

FRANCHISING LAW IN VIETNAM

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Following Vietnam's entry into the World Trade Organization in 2007, franchising activity is on the rise. Even in the recent worldwide economic downturn, major franchises have been attracted by the consumer buying potential of Vietnam's 86-million strong population, half of whom are under 25 years of age.

In recent years, several major franchises have registered to conduct franchising activities in Vietnam, including franchises in the restaurant, apparel, education, car rental, real estate, fitness, eyewear, and other fields. It is estimated that more than 70 different franchises are now operating in Vietnam. Prominent franchises that have registered in Vietnam include Kentucky Fried Chicken, Avis and Budget car rental, and others.

Well-known local Vietnamese franchises, such as the fast-growing Pho 24 (noodle soup shops) and several local coffee shops, convenience store and supermarket chains have also registered and are conducting franchising activities in the country, and abroad. Notably, Pho 24 now has approximately 70 stores, including franchises in Indonesia, Australia, Korea, Philippines, and Cambodia. One local bakery has also established more than 30 franchised bakeries in Vietnam.

Up until 2006, Vietnamese law did not provide a clear legal basis for franchising arrangements. Up to that point, some prominent franchises managed to operate in Vietnam through a combination of trademark licensing and technology transfer agreements. However, the 2006 regulations provide a solid legal foundation for franchising. In addition to some basic provisions in the *2005 Commercial Law*, these regulations include:

- *Decree No. 35/2006/ND-CP of the Government dated 31 March 2006 Providing Detailed Implementing Regulations to the Commercial Law in Regard to Franchising Activities ("Decree No. 35");* and
- *Circular No. 09/2006/TT-BTM of the Ministry of Trade (now the Ministry of Industry and Trade) dated 25 May 2006 Providing Guidelines on the Registration of Franchising Activities ("Circular No. 09").*

The key points of these regulations are discussed below.

Prerequisites for Franchisors and Franchisees

Some prerequisites for franchisors and franchisees that must be considered before entering into a franchise arrangement in Vietnam include:

- The business system to be franchised must have been in operation for at least one year prior to franchising in Vietnam (*Decree No. 35*, Art. 5.1, para. 1);
- A prospective franchisee must be registered to engage in a line of business that is suitable with the goods or services contemplated by the franchise agreement (*Decree No. 35*, Art. 6); and
- A Vietnamese franchisee must operate a franchise for at least one year in Vietnam before it may subfranchise (as in a master franchise arrangement) (*Decree No. 35*, Art. 5.1, para. 2).

Registration Requirements

Franchises from abroad are required to be registered with the Ministry of Industry and Trade (MOIT). (See *Decree No. 35*, Arts. 5.2 and 17.) There are also registration requirements for subfranchising. The registration procedures set forth in *Circular No. 09* are quite transparent and expedient, with clear time limits for government action on registration dossiers submitted to register a franchise.

A registration dossier will include copies of the Franchise Introduction Statement and Franchise Agreement, as well as an application and other relevant documents, such as registration documents for relevant intellectual property. These documents must be translated into Vietnamese. (See *Decree No. 35*, Art. 19.)

Disclosure Requirements

Franchisors are required to observe a number of disclosure requirements. For example, the franchisor must provide a Franchise Introduction Statement (similar to a disclosure document) and a model franchise agreement to a potential franchisee for the potential franchisee to review for 15 days prior to signing the franchise agreement, unless the parties agree otherwise. (See *Decree No. 35*, Art. 8.2.) *Circular No. 09* provides a standard form for the Franchise Introductory Statement.

The law also prescribes a duty to update changes to the contents of a Franchise Introductory Statement. Specifically, the franchisor has an ongoing obligation to inform the relevant franchising registration authorities (i.e., the MOIT and/or local Service of Industry Trade) within 30 days when there are changes regarding the contents of the Franchise Introductory Statement. (See *Decree No. 35*, Art. 21.)

The following disclosure information is subject to the ongoing duty to report changes to the MOIT:

- Legal status of the franchisor (*Decree No. 35*, Art. 19.3(a));
- Name of the franchisor (*Circular No. 09*, Appendix III, Part A, Point I.1);
- Address of the franchisor (*Circular No. 09*, Appendix III, Part A, Point I.2);

- Telephone and fax (*Circular No. 09*, Appendix III, Part A, Point I.3);
- Date of establishment of the franchisor (*Circular No. 09*, Appendix III, Part A, Point I.4);
- Information on whether the franchisor is a master franchisor or master franchisee (*Circular No. 09*, Appendix III, Part A, Point I.5);
- Type of business of the franchisor (*Circular No. 09*, Appendix III, Part A, Point I.6);
- Sector of franchising (*Circular No. 09*, Appendix III, Part A, Point I.7);
- Information on the registration of franchising activities at authorised government agencies (*Circular No. 09*, Appendix III, Part A, Point I.8);
- Rights to use trademarks or service marks and any intellectual property of the franchisor (*Circular No. 09*, Appendix III, Part A, Point II.1);
- Details on the trademarks and services marks and rights with respect to intellectual property registered under the law (*Circular No. 09*, Appendix III, Part A, Point II.2); and
- Certificates of protection for industrial property in Vietnam or in foreign countries (*Decree No. 35*, Art. 19.3(b)).

Intellectual Property

In regard to intellectual property, *Decree No. 35* affirms that the licensing of intellectual property in connection with franchising is governed by Vietnam's intellectual property laws. (See *Decree No. 35*, Art. 10.) A franchise agreement may contain a separate section containing provisions on intellectual property, and it is often recommended that a separate trademark licence should be executed by the parties to the franchise arrangement.

The Franchise Introductory Statement must also disclose certain details regarding intellectual property licensed in connection with the franchise agreement, such as, *inter alia*, details on the registrations of trademarks that are used in franchising activities. (See *Circular No. 09*, Appendix III, Part A, Point II.1.) In this regard, it is important to note that the registration of a trademark is generally required prior to commencing with franchising activities in Vietnam. A number of companies have had their franchising activities in Vietnam delayed because they failed to register their trademarks in Vietnam in the past, and were forced to forgo franchising activities until their trademark registrations were issued in Vietnam. Therefore, it is important for companies that may eventually engage in franchising activities to register their intellectual property in Vietnam early.

Conclusion

Vietnam has a clear, relatively simple franchise registration system that is facilitating the registration and operation of more and more franchises every year. With its large, young population that is increasingly interested in foreign brands and its growing economy, franchising activity will continue to increase in Vietnam in the coming years.

This article was first published on www.executiveview.com.