

<b>THE GOVERNMENT</b>  _____  No.35/2006/ND-CP	<b>SOCIALIST REPUBLIC OF VIETNAM</b>  <b>Independence- Freedom- Happiness</b>  _____  <i>Hanoi, March 31, 2006</i>
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## **DECREE OF THE GOVERNMENT**

**Detailing the provisions of the Commercial Law on commercial franchising**

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**THE GOVERNMENT**

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

Pursuant to the Commercial Law dated June 14, 2005;

At the proposal of the Minister of Trade,

### **DECREES:**

#### **Chapter I**

### **GENERAL PROVISIONS**

#### **Article 1.**

Scope of regulation

This Decree details the provisions of the Commercial Law on commercial franchising in the territory of the Socialist Republic of Vietnam.

#### **Article 2.**

Subjects of application

1. This Decree applies to Vietnamese traders and foreign traders involved in

commercial franchising.

2. Foreign-invested enterprises engaged in goods purchase and sale and activities directly related to goods purchase and sale, apart from the provisions of Article 7 of this Decree, shall only be allowed to conduct commercial franchising for goods items of which they are licensed to provide services of distribution according to Vietnam's international commitments.

### **Article 3.**

Interpretation of terms

In this Decree, the terms below are construed as follows:

1. "*Franchisor*" means a trader that grants commercial rights, including also the secondary franchisor in relation to the secondary franchisee.

2. "*Franchisee*" means a trader that receives commercial rights, including also the secondary franchisee in relation to the secondary franchisor.

3. "*Secondary franchisor*" means a trader that is entitled to sub-franchise commercial rights it has received from the primary franchisor to the secondary franchisee.

4. "*Primary franchisee*" means a trader that receives commercial rights from the primary franchisor. The primary franchisee shall be the secondary franchisor defined in Clause 3 of this Article in relation to the secondary franchisee.

5. "*Secondary franchisee*" means a trader that receives commercial rights from the secondary franchisor.

6. "*Commercial rights*" include one, several or all the following rights:

a) Right granted to the franchisee by the franchisor that also requests the franchisee to undertake by itself the business of supplying goods or providing services within a system set up by the franchisor and associated with the franchisor's trademark, trade name, business slogan, business and advertising logo;

b) Common commercial right granted by the franchisor to the primary franchisee.

c) Right sub-granted by the secondary franchisor to the secondary franchisee

under the common commercial franchise contract.

d) Commercial right granted by the franchisor to the franchisee under the commercial right development contract.

7. "*Business by mode of commercial franchising*" means business activities conducted by the franchisee under the commercial franchise contract.

8. "*Commercial right development contract*" means a commercial franchise contract whereby the franchisor grants the franchisee the right to set up more than one establishment to do business by mode of commercial franchising in a specified geographical area.

9. "*Common commercial right*" means the right granted by the franchisor to the secondary franchisee, permitting the latter to sub-grant commercial rights to secondary franchisees that are not permitted to further grant such common commercial right.

10. "*Secondary commercial franchise contract*" means a commercial franchise contract signed between the secondary franchisor and the secondary franchisee regarding common commercial rights.

#### **Article 4.**

Powers to perform the state management of commercial franchising

1. The Ministry of Trade shall be answerable to the Government for performing the function of state management of commercial franchising nationwide and have the following duties and powers:

a) To perform the unified professional management and provide guidance for realization of policies and provisions of law on commercial franchising; to organize the registration of commercial franchising;

b) To assume the prime responsibility for, and coordinate with ministries, ministerial-level agencies, Government-attached agencies and provincial/municipal People's Committees in, inspecting, controlling, assessing and reporting to competent superior authorities on commercial franchising;

c) To propose to the Government for promulgation or promulgate according to its competence or propose amendments and supplements to legal documents on commercial franchising.

2. The Ministry of Finance shall, within the ambit of its duties and powers, have to guide the tax regime applicable to commercial franchising and the fee for registration of commercial franchising.

3. Ministries, ministerial-level agencies and Government-attached agencies shall perform the state management of commercial franchising within the ambit of their respective tasks and powers.

4. Provincial/municipal People's Committees shall have responsibilities:

a) To perform according to their competence the state management of commercial franchising;

b) To direct provincial/municipal Trade Services and Tourism Services in organizing the registration of commercial franchising according to their competence, periodically inspecting, controlling and reporting to the Ministry of Trade on commercial franchising in their respective localities.

## **Chapter II**

### **COMMERCIAL FRANCHISING**

#### **Section 1**

#### **CONDITIONS FOR COMMERCIAL FRANCHISING**

##### **Article 5.**

Conditions for the franchisor

A trader shall be permitted to grant commercial rights when fully satisfying the following conditions:

1. The business system intended for franchise has been in operation for at least one year.

Where a Vietnamese trader is the primary franchisee of a foreign franchisor, such Vietnamese trader must conduct business by mode of commercial franchising for at least one year in Vietnam before sub-franchising.

2. Such trader has registered commercial franchising with the competent agency defined in Article 18 of this Decree.

3. The in-business goods and/or services covered by commercial rights do not violate the provisions of Article 7 of this Decree.

#### **Article 6.**

Conditions for the franchisee

A trader shall be permitted to receive commercial rights when having the registration of business lines subject to commercial rights.

#### **Article 7.**

Goods and services permitted for commercial franchising business

1. Goods and services permitted for commercial franchising business are those not on the list of goods and services banned from business.
2. Enterprises shall be permitted to deal in goods and/or services on the list of goods and services restricted from business or those on the list of goods and services subject to conditional business only after being granted business licenses or papers of equivalent value by the branch-managing agencies or fully satisfying business conditions.

### **Section 2**

#### **SUPPLY OF INFORMATION AND CONTRACTS IN COMMERCIAL FRANCHISING**

#### **Article 8.**

The franchisor's responsibility to supply information

1. The franchisor shall have to supply copies of the commercial franchise contract form and the written introduction of its commercial franchise to the intended franchisee at least 15 working days before signing the commercial franchise contract, unless otherwise agreed by the parties. Compulsory contents of the written introduction of commercial franchise shall be specified and promulgated by the Ministry of Trade.
2. The franchisor shall have to promptly notify all franchisees of all important changes in the commercial franchise system, which may affect the latter's business activities by mode of commercial franchising.

3. Where the franchised commercial right is a common one, the secondary franchisor shall, apart from supplying information according to the provisions of Clause 1 of this Article, have to notify in writing the intended franchisee of the following contents:

- a) Information on the franchisor that has granted commercial rights to it;
- b) Contents of the common commercial franchise contract;
- c) Method of handling secondary commercial franchise contracts in case of termination of the common commercial franchise contract.

### **Article 9.**

The intended franchisee's responsibility to supply information

The intended franchisee shall have to supply the franchisor with information reasonably requested by the latter before deciding on the grant of commercial rights to the former.

### **Article 10.**

Industrial property subject matters in commercial franchising

1. Where the franchisor licenses industrial property subject matters and contents of commercial rights to the franchisee, such a licensing of industrial property subject matters may be established into a separate section in the commercial franchise contract.

2. The section on licensing of industrial property subject matters in the commercial franchise contract shall be governed by industrial property law.

### **Article 11.**

Contents of the commercial franchise contract

Where the parties choose to apply Vietnamese law, a commercial franchise contract may have the following principal contents:

1. Content of franchised commercial right.
2. Rights and obligations of the franchisor.

3. Rights and obligations of the franchisee.
4. Price, periodical franchise fee and mode of payment.
5. Valid term of the contract.
6. Renewal and termination of the contract, and settlement of disputes.

#### **Article 12.**

##### Language of the commercial franchise contract

Commercial franchise contracts must be made in Vietnamese. For franchises granted by Vietnamese parties overseas, the language of commercial franchise contracts shall be agreed upon by the involved parties.

#### **Article 13.**

##### Valid term of the commercial franchise contract

1. The valid term of a commercial franchise contract shall be agreed upon by the involved parties.
2. A commercial franchise contract may be terminated ahead of the agreed time in the cases specified in Article 16 of this Decree.

#### **Article 14.**

##### Time when the contract takes effect

1. A commercial franchise contract shall take effect as from the time it is entered into, unless otherwise agreed upon by the involved parties.
2. Where a commercial franchise contract contains a section on licensing of intellectual property subject matters, such section shall take effect according to the provisions of law on intellectual property.

#### **Article 15.**

##### Transfer of commercial rights

1. The franchisee may transfer commercial rights to another intended franchisee when the following conditions are satisfied:

a) The intended transferee satisfies the conditions specified in Article 6 of this Decree;

b) Such transfer is consented by the franchisor that has granted commercial rights to the transferring franchisee (hereinafter referred to as the direct franchisor).

2. The franchisee must send a written request for transfer of commercial rights to the direct franchisor.

Within 15 days after receiving such written request of the franchisee, the direct franchisor must reply in writing, clearly stating:

a) Its consent to the transfer of commercial rights by the franchisee; or

b) Its rejection of the transfer of commercial rights by the franchisee for the reasons specified in Clause 3 of this Article.

Past the above-said time limit of 15 days, if the direct franchisor fails to reply in writing, it shall be deemed as having consented to the transfer of commercial rights by the franchisee.

3. The direct franchisor may reject the transfer of commercial rights of the franchisee for one of the following reasons:

a) The intended transferee fails to fulfill its financial obligations under the commercial franchise contract;

b) The intended transferee has not yet satisfied the criteria for being selected by the direct franchisor;

c) The transfer of commercial rights may exert a great adverse impact on the existing commercial franchise system;

d) The intended transferee disagrees in writing to fulfill the obligations of the franchisee under the commercial franchise contract;

e) The franchisee has not yet fulfilled the obligations toward the direct franchisor, except here the intended transferee makes a written commitment to fulfill such obligations on the franchisee's behalf.

4. The transferor of commercial rights shall no longer hold the transferred



commercial rights. All rights and obligations related to commercial rights of the transferor shall be transferred to the transferee, unless otherwise agreed.

#### **Article 16.**

Unilateral termination of the commercial franchise contract

1. The franchisee has the right to unilaterally terminate the commercial franchise contract in cases where the franchisor breaches its obligations specified in Article 287 of the Commercial Law.

2. The franchisor has the right to unilaterally terminate the commercial franchise contract in the following cases:

a) The franchisee no longer holds the business license or papers of equivalent value, which the franchisee is required by law to hold for conducting business activities by mode of commercial franchising.

b) The franchisee is dissolved or goes bankrupt according to the provisions of Vietnamese law.

c) The franchisee commits serious law violations, which may greatly harm the reputation of the commercial franchise system.

d) The franchisee fails to remedy its immaterial breaches in the commercial franchise contract within a reasonable time limit, though it has received a written notice from the franchisor requesting the remedying of such breaches.

### **Section 3**

## **REGISTRATION OF COMMERCIAL FRANCHISING**

#### **Article 17.**

Registration of commercial franchising

1. Before conducting commercial franchising activities, Vietnamese traders or foreign traders that intend to franchise must register commercial franchising with competent agencies defined in this Decree.

2. Agencies competent to register commercial franchising shall have to register commercial franchising of traders in the commercial franchise register and notify

in writing the traders of such registration.

### **Article 18.**

Decentralization of responsibility to register commercial franchising

1. The Ministry of Trade shall register the following commercial franchising activities:

a) Commercial franchises from overseas into Vietnam, including commercial franchises from export processing zones, non-tariff areas or separate customs areas specified by Vietnamese law into the Vietnamese territory;

b) Commercial franchises from Vietnam to overseas, including commercial franchises from the Vietnamese territory into export processing zones, non-tariff areas or separate customs areas specified by Vietnamese law.

2. Trade Services and Trade-Tourism Services of provinces or centrally-run cities where traders that intend to franchise make business registration shall register commercial franchising at home, except for franchising across boundaries of export processing zones, non-tariff areas or separate customs areas specified by Vietnamese law.

### **Article 19.**

Dossiers of application for registration of commercial franchising

A dossier of application for registration of commercial franchising comprises:

1. An application for registration of commercial franchising, made according to the form guided by the Ministry of Trade.

2. A written introduction of commercial franchise, made according to the form set by the Ministry of Trade.

3. Written certifications of:

a) The legal status of the intended franchisor;

b) Industrial property right protection titles in Vietnam or a foreign country in case of licensing industrial property subject matters for which protection titles have been granted.

4. Where papers specified in Clauses 2 and 3 of this Article are written in foreign languages, they must be translated into Vietnamese and notarized by domestic notaries public or Vietnam's foreign-based diplomatic missions and consularly legalized according to the provisions of Vietnamese law.

## **Article 20.**

### Procedures for registering commercial franchising

1. An intended commercial franchisor shall register commercial franchising according to the following procedures:

- a) Sending a dossier of application for registration of commercial franchising to the competent state agency defined in Article 18 of this Decree;
- b) Within 5 working days after receiving complete and valid dossier, the competent state agency shall register commercial franchising in the commercial franchise register and notify in writing the traders of such registration.
- c) Where the dossier is incomplete or invalid, the competent state agency shall, within 2 working days after receiving such dossier, notify such in writing to the intended franchisor for supplementation and completion of its dossier;
- d) The time limits specified in this Clause shall not include the time for the intended franchisor to amend and supplement its dossier of application for registration of commercial franchising;
- e) Past the time limits specified in this Clause, if the competent state agency refuses to effect the registration, it must notify such in writing to the intended franchisor, clearly stating the reasons for refusal.

2. Procedures for registering contracts on licensing of industrial property subject matters shall comply with the provisions of law on industrial property.

## **Article 21.**

### Notification of changes in registered commercial franchise information

Where there are changes in registered information specified in Clauses 2 and 3, Article 19 of this Decree, the franchisor shall notify such changes to the competent state agency where it has registered commercial franchising within 30 days after such changes arise.

## **Article 22.**

Revocation of commercial franchising registrations

1. A trader's commercial franchising registration shall be revoked in the following cases:

a) The trader terminates its business operation or shifts to another business line;

b) The trader has its business registration certificate or investment certificate withdrawn.

2. The agency that has effected the commercial franchise registration shall publicly announce such registration revocation.

## **Article 23.**

The commercial franchising registration fee

Intended commercial franchisors must pay the commercial franchising registration fee. The fee rates and regime of fee management and use shall comply with the Finance Ministry's guidance.

## **Section 4**

### **ACTS OF LAW VIOLATION IN COMMERCIAL FRANCHISING AND COMPETENCE TO HANDLE VIOLATIONS**

## **Article 24.**

Acts of law violation in commercial franchising

1. Traders involved in commercial franchising that commit the following acts of violation shall, depending on the nature and seriousness of their violations, be administratively sanctioned according to the provisions of law on handling of administrative violations:

a) Conducting commercial franchising business without having fully satisfied the specified conditions;

b) Granting commercial franchises for goods or services banned from business;

c) Breaching the obligation to supply information in commercial franchising

specified in this Decree;

d) Including in written introductions of commercial franchise untruthful information;

e) Violating regulations on registration of commercial franchising;

f) Violating regulations on notification in commercial franchising;

g) Failing to pay tax(es) according to the provisions of law, but not seriously enough for penal liability examination;

h) Failing to abide by requests of competent state agencies conducting examinations or inspections;

i) Violating other provisions of this Decree.

2. Where traders conducting business by mode of commercial franchising commit acts of violation, causing material damage to involved organizations and/or individuals, they must pay compensations therefore according to the provisions of law.

### **Article 25.**

Competence and procedures for handling administrative violations

Competence and procedures for handling acts of administrative violation specified in Article 24 of this Decree shall comply with the provisions of law on handling of administrative violations.

### **Article 26.**

Complaints and denunciations

1. Organizations and individuals may complain about the registration of commercial franchising, payment of taxes and fees, inspection and handling of violations in commercial franchising activities according to the provisions of law on complaints.

2. Individuals may denounce acts of law violation in commercial franchising according to the provisions of law on denunciations.

## Chapter III

### IMPLEMENTATION PROVISIONS

#### Article 27.

Transitional provisions

Commercial franchising activities conducted before the effective date of this Decree must go through procedures for registration according to the provisions of this Decree within 3 months after such effective date.

#### Article 28.

Implementation effect

1. This Decree takes effect 15 days after its publication in CONG BAO. To annul all previous stipulations on commercial franchising which are contrary to the provisions of this Decree.
2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and presidents of provincial/municipal People's Committees shall guide and implement this Decree.

	<p style="text-align: center;"><b>ON BEHALF OF THE GOVERNMENT</b></p> <p style="text-align: center;"><b>PRIME MINISTER</b></p> <p style="text-align: center;"><i>(Signed and sealed)</i></p> <p style="text-align: center;"><b>Phan Van Khai</b></p> <p style="text-align: center;"><i>(This translation is for reference only)</i></p>
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