



ICLG

The International Comparative Legal Guide to:

Franchise 2015

1st Edition

A practical cross-border insight into franchise law

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Vietnam

Jim Dao



Tu Ngoc Trinh



Tilleke & Gibbins

1 Relevant Legislation and Rules Governing Franchise Transactions

1.1 What is the legal definition of a franchise?

Under Vietnamese law, a “franchise” refers to a commercial activity in which a franchisor authorises the purchase and sale of goods or the provision of services by a franchisee, conducted by the franchisee on its own behalf, with the following conditions:

- (i) the activity must be conducted according to the method of business organisation specified by the franchisor, and must be associated with the trademark, trade name, business know-how, business mission statements, business logo and advertising of the franchisor; and
- (ii) the franchisor has the right to control and offer assistance to the franchisee in the conduct of the business.

1.2 What laws regulate the offer and sale of franchises?

The offer and sale of franchises are governed by the Commercial Law, Decree 35/2006/ND-CP, Decree 120/2011/ND-CP and Circular 09/2006/TT-BTM, which provide details for implementation of the Commercial Law on franchising activities.

1.3 Are there any registration requirements relating to the franchise system?

Under the franchising regulations as mentioned in question 1.2, foreign franchisors in any business sector must register their franchising activities with the Ministry of Industry and Trade (MOIT) before conducting franchising activities in Vietnam. Domestic franchisors do not need to do so.

1.4 Are there mandatory pre-sale disclosure obligations?

According to Decree 35/2006/ND-CP, unless the franchisor and franchisee agree otherwise, a franchisor needs to provide the proposed franchisee with a copy of the franchise agreement form and franchise disclosure document (FDD) at least 15 business days before the date of entry into the franchise agreement. The proposed franchisee is responsible for providing all reasonably requested information to the franchisor in order for the franchisor to make a decision about whether to grant the franchise to the proposed franchisee.

1.5 Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?

Yes. The sub-franchisor needs to provide a copy of the franchise agreement form and FDD to the proposed sub-franchisee at least 15 business days before the date of entry into the sub-franchise agreement. Additionally, a sub-franchisor must also provide sub-franchisees with written information, including: (i) information about the franchisor; (ii) contents of the master franchise agreement between the franchisor and the sub-franchisor; and (iii) options for dealing with the sub-franchise agreement between the sub-franchisor and the sub-franchisee if the master franchise agreement is terminated.

1.6 Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?

Yes, the format of disclosures (FDD) is prescribed in Circular 09/2006/TT-BTM. The franchisor must update the franchisee on any important changes to the franchise system which affect the franchise business of a franchisee. How often disclosures must be updated depends on the type of information at hand. Certain information, such as changes to the legal status of the foreign franchisor, or information on the relevant industrial property protection certificates in Vietnam or abroad (if applicable), requires that the foreign franchisor must notify the MOIT within 30 days of the change. For other types of information, such as changes to the initial fees payable by the franchisee, other financial obligations of the franchisee, and the financial report of the franchisor, a foreign franchisor must submit an annual report to the MOIT no later than 15 January of each year to report such changes.

1.7 Are there any other requirements that must be met before a franchise may be offered or sold?

Yes, several requirements must be met before a franchisor may franchise in Vietnam. Namely, a prospective franchisee must be registered to engage in business activities that are consistent with the provision of goods or services contemplated by the franchise agreement. The business system to be franchised must have been operating for at least one year prior to franchising in Vietnam. In terms of sub-franchising, a Vietnamese franchisee must operate a franchise for at least one year in Vietnam before it may sub-franchise.

The parties should also check whether the goods or services at hand are in any way restricted from trade under Vietnamese law.

1.8 Is membership of any national franchise association mandatory or commercially advisable?

No. While Vietnam currently has a Franchise Business Association, this association is not well known and has a limited number of members. There is no information on whether this association has its own policies which affect franchise relationships. However, in general, trade association policies in Vietnam are not strong binding tools that affect relationships such as franchises.

1.9 Does membership of a national franchise association impose any additional obligations on franchisors?

No, it does not.

1.10 Is there a requirement for franchise documents or disclosure documents to be translated into the local language?

Yes. The franchise regulations require the franchise agreement to be in Vietnamese. The regulations are silent on the language of the disclosure document, however, it needs to be legalised and translated into Vietnamese before it can be submitted to the MOIT as part of the franchise registration.

2 Business Organisations Through Which a Franchised Business can be Carried On

2.1 Are there any foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a business in Vietnam?

Yes, there are foreign ownership thresholds or restrictions in several business sectors. The Law on Investment and the Law on Enterprises, passed by the National Assembly of Vietnam in 2005, are the primary laws governing the formation of business entities. If foreign investors invest in certain conditional investment sectors, they must comply with the provisions of international treaties of which Vietnam is a member (i.e., Vietnam's WTO commitments).

Under Vietnam's WTO commitments, there are currently some limitations on distribution services for foreign franchisors. These limitations may impact the franchise agreement where it refers to the acquisition by the franchisor of the franchised business, including retail businesses.

2.2 What forms of business entity are typically used by franchisors?

There is no requirement for a foreign franchisor to establish a commercial presence in Vietnam to conduct a franchise business in Vietnam, including the establishment of a corporate entity. If a foreign franchisor does not establish a commercial presence in Vietnam, it is able to grant franchises to franchisees in Vietnam and such franchisees may establish a franchising network in Vietnam under the franchise agreements.

If a foreign franchisor would like to establish a company in Vietnam, the franchisor can choose from different forms of business entities including a one-member limited liability company, a multiple-

member limited liability company, a shareholding company, joint ventures or business cooperation contracts.

2.3 Are there any registration requirements or other formalities applicable to a new business entity as a precondition to being able to trade in Vietnam?

A foreign franchisor does not need to establish a new entity in Vietnam to offer franchises in Vietnam.

If a foreign franchisor would like to establish a company in Vietnam, it will need to prepare an application file to obtain an investment certificate for the company. The contents of the application file may vary depending on the specific type of entity established, the location and size of the project, and the size and method of capital contribution. As a practical matter, depending on the nature of the application, the timing for issuance of an investment certificate can be a few months.

After the licence for establishment is granted, the company will need to carry out the following procedures as required by statute to operate the company:

- (i) making a company seal and registering it with the local police authority;
- (ii) opening a bank account at an authorised local bank;
- (iii) publishing an announcement of the company's establishment in three consecutive issues of a local newspaper;
- (iv) registering the company's accounting system with the Ministry of Finance if the company's accounting system is different from the Vietnamese accounting system; and
- (v) registering trademarks and publishing product specifications, if applicable.

The company will also need to handle related matters such as recruiting and hiring local employees and reporting such to the local labour department, registering contributions of social and health insurance for local employees with the social insurance authorities, obtaining social insurance books and health insurance cards, and obtaining visas and work permits for foreign employees. There are also periodic reporting requirements.

3 Competition Law

3.1 Provide an overview of the competition laws that apply to the offer and sale of franchises.

The Competition Law was enacted in 2004. It was created before the franchising concept was introduced in Vietnam. The regulations on franchising make no reference to the Competition Law, yet the Competition Law contains more than a few provisions that could potentially restrict franchising activities. The Competition Law prohibits agreements that fix prices, share sources of supply, restrict changes to the quality of goods, or impose quantity restrictions and conditions on the sale and purchase of goods. However, such activities are the essence of franchising as they allow the franchisor to control the business system of the franchise.

On the other hand, Decree 35 gives the franchisor the right to require the franchisee to purchase and sell the goods in accordance with the system it dictates. At the time of writing, the government has not yet addressed this issue, so the law is unclear on these inconsistencies. Given the nature of the evolving legal framework on this issue, the parties to a proposed franchise arrangement should check whether a certain approach is reasonable or prudent before entering to the arrangement.

3.2 Is there a maximum permitted term for a franchise agreement?

No, there is no provision that sets out a maximum permitted term for a franchise agreement.

3.3 Is there a maximum permitted term for any related product supply agreement?

No, there is no provision that sets out a maximum permitted term for any related product supply agreement.

3.4 Are there restrictions on the ability of the franchisor to impose minimum resale prices?

The franchising regulations do not impose any cap on the fees chargeable under the franchising agreement. The parties are free to negotiate prices, terms and related conditions. However, such details must be included in the FDD both when submitting it to the MOIT and during the information disclosure process.

3.5 Encroachment - are there any minimum obligations that a franchisor must observe when offering franchises in adjoining areas or streets?

The franchise regulations do not impose any obligations that a franchisor must observe when offering franchises in adjoining areas or streets. The only basis a franchisee has to prevent the franchisor from competing with the franchisee or from appointing another franchisee in the franchisee's allocated territory is the franchise agreement, with terms and conditions agreed to by both franchisor and franchisee.

3.6 Are in-term and post-term non-compete and non-solicitation of customers covenants enforceable?

Non-compete covenants are widely used in franchise agreements and are not expressly prohibited under Vietnamese laws. However, the enforcement of non-compete and non-solicitation covenants is relatively untested in practice. It is not common in Vietnam for a contractual party to request the court to grant an injunction to prevent non-competition covenants. Any such request filed to the court will be considered on a case-by-case basis. Injunctions granted by foreign courts may be recognised and enforced in Vietnam if such injunctions are made by courts in countries which have international treaties with Vietnam governing the matter mentioned in the injunction, or on a reciprocity basis.

4 Protecting the Brand and other Intellectual Property

4.1 How are trade marks protected?

Trademarks are protected in Vietnam if they are registered in Vietnam. The registration can be either conducted at the National Office of Industrial Property of Vietnam (NOIP) or through international registration designating or extending to Vietnam pursuant to the Madrid Convention and the Madrid Treaty. A certificate of trademark registration is valid from the granting date until the end of 10 years after the filing date and may be renewed for unlimited consecutive terms, each of 10 years.

Unregistered trademarks may be protected in Vietnam if they are recognised as "well-known" in Vietnam. However, the enforcement of well-known trademarks that are unregistered in Vietnam is time-consuming and inefficient. Thus, it is always prudent to register one's trademarks as early as possible, especially in light of the fact that Vietnam gives priority to the "first to file".

4.2 Are know-how, trade secrets and other business-critical confidential information (e.g. the Operations Manual) protected by local law?

Yes, know-how, trade secrets and other business-critical confidential information (collectively referred to as "business secrets") are protected if they satisfy the following conditions:

- (i) they are neither common knowledge nor easily obtainable;
- (ii) when used in business activities, they will create advantages for the holder over those who do not hold or use them; and
- (iii) the owner maintains secrecy by necessary means so that the secret will not be disclosed or easily accessible.

Generally, business secrets can be protected without registration procedures. However, if these business secrets meet the protection conditions for inventions or utility solutions, they may be patented by registration with the NOIP.

To prevent the unauthorised use of business secrets, businesses should classify their business information as either technical information or information collected in the course of doing business, and find suitable ways of keeping it confidential. Technical information should be registered as inventions or utility solutions to have better protection. Meanwhile, information collected in the course of doing business should be kept confidential using information security methods.

4.3 Is copyright (in the Operations Manual or in proprietary software developed by the franchisor and licensed to the franchisee under the franchise agreement) protected by local law?

Yes, copyright is protected automatically in Vietnam without any registration requirements. However, due to the limited public awareness on protection of copyright in the country and the weak enforcement mechanism, it is still common for people to download software for personal or even professional use without paying copyright or licensing fees. To effectively prevent unauthorised use of software, the owner should have methods to control or monitor the people who are authorised to use the software. Moreover, registration of the software with Vietnam's Copyright Office will serve as *prima facie* evidence of copyright protection that will facilitate enforcement actions against unauthorised use of software.

5 Liability

5.1 What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations? Is a franchisee entitled to rescind the franchise agreement and/or claim damages?

Failure to comply with mandatory disclosure obligations is considered a violation of franchising regulations. The Vietnam authorities may assess small fines of between VND 6-10 million (approximately USD 285-475, at the time of this writing) on the franchisor for failure to provide complete, accurate information in franchise description documents or in franchise activities. Additionally, Vietnamese law

could require the franchisor to surrender any illicit benefits gained from the violation. The law is silent as to whether a franchisee is entitled to rescind the franchise agreement or claim damages if the franchisor fails to comply with mandatory disclosure obligations. However, Vietnamese law generally allows such remedies to be contracted.

5.2 In the case of sub-franchising, how is liability for disclosure non-compliance or for misrepresentation in terms of data disclosed being incomplete, inaccurate or misleading allocated between franchisor and franchisee? If the franchisor takes an indemnity from the master franchisee in the Master Franchise Agreement, are there any limitations on such an indemnity being enforceable against the master franchisee?

Vietnamese laws are silent on the allocation of liability for disclosure non-compliance or for misrepresentation in terms of the data disclosed being incomplete, inaccurate or misleading between franchisor and franchisee. In these cases, the parties would be generally free to contract.

5.3 Can a franchisor successfully avoid liability for pre-contractual misrepresentation by including disclaimer clauses in the franchise agreement?

This will depend on the facts at hand, but it would be prudent practice for franchisors to include such disclaimers in the franchise agreement.

5.4 Does the law permit class actions to be brought by a number of allegedly aggrieved claimants and, if so, are class action waiver clauses enforceable despite the expense and inconvenience of individual arbitrations?

Vietnam's Civil Procedure Code allows for class actions, but they are still relatively rare in Vietnam. There is a possible statutory interpretation in that courts are not able to refuse class actions even if class action waiver clauses were in place. However, the enforceability of class action waiver clauses has not been tested in practice.

6 Governing Law

6.1 Is there a requirement for franchise documents to be governed by local law? If not, is there any generally accepted norm relating to choice of governing law, if it is not local law?

Under the Civil Code, a transaction involving a "foreign element" may be governed by the laws of a foreign country if the parties so agree, as long as the application of foreign law is not contrary to the "basic principles of Vietnamese law". Transactions involving a "foreign element" include a transaction in which at least one of the parties is a foreign organisation. Thus, the agreement between a foreign franchisor and a Vietnamese franchisee can choose laws other than Vietnamese law.

However, the "basic principles of Vietnamese law" have been interpreted very broadly and even seemingly minor inconsistencies could render contract terms unenforceable in Vietnam. Thus, even if foreign law is selected as the governing law, the franchise agreement needs to be closely reviewed for compliance with Vietnamese law.

6.2 Do the local courts provide a remedy, or will they enforce orders granted by other countries' courts, for interlocutory relief (injunction) against a rogue franchisee to prevent damage to the brand or misuse of business-critical confidential information?

Under the Intellectual Property Law and Civil Procedure Code, a franchisor (as the intellectual property right holder) has the right to request a remedy for interlocutory relief (injunction) against a rogue franchisee to prevent damage to the brand or misuse of business-critical confidential information by submitting an application for urgent injunctive relief to the courts upon or after the initiation of a lawsuit in the following cases:

- (i) when there is a danger of irreparable damage to the intellectual property right holder; or
- (ii) when goods suspected of infringement of intellectual property rights or evidence related to the act of infringement of industrial property rights are likely to be dispersed or destroyed unless they are protected in time.

Such a remedy may be in the form of retention, seizure, sealing, prohibiting any alteration of the original state, prohibiting any movement, prohibiting transfer of ownership, or other remedies that may be applied in accordance with Vietnam's civil procedure regulations. The franchisor requesting the remedy must make a security deposit either by a sum of money or a deed of guarantee issued by a bank or other credit institution. Where the security deposit is made in money, it will be equal to 20 per cent of the value of the goods subject to the application of provisional urgent measures. If it is not possible to value such goods then the deposit amount will be at least VND 20 million (approximately USD 940, at the time of writing).

7 Real Estate

7.1 Generally speaking, is there a typical length of term for a commercial property lease?

No, the length of the term of a commercial property lease is agreed upon by the lessee and the lessor and would be highly dependent on the commercial context. If there is no agreement as to the term between the two parties, then the term can be determined based on the purpose of use.

7.2 Is the concept of an option/conditional lease assignment over the lease (under which a franchisor has the right to step into the franchisee/tenant's shoes under the lease, or direct that a third party (often a replacement franchisee) may do so upon the failure of the original tenant or the termination of the franchise agreement) understood and enforceable?

Yes, but the lease assignment must be agreed to by the lessor. This means that even if the franchisor and franchisee agree in the franchise agreement that the franchisor has the right to take over the lease from the franchisee and carry on the branded operation from the same premises, the lease assignment still requires the approval of the lessor.

7.3 Are there any restrictions on non-national entities holding any interest in real estate, or being able to sub-lease property?

Non-national entities (i.e., those without a legal presence in Vietnam) are not allowed to use land in Vietnam, through either holding any interest in real estate or sub-leasing.

7.4 Give a general overview of the commercial real estate market. Specifically, can a tenant reasonably expect to secure an initial rent free period when entering into a new lease (and if so, for how long, generally), or are landlords demanding “key money” (a premium for a lease of a particular location)?

The real estate market of Vietnam has seen a cycle of booms and busts. Currently, it is in a recovery stage after a slowdown. Therefore, an initial rent-free period may be accepted by some landlords who need to attract tenants. However, real estate prices in Vietnam remain high in comparison with those in other countries, especially in central business districts of large cities such as Hanoi or Ho Chi Minh City. It is thus difficult to generalise about typical leasing transactions as to whether “key money” is required or not. Generally, a leasing agreement between the lessor and lessee should cover these matters.

8 Online Trading

8.1 If an online order for products or request for services is received from a potential customer located outside the franchisee’s exclusive territory, can the franchise agreement impose a binding requirement for the request to be re-directed to the franchisee for the territory from which the sales request originated?

Vietnamese laws are silent on the matter. Since the franchisor and franchisee are free to decide on matters to be covered by the franchise agreement, the franchise agreement can impose a binding requirement for the request to be re-directed to the franchisee for the territory from which the sales request originated, based on the will of franchisor and franchisee. However, depending on the facts at hand, the parties should check whether any competition law matters would be triggered.

8.2 Are there any limitations on a franchisor being able to require a former franchisee to assign local domain names to the franchisor on the termination or expiry of the franchise agreement?

Before franchising in Vietnam, franchisors should consider whether it is commercially viable to hold all relevant domain name registrations in its own name. This would be prudent practice.

However, if a franchisee refuses to assign a domain name that may be territory-specific on the termination or expiry of the franchise agreement, the franchisor has several options it may consider.

The franchisor may file a lawsuit against the former franchisee relating to a dispute over a domain name. Under Circular 10/2008/TT-BTTTT on the settlement of disputes over Vietnam’s country code domain name “.vn”, the franchisor needs to prove all the following:

- the disputed domain name is identical or confusingly similar to the name of the franchisor or identical or confusingly similar to the trademark or service mark to which the franchisor has lawful rights or interests;
- the franchisee has no lawful rights or interests related to this domain name; and
- the domain name is used by the franchisee with a malicious intent against the franchisor.

A dispute over a “.vn” domain name may also be handled through negotiations or conciliation between the two parties, or through arbitration.

Enforceable remedies resulting from negotiations, conciliation, arbitration or court awards could include:

- (i) revocation of the domain name and giving priority to the franchisor in registering the use of the domain name or maintaining the current status of the domain name; or
- (ii) other decisions related to the revocation, suspension or government retention of the disputed domain name.

During the process of dispute resolution, the disputed domain name must be kept intact and may not be returned, revoked or transferred to another domain name registry or another organisation or individual.

If the plaintiff (i.e., the franchisor) is allowed to register the use of the revoked disputed domain name, the franchisor will be given priority for registration within 10 days after the effective date of the successful conciliation record, effective arbitral award, or effective court judgment. However, beyond this, the domain name would be available for others to register.

9 Termination

9.1 Are there any mandatory local laws that might override the termination rights that one might typically expect to see in a franchise agreement?

No, there is no provision under Vietnamese law that would override the termination rights that one might typically expect to see in a franchise agreement.

10 Labour Laws

10.1 Is there a risk that a franchisee or a franchisee’s employees might be treated as the employees of the franchisor, so that the franchisor has vicarious liability for their acts and omissions? If so, can anything be done to mitigate this risk?

No. While the relationship between a franchisor and a franchisee is based on a franchise agreement, an employment relationship under Vietnamese laws is based on an employment contract. Thus, as long as the franchisor does not engage in an employment contract with the franchisee or the franchisee’s employees, and the franchise agreement expresses no such employment relationship, then there is no risk that a franchisee or a franchisee’s employees might be treated as the employees of the franchisor. In other contexts, independent contractor service arrangements could be imputed as employment relationships, but these issues do not arise out of the typical franchise relationship.

11 Currency Controls and Taxation

11.1 Are there any restrictions (for example exchange control restrictions) on the repatriation of royalties to an overseas franchisor?

While Vietnam’s foreign exchange regulations are relatively stringent, there are exceptions which apply to franchising transactions which would allow a Vietnamese entity to pay franchisee fees and royalties in foreign currency overseas through an authorised bank in Vietnam.

11.2 Are there any mandatory withholding tax requirements applicable to the payment of royalties under a trade mark licence or in respect of the transfer of technology? Can any withholding tax be avoided by structuring payments due from the franchisee to the franchisor as a management services fee rather than a royalty for the use of a trade mark or technology?

A foreign franchisor that does not establish a business entity in Vietnam and generates income in Vietnam on the basis of a franchise agreement, trademark licence agreement or technology transfer agreement signed with Vietnamese franchisees, will be considered as a foreign contractor in Vietnam.

All fees generated under such agreements, including royalties, administrative fees, advertising fees, management fees, and so on, are subject to foreign contractor tax. The two components of foreign contractor tax are value-added tax and corporate income tax.

11.3 Are there any requirements for financial transactions, including the payment of franchise fees and royalties, to be conducted in local currency?

Under the current regulations on foreign exchange, a Vietnamese entity can pay franchisee fees and royalties in foreign currency overseas through an authorised bank in Vietnam. However, within Vietnam's territory, except for a few narrow exceptions allowing the use of foreign currency, local currency must be used for all transactions of offers, payments, advertisements, quotations, pricing, prices in contracts, agreements and other similar forms (including the conversion or adjustment of the prices of goods and services, and the values of contracts and agreements).

Thus, the Vietnamese franchisee's onshore transactions with other local parties, such as suppliers or contractors, will likely need to be denominated, and paid, in local currency.

12 Commercial Agency

12.1 Is there a risk that a franchisee might be treated as the franchisor's commercial agent? If so, is there anything that can be done to help mitigate this risk?

Under the Commercial Law, "commercial agency" means a commercial activity where the principal and the agent agree for the agent, in its own name, to conduct the sale or purchase of goods for the principal or to provide the services of the principal to customers in return for remuneration.

"Representation of a business entity" means the agreement of one business entity (referred to as the representative) to act as authorised by another business entity (referred to as the represented entity) to conduct commercial activities in the name and under the instructions of the latter and be entitled to receive remuneration for acting as representative.

However, the typical franchisee will not receive any remuneration for acting as a "commercial agency" or "representation of a business entity" as provided under the Commercial Law. Thus, it is unlikely that commercial agency or sale representative rules would apply to franchising or that a franchisee would be treated as the franchisor's commercial agent.

13 Good Faith and Fair Dealings

13.1 Is there any overriding requirement for a franchisor to deal with a franchisee in good faith and to act fairly according to some objective test of fairness and reasonableness?

As a civil law system, Vietnam does not apply the concept of "good faith" as in certain common law jurisdictions. Nevertheless, the Civil Code of Vietnam provides principles for the establishment of a civil relationship, which would cover franchise relationships. These principles comprise, among others, the principle of free and voluntary undertaking and agreement, the principle of equality, the principle of goodwill and honesty, and the principle of respect for good morals and traditions. In addition, the Civil Code provides that a civil transaction will be deemed invalid for certain reasons, such as violations of legal prohibitions, contravention of social morals, falsification, misunderstanding, deception, or threats.

An invalid civil transaction will not give rise to civil rights and obligations of the parties after the date that the transaction is entered into. The parties will restore everything to its original state and must return to each other what they have received. If restitution cannot be made in kind, it may be paid in money, except where the transacted property, benefits, and income which had been received are confiscated in accordance with the law. The party at fault which caused the damage must compensate the injured party.

14 Ongoing Relationship Issues

14.1 Are there any specific laws regulating the relationship between franchisor and franchisee once the franchise agreement has been entered into?

Once the franchise agreement has been entered into, the relationship between franchisor and franchisee will be governed by the law chosen by both franchisor and franchisee in the franchise agreement. The franchise activities in Vietnam must be compliant with Vietnamese law.

15 Franchise Renewal

15.1 What disclosure obligations apply in relation to a renewal of an existing franchise at the end of the franchise agreement term?

As part of the franchise description document, the conditions for extension or renewal of the agreement must be disclosed to the potential franchisees.

15.2 Is there any overriding right for a franchisee to be automatically entitled to a renewal or extension of the franchise agreement at the end of the initial term irrespective of the wishes of the franchisor not to renew or extend?

No, there is no such right.

15.3 Is a franchisee that is refused a renewal or extension of its franchise agreement entitled to any compensation or damages as a result of the non-renewal or refusal to extend?

The current regulations on franchising do not govern the issue above

and leave it to the contract terms. The franchisor and franchisee can negotiate the terms and conditions for non-renewal or refusal to extend in the franchise agreement. Depending on what is agreed in the franchise agreement, a franchisee that is refused a renewal or extension of its franchise agreement might seek compensation or damages from the franchisor on the basis of contract breach.

16 Franchise Migration

16.1 Is a franchisor entitled to impose restrictions on a franchisee's freedom to sell, transfer, assign or otherwise dispose of the franchised business?

Yes, franchisors are relatively free to impose restrictions. The key is that franchisors have broad discretion in rejecting assignments.

A franchisee is allowed to assign its franchise business entity if the assignee operates in a business appropriate to the subject of the franchise and the franchisor approves the assignment. The law provides that the franchisor may refuse an assignment if: (i) the proposed assignee is unable to meet applicable financial requirements; (ii) the proposed assignee does not satisfy the selection criteria of the franchisor; (iii) the assignment will have a significant adverse effect on the existing franchise system; or (iv) the proposed assignee does not agree in writing to comply with the obligations of the assignor.

The broad nature of these circumstances means that the franchisor would not have much difficulty in finding a reason to reject an assignment. However, franchisors should bear in mind that the law presumes that the franchisor has given its approval if it fails to

produce a written response to the franchisee within 15 days of the receipt of a request for assignment.

16.2 If a franchisee is in breach and the franchise agreement is terminated by the franchisor, will a "step-in" right in the franchise agreement (whereby the franchisor may take over the ownership and management of the former franchisee's franchised business) be recognised by local law, and are there any registration requirements or other formalities that must be complied with to ensure that such a right will be enforceable?

Vietnamese law does not specifically address "step-in" rights, but such rights would cross over into corporate and investment legislation which may trigger foreign ownership restrictions and investment registration. As a matter of practice, a franchisor would likely find it simpler to seek other remedies such as damages, as opposed to enforcing step-in rights.

16.3 If the franchise agreement contains a power of attorney in favour of the franchisor under which it may complete all the necessary formalities required to complete a franchise migration under pre-emption or "step-in" rights, will such a power of attorney be recognised by the courts in the country and be treated as valid? Are there any registration or other formalities that must be complied with to ensure that such a power of attorney will be valid and effective?

Vietnamese law does not specifically address this matter as it relates to franchising "step-in" rights.

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