam and is permitted to franchise in Vietnam without establishing a business entity in Vietnam. However, a foreign franchisor is required to have been in business for one year prior to franchising in Vietnam. A Vietnamese primary franchisee must also have been in business under the foreign franchisor for one year prior to sub-franchising in Vietnam. A foreign franchisor registers its activities with the Ministry of Industry and Trade ("MOIT"), while a local franchisor registers with the local Department of Industry and Trade. The Vietnamese franchisee shall have at least 15 days to review a franchise agreement, but this requirement may be waived by the Vietnamese franchisee. The franchise agreement must be in Vietnamese and may be translated into English.

# Tilleke & Gibbins

HANOI AND HO CHI MINH CITY

## 4. Requirements for Vietnamese Franchisees

The regulations appear to require that a franchisee be a company rather than an individual. A franchisee is defined as a “business entity” which is granted a franchise. A prospective Vietnamese franchisee must be registered to engage in a line of business that is suitable and consistent with the goods or services contemplated by the franchise agreement. If the franchisee is a primary franchisee and wishes to sub-franchise, the franchisee shall operate a franchise for at least one year before it may sub-franchise. Franchisees may assign their franchise to another franchisee provided that the franchisor approves and the assignee satisfies the same requirements of the original franchisee.

## 5. Franchising Registration Application

An application to register franchising activities in Vietnam shall include the following:

- an Application for Registration of Franchising Activity in the form prescribed by the MOIT;
- a Franchise Description Document in the form prescribed by the MOIT (which requires the franchisor’s most recent audited financial report);
- a notarized copy of the business registration certificate or certificate of incorporation of the foreign franchisor certified by the competent body of the place where such foreign franchisor was established; and
- notarized copies of certificates of trademark registration in Vietnam or overseas.

The Franchise Description Document requires information such as general information about the franchisor, initial investment and costs payable by the franchisee, other financial obligations of the franchisee, obligations of the franchisee to buy or lease equipment as designated by the franchisor, description of the market of goods/services to be franchised, terms of the franchising contract, protection of trademarks and other intellectual property rights by the franchisor, and pending litigation.

If the above documents are in a foreign language, they must be translated into Vietnamese and notarized, and notarized and consularized in the case of business registration certificates or certificates of incorporation. At present, the fee to file a franchising application with the MOIT is VND 16,500,000 (equivalent to US\$917.00 at VND18,000=US\$1). In theory, within 2 business days from the date of receipt of an incomplete or invalid application file, the MOIT shall provide written notice to the

# Tilleke & Gibbins

## HANOI AND HO CHI MINH CITY

applicant to supplement and complete such file. Also in theory, within 5 business days from the date of receipt of a valid and complete application file, the MOIT shall register the franchising activity of the applicant and provide written notification to the applicant. In practice, delays are common and foreign franchisors should expect to wait up to 3 months for a completed review of their application dossier.

### 6. Intellectual Property

The Franchise Description Document is required to contain the following information related to intellectual property:

- rights to use trademarks and other intellectual property (e.g., patents, etc.);  
and
- details on any relevant registered trademarks and other intellectual property.

In general, as a pre-requisite to franchising in Vietnam, the foreign franchisor should have a registered trademark in Vietnam, otherwise it will not have enforceable trademark rights in Vietnam. As a best practice, the foreign franchisor should have the registration for its trademarks in its own name as the registrant. If the local franchisee is the registrant of the trademark, complications may arise if a dispute occurs between the foreign franchisor and the franchisee. Additionally, it is a best practice for the parties to execute and register a trademark license agreement.

### 7. Key Tax Issues

A foreign franchisor is not required to have a legal presence in Vietnam and is permitted to franchise in Vietnam without establishing a business entity in Vietnam such as a limited liability company. Note that a Vietnamese limited liability company is subject to corporate income tax ("CIT") at the rate of 25%. A foreign franchisor that does not establish a business entity in Vietnam will be considered a foreign contractor in Vietnam on the basis of the franchise agreement signed with Vietnamese franchisees. All fees generated under the franchise agreement, including royalties, administrative fees, advertising fees are subject to foreign contractor tax, rather than CIT at the rate of 25%. The two components of foreign contractor tax are Value Added Tax ("VAT") and CIT (although at a rate much lower than 25%). VAT is calculated as follows:

Amount of VAT payable = (VAT taxable turnover) x (VAT rate as % of taxable turnover) x (VAT rate)

# Tilleke & Gibbins

## HANOI AND HO CHI MINH CITY

In the case of franchising, the “VAT rate as a % of taxable turnover” is 50% and the “VAT rate” is 10%.

CIT is calculated as follows:

Amount of PIT payable = (CIT taxable turnover) x (CIT rate as a percentage of taxable turnover)

The “CIT rate as a percentage of taxable turnover” may be 1% for food services which fall under the category of trading under the CIT regulations.

\* \* \* \* \*

This summary is designed to provide general information only and is not offered as specific advice on any particular matter. Please contact Thao H. Cung ([thao.c@tillekeandgibbins.com](mailto:thao.c@tillekeandgibbins.com)) or Nhu T. Dinh ([nhu.d@tillekeandgibbins.com](mailto:nhu.d@tillekeandgibbins.com)) at Tilleke & Gibbins Consultants Limited in Hanoi (844-3772-6688) or Ho Chi Minh City (848-3936-2068), or by general email at [Vietnam@tillekeandgibbins.com](mailto:Vietnam@tillekeandgibbins.com) if you have any questions or require specific professional advice on particular facts and circumstances.