

## Franchising in Vietnam: overview

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### MARKET

#### 1. What have been the main developments in the franchising market over the past 12 months?

Franchising has become increasingly commonplace in Vietnam in recent years. International franchise brands are now commonly seen in the streets and shopping centres of Vietnam's major cities, with particular prominence in the fields of food and beverages, fashion and convenience stores. The notable holdout 7-Eleven finally opened its first stores in Vietnam in the summer of 2017, joining fellow late arrivals McDonald's (2014) and Starbucks (2013), symbolising, perhaps, the maturation of the market.

In addition to foreign franchises, local restaurant groups have seen tremendous growth. For example, the Golden Gate Restaurant Group, founded in 2005, now has more than 210 franchise restaurants nationwide across 22 brand concepts including Japanese, hotpot, barbecue and beer clubs. Huy Vietnam, specialising in the franchising of Vietnamese cuisine, has around 200 restaurants under an expanding range of brands. Well-known and longstanding local brands such as Pho 24 and Highlands Coffee also continue to grow domestically, and have even expanded into other countries. Notably, Trung Nguyen Coffee has the largest network of franchise shops in Vietnam, with over 1,200 outlets (the brand was first established in 1998).

By July 2018, the Ministry of Industry and Trade had granted over 200 franchise licences. With the franchise model now well established in restaurants and retail, it is expected that areas such as services, entertainment and technology will develop in the near future.

#### 2. What are the most commonly used methods of local and international franchising?

##### Local franchising

**In Vietnam, all methods of vanilla franchising (direct franchising, master franchise agreements and development agreements) are used. However, direct franchising is most often used in domestic franchises.**

##### International franchising

Overseas franchisors franchising into Vietnam have used a variety of franchising models, ranging from various forms of direct franchising methods (for example, multi-unit or development agreements) to master franchise agreements.

Typically, overseas franchisors will look for prospect franchisees with a high degree of business acumen who will be able to quickly, but sustainably, establish units through large areas of the country. As a result, single-unit franchising methods tend to be fairly rare.

#### 3. Are there any specific reasons for an overseas franchisor to use a separate entity for entering into a franchise agreement with a franchisee in your jurisdiction?

There are no particular local legal or regulatory issues why an overseas franchisor may want to use a separate entity for entering into a franchise agreement with a franchisee in Vietnam.

### REGULATION OF FRANCHISING

#### 4. What is the legal definition of franchising and/or a franchise?

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

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

#### 5. What are the laws regulating franchising?

Franchising is governed by the Commercial Law and the following legal instruments, which provide details for implementing the Commercial Law on franchising activities:

- Decree 35/2006/ND-CP (Decree 35), as amended by Decree 08/2018/ND-CP.
- Decree 120/2011/ND-CP (Decree 120).
- Decree 185/2013/ND-CP (Decree 185).
- Circular 09/2006/TT-BTM (Circular 09).

The offer and sale of franchises in Vietnam is likely to trigger the rules relating to mergers and acquisitions. Currently, Vietnam does not have a single body of legislation governing mergers and acquisitions. As a result, several areas of law (such as investment, company, competition, securities, tax and foreign exchange) may need to be considered when contemplating the offer and sale of franchises.

The ongoing relationship between a franchisor and franchisee is likely to be affected by several areas of law, including intellectual property and contract law.

Overseas franchisors should select their dispute resolution forums and governing law carefully. These are key factors which may affect

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the enforceability of a franchise agreement against a local franchisee.

Vietnam's rules require that the franchise agreement must be in Vietnamese.

In most cases, franchising agreements can be governed by foreign law, provided that the application of that foreign law is not contrary to the "basic principles of Vietnamese law". The "basic principles of Vietnamese law" have been interpreted very broadly, and even seemingly minor inconsistencies can render contract terms unenforceable in Vietnam.

Therefore, even provisions which seem almost standard to overseas franchisors, should be examined very carefully to ensure enforceability.

There are no specific laws in Vietnam to encourage franchising.

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## 6. What is the regulatory authority responsible for enforcing franchising laws and requirements in your jurisdiction?

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The primary regulatory authority responsible for enforcing franchising laws and requirements in Vietnam is the Ministry of Industry and Trade (MOIT) ([www.moit.gov.vn/en/Pages/default.aspx](http://www.moit.gov.vn/en/Pages/default.aspx)).

While Vietnam currently has a Franchise Business Association, this association is not well known and has a limited number of members. It is not imbued with the ability to enforce franchising laws or requirements in Vietnam.

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## 7. Must the franchisor be registered with a professional or regulatory body before setting up a franchise system?

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Foreign franchisors in any business sector must register their franchising activities with the Ministry of Industry and Trade (MOIT) before conducting franchising activities in Vietnam. While there is no requirement for domestic franchisors to register with the MOIT before conducting franchising activities, in Vietnam, domestic franchisors should examine what requirements are required of them on a provincial level. Foreign franchisors must have operated for at least one year in their jurisdiction in order to be registered with the MOIT.

The franchisor (or the IP owner, if different) does not need to be registered with any IP registry or other body.

Depending on the circumstances, a failure to register franchising activity can result in the following sanctions:

- Small fines ranging from VND5 million to VND10 million (approximately US\$225 to US\$475).
- The forced relinquishment of profits gained from the franchising activity that has not been registered (this sanction can be very problematic for the franchisor).

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## 8. Is there a code of ethics or other means of promoting ethical franchising in your jurisdiction?

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There is no code of ethics or other means of promoting ethical franchising, and Vietnam has not adopted the European Code of Ethics.

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## 9. Do franchisees benefit from any laws designed to protect consumers or small businesses?

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Franchisees do not benefit from any laws designed to protect consumers or small businesses.

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## 10. Are there any other requirements which must be met before a business can sell a franchise?

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The offer and sale of franchises in Vietnam is likely to trigger the rules relating to mergers and acquisitions, and so several areas of law may need to be considered when contemplating the offer and sale of franchises (see *Question 5*).

Before a franchisor can offer its franchise in Vietnam, the franchisor must ensure that all of the trade marks associated with the franchising activities in Vietnam are either:

- Registered as trade marks with international trade mark registrations, where Vietnam is named as a designated jurisdiction.
- Registered with Vietnam's National Office of Intellectual Property (NOIP).

The registration of a trade mark with the NOIP can pose commercial difficulties as the registration process in Vietnam can be very time-consuming.

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## FRANCHISE AGREEMENT Pre-contract disclosure requirements

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## 11. Is the franchisor subject to any general or formal pre-contract disclosure requirements?

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Unless the franchisor and franchisee agree otherwise, the franchisor must provide the proposed franchisee with the following at least 15 business days before the date that the franchise agreement is signed:

- A copy of the franchise agreement form.
- A franchise disclosure document.

A franchise disclosure document includes, among other things:

- General information on the franchisor (such as its incorporation details).
- Initial costs to be paid by the franchisee.
- Rights and obligations of the franchisor and the franchisee.
- A description of the franchise system.

The proposed franchisee is responsible for providing all reasonably requested information to the franchisor, so that the franchisor can make a decision about whether to grant the franchise to the proposed franchisee.

Where there is a local sub-franchising, while the local sub-franchisor will be under a number of regulatory obligations, the overseas franchisor and IP owners are not required to participate in any way in the local disclosure process.

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## 12. Must the franchisor disclose fairly and in good faith all facts material to the prospective franchisee's decision to

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### **enter into the arrangement, or must the prospective franchisee rely on its own due diligence?**

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Unless otherwise agreed between the franchisor and the franchisee, the franchisor must provide the franchisee with the following at least 15 business days before the date that the franchise agreement is signed (see *Question 11* for more details):

- A copy of the franchise agreement form.
- A franchise disclosure document.

#### **Formalities**

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### **13. What are the formal contractual requirements to create a valid and binding franchise agreement?**

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Franchising regulations require that the franchise agreement must be made in Vietnamese.

Regarding contractual formalities, the legislation provides that contracts can generally be formed orally, in writing or by specific acts. However, Vietnam is a very formalistic jurisdiction in practice, and the use of company seals is common. Importantly, overseas franchisors should make sure that the franchisee's signatory (where the franchisee is a corporate) is properly imbued with the ability to bind the franchisee.

#### **Parties' rights and obligations**

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### **14. Is there a general obligation to behave fairly, reasonably or in good faith to the other party during the term of the franchise agreement?**

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As a civil law system, Vietnam does not apply the concept of "good faith" that is applicable in certain common law jurisdictions. However, Vietnam's Civil Code provides roughly analogous principles, which will apply to franchise relationships. These principles comprise, among other things:

- The principle of free and voluntary undertaking and agreement.
- The principle of equality.
- The principle of goodwill and honesty.
- The principle of respect for good morals and traditions.

In addition, the Civil Code provides that a civil transaction will be deemed invalid where certain elements were present when that transaction occurred, such as the following:

- Violation of legal prohibitions.
- Contravention of social morals.
- Falsification.
- Misunderstanding.
- Deception.
- Threats.

#### **Obligations of the franchisee**

The general rule is that both a franchisor and a franchisee have the right to freely negotiate the terms and conditions of the franchise agreement, including their rights and obligations towards one another.

The operations manual often forms part of the franchise agreement, and franchisees have an obligation to comply with the operations manual. The provisions of the Commercial Law vest control of the business operations with the franchisor, and the financial obligation to perform such business operations with the franchisee. This

arrangement can create a significant financial burden for the franchisee when the franchisor decides to change the layout or design of the operation outlet, resulting in a substantial change to the financial obligations of the franchisee (as compared to the obligations that were previously in place when the agreement was signed).

Even though the regulations require the franchisor to inform its franchisees of any changes that may affect their business, they do not specifically provide any legal means for franchisees to refuse such changes, or escape from any additional resulting obligations.

However, the Competition Law will prohibit such behaviour if it can be proved that the franchisor made the changes in order to drive the franchisee out of business. To make use of this provision, the franchisee must prove that the changes are outside "the essential scope of performance of the contract".

#### **Obligations of the franchisor**

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 towards one another, such as whether the franchisor is obligated to train the franchisee's staff.

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### **15. Does local law require that particular provisions must be expressly included in a franchise agreement?**

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Local law does not require that any particular provisions be expressly included in a franchise agreement.

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### **16. Are exclusion and entire agreement clauses enforceable in your jurisdiction? If so, are they effective to protect the franchisor?**

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The effectiveness of these clauses depends on the particular facts of a given case. In particular, Vietnam legislation may specifically permit one to exclude or waive statutory rights in some cases, while restricting this ability in other instances.

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### **17. Can the franchisor impose product tying or other purchasing restrictions and non-compete obligations on the franchisee during the term of the agreement?**

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#### **Restrictions on purchasing and product tying**

As a general rule, a franchisor can impose product tying or other purchasing restrictions on a franchisee during the term of the agreement. However, a number of Vietnam's franchising regulations are in conflict with its competition laws. As a result, franchisors should check to ensure that any obligations imposed would not be deemed unenforceable under the relevant competition laws.

#### **Non-compete obligations and transfer restrictions**

Non-compete covenants are widely used in franchise agreements, and are not expressly prohibited under Vietnamese law. However, the enforcement of non-compete and non-solicitation covenants is relatively untested in practice. Any such request filed with the court will be considered on a case-by-case basis.

A franchisor can impose restrictions on 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.

There are several very broad statutorily enumerated circumstances which, taken together, mean that a franchisor would not have much difficulty in finding a reason to reject an assignment. However,

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franchisors should bear in mind that the law presumes that the franchisor has given its approval if it fails to produce a written response to the franchisee within 15 days of receipt of a request for an assignment.

### **Fees and payments**

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#### **18. What fees are usually payable by the franchisee? Are there any restrictions on the parties' freedom to set the fees and payments, or any other payment requirements?**

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Vietnam law allows the parties to determine which fees are payable. Generally, these will include franchisee or initial fees, continuing fees and advertising contributions. Interest can be charged on overdue payments, and there are no limits on the amount interest that can be charged.

### **Term of agreement and renewal**

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#### **19. Are parties free to agree on the term of the franchise agreement? What is the typical term of a franchise agreement in your jurisdiction?**

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Local law does not impose any minimum or maximum term on a franchise agreement.

Both parties have the right to freely negotiate the terms and conditions of the franchise agreement. Commercial Law, Circular 09/2006/TT-BTM recommends that potential franchisees assess the disclosure information carefully and seek professional advice before signing the agreement. The Commercial Law also gives the proposed franchisee 15 business days to assess the disclosure information, unless otherwise agreed between the parties. Though it is not mandatory to do so, the following terms of the franchise agreement can be included in the disclosure information:

- The conditions for extension and termination of the franchise agreement.
- The obligations of the franchisor and the franchisee arising from termination of the agreement.

A common term for a franchise agreement is from five to seven years, subject to any rights to renew.

#### **20. What rights of renewal are usually included in the franchise agreement? Are fees paid on renewal?**

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### **Commercial practice**

Renewal rights can vary widely depending on the circumstances of each case. In our experience, a common term for a franchise agreement is from five to seven years, but this is rather dependent on the sector at hand. The parties can agree on an additional term (renewal) for a maximum of ten years, subject to the franchisee providing a written notice to the franchisor at least three months prior to the expiry date of the franchise agreement. Typically, there is no fee payable on renewal, and where fees are charged, they tend to be small and in practice are often waived. However, any fees charged will depend on the business sector in each case.

### **Local law**

The franchisor and franchisee do not have statutorily provided automatic rights of renewal. Therefore, a renewal must be agreed to in the terms of the franchise agreement.

Depending on what is agreed in the franchise agreement, a franchisee that is refused a renewal or extension of its franchise agreement may seek compensation or damages from the franchisor on the basis of a breach of contract.

### **Termination**

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#### **21. Are there any limitations on the right of a franchisor to terminate the agreement?**

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This issue largely depends on the terms of the contract. The franchisor and franchisee can negotiate the terms and conditions for the duration of the franchise agreement and any renewal terms in the franchise agreement. Depending on what is agreed in the franchise agreement, a franchisee that is refused a renewal or extension of its franchise agreement may seek compensation or damages from the franchisor on the basis of a breach of contract.

The general rule is that both a franchisor and a franchisee have the right to freely negotiate the terms and conditions of the franchise agreement, including their unilateral termination rights towards one another with specific circumstances and consequences. If this has not been agreed, then the franchisor should consider whether it has any statutory grounds to unilaterally terminate the agreement.

In terms of remedies, overseas franchisors should be aware that the Vietnamese courts can impose certain remedies in the case of a breach of contract that can be very different from those that may be expected (for example, the rules concerning liquidated damages should be closely examined by overseas franchisors).

#### **22. Are post-term restrictive covenants enforceable?**

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The enforcement of non-compete and non-solicitation covenants applied both during the term of the franchise agreement and post-term is relatively untested in practice (see *Question 17, Non-compete obligations and transfer restrictions*). There have been very few instances where a contractual party has requested that a court grant an injunction to prevent the application of a non-compete covenant. Any such request filed with the court will be considered on a case-by-case basis.

#### **23. Can the franchisor or a replacement franchisee continue to sell to the former franchisee's customers?**

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There is no legal restriction that prevents the franchisor or a replacement franchisee from continuing to sell to the former franchisee's customers.

### **Choice of law and jurisdiction**

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#### **24. Will local courts recognise a choice of foreign law in a franchise agreement for a business operating in your jurisdiction?**

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Under the Civil Code, a transaction involving a "foreign element" can be governed by the laws of a foreign country if the parties so agree, provided that the application of that foreign law is not contrary to the "basic principles of Vietnamese law". Transactions involving a "foreign element" include transactions in which at least one of the parties is a foreign organisation. Therefore, in a franchise agreement between a foreign franchisor and a Vietnamese franchisee, a choice of foreign law can be made and will be recognised by the Vietnamese courts.

However, whether or not the application of a foreign law will be contrary to the "basic principles of Vietnamese law" has been interpreted very broadly, and even seemingly minor inconsistencies could render contract terms unenforceable. Therefore, if a foreign law is selected as the governing law, the franchise agreement must be closely reviewed to ensure compliance with Vietnamese law.

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**25. Will local courts recognise a choice of foreign jurisdiction in a franchise agreement for a business operating in your jurisdiction?**

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Foreign arbitral awards and some foreign court judgments can be enforced in Vietnam. However, it is prudent for overseas franchisors to closely examine their particular dispute resolution forums, as the choice of dispute resolution forum can greatly impact the chances of successfully enforcing an award against a local franchisee (see *Question 39*).

**OPERATIONS MANUAL**

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**26. How does the franchisor ensure that the franchisee complies with the business standards, systems and requirements?**

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Under the Commercial Law, the franchisor has the right to conduct regular or random inspections of the franchisee's operations in order to ensure uniformity of the franchise system and the consistency of the quality of the goods or services. Moreover, the franchisor can demand that the franchisee comply with the Operations Manual as a contractual obligation under the franchise agreement.

If foreign personnel come into Vietnam to conduct inspections, then there may be particular immigration rules relating to visas or work permits that they will need to abide by.

**27. Can the franchisor change the Operations Manual unilaterally, as is usually required?**

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In general, a franchisor can make unilateral changes to the Operations Manual. However, the current franchise regulations require that the franchisor notify all franchisees of any important change to the franchise system that affects the franchisee's franchise business (such as a change to the Operations Manual). The notification of any important change must be provided to the franchisee as soon as is practically possible.

**LIABILITY ISSUES**

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**28. What are the franchisee's remedies against the franchisor for deceptive or fraudulent selling practices?**

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The Commercial Law is silent on this matter and the general rules of contract law will apply.

Typically, a franchisee will need to initiate a claim against the franchisor and seek compensation for losses or damages that it can prove it has suffered.

**29. How can third-party claims against the franchisee be brought successfully against the franchisor?**

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**Indemnity**

Indemnities are often used in Vietnam, but whether they are ultimately enforceable will depend on the facts of the particular case.

**Precautions**

There are no typical precautions that franchisors need to take to emphasise the franchisee's independence from the franchisor.

**INTELLECTUAL PROPERTY**

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**30. What provisions are usually made in relation to intellectual property rights (IPRs), including know-how?**

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There are no typical provisions that are used concerning the rights granted to a franchisee relating to the use of IPRs and know-how. These rights are agreed between the parties in the franchise agreement. Normally, the franchisor will license the IPRs to the franchisee. The franchisee has no ownership rights to the licensed IPRs. Use of the licensed IPRs must comply with the terms outlined in the franchise agreement. Use of the licensed IPRs other than as expressly authorised by the franchise agreement, without the franchisor's prior written consent, may constitute an infringement of the franchisor's rights to the licensed IPRs.

**31. What are the registration requirements for licensing IPRs?**

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Licences for trade marks, industrial design rights and patent rights can be registered with the National Office of Intellectual Property (NOIP). Licences for trade marks, industrial design rights and patent rights which are not registered can be effective as between the parties to that licence, but cannot be enforced against third parties who are not signatories to the licence agreement (including third-party infringers).

Vietnamese law does not have any specific definitions of know-how, but there are legal provisions which protect business secrets. Generally, business secrets are automatically protected and they cannot be registered. Because business secrets cannot be registered, it is not possible to register a licence of business secrets. However, if certain business secrets also meet the protection criteria for inventions or utility solutions, they can be patented by registration with the NOIP, and any licence for those patent rights can also be registered with the NOIP.

Copyright is protected automatically in Vietnam without any registration requirements. There is no requirement to register a copyright licence with any Vietnamese authority.

The terms of a licence of IPRs can also be included in the franchise agreement. However, overseas franchisors should pay attention to how the licence is presented in the franchise agreement, and determine whether IP registrations in Vietnam are desirable.

**REAL ESTATE**

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**32. Are consents from landlords difficult to obtain when transferring leases or granting subleases from a franchisor to a franchisee?**

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Leases of retail premises typically are for terms of two to five years.

The real estate market is not uniform across Vietnam. Institutional landlords (such as developers operating shopping malls) tend to exercise more scrutiny than non-institutional landlords when considering whether or not to provide their consent to the transfer or sublet of a lease.

It is common for non-institutional landlords to require a payment to provide their consent.

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### 33. How can a franchisor prevent the franchisee from occupying the premises after the franchise agreement has ended?

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Generally, a franchisor cannot prevent a franchisee from retaining the right to occupy the premises when the franchise agreement ends.

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### 34. How can the franchisor effectively acquire the franchisee's premises at the end of the franchise relationship?

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A franchisor cannot effectively acquire the franchisee's premises at the end of the franchise relationship. The franchisor may be able to negotiate to rent the premises if this is permitted by the landlord, and if certain regulatory conditions are met.

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### 35. If the franchisor leases or subleases its own site to its franchisee, can it pass on all related costs to the franchisee? Can the franchisor charge its franchisee tenant a rent expressed as a percentage of the franchisee's sales?

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The general rule is that contractual lease provisions are freely negotiable. Therefore, the franchisor can pass on all related costs to the franchisee if the franchisee agrees to these terms.

A landlord (the franchisor) can charge rents which are a percentage of the sales of the tenant (the franchisee) if both the landlord and the tenant agree. However, this is not common in Vietnam. Normally, landlords will charge a fixed rental rate.

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## COMPETITION LAW

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### 36. What is the effect of competition law rules on franchising agreements? Are there any available exemptions?

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#### Competition law

Competition law in Vietnam is primarily governed by the Law on Competition No 27/2004/QH11 passed by the National Assembly of Vietnam on 3 December 2004 (2004 Competition Law) and its implementing regulations. The National Assembly of Vietnam passed an updated version of the Law on Competition on 12 June 2018 (2018 Competition Law). The new law will take effect on 1 July 2019, replacing the current 2004 Competition Law.

Though the franchising regulations make no direct reference to the Competition Law, the 2004 Competition Law and its successor contain a number of provisions that could potentially restrict franchising activities, including prohibiting agreements where the parties to the agreement have a combined market share of 30% or more of the relevant market that:

- Fix prices.
- Share sources of supply.
- Provide for an exclusive arrangement.
- Impose quantity restrictions and conditions on the sale and purchase of goods.
- In addition, the 2018 Competition Law introduces provisions on agreements that:
- Prohibit transactions with other entities that are not parties to the agreement.

- Restrict consumer markets or the sources of supply of goods and services of other entities that are not parties to the agreement
- Restrict or potentially restrict competition.
- Agreements under the three categories above will be prohibited if they "have or potentially have the effect of significantly restricting competition in the market". This vague condition will be evaluated by the Vietnamese authorities based on factors such as:
  - The market shares of the enterprises participating in the agreements.
  - Barriers to market entry or expansion.
  - The increase in fees or time spent by customers.
- Vertical restraints (competition-restricting agreements between two or more enterprises in different phases of the same production, distribution or supply chain for specific goods or services) are also subject to the "significantly restricting competition" condition.

These prohibited activities form part of the essence of franchising agreements, as they allow the franchisor to control the franchisee's business system. At the time of writing, there remains a level of conflict between the spirit of the franchising regulations and both versions of the Competition Law.

#### Exemptions

Under both the 2004 Competition Law and the 2018 Competition Law, a prohibited agreement in restraint of competition can be exempted for a definite period if it satisfies one of the following criteria aimed at reducing prime costs and benefiting consumers:

- It promotes technical or technological progress or improves the quality of goods and services.
- It promotes the uniform applicability of quality standards and technical ratings of product types.
- It unifies conditions on trading, delivery of goods and payment, but does not relate to price or any pricing factors.
- It increases the competitiveness of Vietnamese enterprises in the international market.
- The following exemptions are also provided by the 2004 Competition Law, but are not mentioned in the 2018 Competition Law:
  - It rationalises an organisational structure or a business scale or increases business efficiency.
  - It increases the competitiveness of medium- and small-sized enterprises.

#### Online/e-commerce restrictions

Vietnamese law does not prohibit a franchisor from preventing a franchisee from:

- Having its own website presence.
- Promoting its business on the internet.
- Engaging in e-commerce.

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## EMPLOYMENT ISSUES

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### 37. Can a franchisee be regarded as an employee of the franchisor?

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Under most franchise arrangements, a franchisee cannot be regarded as an employee of the franchisor.

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## DISPUTE RESOLUTION

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### 38. How are franchising disputes typically dealt with? What provisions for handling disputes are usually included in domestic franchise agreements?

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The parties can choose to resolve disputes through:

- Negotiation.
- Mediation.
- Arbitration.
- Court.

An overseas franchisor and a local franchisee can choose to resolve disputes through:

- Local arbitration.
- Overseas arbitration.
- A local or overseas court.

However, as mentioned, the choice of forum for dispute resolution can greatly impact the chances of successfully enforcing an award against a local franchisee.

It is not mandatory to resolve disputes through negotiation or mediation.

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### 39. How are foreign judgments or foreign arbitral awards enforced locally?

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Foreign arbitral awards and some foreign court judgments can be enforced in Vietnam. However, it is prudent for overseas franchisors to closely examine their particular dispute resolution forums, as the choice of dispute resolution forum can greatly impact the chances of successfully enforcing an award against a local franchisee.

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## EXCHANGE CONTROL AND WITHHOLDING

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### 40. Are any exchange control or currency regulations applicable to payments to an overseas franchisor?

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The current regulations on foreign exchange are the Ordinance on Foreign Exchange and its guiding regulations, which govern every outbound payment whether to an overseas franchisor or otherwise.

Within the territory of Vietnam, except for a few narrow exceptions allowing the use of foreign currency, local currency must be used for all transactions of offers, payments, advertisements, quotations, pricing, prices in contracts, agreements and other similar forms (including the conversion or adjustment of the prices of goods and services, and the values of contracts and agreements).

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### 41. Is there a withholding obligation on payments made to an overseas franchisor?

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A foreign franchisor that does not establish a business entity in Vietnam and generates income in Vietnam on the basis of a franchise agreement signed with Vietnamese franchisees will be considered a foreign contractor in Vietnam. All fees generated under such agreements may be subject to foreign contractor tax, including (among other things):

- Franchise fees.
- Royalties.
- Administrative fees.
- Advertising fees.
- Management fees.

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## REFORM

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### 42. Are there any proposals to reform the laws affecting franchising?

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There are currently no proposals to reform the laws on franchising. However, the Vietnamese Government is drafting subordinate legislation to guide the implementation of the 2018 Competition Law and aims to issue such legislation by the time the new law comes into effect in July 2019.

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