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Vietnam

FRANCHISE & LICENSING

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This country-specific Q&A provides an overview of franchise & licensing laws and regulations applicable in Vietnam.

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VIETNAM FRANCHISE & LICENSING



1. Is there a legal definition of a franchise and, if so, what is it?

The definition of a “franchise” is covered in Article 284 of the Commercial Law 2005 (“the Commercial Law”). This defines a franchise as a commercial activity whereby a franchisor authorizes and requires a franchisee to conduct the purchase and sale of goods or provision of services on its behalf. These transactions must follow the conditions below:

- a) The purchase and sale of goods or the provision of services must be conducted under the method of business organization specified by the franchisor. It must also be associated with the trademark, trade name, business know-how, business mission statements, business logo and advertising of the franchisor; and
- b) The franchisor has the right to control and offer assistance to the franchisee in the conduct of the business.

2. Are there any requirements that must be met prior to the offer and/or sale of a franchise? If so, please describe and include any potential consequences for failing to comply.

Before conducting franchising activities, both franchisors and franchisees must meet the following conditions:

- a) The franchisor’s business system (to be franchised) must have been in operation for at least one year as per Article 5 of Decree 35/2006/ND-CP (as amended by Article 8 of Decree 08/2018/ND-CP) (“Decree 35”).

A violation of this provision shall be subject to (i) a monetary fine from VND 10,000,000 to VND 20,000,000, and (ii) a remedial measure requiring the return of any illegal profits as per Articles 4, 75.3 and 75.6 of Decree 98/2020/ND-CP (“Decree 98”).

- b) Foreign franchisors must register their franchising

activities with the Ministry of Industry and Trade (“MOIT”) following Article 17 of Decree 35.

A breach of this requirement shall be subject to the same monetary fines and remedial measures mentioned above.

- c) The franchisor must disclose to the franchisee information regarding the franchise system. This must include a franchise agreement template and an introductory franchise document as stipulated in Article 8.1 of Decree 35. The franchisee will need to provide any information reasonably required by the franchisor for the franchise activity.

A violation of this condition shall lead to (i) a monetary fine from VND 6,000,000 to VND 10,000,000, and (ii) a remedial measure requiring the return of any illegal profits under Articles 4, 75.2, and 75.6 of Decree 98.

- d) The franchisee must fulfill all other relevant requirements applicable to the franchised business, depending on the sector. This includes, but is not limited to, sub-license requirements such as food safety satisfaction, fire protection sub-licenses, etc.

Infringement of these requirements shall be handled according to relevant laws.

3. Are there any registration requirements for franchisors and/or franchisees? If so, please describe them and include any potential consequences for failing to comply. Is there an obligation to update existing registrations? If so, please describe.

- a) Foreign franchisors, including sub-franchisors, must register their franchise activity with MOIT before conducting franchising activities as per Article 17 of Decree 35. This regulation does not apply to (a) domestic franchisors/franchising or (b) overseas franchising (where the franchisor’s business system

originates in Vietnam).

b) If registration is required, the following steps apply:

Step 1: Franchisors must submit to MOIT the application dossiers requesting the registration of commercial franchising activities. These dossiers should include: (i) the registration forms, (ii) the introductory franchise document ("FID"), (iii) documents certifying the legal status of the franchisors, (iv) industrial property right protection deeds, and (v) documentation regarding the approval of the master franchisor in case of sub-franchising (under Article 19 of Decree 35 and Clause 2, Section II of Circular 9/2006/TT-BTM ("Circular 9")).

Documents (i) and (ii) must follow the forms specified in Circular 9. Meanwhile, documents (iii) and (iv) must be notarized, legalized, and translated under Vietnamese law if prepared in foreign languages.

Step 2: The prescribed time limit for examining this application dossier is five working days from the date of submission. For approved application dossiers, MOIT will issue a notification accepting registration of the franchise activity and record the registration in the franchise register (following Clause 6, Section II of Circular 09).

Step 3: If there are any amendments to existing registrations, franchisors must notify MOIT within 30 days from the date of the amendment (as per Article 21 of Decree 35 and Section III of Circular 9).

c) Failure to follow the above requirements shall be subject to (i) a monetary fine from VND 10,000,000 to VND 20,000,000, and (ii) a remedial measure requiring the return of any illegal profits as per Articles 4, 75.3, and 75.6 of Decree 98.

4. Are there any disclosure requirements (franchise specific or in general)? If so, please describe them (i.e. when and how must disclosure be made, is there a prescribed format, must it be in the local language, do they apply to sales to sub-franchisees) and include any potential consequences for failing to comply. Is there an obligation to update and/or repeat disclosure (for example in the event that the parties enter into an amendment to the franchise agreement or on renewal)?

The disclosure requirements are set out in Decree 35. The key points are as follows:

a) Under Article 8.1 of Decree 35, the franchisor is obliged to provide the franchisee with documents detailing information about the franchising system. This would include a franchise agreement template and the FID. These should be shared at least 15 days before the agreement is signed. Under Article 9 of Decree 35, the franchisee is obliged to provide the franchisor with any information reasonably required for the franchise activity.

b) The language of the franchise agreement must be in Vietnamese as stipulated in Article 12 of Decree 35. However, this is not the case for Vietnam-to-overseas franchising. Meanwhile, the franchise agreement must be in writing or other forms of equivalent legal validity in line with Article 285 of the Commercial Law. The details of the franchise agreement will be agreed between the parties. However, if it is to be governed by Vietnamese law, it must include the essential contents outlined in Article 11 of Decree 35.

c) Under Vietnamese law, there are no requirements concerning the language and format of the FID.

d) For master franchising, in addition to the above, under Article 8.3 of Decree 35 the sub-franchisor must also provide the franchisee with the following information in writing: (i) information about the franchisor granting the franchising right, (ii) contents of the master franchise agreement, and (iii) settlement methodologies regarding the sub-franchising agreement in the event that the master agreement is terminated.

e) The franchisor must immediately notify all franchisees of any substantial changes in the franchise system that could affect the business under Article 8.2 of Decree 35.

Violation of any of the above requirements shall be subject to (i) a monetary fine from VND 6,000,000 to VND 10,000,000, and (ii) a remedial measure requiring the return of any illegal profits under Articles 4, 75.2, and 75.6 of Decree 98.

5. If the franchisee intends to use a special purpose vehicle (SPV) to operate each franchised outlet, is it sufficient to make disclosure to the SPVs' parent company or must disclosure be made to each individual SPV franchisee?

a) A franchisee is allowed to use an SPV to operate the franchised outlet. In this instance, and under Articles 3.3 and 3.5 of Decree 35: (i) the franchisee will be regarded as a sub-franchisor, (ii) the SPV will be regarded as a sub-franchisee, and (iii) the franchisee must obtain

consent from the master franchisor for sub-franchising under Article 290 of the Commercial Law.

b) Please refer to related comments in Question 4. As set out above, the master franchisor must disclose information to the original franchisee (or the sub-franchisor).

c) As such, and if granted the sub-franchising right by the master franchisor, the original franchisee (or the sub-franchisor) must provide each SPV (or each sub-franchisee) with the information and documents regarding the franchising and sub-franchising activities.

6. What actions can a franchisee take in the event of mis-selling by the franchisor? Would these still be available if there was a disclaimer in the franchise agreement, disclosure document or sales material?

Mis-selling by the franchisor could be a breach of the franchise agreement. The franchisee can initiate civil proceedings to seek redress under the Commercial Law and the Civil Code 2015. For instance, the franchisee could seek specific performance, punitive damages, compensation for damages, or termination of the franchise agreement under Article 292 of the Commercial Law.

Concerning the disclaimer in the franchise agreement, disclosure document, or sales material, this could be voided by the competent court or commercial arbitration. However, this would require the franchisee to prove that the franchisor's mis-selling was a fundamental breach of the agreement and seek its cancellation under Articles 3.13 and 3.12 of the Commercial Law. A fundamental breach under Commercial Law generally means a breach of contract by one party causing loss to the other party to the extent that the other party cannot achieve its objectives of entering into the contract. Furthermore, if the contents of a disclaimer violated the regulations or laws of Vietnam, it could be deemed illegal and, therefore, have no effect.

7. Would it be legal to issue a franchise agreement on a non-negotiable, "take it or leave it" basis?

A franchise agreement is a commercial contract. Typically, there are no limits on its drafting, presentation, or provisions as long as the wording and content meet the requirements of Vietnamese law. Subject to this, there would be no legal issues with a

contract of adhesion or a non-negotiable agreement.

8. How are trademarks, know-how, trade secrets and copyright protected in your country?

a) In Vietnam, the intellectual property rights (IPR) of trademarks, know-how, trade secrets, and copyright are classified into two areas: copyright and related rights and industrial property rights (under Articles 4.1 to 4.4 of the Law on Intellectual Property 2005, as amended and supplemented from time to time ("Law on IP")).

The protection and application of the IPR owner in the copyright and industrial property fields are administered by the National Office of Intellectual Property (NOIP) and the Copyright Office of Vietnam (COV), respectively. If the IPR owner requires protection against unauthorized use in Vietnam, their rights must be registered with the competent authorities.

i. Invention, industrial design, and trademark protections can either be on a first-to-file or priority principle basis (under Articles 90 and 91 of the Law on IP).

ii. Protection under Article 93 of the Law on IP is as follows: (A) a maximum of 20 years for invention patents; (B) ten years for utility solution patents; (C) a maximum of five years for industrial design, renewable for two consecutive periods of five years; and (D) an initial ten years, indefinitely renewable for further ten-year periods, for trademark.

Under Article 27 of the Law on IP, the length of copyright protection can be either (A) indefinite for the moral rights of the author under Articles 19.1, 19.2, and 19.4, or (B) definite with a specific-duration moral right of the author under Article 19.3 and economic rights under Article 20. For (B), the length of protection can range from 75 to 100 years or the author's whole life, depending on the type of copyright.

iii. Trade secrets, such as data used in business, may be protected in Vietnam if the owner provides appropriate measures to maintain the secrecy of the data (under Article 84 of the Law on IP).

b) If an IPR owner is aware of any violation of their rights, regardless of their effort to prevent acts of infringement, a range of measures can be applied to protect their IPR (under Article 198 of the Law on IP). IPR owners can:

i. Request that any organization or individual who commits an act infringing the IPR of the holder terminates such action, makes a public apology or

rectification, and pays damages;

ii. Request that the competent State body deals with acts infringing its IPR under the provisions of the Law on IP and other relevant laws; and

iii. Initiate a court lawsuit or claim at the arbitration center to protect the legitimate rights and interests of the owner.

c) Enforcement agencies with the authority to address IPR infringement issues include, but are not limited to, the Ministry of Industry and Trade's Market Management Bureau, the Ministry of Public Security's Economic Police, and the People's Court (Civil Court). Depending on the determination of the IPR owners, there are three levels at which rights may be enforced in Vietnam. These include administrative action, civil court action, and criminal prosecution (under Article 200 of the Law on IP).

At the level of administrative remedies, the competent authority will compel the violator to terminate the acts in question and decide on the appropriate sanction. This could include a warning, fine, the seizure or destruction of counterfeit goods, business suspension, and re-exportation of infringing imported or transited goods out of Vietnam (under Article 214 of the Law on IP).

The application of civil and criminal remedies falls within the authority of the courts. Depending on the seriousness of the action, violators may be obligated to terminate the infringing acts, publicly apologize and provide rectification, perform civil obligations, or pay damages for the loss (Under Article 202 of the Law on IP).

If the government authorities investigate an act of infringement that involves a criminal element, the violators will be subject to criminal prosecution (under Article 212 of the Law on IP). Penalties in these instances could include fines, imprisonment, and even the death penalty in serious cases.

9. Are there any franchise specific laws governing the ongoing relationship between franchisor and franchisee? If so, please describe them, including any terms that are required to be included within the franchise agreement.

The most relevant laws governing the on-going relationship between franchisor and franchisee are Decree 35, the Commercial Law, and the Civil Code 2015.

a) Decree 35 stipulates the information disclosure requirements applicable to the franchisor. Under Article 8.2, it must immediately notify all franchisees of any substantial changes in the franchising system that could affect their commercial franchising business.

b) The Commercial Law stipulates the rights and obligations of franchisors and franchisees during their on-going relationship. These are set out in Articles 286 to 289. Sub-franchising matters are covered under Article 290.

c) The Civil Code 2015 stipulates the rights and obligations of the parties to a civil transaction in general. Since franchising is also a civil relationship, it is likewise governed by the Civil Code. If any matters arising between the parties are not regulated in Decree 35 or the Commercial Law, provisions of the Civil Code will be applied.

As described in Question 4, the contents of the franchise agreement are agreed upon between the parties. However, it must include the essential elements set out in Article 11 of Decree 35 if it is governed by Vietnamese law.

10. Are there any aspects of competition law that apply to the franchise transaction (i.e. is it permissible to prohibit online sales, insist on exclusive supply or fix retail prices)? If applicable, provide an overview of the relevant competition laws.

Under the Vietnamese legal framework, there are certain aspects of competition law that franchisors and franchisees should be aware of. Notable examples include anti-competitive agreements and the abuse of dominant or monopoly positions.

a) In relation to an anti-competitive agreement. This includes:

i. Agreements directly or indirectly fixing the price of goods or services under Article 11.1 of the Law on Competition. This kind of anti-competitive agreement is an arrangement between traders where a common price or method of calculating prices is applied when buying from and selling goods and services to customers. Such an arrangement could also include exchanging price information to create uniform reactions to these prices when negotiating with customers.

ii. Agreements that prevent, restrain, or disallow other enterprises from entering the market or developing a business under Article 11.5 of the Law on Competition. In

this kind of anti-competitive agreement, relevant parties agree to perform acts to create barriers to market entry. This is done by causing difficulties for business activities or the business of another enterprise, or by reducing the attractiveness of the market.

b) In relation to the dominant or monopoly position: This depends on the terms of the franchise agreement. The activities of the franchisor and franchisee may fall within the list of prohibited acts of abuse of a dominant market and monopoly position. In general terms, these prohibitions include, but are not limited to:

iii. Selling goods or providing services below cost that drives or could drive competitors out of the market;

iv. Imposing irrational buying or selling prices of goods or services, or establishing minimum resale price maintenance (RPM), which causes or could cause damage to customers;

v. Restricting the production and distribution of goods or services, limiting markets, and preventing technical and technological development which causes or could cause damage to customers;

vi. Applying dissimilar commercial conditions in similar transactions which leads or could lead to other enterprises being prevented from entering the market or the expansion or exclusion of other enterprises;

vii. Imposing conditions on other enterprises to conclude contracts for the purchase or sale of goods or services or requesting that customers accept obligations that have no direct connection with the subject of these contracts which leads or could lead to other enterprises being prevented from entering or expanding in the market or to the exclusion of other enterprises; and

viii. Preventing other enterprises from entering or expanding in the market.

11. Are in-term and post-term non-compete and non-solicitation clauses enforceable?

Vietnamese law does not have any specific regulations or prohibitions in this regard. However, non-compete clauses are met with disdain when it comes to their being enforced and upheld in the courts. This is more of a historic concern. This is due to the violation principle of free and voluntary agreement in commercial activities under Article 11 of the Commercial Law.

However, in recent years, Vietnamese courts have become increasingly warm towards permitting non-compete clauses to be enforced. Therefore, as long as

these clauses do not violate or contravene Vietnamese law, they will be enforceable.

12. Are there any consumer protection laws that are relevant to franchising? Are there any circumstances in which franchisees would be treated as consumers?

The relevant Vietnamese law would be the Consumer Protection Law 2010 and relevant legal documents. This regulates the relationship between consumers and traders offering goods and services to consumers. In other words, it governs the relationship between the franchisee, its customers and clients.

There are no circumstances in which franchisees would be treated as consumers under Vietnamese law for the following reasons:

a) The trader is an economic organization or individual who conducts commercial activities independently and regularly, under Article 6 of the Commercial Law;

b) A consumer is someone who purchases or uses goods and services for personal use, for families, or for organizations, under Article 3.1 of the Law on Consumer Protection 2010; and

c) The franchisee is a trader, under Article 284 of the Commercial Law and Article 3.2 of Decree 35.

Therefore, it is clear that a franchisee will not be treated as a consumer under the laws of Vietnam.

13. Is there an obligation (express or implied) to deal in good faith in franchise relationships?

To deal "in good faith" is a fundamental principle of civil laws under Article 3.3 of the Civil Code 2015. A franchising agreement is a civil transaction. Therefore, both franchisor and franchisee must conduct their relationship in "good faith".

14. Are there any employment or labour law considerations that are relevant to the franchise relationship? Is there a risk that the staff of the franchisee could be deemed to be the employees of the franchisor? What steps can be taken to

mitigate this risk?

Franchising is a relationship between traders. In order words, it is a business-to-business transaction. As such, there should be no labor issues concerning a franchising relationship.

There is little to no risk that a franchisee’s staff could be deemed employees of the franchisor. Under the Labor Code 2019, a relationship of employment is formed based on a labour contract. Therefore, in theory, a franchisee’s employee will not also be an employee of the franchisor unless he or she has entered into a labour contract with both these parties.

15. Is there a risk that a franchisee could be deemed to be the commercial agent of the franchisor? What steps can be taken to mitigate this risk?

Based on the comparison table below, there are many similarities between a commercial agent and a franchisee. However, the nature of these two kinds of business is very different and can be seen through the following points:

The ownership of the goods/services sold/provided to the customers;

The commercial agent receives remuneration from the principal whereas the franchisee pays royalties to the franchisor; and

The principal is liable for the quality of goods and services and, therefore, has a direct obligation to the customer. The franchisor, on the other hand, does not have such direct obligations, which typically fall on the franchisee.

Therefore, to mitigate the risk of being considered a commercial agent-principal relationship, the provisions in a franchise agreement will need to be carefully and clearly drafted. In particular, attention should be given to clauses concerning the nature of payment, the ownership of goods/services, and the liability to customers.

Key Points	Commercial Agency Arrangement	Franchising Arrangement
Definition under Vietnamese law	Commercial agency means a commercial activity whereby the principal and the agent agree for the agent to conduct, in its name, the sale or purchase of goods or the provision of services to customers to receive remuneration.	Franchise means a commercial activity whereby a franchisor authorizes and requires a franchisee to conduct, on its behalf, the purchase and sale of goods or the provision of services under the conditions under the law.
Ownership	The principal owns the goods and money delivered to the agent for selling/providing/collecting/purchasing from the customers and sellers.	The franchisor owns trademark, trade name, business know-how, business mission statements, logo, and advertising. As to the ownership of the goods/ services sold/ provided to the customers, it may either be owned by the franchisor or franchisee dependent on the agreement.
Remuneration/royalties	The principal pays remuneration to the agent.	The franchisee pays royalties to the franchisor.
Rights of the principals/franchisors	<ul style="list-style-type: none"> • To fix the selling or purchasing price of goods or the service charge to the customer; • To fix the price for selling to the agent; • To request that the agent implement security measures as provided for by law; • To request that the agent makes the payment or delivers goods under the agency contract; and • To inspect and supervise the performance of the agency contract by the agent. 	<ul style="list-style-type: none"> • To receive royalties; • To organize advertisement for the franchise system and franchise network; and • To conduct regular or random inspections of the franchisee’s operations to ensure uniformity in the franchise system and consistency in the quality of goods or services.
Obligations of principals/franchisors	<ul style="list-style-type: none"> • To provide guidelines and information for and facilitate the performance of the agency contract by the agent; • To be liable for the quality of goods of an agent selling and purchasing goods and the quality of services of agencies providing services; • To pay remuneration and other reasonable expenses to the agent; • To return the assets of the agent used as security (if any) to the agent after the termination of the agency contract; and • To be jointly liable for a breach of law by the agent if the violation is partly the principal’s fault. 	<ul style="list-style-type: none"> • To provide the franchisee with the disclosure document on the franchise system; • To provide the franchisee with initial training and on-going technical assistance to enable the franchisee to operate the business under the franchise system; • To design and layout the goods or service sales outlet at the cost of the franchisee; • To ensure the intellectual property rights concerning the objects stipulated in the franchise contract; and • To accord equal treatment to franchisees in the franchise system.

16. Are there any laws and regulations that affect the nature and payment of royalties to a foreign franchisor and/or how much interest can be charged?

There are no regulations affecting the nature and payment of royalties to a foreign franchisor as long as all tax obligations have been met under Vietnamese law. If a franchise agreement is governed by the laws of Vietnam, the following should be noted:

In relation to late payment: If royalties are not paid on time, the franchisor has the right to request that the franchisee pay interest accrued on the outstanding amount for the late period. The average interest rate applicable to overdue debts in the market at the time under Article 307 of the Commercial Law will be applied. Alternatively, the parties can agree on an interest rate. However, this cannot exceed 20% per year as per Articles 357 and 478 of the Civil Code 2015.

In relation to penalties for violating contractual

obligations: A commercial transaction agreement commonly contains a “penalties for violation of obligations” clause. In this clause, the violating party may be obliged to pay a penalty to the other party for its violation. However, this penalty should not exceed 8% of the value of the violated contractual obligations as stated in Article 301 of the Commercial Law.

17. Is it possible to impose contractual penalties on franchisees for breaches of restrictive covenants etc.? If so, what requirements must be met in order for such penalties to be enforceable?

As set out in Question 16, Article 292 of the Commercial Law describes the regulations regarding contractual penalties that parties could apply in case of contractual violations. Such penalties and remedies include the following:

- a) Specific performance;
- b) Penalty for breach;
- c) Damage for loss;
- d) Temporary cessation of performance of the contract;
- e) Termination of performance of the contract;
- f) Rescission of contract; and
- g) Other remedies, provided that they are not contrary to the fundamental principles of Vietnamese law, any international treaty of which Vietnam is a member, or to international commercial practice.

In order to apply such penalties, clauses should be clearly set out in the franchising agreement. Furthermore, these provisions should not exceed the limitations set out in Question 17. For example, a breach penalty should not exceed 8% of the value of the violated contractual obligations. Damages should be calculated based on the actual, proven losses including those profits that would have been earned had the breach not occurred.

18. What tax considerations are relevant to franchisors and franchisees? Are franchise royalties subject to withholding tax?

Franchisors are subject to the following taxes applied for any fees collected. These fees include, but are not limited to, franchise fees, royalties, administrative fees, advertising fees, management fees, etc.:

- a) Corporate income tax (CIT) and personal income tax (PIT); and
- b) Value-added tax (VAT).

Local franchisees are responsible for withholding the applicable foreign contractor withholding tax (i.e., the CIT, PIT, and VAT applied to the franchisor) from the amounts paid to the franchisor under the franchise agreement. The same must also be paid to Vietnam’s tax authorities on behalf of the foreign franchisor.

Royalties are classified as income of the foreign franchisor derived from their engagement in the franchise agreement. These will, therefore, be subject to withholding tax.

19. Does a franchisee have a right to request a renewal on expiration of the initial term? In what circumstances can a franchisor refuse to renew a franchise agreement? If the franchise agreement is not renewed or it if it terminates or expires, is the franchisee entitled to compensation? If so, under what circumstances and how is the compensation payment calculated?

These rights and refusals would depend on the provisions in the current franchise agreement. A franchise agreement is a commercial agreement drafted based on negotiation between the parties. If the renewal right is set out in the contract, the franchisee will be able to exercise that right when the initial term expires. The same principle applies to compensation and the refusal right of the franchisor.

20. Are there any mandatory termination rights which may override any contractual termination rights? Is there a minimum notice period that the parties must adhere to?

Under the Civil Code and the Commercial Law, several termination rights may override the contractual termination right. These include the right to terminate in case of dissolution or bankruptcy, termination due to force majeure, or the right to terminate due to material adverse changes in circumstances. Such termination rights will also be subject to the dispute settlement parties and the objective factors of the situation leading to a termination request.

21. Are there any intangible assets in the franchisee's business which the franchisee can claim ownership of on expiry or termination, e.g. customer data, local goodwill, etc.

Vietnamese law does not set out the legal framework for such a claim of ownership. The ownership of intangible assets will be subject to the provisions of the executed franchise agreement.

22. Is there a national franchising association? Is membership required? If not, is membership commercially advisable? What are the additional obligations of the national franchising association?

There is no national franchising association in Vietnam.

23. Are foreign franchisors treated differently to domestic franchisors?

Yes, please refer to Question 3. Foreign franchisors will need to register their franchise activities before conducting these activities in Vietnam.

24. Are there any requirements for payments in connection with the franchise agreement to be made in the local currency?

Under the laws of Vietnam, an agreement between two Vietnamese parties within Vietnam must be stated and conducted in VND with no reference to USD or other foreign currencies. Therefore, if both the franchisor and the franchisee are Vietnamese individuals or entities, the contract value of the relevant franchise agreement must be stated and paid in VND.

25. Must the franchise agreement be governed by local law?

Parties can choose foreign governing laws only if the franchising agreement has foreign elements. Under the Civil Code, "foreign elements" would mean that (i) at least one contractual party is a foreign individual/entity; (ii) the basis for the establishment, modification, or termination of the contractual relationship arises outside Vietnam; or (iii) the subject of the contractual relationship is outside Vietnam.

Any other franchising agreement which does not fall within the category above (without any foreign elements) must be governed by Vietnamese law.

26. What dispute resolution procedures are available to franchisors and franchisees? Are there any advantages to out of court procedures such as arbitration, in particular if the franchise agreement is subject to a foreign governing law?

Parties can typically choose either court or arbitration as the dispute resolution mechanism for the franchise agreement. Dispute resolution through arbitration is generally a preferred choice because it requires less time and cost and involves less complicated procedures.

It is important to note that Vietnamese courts will only recognize foreign law in proceedings where it is not found to be incompatible with the basic principles of Vietnamese law. In other words, the consequences of its application must not contradict the laws of Vietnam or its public interests and orders.

If a judgment is obtained from a foreign court, or any other foreign jurisdiction, against the local franchisee to enforce the terms of the franchising agreement, this foreign judgement will not automatically be effective or recognised by Vietnamese courts. In order to further enforce this in Vietnam, an agreement on the matter must have been signed between or admitted to by Vietnam and the relevant foreign jurisdiction.

27. Does local law allow class actions by multiple franchisees?

The Civil Procedure Code allows multiple plaintiffs to take legal action against a single organization (under Clause 1 of Article 42 and Clause 2 of Article 188).

28. Must the franchise agreement and disclosure documents be in the local language?

The language of a franchise agreement must be in Vietnamese, irrespective of the chosen governing law, except in the case of Vietnam-to-overseas franchising under Article 12 of Decree 35.

There are no regulations on the language of the disclosure documents to be provided to the franchisee, set out in Question 4. However, during the registration step of the franchisor with the MOIT as described in

Question 3, the submitted FID must be a Vietnamese translation.

29. Is it possible to sign the franchise agreement using an electronic signature (rather than a wet ink signature)?

Digital signatures are valid and legally recognized in Vietnamese law, subject to the digital signature security requirements under the 2005 Electronic Transactions Law and Decree 130. In general terms, digital signatures must be registered with agents who have been granted the right to issue them by the Vietnamese authorities.

It is important to note that current Vietnamese law recognizes digital signatures as the only legal type of electronic signature. In addition, only one method of signature is allowed on the same agreement. Therefore, parties should only choose one form of signature, either wet ink or electronic.

30. Can franchise agreements be stored electronically and the paper version be destroyed?

This depends on how the franchise agreement was entered into in the first place. If it was signed using wet ink signatures, the parties must keep hard copies of the agreement. However, if it was signed using digital signatures as described in Question 29, the electronic agreement is considered legally signed and must be safely stored electronically.

31. Please provide a brief overview of current legal developments in your country that are likely to have an impact on franchising in your country.

While it is still far from perfect, Vietnam's legal framework has undergone significant developments and constant changes enabling the country to align with both international trends and standards. Many new guiding documents on commercial matters, investment, and intellectual property have been issued lately, such as the new investment and enterprise laws. Meanwhile, a draft law amending and supplementing the current Law on IP is being prepared.

32. In your opinion, what are the key lessons to be learned by franchisors as a consequence of the COVID-19 crisis?

The COVID-19 crisis is unprecedented. It has caused franchisors to respond carefully to the challenges faced. In particular, franchisees are looking to franchisors for guidance on how to sustain the agreed franchising system and not be faulted for being in breach of the agreement. Key lessons from this include:

a) Constant communication and remaining informed of changes

The importance of communication cannot be overstated. Generally, this equates to the parties being equipped with the necessary information. It is important for franchisors to review all communications carefully to avoid liability. Constant communication leads to better decision-making. While reliance is typically placed on the franchisee in relation to changes in the local jurisdiction, franchisors need to be proactive and independently seek out such changes at all times. Early identification of issues stemming from these changes is essential to remain competitive in the market. This is now truer than ever, in light of the COVID-19 crisis.

b) Business continuity planning and flexibility

With the relevant information, whether independently sought or through franchisee communication, the franchisor can make better decisions and have different business plans when the situation calls for it. These plans should never be set in stone and are merely guidance. They should be "working documents" with the flexibility to handle the fluidity of the situation and ever-changing conditions.

This will provide opportunities to innovate and adapt, which will continue beyond the COVID-19 crisis. Competitive edge lies in first-mover advantage. We have seen many changes occurring recently within the franchise systems. The most common is the transition to online formats for retail and service brands, including sectors in food and beverage, education, and fitness concepts.

c) More active participation by the franchisor

Franchisees increasingly call upon franchisors to assist with various business issues. This is not a typical approach. However, it may benefit the franchisor to approach the issues equally across all jurisdictions. This is because the issues are system-wide (faced by many franchisees), and the franchisor will likely have the appropriate resources and infrastructure to deal with them more competently.

For example, the most common problem faced by franchisees during the COVID-19 crisis is supply chain issues. Similar to the flexibility comment above,

franchisors need to be open in identifying alternative arrangements, including permitting franchisees to source their own supplies.

Nevertheless, such participation in business issues must

be carefully crafted and risks skilfully mitigated. This is to avoid creating potential liabilities for the franchisor who could be considered to be taking an active role in the operations.

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