

VIETNAM

On 31 March 2006 the Socialist Republic of Vietnam adopted a *Decree making detailed Provisions for implementation of the Commercial Law with respect to Franchising Activities* (No. 35-2006-ND-CP).

The Decree has 28 articles divided into three chapters.

The Chapters and articles are as follows:

Chapter I (Articles 1 – 4) contains *General Provisions*;

Chapter II (Articles 5 – 26) deals with *Franchising Activities*:

Section 1 (Articles 5 – 7) with *Conditions for Franchising Operations*;

Section 2 (Articles 8 – 16) with *Information Disclosure and Franchise Contracts*;

Section 3 (Articles 17 - 23) with the *Registration of Franchising Activities*; and

Section 4 (Articles 24 – 26) with *Breaches of Law in Franchising Activities, Authority to deal with Breaches*;

Chapter III (Articles 27 – 28) contains *Implementing Provisions*.

It is not a disclosure law, even if it does give indications of the information that the franchise agreement must contain (Article 11, but see also Article 8). Article 11 thus states that the agreement:

“may contain the following items:

1. Contents of franchising.
2. Rights and obligations of the franchisor.
3. Rights and obligations of the franchisee.
4. Price and periodic franchising fee, and payment method.
5. Term of the contract.
6. Extension and termination of the contract, and dispute resolution.”¹

What is interesting in this context is that the Decree expressly provides that a prospective franchisee must provide the franchisor with all information reasonably requested by the franchisor in order to make a decision on the granting of the franchise to such a prospective franchisee (Article 10(1)).

Article 2 states specifically that the Decree applies “to Vietnamese business entities and foreign business entities participating in franchising activities” (para. (1)). Special provision is made for foreign business entities which are subject to certain limitations in their activities. Para. (2) in fact states that an enterprise with foreign-owned capital specialising in the purchase and sale of goods, or in activities directly related to the purchase and sale of goods, may only conduct franchising in those lines of goods for which such an enterprise is permitted to provide distribution services pursuant to the international undertakings of Vietnam.

Article 3, which gives the definition of terms used, refers also to master franchises which are explicitly covered by the Decree.

¹ Translation of the Vietnamese Decree by Phillips Fox Translation

The Vietnamese Decree provides for pilot operations: it includes the requirement as one of the conditions franchisors have to satisfy in order to be permitted to grant franchises. If the franchisor is a foreign franchisor granting a master franchise to a Vietnamese sub-franchisor, the sub-franchisor must operate the franchise business for at least one year in Vietnam before sub-franchising (Article 5(1)).

As regards the term of the agreement, the Vietnamese Decree specifically states that the term of the agreement “shall be as agreed by the parties” (Article 13(1)).

The Vietnamese Decree provides for a unilateral right of both franchisee and franchisor to terminate in certain cases:

“Art 16 1. A franchisee shall have the right to unilaterally terminate the franchise contract if the franchisor breaches the obligations stipulated in article 287 of the Commercial Law.

2. The franchisor shall have the right to unilaterally terminate the franchise contract in the following cases:

(a) The franchisee no longer possesses the licence or equivalent document required by law in order to carry out the franchise business;

(b) The franchisee becomes bankrupt or is dissolved in accordance with the law of Vietnam;

(c) The franchisee commits a serious breach of law which may significantly damage the reputation of the franchise system;

(d) The franchisee fails to remedy a non-fundamental breach of the franchise contract within a reasonable time after the franchisee has received written notice from the franchisor to remedy such breach.”

The assignment of franchises is also dealt with (Article 15).

Section 3 of Chapter II gives detailed provisions on the registration of franchising activities and Section 4 on breaches of law and the authority to deal with breaches.

One characteristic aspect is the involvement of the authorities at different levels. Article 4 describes the duties of the different authorities in “State administration of franchising activities” in great detail: the Ministry of Trade, the Ministry of Finance, other Ministries, ministerial equivalent bodies and Government bodies, people’s committees of provinces and cities under central authority are all referred to.