



Critical Assessment and International Comparisons of Vietnam's Franchise Law

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Abstract

The paper study on legal framework of franchise law in Vietnam and compare to internal legal framework on franchises. Franchising has just appeared in Vietnam since the mid-1990s. In January 2006, Vietnam passed the Franchise Law, which creates the legal framework for the stable growth of franchising. The legal frameworks of Vietnam Franchise Law are under specific law with various subordinate regulations governing franchise business and registration of the franchise. The legal frameworks tend to follow international frameworks in terms of jurisdiction on franchising, definition of franchise, credentials of franchisor and franchisee, disclosure of franchise information, details of franchise agreement, franchise relationship, and franchise registration. However, the ambiguity of the legal framework governing franchise businesses still exists. This paper displays a critical assessment and an international comparison of legal frameworks. The paper concludes that, while the Vietnam franchise law is broadly consistent with international practice, some legal issues should be addressed for further development of the Vietnamese franchise sector.

Keywords

Vietnam, Franchising, Franchise Law

1. Introduction

Franchising is a popular way of doing business which has completely changed the operation of distributing goods and services in almost all industry sectors and has reformed the business environment of most countries. In contemporary business format of franchising, it is a complicated business relationship for a franchisor who has built an individual business system, granting a franchisee with the compensation of franchising fees. The franchisor also has a right to control operation of franchise business in which the franchisee's independently-owned business has to follow.

Franchising is a new business concept in Vietnam with the first entry of leading foreign franchise in the mid-1990s. Although there are currently not many formats of franchise systems in Vietnam, there is an increasing number of foreign franchise systems operated through company-owned outlets and increasing establishment of domestic franchise systems. However, the commercial environment for franchising is increasingly favourable. Vietnam has maintained high GDP growth in recent years and has also been one of the most prosperous countries in the world in containing the Covid-19 pandemic.

The relatively late growth of franchise sector in Vietnam stems from the late development of a commercial and legal environment necessary to support it. Vietnam enter as the WTO members in 2007 in connection to its transition to a market economy after the two decades for the Doi Moi economic reform introduced in 1986. The accession to WTO made Vietnam in the spotlight of global investment and businesses. Nevertheless, with regards to franchise sector still had not reach the point of fully benefit from WTO accession. This was because there are still issue of the lack of a clear legal framework for franchising. Vietnam tended not to consider franchise business was not considered as a distinct business form from other businesses. It is also difficult for franchise to expand under the legal framework that focus on the principle of "where the general rule is that anything not explicitly permitted is not allowed".¹ It is why a franchise development was not so practicable in Vietnam². Vision and Associates, a Vietnamese law which has special expert in franchise, pointed out that without the specific legal reference there must be a confusion between franchise business with other business such as trademark licencing and service agreement.³

Doing franchise at the early stage of development in Vietnam was seen as the making various separate business agreements as to serve the license, trademarks and accounting, standards and other relevant part of franchise businesses. Making franchise thus can be considered as "hammering a square peg into a round hole"⁴ discouraging both potential domestic and foreign franchisors.

¹ Giles Cooper, "Chalk Needed to Outline Franchising Fields of Play" [2007] <<https://vietnamfranchise.wordpress.com/2010/02/15/chalk-needed-to-outline-franchising-fields-of-play/>> (accessed 25 February 2022).

² Before the introduction of the Commercial Law in 2005, franchising was considered as a form of technology activities, which was regulated by laws and regulations on licensing and technology transfer.

³ Vision & Associate, "Laws For Franchising Scattered Amongst Many Decrees", Vietnam Investment Review, 8 December 2003.

⁴ Giles Cooper, "Chalk Needed to Outline Franchising Fields of Play" [2007] <<https://vietnamfranchise.wordpress.com/2010/02/15/chalk-needed-to-outline-franchising-fields-of-play/>> (accessed 25 February 2022).

By the aim to facilitate economic and business development in Vietnam after its WTO accession in 2007, Vietnam passed a specific Franchise Law that details the legal frameworks for the improvement of Vietnam franchise sectors. The Franchise Laws include various laws and regulations. The below is the lists of laws passed for governing franchise businesses in Vietnam

- The 2005 Commercial Law established a framework for regulating franchise relationships.
- Decree 35 of 2006 was enacted to provide temporary implementation details for the Commercial Law on Franchising Conducts and was later amended in 2011.
- In 2018, Decree 08 was issued to modify business conditions for industries regulated by the Ministry of Industry and Trade.
- Circular 09 of 2006 by the Ministry of Industry and Trade outlined the procedures for registering franchising activities and required prior disclosure, which are key aspects of the regulatory regime.
- Decision 106 of 2008 by the Minister of Finance provided guidelines on the collection, payment, management, and use of fees for commercial franchising registration.

The Franchise Laws recognises both Vietnamese and foreign business entities. The laws govern all franchise activities in Vietnam and the laws tend to be similar framework with international models that set regulatory obligations on prior disclosure, franchise registration and franchise relationship requirements⁵.

The introduction of specific franchise law in 2005 was the turning point in franchising in Vietnam⁶. The introduction of the law is due to the government response to business demand for clearer legal frameworks for franchising. The first foreign franchise in Vietnam is The Jollibee(Philippines fast-food franchise) which established in 1996. Following decade later, there were only 23 franchise systems established in Vietnam, and the majority of their franchise system were like Jollibee that franchise outlets are owned and operated by the brand owners. However, five years after the introduction of specific franchise law, the number of franchise businesses increased to 96 businesses systems where both both foreign and domestic utilising franchise to expand their business in Vietnam. In addition, the number of franchise businersses and the value of franchise sector is under the increasing trend. Currently Vietnam has almost 300 franchise systems, both domestic and foreign in operation in Vietnam economy.⁷ The later part of the paper goes into details of legal frameworks of Vietnam franchise laws in terms of jurisdiction on franchising, definition of franchise, credentials of franchisor and

⁵ Andrew Terry and Nguyen Ba Binh, "Vietnam's New Regulatory Regime for Franchising" (2009) *LawAsia Journal* at 82.

⁶ Nguyen, Ba Binh, (2012), *The role and influence of Vietnam s franchise law on the development of franchising: a multiple case study*, UNSW PhD Thesis <<https://unsworks.unsw.edu.au/entities/publication/db78b9fb-329e-448a-90d2-e9c1dbb89ea2?fbclid=IwAR0Sa1rFyeGhzPOSE9eE7C7TLXHOdSmectKsniRyPpTOgtYKeMmHqpNQKH0>>;(reviewed and updated by the authors, 12th October 2022).

⁷ Collected by the authors.

franchisee, disclosure of franchise information, details of franchise agreement, franchise relationship, and franchise registration. The part of the paper also provide comparisons with international legal frameworks of franchise as to present the possible issues of Vietnam franchise laws.

2. Jurisdiction on franchise

Vietnam's Franchise Law stipulates legal jurisdiction that it will govern all franchise business "in the territory of the Socialist Republic of Vietnam" (article 1 of Decree 35), and both Vietnamese and foreign businesses operating franchising are subject to the Law (article 2 of Decree 35). However, the definitions of "in the territory of Vietnam" and "participating in franchising business" are not clear, leading to potential challenges in the application of the Franchise Law in Vietnam. It is because the words "in the territory of" can be interpreted as applying to franchise businesses that are located in Vietnam. This contributes to the issue when Vietnamese franchisor operates its franchise from aboard or when the a foreign franchisor operates franchise in Vietnam without a physical outlet in Vietnam. The foreign franchise may conduct direct franchising, master franchising or geographical control of franchise development by no means of opening physical outlet in Vietnam. Thus, the literal interpretation of the words suggests that the law does not govern those forms of franchising. In reality, as to ensure that they are under compliance to Vietnam laws all Vietnamese and foreign franchisors do register their franchise business with the authority when they have to franchise abroad or in Vietnam (article 18.1.b of Decree 35). However, whether both franchisor and franchisee have to be complied to Vietnam Franchise law is still questionable.

The ambiguity concerning the jurisdiction also occurs when there is interaction with internal laws of foreign countries. If there is a conflict of law on applying specific franchise laws to franchise business that have various international operations. There may have to be disputable that what law of country should be apply. The example is the China's 2007 Commercial Franchise Regulation is applied to franchising activities "conducted within the territory of" this country (article 2). It means that franchise in Vietnam that have franchise in China has to comply with China franchise laws both in Vietnam or in China only. This is also similar situation that Vietnam franchise law apply similar concept of "conducted within the territory" in China's franchise law is also unclear and leads to uncertainty in particular situations⁸.

Comparing to Australia, Vietnam seems to be unclear about setting up jurisdiction of franchise law. Australia established specific law that provided the clear application of the franchise law are clearly set to ensure certain interpretation. The Australia 1998 Franchising Code of Conduct provided clear jurisdiction that the law would not regulate a franchise agreement if the franchisor was: (i) resident, domiciled or incorporated outside this country and (ii) grants only one franchise or master franchise to be operated in this country. However, in order to protect

⁸ Zhiqiong June Wang, *The Impact of China's Regulatory Regime on Foreign Franchisor's Entry and Expansion Strategies* (2010) (PhD Thesis, The University of New South Wales).

Australian master franchisees when entering into sub-franchising agreements with foreign franchisors, the Australian franchise law was amended to ensure that the law can be applied to international franchise businesses, as outlined in the Franchising Code of Conduct 2008.

3. Definition of franchise

The Commercial Law includes a broad definition of franchising in article 284:

“Franchising means a commercial activity whereby a franchisor authorizes and requires a franchisee to conduct on its behalf the purchase and sale of goods or provision of services under the following conditions:

1. The purchase and sale of goods or provision of services be conducted according to the method of business organization specified by the franchisor and be associated with the trademark, trade name, business know-how, business mission statements, business logo and advertising of the franchisor.
2. The franchisor has the right to control and offer assistance to the franchisee in the conduct of the business.”

Decree 35 article 3 further clarifies the definition of franchising as master franchising agreement involving with franchisor granting franchise rights to franchisee and franchise development agreement relating franchisor who provide addition right to franchisees to set up more than one within a specific area. However, the Decree 35 does not allow the business conduct of secondary franchisees to make a sub-franchising.

In addition, it can be considered that the definition of franchising according to Decree sets descriptive term as to be consistent with international practice. The definition explains features of a brand, system or control, and payment. Nevertheless, Vietnam’s definition on franchising seems to be different from most other countries because the definition does not explain explain payment obligation in franchise business. The assumable reason is that payment of royalty fees, either directly or indirectly, is a prerequisite requirement in doing franchise business. Without specific obligation of franchise payment in legal framework, it can enable franchisor to refrain from classifying its business as franchise and franchisor can be excluded from any legal obligation under the scope of the law. The example court case is in *Alpha Centauri Enterprises Pty Ltd v Mortgage House of Australia Pty Ltd* [2010] NSWCA 188. In the case, the NSW Court of Appeal had to determine if a mortgage brokering agreement was considered a franchise business or not. The basis for this decision was due to the lack of provisions for the payment of fees to the respondent or the requirement for the purchase and payment for goods or services from the respondent in the agreement. Without the payment terms in the franchise agreement for the purpose of the application of Australia’s Franchising Code of Conduct the agreement may not be defined within the code of conduct and not to be franchise business. However, the Court ruled that the payment requirement was fulfilled as the franchise agreement which included provisions for

the use of supplied stationary with a cost, mortgage payments, and an application fee of \$600 with \$375 to be paid to Mortgage House of Australia Pty Ltd.

In aspect of definition on brand of franchise business, Vietnam follows the definition of brand according to US's framework that the brand includes the formula of "system or marketing plan" as a vital part of the franchise definition. In Australia, the definition requires that in franchising the franchisor must grant franchisee a right to use brand for operation of franchise business. In addition, Vietnam adopts the US's frameworks of the franchisor's control over franchisee which contribute franchise business to be different from other like commercial activities⁹. However, the definition of brand in franchise business is ambiguous as to whether the franchisor in Vietnam must confer all aspects of brand usage to franchisee according to article 284 of the trademark laws or franchisor can provide right to use part of brand with some aspects of the trademark law.

The possibility is that franchisor must confer all right to use brand to franchisee. However, this is not a practical because it may constitute obstruction to do franchise business where there is a lack any brand factors for the franchise system. Additionally, since most contemporary franchising businesses are service-based rather than goods-based, Article 284 of the trademark law only applies to trademarks and not service marks. According to Vietnamese intellectual property law, a service mark for services is distinct from a trademark for goods.¹⁰ This can contribute to a possible difficulty in doing franchise business that have both selling of goods and services but the franchisor and franchisee establish only one franchise agreement. It is important that Vietnam's Franchise Law should set definition of franchise business as the franchise the franchisor's control to the franchisee in all of the use of a trademark and a service mark. ¹¹ However, it is noted that there is still a lack of unified approach in setting up legal definition of franchise business.¹²

4. Credentials of Franchisor and Franchisee

Vietnam franchise law states obligation of credibility and certainty of franchise business before conducting franchising. The Vietnam franchise law requires a pre-conditions before franchising business by that there must be an operation of the franchise business at least one year (article 5 of Decree 35) ¹³. Comparing to China franchise law (Regulations on the Administration of Commercial Franchises (2007), article 7), the franchisor has to have a mature business system, the ability to give a long-term business guidance, and at least has two outlets operated for more than one year. It is considered that Vietnam franchise law on franchise credibility is less strict than China. In general, the pre-

⁹ Warren Pengilley, Submission to Parliamentary Committee of Inquiry into Franchising Code of Conduct (2008).

¹⁰ The Vietnam 2005 IP Law states the marks that includes trademarks and service marks.

¹¹ Warren Pengilley, Submission to Parliamentary Committee of Inquiry into Franchising Code of Conduct (2008).

¹² Harold Brown, Franchising - Realities and Remedies (ALM publisher 1982), p1.

¹³ Article 7.4, the 2005 Franchise Measures. A similar provision is retained in the 2007 Commercial Franchise Regulation which replaced the 2005 Franchise Measures.

condition for franchise business is aimed to provide certainty for franchisee that the franchisor has more than simply a pure concept of franchise business.¹⁴ Vietnam's Franchise Law seems to be more reasonable than China as the franchisor only has to operate its franchise system for at least one year expand their franchise businesses. Nevertheless, there is still a concern that there is a viability which may not be consummated¹⁵. It is because the requirement for one year before extending franchise system to franchisee may not be appropriate for some businesses and can obstruct franchising opportunities¹⁶. Nevertheless, the requirement is vital element for protecting franchisees¹⁷.

The passage of the Decree 08 changed the way to govern foreign franchisor by that there is prohibition on some goods and services (article 5 of Decree 35). If the goods and services are prohibited to be franchised, there must be a permit from authority (article 7 of Decree 35). It is still unclear about the goods and services that can be permitted to be franchised by foreign-invested enterprises. In addition, compared to local franchisors, international franchisors have to deal with additional restriction in conducting sale of goods or business activities related distribution of goods permitted under Vietnam's international commitment 2.2 of Decree 35). The permission for goods distribution was detailed by at Decision No. 10/2007/QĐ-BTM of the then Ministry of Industry and Trade 21 May 2007. However, the permitted distribution was under criticism that the lists of goods are incompatible with Vietnam's WTO commitments that Vietnam must not restrict free flow of goods for foreign franchisors. Thus, on 1 January 2010, Vietnam government decided to remove the requirement on the permitted distribution. Also, there was a revision of the Decree 08 on 15 January 2018, so that there should be freer for franchise to operate their businesses under the Vietnam Franchise law. Nevertheless, some conditions still apply to franchising businesses under the Vietnam's Law on Enterprises (article 7 of the 2014 Law on Enterprises, article 7 of the 2020 Law on Enterprises)¹⁸

5. Disclosure of franchise information

Vietnam's Franchise Law is similar to international franchise laws by that it require¹⁹, prior disclosure²⁰. The concept of prior disclosure is widely recognized

¹⁴ Andrew Terry, "A Census of International Franchise Regulation" (Paper presented at the 21st Annual International Society of Franchising Conference, Las Vegas, Nevada, the US, 2007).

¹⁵ Ibid

¹⁶ Ngo Duong Hoang Thao, Chairman of Vietnam Franchise Club cited by Phan Anh, "Nhuong Quyen Thuong Mai Con Hep Cua Vi Thieu Luat [Franchising is still Constrained Because of the Lack of Rules]" (2007) <<http://vnexpress.net/GL/Kinh-doanh/2007/01/3B9F2BF4/>> (accessed 12 January 2023).

¹⁷ Ibid n 14

¹⁸ Vietnam's National Portal on Business Registration, "Luat Doanh Nghiep Nam 2014 - Tao Thuan Loi Toi Da Cho Doanh Nghiep Trong Toan Bo Qua trinh Thanh Lap, Hoat Dong [the 2014 Law on Enterprises - Creating Maximum Convenience for Businesses in the Entire Process of Establishment and Operation]" (2015) <<https://dangkykinhdoanh.gov.vn/vn/tin-tuc/611/3922/luat-doanh-nghiep-nam-2014---tao-thuan-loi-toi-da-cho-doanh-nghiep-trong-toan-bo-qua-trinh-thanh-lap--hoat-dong.aspx>> (accessed 6 March 2022).

¹⁹ Ibid n 14

²⁰ Franchisee disclosure is also mandated the Decree providing that the proposed franchisee must provide the franchisor with all information reasonably requested by the franchisor in order to make a decision or grant of the franchise to such proposed franchisee (article 9).

to be effective mechanisms decreasing potential franchisor bargaining power because franchisor retains important business information for franchisee to choose to partner with the franchisor's system²¹. While almost international franchise laws require a prior disclosure without solid contractual template, Vietnam Franchise law prescribes franchisor to use disclosure template according to the law²². The Franchise Law state that the franchisor has to disclose a copy of franchise agreement and the prior disclosure information not less than 15 business days before signing the franchise agreement. In case that there is no paper agreement,²³ under Decree 35, the Ministry of Industry and Trade has the authoritative power to obligate the compulsory prior disclosure according to franchise law.²⁴ The detail of the prior disclosure according to the Circular are "warning lists" of due diligence for franchise business, including:

- General information about the franchisor and its system
- Trademarks/IP rights
- Initial costs of the franchisee
- Other financial obligations
- Initial investment by the franchisee
- Obligations of the franchisee to buy or lease equipment for compatibility with the business system as designated by the franchisor
- Obligations of the franchisor
- Description of the market of the goods/services to be franchised
- Franchising agreement
- Information about the franchise system
- Financial statements of the franchisor
- Rewards, acknowledgements to be received and organizations to participate.

The requirement on the prior disclosure is important for franchisee's consideration but it is recommended that the franchisee has to resort to professional consultant for ensuring that franchisees completely understand the franchisor's system and businesses. In addition there is the sub-franchisor, there must be a documents of prior-disclosure of master franchise detail, master franchising agreement; the resolution for sub-franchising agreement if there is a termination of the master franchising agreement (article 8.3 of Decree 35).

The obligation on Vietnam's prior disclosure are required according to international recognition on comprehensive disclosure. The example of countries that establish requirement on prior disclosure are the US, Australia, China,

²¹ Andrew Terry, "Submission to the Australia Treasury Small and Family Business Division with regard to A Franchise Disclosure Register", (2018) < <https://treasury.gov.au/sites/default/files/2022-02/c2021-210402-andrew-terry.pdf>> accessed 12 January 2023.

²² Ibid n 14

²³ The Franchise Description Document itself provides that "unless the parties agree otherwise a prospective franchisee has at least 15 days" to study the Document.

²⁴ Appendix III of the Circular Providing Guidelines in Procedures for Registration of Franchising Activities

Malaysia²⁵, and also UNIDROIT’s Model Franchise Disclosure Law. The comparison of the main issues of the disclosure between Vietnam and these countries is summarised in the tables 1 below:

Table 1: Obligation of Prior Disclosure in Countries

Elements Countries	Franchisee prior disclosure	Franchisor prior disclosure				Franchisor continuing disclosure of franchisor
		Prior disclosure	Days before signing contract/giving payment	Prescribed disclosure document	Warning to franchisee	
Vietnam	√	√	15	√	√	√
Australia		√	14	√	√	√
China		√	20			√
Malaysia		√	10	√		
the US						
Federal (FTC rule)		√	10	√	√	
State (Franchise Disclosure Documents)		√	10	√	√	

Source: Source: Nguyen, Ba Binh, (2012), The role and influence of Vietnam s franchise law on the development of franchising: a multiple case study, UNSW PhD Thesis <<https://unsworks.unsw.edu.au/entities/publication/db78b9fb-329e-448a-90d2e9c1dbb89ea2?fbclid=IwAR0Sa1rFyeGhzPOSE9eE7C7TLXH0dSmectKsniRyPpTOgtYKeMmHqpNQKH0>>;(reviewed and updated by the authors, 12th October 2022).

Table 2: Non-contractual details of the obligation on prior disclosure

Elements Countries	Franchisor information/experience/litigation	Start-up costs	Financing assistance	Related contracts	Existing franchise network	Non-renewals/terminations/transfers/buy-backs/ceasing operation	Earnings claims	Franchisor financial statements	General Sector information
Vietnam	√	√			√	√		√	√
Australia	√	√	√	√	√	√	Justify if given	√	
China	√				√			√	
Malaysia	√	√	√		√	termination		√	
the US									
Federal (FTC rule)	√	√	√	√	√	√	Justify if given	√	

²⁵ Andrew Terry, “The Regulation of Franchising in Asia: A Comparative Study” (Paper presented at the 6th Asian Law Institute Conference, Hongkong, May 2009).

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State (Franchise Disclosure Documents)	√	√	√	√	√	√	Justify if given	√	

Source: Nguyen, Ba Binh, (2012), The role and influence of Vietnam s franchise law on the development of franchising: a multiple case study, UNSW PhD Thesis <<https://unsworks.unsw.edu.au/entities/publication/db78b9fb-329e-448a-90d2-e9c1dbb89ea2?fbclid=IwAR0Sa1rFyeGhzPOSE9eE7C7TLXH0dSmectKsniRyPpTOgtYKeMmHqpNQKHo>>;(reviewed and updated by the authors, 12th October 2022).

Table 3: Contractual details the obligation on prior disclosure

Elements Countries	Fee & payments	Restriction on source/Supply of products & services	Franchisee's Obligation (consolidated)	Franchisor's obligation (consolidated)	Territory	Intellectual Property	Participation in franchise business operation	Renewal/Termination/Transfer/Dispute resolution	Other contract conditions
Vietnam	√	source		√	√	√	√	√	√
Australia	√	√	√	√	√	√	√	√	√
China	√	supply				√			
Malaysia	√	√	√	√	√	√	√	√	
the US									
Federal (FTC rule)	√	√	√	some	√	√	√	√	
State (Franchise Disclosure Documents)	√	√		√	√	√	√	√	

Source: Nguyen, Ba Binh, (2012), The role and influence of Vietnam s franchise law on the development of franchising: a multiple case study, UNSW PhD Thesis <<https://unsworks.unsw.edu.au/entities/publication/db78b9fb-329e-448a-90d2-e9c1dbb89ea2?fbclid=IwAR0Sa1rFyeGhzPOSE9eE7C7TLXH0dSmectKsniRyPpTOgtYKeMmHqpNQKHo>>;(reviewed and updated by the authors, 12th October 2022).

From the above, table 1-3, Vietnam follows the international prior disclosure by obligate franchisor to provide details of prior disclosure to franchisee. Nevertheless, the disclosure requirement under the Vietnam Franchise law seems to be less comprehensive compare to the US's²⁶ and Australia²⁷'s franchise laws (the Australia is based on the US's franchise law). Vietnam Franchise law does not obligate franchisor to provide franchisee vital details of territory and financial systems. It is understand that it is difficult to decide what financial information needs to be provided to franchisee²⁸ but it is necessary for the franchisee to have a clear understanding on financial costs of franchise business²⁹.

The obligation of Vietnam Franchise law on prior disclosure seems to be very generally. It has obligation that franchisor has to provide prior disclosure of the "business experience" but there is no definition in details of what is "business experience". Franchisor may only provide brief information of franchise business without practical details of how to running and develop franchise system. In addition, it will be difficult to determine whether franchisor has provided prior disclosure information to franchisee when there are the lack of transparency on legal frameworks governing franchise and there is a limitation of franchise details. Comparing to international legal frameworks on franchise, Vietnam Franchise law Decree 35 article 8.2 obligates franchisors to disclose significant modifications of franchise system impacting the franchisee. However, the Decree 35 also obligate franchisee to provide important information to franchisors.³⁰ The Decree 35 article 9 states that franchisee must provide all important information to franchisor as to ensure that franchisor has sufficient information in determining granting its franchise system to franchisee.

Furthermore, Vietnam Commercial Law article 287 requires the franchisor to give a disclosure report based on the proviso "unless otherwise agreed". It is thus under the specific Vietnam Franchise Law (Decree 35 and Circular 09) that compels details of disclosure regime. However, it is concern that there may be conflict of interpretation where the higher Vietnam commercial law may conflict with specific regulations on franchise. In normal situation, the application of regulations to be considered having higher legal effect than the main law³¹. This is the approach of the Ministry of Industry and Trade concerning the Franchising Decree.

²⁶ The first introduction of franchise disclosure is in US by the Federal Trade Commission(FTC)'s 1979 Franchise Rule. Later in 1993, the FTC permitted two main types of prior-disclosure of 1) disclosure under the 1979 Franchise Rule; 2) the North American Administrators Association, Inc. (NAAA)'s Uniform Franchise Offering Circular, April 1993.

²⁷ Australia obligated to conduct disclosure according to franchise law, in 1998 (in the Annexure 1 – disclosure document and Annexure 2 – short form disclosure document).

²⁸ Ibid n 14

²⁹ Office of Small Business, Canberra, Australia, "Final Exposure Draft of the Franchising Code of Conduct" (1998), para. 18.

³⁰ China also required franchisees to conduct this obligation in the 2005 Franchise Measures but then removed it by the 2007 Franchise Law.

³¹ Ngo Duc Manh, "Nang Cao Chat Luong Hoat Dong Lap Phap Cua Quoc Hoi [Improving the Legislative Quality of the Parliament]" (2007) 138(18) <http://www.tapchiconsan.org.vn/details.asp?Object=4&news_ID=81049627> (accessed 12 January 2023); Tran Dinh Long, Vice-Chairman of the Legal Committee of Vietnam's Parliament cited by Pham Thuy, "Legal Document – Who Are You? [Van Ban Quy Pham Phap Luat - Anh La Ai?]" (2008) <<http://www.ttb.gov.vn/default.aspx?tabid=581&ItemID=3798>> (accessed 12 January 2023).

6. Details of Franchise agreement

The Vietnam Commercial Law article 285 obliges that franchise agreement must be in writing document. It is due to the fact that a franchise agreement is vital to clarify the franchising relationship and franchise operation between franchisor and franchisee. The requirement for franchise agreement to be in writing is thus to ensure that there is a clear understanding in working on franchise business of the two parties. In addition, Vietnam franchise law also governs details of a franchise agreement's provisions.³² While concerning with a freedom of contract under the 2005 Civil Code, Vietnam Franchise law Decree 35 article 11 sets guideline franchise agreement should have the contractual details such as of; contents of franchising, royalty fees, payment method, agreement terms, 6) expiry and extension of agreement, and dispute resolution.

In addition to the contractual detailed guided by the Decree 35, the franchisor would have to follow legal requirement of prior disclosure of term, extension conditions, termination of agreement, the amendment of the franchise agreement, conditions for providing franchise operation and business to franchisee, the non-eligibility clarification of status in case of the death of franchisor/franchisee. However, there is still a room for establishing franchise agreement by the preference of franchisor and franchisee by adhering to the commercial law 2005 but not the details of the contract must not be contradicting with other laws in Vietnam.

7. Franchise relationship

Comparing to other countries that set regulation for franchise business, Vietnam passed laws that established obligation dealing with relationship between franchisor and franchisee³³. The Commercial Law 2005 Articles 286-289 stipulates the rights and obligations of both the franchisor and the franchisee as to ensure that there is clear right over franchise business. The franchisor has the rights in conducting franchise of 1) obtaining royalties; 2) arranging advertising for the franchise system; 3) inspecting franchise site as to maintain standard and consistency of the franchise system. Nevertheless, franchisor also has duty of 1) giving a prior disclosure information; 2) supplying initial training and ongoing professional assistance; 3) planning franchise retail, 4) ensuring intellectual property rights of franchise; 5) equally treating all franchise retail.

Commercial Law 2005 also stipulate the franchisee rights that the franchisee must 1) provide business support and 2) perform up to franchise standard equally with other franchisees. The law also stipulate franchisee duty of 1) paying franchise fees; 2) paying for building a franchise outlet; 3) having sufficient finance and staffs, 4) complying to the franchise control and standard of franchise; 5) keeping

³² China, Indonesia, Italy, Korea, Malaysia, also establish legal requirement on contents of franchise agreement.

³³ Ibid n 14

trade secret and confidentiality of the franchise within the period of franchise agreement and after the end of the agreement; 6) terminating the usage of any intellectual property upon expiry of the franchise agreement; 7) operating the franchisee’s outlets at the standard of the franchise business; 8) not to conducting sub-franchise without the permission from franchisor (Decree 35 article 15). It is also noted that franchise has right to terminate franchise agreement in case the franchisor violates its obligations (Decree 35 article 15).

In the same way, franchisor is entitled by Decree 35 article 16 to unilaterally terminate the franchise agreement in case of; 1) the franchisee cannot maintain business licence or equivalent document to operate business according to laws; 2) the franchisee is under insolvency and bankrupt; 3) the franchisee conduct serious violation leading to potential damage on franchise business and prestige; 4) franchisee cannot could solve a non-fundamental breach of the franchise agreement within a reasonable time after receiving franchisor’s notice.

While there are very precise details of legal condition by Vietnam franchise law, there is still an ambiguity in case of that the franchisee cannot could solve a non-fundamental breach of the franchise agreement within a reasonable period. The ambiguity is on how to identify the reasonable period. It is also unclear on how to determine the what breach of agreement can be classified as non-fundamental breach. Furthermore, Vietnam Franchise law does not clearly provide obligation for dealing with the possible situation that franchisor decide not to renew the franchise agreement with franchisee. The law does not obligate franchisor’s advance notice for the non-renewal, comparing to other jurisdictions that have legal obligation to franchisor to provide notice of non-renewable of the franchise agreement 34 The following chart display the comparison on the legal aspects of franchise relationship in Vietnam and other countries according to table 4 below:

Table 4: Legal frameworks on franchise relationship

Elements Countries	General standards of conduct	The specific relationship issues				Prescribed rights and obligations (consolidated)
		termination	term/renewal	transfer	other	
Vietnam		√		√		√
Australia	Good faith	√		√	Right to associate/general release from liability	
Belgium						
Brazil						
Canada						
- Model Law	fair dealing				right to associate	
Alberta	fair dealing				right to associate	
Ontario	fair dealing				right to associate	

³⁴ Ibid n 14

Elements Countries	General standards of conduct	The specific relationship issues				Prescribed rights and obligations (consolidated)
		terminati on	term/renew al	transf er	other	
Prince Edward Island	fair dealing				right to associate	
China	good faith		√			√
France						
Indonesia			√		encroachment	
Italy	loyalty, fairness, good faith	√	term			
Japan					Vertical restraints	
Kazakhsta n					√	√
Korea	good faith	√	√		Unilateral amendment/unfa ir trade practices	√
Lithuania		√	renewal	√	√	√
Malaysia	best business practice	√	√		Confidentiality/p ost termination restraints	
Mexico		√				
Romania		√	√		general	
Russia		√	√	√	trade practices	
Spain						
Sweden						
Taiwan						
the US						
Federal (FTC rule)						
State (Franchise Disclosure Document s)		19 states	18 states	10 states	7 states	
Unidroit Model Law						

Source: Andrew Terry, "A Census of International Franchise Regulation" (Paper presented at the 21st Annual International Society of Franchising Conference, Las Vegas, Nevada, the US, 2007); (reviewed and updated by the authors, 12 February 2022).

Furthermore, by recognising the relationship between franchisor and franchisee, Vietnam aims to govern the relationship by mandating the rights as well as the obligations of both the franchisor and the franchisee. The legal rights and obligations are stipulated in Commercial Law. Nevertheless, there is still a room for franchisor and franchisee to set agreement as to suti their franchise businesses as the Commercial Law states the proviso of "unless otherwise agreed".

8. Franchise registration

The initial adoption of the Franchise law in Vietnam in 2005 obligate the registration of franchise business in order to maintain the certainty of franchise businesses.³⁵ The obligation of the registration in Vietnam follows China and Korea which required the registration of the franchisor and the disclosure. The application for registration of franchise in Vietnam involved with comprehensive system documentation. This is similar to Malaysia's Franchise Act 1997 that stipulate all franchise to be under government registration. The Vietnam Commercial Law demanded that there must be registration of franchise business with the Ministry of Industry and Trade before expanding franchise business to other franchisees (article 291). The registration system in Vietnam is different from Malaysia system that there is government inspection of disclosure documents. Vietnam imposed a "light-hand approach" where the franchisor will have to registration franchise business by only a filing and recording of document without government inspection to the franchise business. Nevertheless, after 2 years of applying the Franchise Law in Vietnam, there were few franchising business registration with the Ministry.³⁶ Through 2006-2008, there was a lack of subordinate regulation on registration fees (required by Circular 09) and ineffective government sanction to unfair franchise business.³⁷ Later, Vietnam government in 2011 ended the registration obligation for domestic franchise by Decree 120.³⁸ Although Decree 120 is said to represent the Government's policy on reducing redundant administrative process for better business environment,³⁹ the ineffective administration of the franchise registration tended to be a main reason for the end of the registration system. In addition, the exclusion of registration for only domestic franchisors contributed to potential criticism of discriminatory treatment between the domestic franchisors and the foreign franchisors. It was inconsistent with Vietnam's WTO accession commitments.⁴⁰ On 15 January 2018, Vietnam government adopted Decree 08 for termination of franchise registration for both domestic and foreign franchises.

9. Conclusion

It can be seen that Vietnam's regulatory framework for franchising is generally consistent with international scheme. The governing Vietnam Commercial Law still has legal gap for some franchisor's obligations by the fact that the franchise agreement is subject to the proviso "unless otherwise agreed" (article

³⁵ Example countries that obligate registration of franchise are Indonesia, Mexico, Spain, China, Malaysia, and 14 US states.

³⁶ Bill Magennis, "Update from Vietnam 2007" (Paper presented at the Conference of the International Bar Association, Singapore, 14-19 October 2007) <www.isanet.org> (accessed 12 January 2023).

³⁷ A fee regime was introduced in 2008, 2 years after the introduction of the Franchise Law.

³⁸ The ended the registration obligation is also for franchise businesses which export from non-tariff zones and other special customs zones in Vietnam.

³⁹ Interview with officials of Vietnam's Ministry of Industry and Trade (22 March 2012).

⁴⁰ See generally the Schedule of Specific Commitments in Services of the working party on the accession of Vietnam to WTO (WT/ACC/VNM/48/Add.2, 27 October 2006)

287). Franchise law is also unclear because that the mandatory regimes of Decree 35 and Circular 09 as the the guiding regulations does not explicitly display which rules prevail . Nevertheless, upon consider overview of the Vietnam franchise law, it seems that the law is in the modern scheme at the same level with international scheme. The Vietnam franchise law helps balances the freedom of commerce and the protection of rights between franchisor and franchisee. In developing countries that there is still unclear rules of law, a specific franchise law can provide potential track for development of franchise and strategy to expand franchise. It is the role of specific regulation that can help facilitate the development of franchise in Vietnam. Nevertheless, there are some concerns in connection to certain parts of the Vietnam law that may have to be reformed in order to put forward the development of franchise business.