

**DECREE
MAKING DETAILED PROVISIONS
FOR IMPLEMENTATION OF THE COMMERCIAL LAW
WITH RESPECT TO FRANCHISING ACTIVITIES**

The Government

Pursuant to the *Law on Organization of the Government* dated 25 December 2001;

Pursuant to the *Commercial Law* dated 14 June 2005;

On the proposal of the Minister of Trade;

Decrees:

CHAPTER I

General Provisions

Article 1 *Governing scope*

This Decree makes detailed provisions for implementation of the *Commercial Law* with respect to franchising activities in the territory of the Socialist Republic of Vietnam.

Article 2 *Applicable entities*

1. This Decree applies to Vietnamese business entities and foreign business entities participating in franchising activities.
2. An enterprise with foreign owned capital specializing in the purchase and sale of goods and activities directly related to the purchase and sale of goods, in addition to complying with the provisions in article 7 of this Decree, may only conduct franchising in lines of goods in which such enterprise is permitted to provide distribution services pursuant to international undertakings of Vietnam.

Article 3 *Interpretation of terms*

In this Decree, the following terms shall be construed as follows:

1. *Franchisor* means the business entity which grants a franchise and includes a secondary franchisor in the relationship with secondary franchisees.
2. *Franchisee* means the business entity which is granted a franchise and includes secondary franchisees in the relationship with a secondary franchisor.
3. *Secondary franchisor* means the business entity with the right to sub-franchise to secondary franchisees the franchise granted to such secondary franchisor by the initial franchisor.
4. *Primary franchisee* means the business entity which is granted the franchise by the initial franchisor. The primary franchisee is the secondary franchisor within the meaning of clause 3 of this article in the relationship with secondary franchisees.
5. *Secondary franchisee* means the business entity which is granted the franchise by the secondary franchisor.
6. *Franchise* comprises one, some or all of the following rights:
 - (a) Right whereby the franchisor permits and requires the franchisee to conduct on its own behalf the purchase and sale of goods or provision of services according to the system specified by the franchisor, and to be associated with the trademark, tradename, business mission statement, business logo and advertising of the franchisor;
 - (b) Right whereby the franchisor grants to the primary franchisee the master franchise;
 - (c) Right granted by the secondary franchisor to a secondary franchisee under the master franchising contract;
 - (d) Right whereby the franchisor grants a franchise to the franchisee under a development contract.
7. *Franchise business* means a business conducted by a franchisee under a franchising contract.

8. *Franchise development contract* means a franchise contract under which the franchisor grants the franchisee the right to set up more than one establishment to conduct the franchise business within a specific geographical area.
9. *Master franchise* means the right that is granted by a franchisor to a secondary franchisor to sub-franchise to secondary franchisees. Secondary franchisees shall not be permitted to further sub-franchise such master franchise.
10. *Secondary franchising contract* means a franchising contract entered into between a secondary franchisor and a secondary franchisee pursuant to a master franchise.

Article 4 *Authorities responsible for State administration of franchising activities*

1. The Ministry of Trade shall be responsible to the Government for the exercise of State administration of franchising activities nationwide, and shall have the following powers and duties:
 - (a) To exercise uniform administration of professional activities, to provide guidelines for the implementation of polices and regulations on franchising activities, and to organize the registration of franchising activities;
 - (b) To co-ordinate with ministries, ministerial equivalent bodies, Government bodies and people's committees of provinces and cities under central authority to inspect, control, assess and report on franchising activities to superior competent bodies;
 - (c) To issue within its own authority, or to propose that the Government issue, new legal instruments and to propose amendments of and additions to legal instruments on franchising activities.
2. The Ministry of Finance shall, within the scope of its duties and powers, be responsible for providing guidelines on tax regimes and registration fees applicable to franchising activities.
3. Ministries, ministerial equivalent bodies and Government bodies shall, within the scope of their respective duties and powers, be responsible to exercise State administration of franchising activities.
4. People's committees of provinces and cities under central authority shall perform the following tasks:

- (a) Undertake State administration of franchising activities within their localities;
- (b) Direct Departments of Trade or Departments of Trade and Tourism, within the scope of their authority, to organize registration, inspections and control of franchising activities within their localities and to forward periodical reports on such franchising activities to the Ministry of Trade.

CHAPTER II

Franchising Activities

Section 1

Conditions for Franchising Operations

Article 5 *Conditions applicable to franchisors*

A business entity may grant a franchise when the business entity satisfies all of the following conditions:

1. The business system to be franchised has been operating for at least one year. In a case where a foreign franchisor grants a franchise to a primary franchisee being a Vietnamese business entity, such Vietnamese business entity must operate the franchise business for at least one year in Vietnam before sub-franchising.
2. The business entity has registered the franchising activity with the competent body stipulated in article 18 of this Decree.
3. The goods and services the subject of the franchise do not breach the provisions of article 7 of this Decree.

Article 6 *Conditions applicable to franchisees*

A business entity shall be entitled to receive a franchise when it has business registration appropriate to the subject of the franchise.

Article 7 *Goods and services eligible for franchising*

1. *Goods and services eligible for franchising* means goods and services not on the list of goods and services in which business is prohibited.

2. An enterprise may only conduct business in goods and services on the list of goods and services in which business is restricted or on the list of goods and services subject to conditions after such business entity has been issued with a business licence or equivalent document by the body administering the branch or after the enterprise satisfies the conditions for such business.

Section 2

Information Disclosure and Franchise Contracts

Article 8 *Responsibility of franchisors to disclose information*

1. A franchisor shall be responsible to provide a copy of the franchise contract form and the franchise description document to the proposed franchisee at least fifteen (15) business days prior to the date of entry into the franchise contract if the parties do not have some other agreement. The Ministry of Trade shall provide regulations on and announce the compulsory items which must be included in the franchise description document.
2. A franchisor shall be responsible to immediately notify all franchisees of any important change to the franchise system which affects the franchise business of a franchisee.
3. If the franchise is a master franchise, in addition to providing the information stipulated in clause 1 of this article, the secondary franchisor must also provide a proposed franchisee with the following information in writing:
 - (a) Information about the franchisor which has granted the franchise;
 - (b) Contents of the master franchise contract;
 - (c) The manner in which secondary franchise contracts will be dealt with in the event of termination of the master franchise contract.

Article 9 *Responsibility of proposed franchisees to disclose information*

A proposed franchisee must provide the franchisor with all information reasonably requested by the franchisor in order to make a decision on grant of the franchise to such proposed franchisee.

Article 10 *Objects of industrial property in franchising*

1. If the franchisor grants the franchisee the right to use objects of industrial property and contents of franchising, then the transfer of the right to use such objects of industrial property may be provided for in a separate section of the franchise contract.
2. The transfer of the right to use objects of industrial property in a franchise contract shall be governed by the law on industrial property.

Article 11 *Contents of franchise contracts*

If the parties select application of the law of Vietnam, the franchise contract may contain the following main 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.

Article 12 *Language of franchise contracts*

A franchise contract must be made in Vietnamese. In the case of a franchise from Vietnam to overseas, the parties shall agree on the language of the franchise contract.

Article 13 *Term of franchise contracts*

1. The term of a franchise contract shall be as agreed by the parties.
2. A franchise contract may be terminated prior to the expiry of the agreed term pursuant to article 16 of this Decree.

Article 14 *Time when franchise contracts takes effect*

1. A franchise contract shall take effect as from the date of its signing except where the parties agree otherwise.

2. If a franchise contract contains a section on transfer of the right to use objects of intellectual property, such section shall take effect in accordance with the law on intellectual property.

Article 15 *Assignment of franchises*

1. A franchisee may assign the franchise to another proposed franchisee when the following conditions are satisfied:
 - (a) The proposed assignee satisfies the condition stipulated in article 6 of this Decree;
 - (b) The original franchisor (hereinafter referred to as the *direct franchisor*) provides approval.
2. The franchisee must provide the direct franchisor with a written request to assign the franchise. Within fifteen (15) days from the receipt of such written request, the direct franchisor must provide a written response:
 - (a) Approving assignment of the franchise by the franchisee; or
 - (b) Not approving assignment of the franchise by the franchisee for a reason stipulated in clause 3 of this article.

If the direct franchisor fails to provide a written response within the above fifteen (15) day period, it shall be deemed to have approved assignment of the franchise by the franchisee.

3. The direct franchisor may only refuse to approve assignment of the franchise by the franchisee when one of the following grounds exists:
 - (a) The proposed assignee is unable to satisfy the financial obligations which it would have to discharge under the franchise contract;
 - (b) The proposed assignee has not satisfied the selection criteria of the direct franchisor;
 - (c) The assignment will have a significantly adverse effect on the existing franchise system;
 - (d) The proposed assignee does not agree in writing to comply with the obligations of the franchisee under the franchise contract;

- (dd) The franchisee has not fully discharged obligations to the direct franchisor, except where the proposed assignee provides a written undertaking to discharge such obligations in lieu of the franchisee.
4. The assignor shall lose the franchise once it is assigned. All rights and obligations relating to the franchise of the assignor shall transfer to the assignee, unless there is some other agreement.

Article 16 *Unilateral termination of franchise contracts*

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.

Section 3

Registration of Franchising Activities

Article 17 *Registration of franchising activities*

1. Before carrying out franchising activities, any Vietnamese business entity or foreign business entity intending to grant a franchise must register its franchising activities with the competent body stipulated in this Decree.
2. The body competent to register franchising activities shall be responsible to register the franchising activities of a business entity into the Register of franchising activities and to provide written notification of such registration to the business entity.

Article 18 *Delegation of authority to register franchising activities*

1. The Ministry of Trade shall register the following franchising activities:
 - (a) Franchising activities from overseas into Vietnam including those from export processing zones, non-tariff zones and other separate customs areas into Vietnamese territory in accordance with the law of Vietnam;
 - (b) Franchising activities from Vietnam to overseas including those from Vietnamese territory into export processing zones, non-tariff zones or separate customs areas in accordance with the law of Vietnam.
2. The Department of Trade or Department of Trade and Tourism of the province or city under central authority where the proposed franchisor registers its operations shall carry out registration of domestic franchising activities, except those transferred across the borders of export processing zones, non-tariff zones or separate customs areas in accordance with the law of Vietnam.

Article 19 *Application files for registration of franchising activities*

An application file for registration of franchising activities shall comprise:

1. Application for registration of franchising activities on the form stipulated by the Ministry of Trade.
2. Franchise description document prepared on the form stipulated by the Ministry of Trade.
3. Documents confirming:
 - (a) The legal status of the proposed franchisor;
 - (b) [Documents being] Certificates of protection in respect of industrial property rights in Vietnam and overseas when a contract involves a transfer of any protected objects of industrial property.
4. If a document stipulated in clause 2 or 3 of this article is in a foreign language, it must be translated into Vietnamese and certified by a Vietnamese notary office or consularized by a Vietnamese diplomatic body overseas in accordance with the law of Vietnam.

Article 20 *Procedures for registration of franchising activities*

1. A proposed franchisor shall be responsible to register franchising activities in accordance with the following provisions:
 - (a) By sending the application file for registration of franchising activities to the competent State administrative body stipulated in article 18 of this Decree;
 - (b) Within five business days from the date of receipt of a complete and valid application file, the competent State body shall register the franchising activities into the Register of franchising activities and shall provide written notification of such registration to the business entity;
 - (c) Within two business days from the date of receipt of an incomplete or invalid application file, the competent State body shall provide written notice to the proposed franchisor to supplement and complete such file;
 - (d) The time-limits stipulated in this clause shall exclude any time taken by the proposed franchisor to supplement or complete the application file for registration of franchising activities;
 - (dd) If registration is refused at the expiry of the time-limit stipulated in this clause, the competent State body shall provide written notice to the proposed franchisor stating the reasons for the refusal.
2. Procedures for registration of a contract transferring the use of objects of industrial property shall be implemented in accordance with the law on industrial property.

Article 21 *Notification of changes to registered information in franchising activities*

In a case of a change to the registered information [in the documents] stipulated in clauses 2 and 3 of article 19 of this Decree, the franchisor shall be responsible to notify the competent State body where the franchising activities were registered within thirty (30) days from the date of such change.

Article 22 *Cancellation of registration of franchising activities*

1. Registration of franchising activities of a business entity shall be cancelled in the following cases:
 - (a) The business entity conducting the franchise ceases business or changes its business line or trade;

- (b) The business entity has its business registration certificate or investment certificate withdrawn.
2. The body which registered franchising activities shall be responsible to provide public notification of any cancellation of such registration.

Article 23 *Fees for registration of franchises*

The proposed franchisor must pay a fee for registration of franchising activities. The amount of the fee and the management and use of such fee shall be regulated in guidelines of the Ministry of Finance.

Section 4

**Breaches of Law in Franchising Activities,
Authority to Deal with Breaches**

Article 24 *Breaches of law in franchising activities*

1. Any business entity engaged in franchising activities which commits one of the following breaches shall, depending on the nature and seriousness of the breach, be subject to an administrative penalty pursuant to the law on dealing with administrative breaches:
- (a) Conducting a franchise without having satisfied all the conditions stipulated;
 - (b) Conducting a franchise involving goods and services in which business is prohibited;
 - (c) Breaching the obligation to supply information during franchising activities as stipulated in this Decree;
 - (d) Providing untruthful information in the franchise description document;
 - (dd) Breaching the provisions on registration of franchising activities;
 - (e) Breaching the provisions on notices in franchising activities;
 - (g) Failing to pay taxes in accordance with law where such failure does not warrant criminal prosecution;

- (h) Failing to comply with requests from competent State bodies during an examination and inspection;
 - (i) Breaching other provisions of this Decree.
2. A business entity conducting a franchise which commits a breach causing loss and damage to the material interests of any organization or individual concerned must pay compensation for such loss and damage in accordance with law.

Article 25 *Authority and procedures for dealing with administrative breaches*

The authority and procedures for dealing with administrative breaches as stipulated in article 24 of this Decree shall be implemented in accordance with the law on dealing with administrative breaches.

Article 26 *Complaints and denunciations*

1. Organizations and individuals shall have the right to complain about the registration of franchising activities, payment of taxes and fees, examinations and inspections, and dealing with breaches in franchising activities in accordance with the law on complaints.
2. Individuals shall have the right to denounce any conduct in breach of law during franchising activities in accordance with the law on denunciations.

CHAPTER III

Implementing Provisions

Article 27 *Transitional provision*

Any franchising activities which were carried out before the effective date of this Decree must be registered in accordance with the procedures stipulated in this Decree within three months after the effective date of this Decree.

Article 28 *Effectiveness*

1. This Decree shall be of full force and effect fifteen (15) days after the date of its publication in the Official Gazette. Any previous provisions relating to franchising activities which are contrary to the provisions in this Decree are hereby repealed.

2. Minister, heads of ministerial equivalent bodies and Government bodies, and chairmen of people's committees of provinces and cities under central authority shall be responsible for providing guidelines and for implementation of this Decree.

For the Government
The Prime Minister

PHAN VAN KHAI