

An Overview of Franchising Law in Southeast Asia

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I. Introduction

The popularity of the franchise business model has grown rapidly in mainland Southeast Asia in recent years, with some of the world's top brands becoming common sights in the commercial districts and shopping malls of major regional cities in Cambodia, Laos, Myanmar, Thailand, and Vietnam.

Although these countries have not yet enacted franchising-specific laws, certain features of each country's regulatory regime impact franchising. As such, well-prepared franchise business operations have comfortably adapted to each country's regulatory framework, and the growth is poised to continue even as the global retail sector redesigns and redoubles its efforts in the wake of the COVID-19 pandemic. In fact, the franchise business model, which is both global and local at the same time, may offer retail entrepreneurs a solution in their quest to meet the challenges of the new retail economic realities.

This article explains the legal frameworks that impact the franchise business model in Cambodia, Laos, Myanmar, Thailand, and Vietnam. For each country, this article discusses relevant regulatory considerations for franchise



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agreements, how to protect intellectual property rights, and judicial and arbitral procedures for resolving disputes that might arise between a franchisor and a franchisee.

II. Cambodia

By Jay Cohen, Chandavya Ing, Mealtey Oeurn, and David Mol

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 eight percent between 1995 and 2018,¹ and, during that time, Cambodia transitioned from being classified as a low-income country to a lower-middle income country.² Along with economic growth, and a welcoming investment framework, Cambodia has witnessed the entrance of a number of international franchise brands, especially in the food and consumer goods sectors.

Domestic 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 establishing its own local infrastructure.

Cambodia has not yet enacted a comprehensive franchising regulatory scheme similar to the United States. Franchising is governed primarily by the Civil Code;³ the Law Concerning Marks, Trade Names and Acts of Unfair Competition, dated February 7, 2002 (Trademark Law);⁴ the Sub-Decree on the Implementation of the Law Concerning Marks, Trade Names and Acts of Unfair Competition, dated July 12, 2006 (Trademark Implementation Law);⁵ the Notification on the Recordal of License Contracts and Franchise Contracts, dated March 12, 2015;⁶ and the Prakas on the Recordal of License Contract Over Mark and Franchise Contract, dated 13 January 2020.⁷

A. Franchising in Cambodia

An overseas franchisor is not required to use a separate entity to enter into a franchise agreement with a franchisee in Cambodia, but they are permitted to do so if they desire.

1. *Cambodia Overview*, WORLD BANK, <https://www.worldbank.org/en/country/cambodia/overview>.

2. *Cambodia*, WORLD BANK, <https://ida.worldbank.org/results/cambodia>.

3. Civil Code (2007) [Cambodia] [hereinafter Cambodia Civil Code].

4. Law Concerning Marks, Trade Names, and Acts of Unfair Competition (2002) [hereinafter Cambodia Trademark Law].

5. Sub-Decree on the Implementation of the Law Concerning Marks, Trade Names and Acts of Unfair Competition (2006) [hereinafter Cambodia Trademark Implementation Law].

6. Notification on the Recordal of License Contracts and Franchise Contracts (2015).

7. Prakas on the Recordal of License Contract over Mark and Franchise Contract (2020).

For franchise agreements originally prepared in a foreign jurisdiction and according to the law of a country other than Cambodia, franchisors should focus on adapting the following provisions in the franchise agreement to ensure they are enforceable in Cambodia: pre-disclosure and guaranty provisions; non-compete obligations; fees and tax-related clauses; termination and damages; intellectual property provisions; dispute resolution clauses; and real estate provisions.

The articles addresses a few of the important aspects of these provisions below, but franchisors should work with local counsel to ensure that their full agreement is sufficiently adapted to comply with Cambodian law.

B. *Pre-Disclosure & Guaranty*

While Cambodian law does not provide any requirements on pre-contract disclosure, all of the 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 make a claim for damages from the party who made the misrepresentation.⁸

Further, under the same legislation, a personal guaranty is invalid if the guarantor was not fully informed of all material information on the guaranteed obligation at the time that the guaranty was provided.⁹ Accordingly, the franchisor must ensure that the proper material information is provided at the time of the signing of the guaranty and should ensure that the guaranty contains an agreement that all material information was provided.

C. *Non-Compete Obligations*

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. In Cambodia, employees may not be restricted by their former employers in any way,¹⁰ effectively prohibiting non-compete provisions in employment relationships. The franchise agreement should take into consideration this limitation when drafting a non-compete provision, as the clause may affect the mobility of employees post-employment with the franchisee.

D. *Fees and Taxes*

Initial fees, continuing fees (management charges or royalty fees), advertising contributions, required advertising spend, and other customary franchisee fees are common in franchise agreements in Cambodia. There is no restriction on the amount that can be charged for initial fees, continuing fees

8. Cambodia Civil Code, art. 345.

9. *Id.* art. 900.

10. Labor Law, art. 70.

or charges, advertising contributions, or required advertising spend. However, for tax purposes, advertising contributions and required advertising spend paid directly to the franchisor will generally be treated as royalties payable to the franchisor, according to the current practice of the General Department of Taxation.

Interest on overdue payments is allowed under the Civil Code, with a default interest rate of five percent per year unless specified otherwise.¹¹ There is no maximum interest rate that can be charged on overdue payments, except in the context of a loan.¹² 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.¹³

E. Termination and Damages

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 result in a civil action for damages.¹⁴ 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.¹⁵

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.¹⁶ Typically, liquidated damages clauses are enforceable in Cambodia as long as the damages amount reasonably correlates to the anticipated losses resulting from a breach.¹⁷ 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.¹⁸ The court is likewise authorized to award additional damages if the actual damages exceed the liquidated damages provided under the contract.¹⁹

F. 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.

11. Civil Code, art. 318.

12. Prakas on Interest Rate Ceiling on Loan (2017), https://www.nbc.org.kh/download_files/legislation/prakas_eng/Prakas-on-Interest-Rate-Cap-Eng.pdf.

13. Cambodia Civil Code, art. 586.

14. *Id.* ch. IV (Remedies for Breach of Contract).

15. *Id.*, art. 403(2).

16. *Id.*, art. 403(4).

17. *Id.*, art. 403 (1).

18. *Id.*, art. 403 (3)

19. *Id.*, art. 403.

Trademark owners need to register their trademarks with the Department of Intellectual Property Rights (DIPR) to receive protection under local law for a renewable term of ten years.²⁰ 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.²¹ 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).²² In 2015, Cambodia became a member of the Madrid System; thus, trademark registration applications initiated at a national or regional intellectual property office of another party to the system can also be designated for filing in Cambodia.²³

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.²⁴

In theory, trademark license agreements cannot be enforced against third parties if they have not been registered with the DIPR.²⁵ That means, 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 (approximately \$100) per trademark.²⁶

Similarly, patent and industrial design licenses should be registered with the Ministry of Industry and Handicrafts (MIH).²⁷ Cambodia is a member of the Paris Convention for the Protection of Industrial Property,²⁸ a contracting state of the Patent Cooperation Treaty (PCT),²⁹ and a contracting party to the Hague Agreement on the International Registration of Industrial

20. Cambodia Trademark Law, art. 12.

21. *Id.*, art. 6.

22. Cambodia Trademark Implementation Law, art. 21.

23. See Prakas on the Procedure for International Registration of Marks Under the Madrid Protocol (2016), <https://wipolex.wipo.int/en/legislation/details/19479>.

24. Cambodia Trademark Law, art. 19.

25. Prakas on the Recordal of License Contract Over Mark and Franchise Contract art. 14 (2020).

26. Inter-ministerial Prakas on the Provision of Public Services at the Ministry of Commerce (2017).

27. Law on Patents, Utility Model Certificates and Industrial Designs, art. 16 (2003).

28. Paris Convention for the Protection of Industrial Property, as last revised at the Stockholm Revision Conference, Mar. 20, 1883; Paris Notification No. 186, Paris Convention on the Protection of Industrial Property: Accession by the Kingdom of Cambodia, June 22, 1998, *available at* https://www.wipo.int/treaties/en/notifications/paris/treaty_paris_186.html.

29. PCT Notification No. 210, Patent Cooperation Treaty (PCT): Accession by the Kingdom of Cambodia, Sept. 8, 2016, *available at* https://www.wipo.int/treaties/en/notifications/pct/treaty_pct_210.html

Design.³⁰ 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,³¹ the Japan Patent Office,³² the European Patent Office,³³ the China National Intellectual Property Administration,³⁴ and, more recently, the Korean Intellectual Property Office³⁵ and the United States Patent and Trademark Office.³⁶

Cambodia ratified the Berne Convention in 2020, and the government was authorized to take the necessary steps to accede to the convention.³⁷ At the time of writing, Cambodia has not yet deposited the instrument of accession with the director general of the World Intellectual Property Organization (WIPO), and several legislative or regulatory updates may be introduced to bring the country's copyright law in line with the Berne Convention, including provisions relating to the automatic protection of foreign copyrights. Therefore, until Cambodia officially accedes to the Berne Convention, 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 thirty days of the first communication to the public.³⁸ This reality 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.

30. *Cambodia Joins the Hague System*, WIPO NEWS (Nov. 25, 2016), wipo.int/hague/en/news/2016/news_0011.html.

31. Memorandum of Understanding (MOU) on the Co-operation in Industrial Property between the Ministry Industry and Handicraft and the Intellectual Property Office of Singapore, Jan. 20, 2015; Renewal of the MOU on the Co-operation in Industrial Property between the Ministry of Industry and Handicraft and the Intellectual Property Office of Singapore, Jan. 14, 2020.

32. Joint Statement of Intent on Cooperation for Facilitating Patent Grant of Cambodia-Related Patent Application (May 4, 2016).

33. Agreement Between the President of the European Patent Office and the Cambodian Ministry of Industry and Handicraft (Jan. 23, 2017).

34. Memorandum of Understanding (MOU) on Cooperation on Intellectual Property Between the Ministry of Industry and Handicraft and the State Intellectual Property Office of China (Sept. 21, 2017).

35. Memorandum of Understanding (MOU) on Patent Cooperation Between Ministry of Industry and Handicraft and the Korean Intellectual Property Office of the Republic of Korea (Aug. 16, 2019).

36. Memorandum of Understanding (MOU) on the Co-operation to expedite the issuance of patents in Cambodia Between the Minister of Industry, Science, Technology and Innovation and USPTO (Oct. 23, 2020).

37. Law on Ratification of Cambodia to Join the Berne Convention for the Protection of Literary and Artistic Works 1886 and its Amendment in 1979 (2020).

38. Law on Copyright and Related Rights, 2003, art. 3 [Cambodia].

Cambodia does not currently have any law governing trade secrets. Mostly, franchisors use non-disclosure clauses in their franchise agreements to secure and protect their know-how from third parties.

G. *Dispute Resolution*

Choosing a foreign country's law as the governing law for a franchise agreement does not contravene Cambodian law. However, in the authors' experience, local courts may be unwilling to apply foreign law to disputes before them. In addition, certain subject matter (such as advertisement approval requirements for certain services, like healthcare,³⁹ or the owning of land)⁴⁰ 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.⁴¹ Cambodia has only entered into such an agreement with Vietnam.⁴²

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.⁴³ Further, Cambodia has its own domestic arbitration institution called the National Commercial Arbitration Center.⁴⁴ 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).⁴⁵ Nevertheless, most foreign parties tend to conclude their disputes with a Cambodian counter-party by arriving at a settlement.

H. *Real Estate*

In Cambodia, land ownership is limited to Cambodian nationals, or entities of Cambodian nationality, meaning that at least fifty-one percent of the company's shares are held by Cambodian nationals or other companies of Cambodian nationality.⁴⁶ Foreigners may, however, own up to seventy

39. Prakas No. 028 on Private Practice Advertisement in Medical, Paramedical and Medical Aid Practices, 2004.

40. Constitution of the Kingdom of Cambodia, Sept. 21, 1993, art. 44; Land Law (amended 2001), art. 9 [Cambodia].

41. Code of Civil Procedure, art.199 [Cambodia].

42. Agreement on Mutual Judicial Assistance in Civil Matters Between the Kingdom of Cambodia and the Socialist Republic of Vietnam (Jan. 21, 2013).

43. Law on the Ratification and Implementation of the UN Convention on Recognition of Foreign Arbitration Award (July 23, 2001).

44. Law on Commercial Arbitration (2006) [Cambodia].

45. SINGAPORE INT'L ARB. CENTRE, <https://www.siac.org.sg>.

46. Constitution of the Kingdom of Cambodia, dated September 21, 1993, Article 44; Land Law (amended 2001), dated August 31, 2001, Article 9.

percent of the floor space on co-owned buildings (which are akin to condos and mixed used developments).⁴⁷ Any real estate related provisions in a franchise agreement should adhere to these limitations, and care should be taken to ensure that mechanisms are in place for any real estate related to the franchise.

III. Laos

By Dino Santaniello

Eclipsed by its more prominent neighbors that include 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 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 may govern franchises in the country.

The Decision on Wholesale and Retail Businesses 2015 No. 1005/MOIC.ITD, dated May 22, 2015, mentions the term *franchise* and stipulates that general wholesale and retail activities can be carried out under this type of business.⁴⁸ 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 in the retail and wholesale business will depend on the share equity held in the company carrying out the franchise.⁴⁹ Depending on the business activities of the franchise, additional restrictions on the ratio of shares between foreigners and Lao nationals may apply.⁵⁰

All franchise agreements are also governed by the common rules of the Civil Code No. 55/NA, dated December 6, 2018,⁵¹ and the Law on Notary No. 11/NA, dated November 26, 2009 (Notary Law).⁵² For contracts of a certain value, it is therefore strongly recommended to proceed with the notarization of the contract by the Notary Office of the Ministry of Justice or one of its related departments. This notarization proves that the contract is valid under existing Lao laws and thus fully enforceable against a third

47. Law on Providing Foreigners with Ownership Rights Over Private Part of Co-Owned Buildings, 2010.

48. Decision on Wholesale and Retail Businesses, art. 11 (2015) [Laos].

49. *Id.* art. 13.

50. As a matter of example, the Notification No.1327/MOIC.ER, 2015, includes a list of activities whose investment is restricted from foreign investors.

51. Civil Code No. 55/NA, 2018 [Laos] [hereinafter Laos Civil Code].

52. Law on Notary No. 11/NA, 2009 [hereinafter Laos Notary Law].

party.⁵³ There are no statutory pre-contract disclosure requirements in Laos. Regarding the protection of intellectual property of a franchise agreement, the applicable legislation is the Law on Intellectual Property No. 38/NA, dated November 15, 2017,⁵⁴ and the subsequent Decision on Trademarks and Trade Names No. 2822/MOST, dated December 17, 2019 (Decision on Trademarks.)⁵⁵

A. Franchise Agreements

Typically, franchise agreements, or similar agreements relating to trademarks, would fall under the provision of the Decision on Trademarks, which regulates the “authorization to use a trademark,” thus enabling trademark owners to contractually allow others to use their trademark.⁵⁶ The decision provides that the licensee or licensor must notify the Lao Department of Intellectual Property (DIP) of any agreement authorizing use of a trademark (e.g., a license agreement). While the Decision on Trademarks does not provide any sanctions for failing to register, the recordal can be used by the licensee as a proof of its rights to act on behalf of the trademark owner to carry out any legal actions, for instance.

The Civil Code requires good faith in the performance of contracts.⁵⁷ Though “good faith” 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 also need to be treated very carefully. For instance, imposing different prices or terms for transactions involving the same goods or services is prohibited under a chapter dedicated to abuse of dominant market position, as is monopoly,⁵⁸ by the Law on Business Competition, No. 60/NA, dated July 14, 2015.⁵⁹ Similarly, Laos prohibits the imposition of terms and conditions through a sale or purchase agreement,⁶⁰ as well as the act of forcing the performance of obligations that are not required by contract.⁶¹ 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 for operators in a position of market dominance. Franchisors are thus not permitted to impose a price

53. *Id.* art. 15.

54. Law on Intellectual Property No. 38/NA, 2017 [hereinafter Laos Law on Intellectual Property].

55. Decision on Trademarks and Trade Names No. 2822/MOST, 2019, art. 32 [hereinafter Laos Decision on Trademarks]. The Decision on Trademarks literally speaks of an agreement on “Authorization to Use a Trademark.”

56. *Id.* art. 32.

57. Laos Civil Code art. 378.

58. Law on Business Competition, No. 60/NA, 2015, art. 36 [hereinafter Laos Law on Business Competition].

59. *See generally* Laos Law on Business Competition.

60. *Id.* art. 26.

61. *Id.*

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 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.

B. *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 before 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 hold exclusive rights over that mark. Registration of a trademark, which gives the registered owner the ability to protect its trademarks against infringement, will be necessary to initiate and conduct seizures against parties selling goods or services that infringe on the intellectual property rights of the registered trademark owner.⁶² Accordingly, a franchisor or franchisee in Laos that has registered a trademark will be able to seek assistance from authorities to conduct seizures of counterfeit or imitation goods.

Copyrights do not need to be registered in order to be protected by law, as the rights arise automatically when a work is created.⁶³ However, an official notification claiming copyright ownership can be useful as evidence in case of a violation or dispute and may be filed with the DIP.

Trade secrets are expressly mentioned under the law on intellectual property and also do not require registration in order to be protected.⁶⁴ 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 intellectual property issues—for instance, through standard confidentiality and intellectual property acknowledgment and assignment, and contingency clauses in employment contracts.

62. Laos Law on Intellectual Property, art. 58.

63. *Id.* art. 97.

64. *Id.* art. 12.

C. Taxation and Dispute Resolution

Under the Law on Income Tax No. 67/NA, dated June 18, 2019, a ten percent withholding tax applies to payments made with respect to dividends,⁶⁵ and a five percent withholding tax applies to intellectual property royalty fees.⁶⁶

Taxation rates may differ from those prescribed in the law if the recipient of the payment is from a country that has signed a double taxation agreement with Laos. Currently, this situation applies to Brunei, China, Luxembourg, Malaysia, Myanmar, North Korea, Russia, Singapore, South Korea, Thailand,⁶⁷ 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.⁶⁸ 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.⁶⁹ 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.⁷⁰

IV. Myanmar

By 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. Domestic franchising is still relatively uncommon. International franchise brands typically enter the Myanmar market by appointing a local master franchisee—which helps

65. Law on Income Tax No. 67/NA, 2019, art. 39 [Laos].

66. *Id.*

67. Double Tax Agreement Between the Government of Kingdom Thailand and Lao PDR (Dec. 23, 1997).

68. Administrative remedies are filed with the relevant administration (e.g., Ministry of Industry and Commerce if the nature of the dispute pertains to consumer protection) whereby the administration may serve as mediator and ultimately take sanction against one of the parties (e.g., warning, fine, withdrawal of license). The right to file a complaint with the Lao People's Court to force compliance with the rule is included in the Law on Civil Procedure, and the court has the ability to impose sanctions, including civil compensation.

69. Notification no.2454/PMO, 1998 [Laos].

70. Law on Civil Procedure, art. 362 [Laos].

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 of 2015,⁷¹ the Consumer Protection Law of 2019,⁷² the Contract Act of 1872,⁷³ the Myanmar Companies Law of 2017,⁷⁴ and the Trademark Law of 2019.⁷⁵

A. Franchise Agreements and Fees

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.⁷⁶ 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 of 2015 in certain cases.⁷⁷ 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.⁷⁸

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%.⁷⁹ 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.⁸⁰ If existing double-taxation agreements are in place, the withholding tax amount payable by non-resident foreigners may be reduced or exempted, subject to the discretion of the Ministry of

71. Competition Law (2015) [Myanmar] [hereinafter Myanmar Competition Law].

72. Consumer Protection Law (2019) [Myanmar].

73. Contract Act (1872) [Myanmar] [Myanmar Contract Act].

74. Myanmar Companies Law (2017).

75. Trademark Law (2019) [Myanmar] [hereinafter Myanmar Trademark Law].

76. Myanmar Competition Law, ch. VIII, XI.

77. *Id.* §§ 13, 15, 17.

78. Myanmar Contract Act § 27.

79. Myanmar Ministry of Planning and Finance, Notification No. 47/2018.

80. *Id.*

Planning and Finance and the Internal Revenue Department.⁸¹ To date, Myanmar has entered into double-taxation agreements with India, Laos, Malaysia, Singapore, South Korea, Thailand, the United Kingdom, and Vietnam.⁸² Double-taxation agreements with Bangladesh and Indonesia have also been concluded but have yet to be ratified.⁸³

B. 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 issue, it is vital for franchisors to protect themselves by using clear and comprehensive language in their franchise agreements. As part of this step, 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 of 2015 by imprisonment for up to two years, a fine of up to MMK ten million (approximately \$7,100), or both.⁸⁴

In 2019, Myanmar enacted a suite of intellectual property legislation, comprising a Trademark Law,⁸⁵ Industrial Designs Law,⁸⁶ Patent Law,⁸⁷ and Copyright Law.⁸⁸ Under the new intellectual property system, trademarks, industrial designs, and patent licenses must be recorded with the intellectual property office to be deemed enforceable in Myanmar.⁸⁹ Similarly, under the Science, Technology, and Innovation Law of 2018, all agreements on technology transfers must comply with the terms set by the National Council for Science, Technology, and Innovation Development, and they must be registered with the designated registrar to be deemed enforceable.⁹⁰

C. 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 of 2016

81. *Avoidance of Double Taxation Agreements of Union of Myanmar*, MYANMAR INTERNAL REV. DEPT., <https://www.ird.gov.mm/en/page/589>.

82. *Id.*

83. *Myanmar: Individual-Foreign Tax Relief and Tax Treaties*, PWC.COM, <https://taxsummaries.pwc.com/myanmar/individual/foreign-tax-relief-and-tax-treaties>.

84. Myanmar Competition Law, 2015, §19, 41.

85. Myanmar Trademark Law.

86. Industrial Designs Law (2019) [Myanmar] [hereinafter Myanmar Industrial Designs Law].

87. Patent Law (2019) [Myanmar] [hereinafter Myanmar Patent Law].

88. Copyright Law (2019) [Myanmar].

89. Myanmar Trademark Law § 49; Myanmar Industrial Designs Law § 58; Myanmar Patent Law § 64.

90. Technology and Innovation Law, 2018, Ch. IX (Science) [Myanmar].

and the 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.⁹¹ For example, Myanmar courts may refuse to recognize a foreign arbitral award if the party against whom it is invoked furnishes to the court proof that, among other reasons, the parties to the arbitration agreement referred was under some incapacity;⁹² the agreement concerned is not valid under the law to which the parties have subjected to it;⁹³ or if the award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.⁹⁴ Enforcement of a foreign arbitral award may be refused if the Myanmar courts find that the subject matter of the dispute is not capable of settlement by arbitration under Myanmar laws,⁹⁵ or if the enforcement of the award would be contrary to the public policy of Myanmar.⁹⁶ Therefore, unless the dispute arising from a franchise agreement falls within one of the limited exceptions of the Arbitration Law of 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.⁹⁷

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.⁹⁸

V. Thailand

By Sber 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.⁹⁹ Some of the most popular franchise operations are in the food and restaurant sector, services, education, and retailing.¹⁰⁰

While no specific statutes govern franchising in Thailand, the Trade Competition Commission of Thailand issued a set of guidelines in 2019 to regulate unfair trade practices in franchise businesses.¹⁰¹ The government has

91. Arbitration Law § 46 (2016) [Myanmar] [hereinafter Myanmar Arbitration Law].

92. *Id.* § 46(b)(i).

93. *Id.* § 46(b)(ii).

94. *Id.* § 46(b)(vi).

95. *Id.* § 46(c)(i).

96. *Id.* § 46(c)(ii).

97. Myanmar Arbitration Law § 46.

98. Civil Procedure Code § 13 [Thai].

99. THAI FRANCHISE CENTER, https://www.thaifranchisecenter.com/stats/franchise_stats.php.

100. *Id.*

101. Notification of the Trade Competition Commission Re: Guidelines for the Consideration of Unfair Trade Practices in Franchise Businesses (2019) [Thai.] [hereinafter Thailand Franchise Guidelines].

also been contemplating the enactment of a Franchising Business Act, but no concrete steps have been taken to move it forward. It is widely considered that Thailand may follow the Chinese model as set out in the 2005 PRC Ministry of Commerce's Administrative Measures on Commercial Franchising¹⁰² and the subsequent 2007 Franchise Regulations.¹⁰³ An important point to watch here will be whether Thailand follows the Chinese 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.¹⁰⁴

A. Franchise Agreements

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

- Civil and Commercial Code;¹⁰⁵
- 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);¹⁰⁶
- 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);¹⁰⁷
- 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);¹⁰⁸
- Trade Secrets Act B.E. 2545 (2002), as amended by Trade Secrets Act (No. 2) B.E. 2558 (2015);¹⁰⁹
- Unfair Contract Terms Act B.E. 2540 (1997);¹¹⁰
- Trade Competition Act B.E. 2560 (2017);¹¹¹
- Act Relating to Price of Merchandise and Service B.E. 2542 (1999);¹¹² and
- Revenue Code B.E. 2481 (1938)¹¹³

102. Administrative Measures on Commercial Franchising, (promulgated by Ministry of Commerce, Dec. 30, 2004, effective Jan. 1, 2005) (China).

103. Regulations on the Administration of Commercial Franchise (promulgated by the State Council on Jan. 31, 2007 and effective May 1, 2007) (China).

104. Administrative Measures on Commercial Franchising, (promulgated by Ministry of Commerce, Dec. 30, 2004, effective Jan. 1, 2005), art. 7(4) (China).

105. Civil and Commercial Code [Thai.].

106. 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) [Thai.] [hereinafter Thailand Trademark Act].

107. 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) [Thai.] [hereinafter Thailand Patent Act].

108. 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) [Thai.].

109. Trade Secrets Act B.E. 2545 (2002), as amended by Trade Secrets Act (No. 2) B.E. 2558 (2015) [Thailand] [hereinafter Thailand Trade Secrets Act].

110. Unfair Contract Terms Act B.E. 2540 (1997) [Thai.].

111. Trade Competition Act B.E. 2560 (2017) [Thai.] [hereinafter Thailand Trade Competition Act].

112. Act Relating to Price of Merchandise and Service B.E. 2542 (1999) [Thai.].

113. Revenue Code B.E. 2481 (1938) [Thai.].

The parties must 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.¹¹⁴ For example, in the context of a franchising arrangement involving use of technology, a “tying arrangement” in which the franchisor requires the franchisee to purchase materials from the franchisor, or his or her agent, for use in production of a particular item without justifiable reasons may be seen as anticompetitive and may be unenforceable.¹¹⁵

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 are aimed at preventing franchisors from adopting overly restrictive and unfair contractual conditions that could cause damage to franchisees.¹¹⁶ 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.¹¹⁷ Franchisors are also not allowed to prevent franchisees from offering discounts on perishable items that are close to their expiration,¹¹⁸ and franchisors cannot discriminate among its franchisees by stipulating different conditions without justifiable reasons.¹¹⁹

Notably, the Franchise Guidelines also impose pre-contractual disclosure requirements on the franchisor, specifying that franchisors must provide to the franchisee details on matters concerning franchise fee payments, intellectual property rights, renewal and termination terms, and the model of the franchising system.¹²⁰ 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.¹²¹

B. 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.

114. Thailand Trade Competition Act B.E. 2560.

115. Franchise Guidelines § 5 (2019) [Thai.] [hereinafter Thailand Franchise Guidelines].

116. See generally Thailand Franchise Guidelines.

117. *Id.* § 5.1.1.

118. *Id.* § 5.4.

119. *Id.* § 5.5.

120. *Id.* § 3.

121. *Id.* § 4.

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).¹²² 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.¹²³ 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. Because Thailand is a freedom-of-contract jurisdiction, the contracting parties can adopt any terms or conditions that they deem appropriate concerning the ability to act, as long as the terms and conditions are legal, possible, and not contrary to public order or good morals.¹²⁴

Another important component of some franchises is the franchisor's patented technology. In Thailand, the law of patents is primarily enshrined in the Patent Act B.E. 2522 (1979). Section 41 of the current Patent Act requires that a patent license agreement be similarly registered with the DIP.¹²⁵

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) (TSA). Provisions in this law protect against unauthorized disclosure of trade secrets and enable the court to issue injunctions against disclosure of trade secrets.¹²⁶

The TSA provides for broad protection and severe penalties for trade secret infringement.¹²⁷ 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.

122. Thailand Trademark Act § 58.

123. Supreme Court Judgment 4440/2552 (2009) [Thai.].

124. Civil & Commercial Code § 150 [Thai.].

125. Thailand Patent Act § 41.

126. Thailand Trade Secrets Act § 18.

127. See *generally* Thailand Trade Secrets Act B.E. 2545.

VI. Vietnam

By Thao Thu Bui, Tu Ngoc Trinh, and Waewpen Piemwichai

Franchising has become increasingly commonplace 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.¹²⁸ 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. Based on our experience, single-unit franchising methods are uncommon.

No specific laws in Vietnam encourage franchising. Franchising is governed by the Commercial Law,¹²⁹ 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 35;¹³⁰
- Decree 98/2020/ND-CP;¹³¹ and
- Circular 09/2006/TT-BTM, as amended by Circular 04/2016/TT-BTC.¹³²

The Commercial Law vests control of the business operations with the franchisor, and the financial obligation to perform such business operations with the franchisee.¹³³ 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.¹³⁴

128. See VIET. MINISTRY OF IND. & TRADE, <https://www.moit.gov.vn/nhuong-quyen-thuong-mail>.

129. Law on Commercial No. 36/2005/QH11 passed by the National Assembly of Vietnam on 14 June 2005 [hereinafter Vietnam Commercial Law].

130. Decree 35/2006/ND-CP, as amended by Decree 120/2011/ND-CP and Decree 08/2018/ND-CP Decree 35 (May 15, 2020) [Viet.] [hereinafter Decree 35].

131. Decree 98/2020/ND-CP (Aug. 26, 2020).

132. Circular 09/2006/TT-BTM, as amended by Circular 04/2016/TT-BTC [Viet.].

133. Vietnam Commercial Law, art. 284.

134. *Id.* art. 8.2; *see also* Decree 35.

The offer and sale of franchises is also likely to trigger Vietnam's rules relating to mergers and acquisitions. Because no single body of legislation governs mergers and acquisitions, several areas of law (such as investment, company, competition, securities, tax, and foreign exchange law) may apply.¹³⁵ 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.¹³⁶

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."¹³⁷

The primary regulatory authority responsible for enforcing franchising laws and requirements in Vietnam is the Ministry of Industry and Trade (MOIT).¹³⁸ All franchising activities from overseas into Vietnam must first be registered with the MOIT before they are carried out.¹³⁹

A. Franchise Agreements

When preparing to enter into a franchising agreement, which franchising regulations require to be made in Vietnamese,¹⁴⁰ 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.¹⁴¹

The franchisor must provide a copy of the franchise agreement form and a franchise disclosure document to the proposed franchisee at least fifteen

135. Law on Investment No. 61/2020/QH14 passed by the National Assembly of Vietnam on 17 June 2020 [hereinafter Vietnam LOI]; Law on Enterprises No. 59/2020/QH14 passed by the National Assembly of Vietnam on 17 June 2020 [hereinafter Vietnam LOE]; Law on Competition No. 23/2018/QH14 passed by the National Assembly of Vietnam on 12 June 2018 [hereinafter Vietnam Competition Law]; Law on Securities No. 54/2019/QH14 passed by the National Assembly of Vietnam on 26 November 2019 [hereinafter Vietnam Law on Securities]; Law on Enterprise Income Tax No. 14/2008/QH12 passed by the National Assembly of Vietnam on 3 June 2008, as amended by Law No. 32/2013/QH13 dated 19 May 2013, Law No. 71/2014/QH13 dated 26 November 2014 and the LOI [hereinafter Vietnam LEIT]; Ordinance on Foreign Exchange Control No. 28/2005/PL-UBTVQH11 adopted by the Standing Committee of the National Assembly on 13 December 2005, as amended by Ordinance No. 06/2013/UBTVQH13 dated 18 March 2013 [hereinafter Vietnam Ordinance on Foreign Exchange Control].

136. Law on Intellectual Property No. 50/2005/QH11 passed by the National Assembly of Vietnam on 29 November 2005, as amended by Law No. 36/2009/QH12 and Law No. 42/2019/QH 14 [hereinafter together Vietnam IP Law]; Civil Code No. 91/2015/QH13 adopted by the National Assembly of Vietnam on 24 November 2015 [hereinafter Vietnam Civil Code].

137. Vietnam Competition Law art. 12.

138. *Id.* art. 4.1; Decree 35.

139. Vietnam Competition Law arts. 17, 18; Decree 35.

140. Vietnam Competition Law, art. 12; Decree 35.

141. Vietnam Civil Code arts. 3.2, 117.1(b).

business days before the signing of the agreement.¹⁴² 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.¹⁴³ However, it does not include any information on the franchisee.¹⁴⁴ In addition, the proposed franchisee is responsible for providing all reasonably requested information to the franchisor.¹⁴⁵ 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.¹⁴⁶

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 because Vietnamese law presumes that the franchisor has given its approval if it does not give a written response to the franchisee within fifteen days of receipt of a request for an assignment.¹⁴⁷

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, the amount of interest that can be charged may be limited.¹⁴⁸

B. 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 Intellectual Property Law, a trademark license agreement is binding on the involved parties as well as third parties, even without recordal at the IP Office.¹⁴⁹ 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.¹⁵⁰

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.¹⁵¹

142. Vietnam Competition Law, art. 8.1; Decree 35.

143. Circular 09, app. III.

144. See Appendix III of Circular 9 for the standard form of franchise disclosure document.

145. Vietnam Competition Law, art. 8.2; Decree 35.

146. Vietnam Competition Law, art. 8.3; Decree 35.

147. Vietnam Competition Law, art. 15.2; Decree 35.

148. Vietnam Civil Code arts. 357.2, 468.1.

149. Intellectual Property Law, art. 148.2 [Vietnam].

150. *Id.* art. 148.3.

151. *Id.* art. 6.3(c).

C. 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.¹⁵² 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.¹⁵³ Even seemingly minor inconsistencies could render contract terms unenforceable. Therefore, choosing foreign law as the governing law requires that the franchise agreement be closely reviewed to ensure compliance with Vietnamese law.¹⁵⁴

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.¹⁵⁵ However, a foreign court judgment may be enforced in Vietnam on a treaty or reciprocal basis.¹⁵⁶ 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.

VII. Conclusion

As mentioned above, the franchising environment in mainland Southeast Asia has been growing ever more active, with the latest from the COVID-19 pandemic looking like it will not seriously impede this trend. While the laws of the region may sometimes seem like a patchwork to outside franchisors, each jurisdiction in fact has a well-worn legal path supporting franchisors, franchisees, and their business operations. Developments in recent years have indicated that the legal and regulatory framework for franchising is becoming increasingly formalized; for instance, Thailand’s early 2020 regulations emphasizing trade competition practices in relation to franchising businesses, which had essentially already been in place, but were formally laid out as rules for franchisors and franchisees.

This trend seems likely to continue in Thailand and neighboring countries, as does the popularity of the franchising business model for doing business in mainland Southeast Asia.

152. Vietnam Civil Code art. 664.2.

153. *Id.* art. 670.1(a).

154. *Id.* arts. 664, 670.

155. Civil Procedure Code No. 92/2015/QH13, passed by the National Assembly of Vietnam on 25 Nov. 2015, as amended by Labor Code No. 45/2019/QH14 and Law on Enterprise No. 59/2020/QH14, art. 424.

156. *Id.* art. 423.

