



FRANCHISING IN VIETNAM

The below Legal Summary prepared by BLG contains a brief discussion with tailored practical information for investment and business activities in Vietnam.

The article concentrates on a number of legal notes of franchise in Vietnam.

Franchising in Vietnam has become increasingly popular among foreign investors and local business thanks to many advantages such as lower risk but higher profit than independent business model, existing goodwill, available management and operation assistance. In this brief, we would like to address a number of legal notes of franchise in Vietnam.

1. Legal framework for franchising in Vietnam

Franchising is governed primarily by Commercial Law No. 36/2005/QH11 ("*Commercial Law*") and the following legal instruments:

- Decree No. 35/2006/ND-CP of the Government dated 31 March 2006 detailing implementation of Commercial Law regarding franchising, as amended by Decree No. 08/2018/ND-CP dated 15 January 2018 ("*Decree 35*").
- Circular No. 09/2006/TT-BTM of the Ministry of Industry and Trade dated 25 May 2006 guiding the commercial franchising registration, amended by Circular No. 04/2016/TT-BCT of the Ministry of Industry and Trade ("*MOIT*") ("*Circular 09*").

Franchising is also administered by, among others, the regulations of Law on Intellectual Property, adopted on 29 November 2005 and amended in 2019, and the Law on Technology Transfer dated 19 June 2017.

2. Definition

According to Article 284 of Commercial Law and Article 3.6, Article 3.7 of Decree 35, **franchising** is defined as a commercial activity under which a party (the franchisor) grants another party (the franchisee) the right to conduct the business of selling its goods or supplying services under the following conditions:

- The franchisee may conduct the business under a format determined by the franchisor, and may affix the franchisor's trademarks, trade names, business logos, slogans, and advertisements at the franchisee's business premises; and
- The franchisor has the right to control and assist the franchisee to conduct the franchised business.

In comparison to a "normal" franchise, a master franchise gives the franchisee the right to act as a sub-franchisor and to grant a franchise to a sub-franchisee.

Business by mode of franchising means business activities conducted by the franchisee under the franchise agreement.

3. Rights and obligations

The franchisor and franchisee each normally have main rights and obligations as stipulated in Articles 286, 287, 288, and 289 of Commercial Law.

Main rights and obligations of the franchisor^[1]

- To receive franchise sums.
- To organize advertising for the franchise system and the commercial franchise network.
- To conduct periodical or extraordinary inspections of activities of franchisees in order to ensure the uniformity of the franchise system and the stability of quality of goods and services.
- To supply documents guiding the franchise system to franchisees.
- To provide initial training and regular technical assistance to franchisees for managing the latter's activities in accordance with the franchise system.
- To design and arrange places of sale of goods or provision of services at the expenses of franchisees.
- To guarantee the intellectual property rights over objects stated in franchise agreement.
- To equally treat all franchisees in the franchise system.

Main rights and obligations of the franchisee^[2]

Unless otherwise agreed, the franchisee shall have the following main rights and obligations:

- To request the franchisor to provide fully technical assistance related to the franchise system.
- To request the franchisor to equally treat all franchisees in the commercial system.
- To pay franchise sums and other amounts under franchise agreement.

^[1] Article 286, 287 of Commercial Law.

^[2] Article 288, 289 of Commercial Law.

- To invest adequate material facilities, financial sources and human resources to take over business rights and know-how transferred by the franchisor.
- To submit to the control, supervision and instruction by the franchisor; to comply with all requirements set forth by the franchisor on designing and arrangement of places of sale of goods or provision of services.
- To keep secret the franchised business know-how even after the expiration or termination of franchise agreement.
- To stop using trademarks, trade names, business slogans, logos and other intellectual property rights (if any) or systems of the franchisor upon the expiration or termination of franchise contracts.
- To manage their activities in accordance with the franchise system.
- Not to sub-franchise without the permission of the franchisor.

4. Franchising conditions

The franchising has to meet several conditions, including:

Firstly, the business to be franchised has already been run for at least one year to ensure the stable and sustainable development of the franchising network^[3].

This regulation notably applies to the business system intended to be franchised, not to the franchisor. The duration of 01 year is counted from the issuance date of the Certificate of Business Location of the first store in the franchisor's business system, and at the same time, that business location and the business system must actually carry out business activities^[4].

Despite not being expressed clearly anymore, it is necessary that the franchisee register the business lines relating to the franchise, including the registration of investment target as "franchising" in its Investment Certificate Registration (if any). At the same time, goods and services of franchising do not fall in the list those prohibited from trading (such as: special and toxic minerals; imported scraps which pollute the environment, etc.). In case the goods and services are restricted or conditional, the franchisee must obtain relevant business licenses and meet other business conditions as prescribed by law.

^[3] Article 5 of Decree 35.

^[4] Chinhphu.vn, "Điều kiện nhượng quyền thương mại", <https://baochinhphu.vn/dieu-kien-nhuong-quyen-thuong-mai-102249784.htm>, last accessed on 13 March 2023.

Secondly, the franchise agreement must be Vietnamese and in writing or equivalent form^[5].

A franchisor and a franchisee may negotiate the terms and conditions of a franchise agreement at their own discretion. Decree 35 gives some suggested terms and conditions which can be used for reference, but it is not compulsory to include them in a franchise agreement.

Where a franchising agreement contains a section on licensing of intellectual property matters, subject to the relevant regulations of intellectual property, it can be registered at National Office of Intellectual Property.

In Vietnam, a transfer agreement of the right to use an intellectual property asset need to be registered to take effect while a licensing one may be registered upon the parties' desires to protect the asset from a third party's claim.

The franchising may include the transfer of technology which can be understood as business secrets and know-how. In case a transfer of technology that may accompany a franchise or vice versa, the technology transfer agreement ("*TTA*") must be in writing and needs to be registered in the following circumstances: (a) technology transfer from overseas; (b) technology transfer from Vietnam to another country; (c) technology transfer using the State capital, unless being issued a type of certificate of registration of science and technology. Other than the above circumstances, the parties of TTA are suggested to register it to enjoy benefits in accordance with Law on Technology Transfer and other related regulations. However, some banks may request to see a registered TTA to remit fees.

Thirdly, both parties fulfill the information disclosure obligations (as discussed in Section 5).

Fourthly, the franchisor intends to do franchising from overseas including franchising from export processing zones, non-tariff areas or separate customs areas specified by Vietnamese law into Vietnam's territory must register at the MOIT^[6].

Instead of having the domestic franchising or franchising from Vietnam to overseas be registered, the franchisor has to report to the provincial Department of Industry and Trade where it is registered to operate in the form in Section B of Appendix III attached to Circular 09 no later than 15 January annually. There is no provision specifying the content of the report, and the procedure by which the report is filed. Thus, the reporting requirement appears not to be fully operational.

^[5] Article 285 of Commercial Law, Article 12 of Decree 35.

^[6] Article 17 of Decree 35.

5. Information disclosure obligation

By the franchisor^[7]

Decree 35 requires an information disclosure document by the franchisor called the Franchise Description Document (“*FDD*”). The FDD must be prepared according to a standard form provided by the MOIT under Circular 09.

The franchisor must provide the prospective franchisee with its FDD and the form of franchise agreement in Vietnamese at least 15 working days before the execution of the franchise agreement unless the parties agree otherwise.

In case of master franchising, the sub-franchisor shall, in addition to the above, have to notify in writing the following contents:

- Information on the franchisor that has granted commercial rights to it;
- Contents of the master franchising agreement;
- Method of handling secondary franchising contracts in case of termination of the master franchising agreement.

In case a foreign franchisor grants a master franchise to a local master franchisee/sub-franchisor, the foreign franchisor does not need to provide disclosure to local sub-franchisees, as that is the responsibility of the master franchisee/sub-franchisor.

During the operation, the franchisor must keep its franchisees updated with any significant changes that may have an impact on their franchised business activities.

By the franchisee^[8]

The potential franchisee shall have to supply the franchisor with information reasonably requested before the franchisor decides on the grant of franchising.

6. Franchising registration^[9]

Registration requirements apply to franchising from overseas. An offshore franchisor has only to register its franchising business once to the MOIT.

The dossier must include:

^[7] Article 8 of Decree 35.

^[8] Article 9 of Decree 35.

^[9] Article 17, 19, 20, 22 of Decree 35.

- Registration of franchise activity, made on a standard form provided in Circular 09;
- FDD;
- Certified copy of the franchisor's Business Registration;
- Certified copy of the audited financial statements of the franchisor for the year preceding the date of registration; and
- Certified copy of patents and certificates involving intellectual property rights of the franchisor.

If any of the above documents are in a foreign language, certified translation is required.

In addition, if the applicant is a sub-franchisor, it must present a document issued by the master franchisor permitting it to sub-franchise the business.

The MOIT has discretion to determine whether the documentation submitted for registration of the franchising activity meets requirements. It may require changes or additional information in the FDD. For the purpose of registration, it is preferable for a franchisor to use the FDD which has a similar format to the template provided in Circular 09. The regulatory time frame for the MOIT to approve the franchising activity is five working days from the date on which a complete dossier is submitted by the franchisor. In practice, the time frame may be longer--perhaps a month^[10].

*We hope you find our articles interesting and useful in your everyday business operations. We wish you pleasant reading. Please kindly visit **Insight** at our official website www.bizlegalgroup.com for more.*

^[10] Russin & Vecchi's Lawyers, "Vietnam: Legal Framework For Franchising In Vietnam", <https://www.mondaq.com/franchising/1196594/legal-framework-for-franchising-in-vietnam>, last accessed on 13 March 2023.




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