

## **Principaux apports de la loi uniforme sur les franchises au Canada**

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Cette nouvelle loi, rédigée par la Conférence pour l'harmonisation des lois au Canada se présente comme un choix pour les provinces canadiennes. S'agissant d'une loi cadre, son adoption par les provinces peut passer par la rédaction de leur propre loi sur le franchisage.

L'apport principal de la loi uniforme concerne l'obligation de divulgation du document d'information. En effet, à la différence du D.I.P. couramment utilisé en France, le document d'information, selon la loi canadienne, n'est pas une obligation précontractuelle. Ainsi, cette nouvelle loi accorde un délai de 14 jours (à compter de la signature du contrat de franchise ou du premier versement du franchisé au franchiseur) pour que le franchiseur divulgue le document d'information.

En deuxième lieu, le contenu du document d'information est également fixé par la loi uniforme. Le document d'information doit contenir notamment :

- Les états financiers prescrits
- Des copies de tous les projets de contrat de franchisage et d'entente relative à la franchise que doit signer le franchisé éventuel
- Les déclarations prescrites qui visent à permettre au franchisé éventuel de prendre des décisions éclairées en matière de placement
- Les autres renseignements prescrits
- Les copies des autres documents prescrits

En outre, le document d'information fait état de tous les faits importants, en plus des déclarations, des documents et des renseignements. En cas de changement important, le franchiseur doit en notifier au franchisé avant la signature du contrat de franchise ou avant le premier versement exécuté par le franchisé.

La loi uniforme dispose également sur le droit de résolution accordé aux franchisés. Ainsi, le franchisé peut résoudre le contrat dans les 60 jours après avoir reçu le document d'information, si le franchiseur ne lui a pas remis ce document dans le délai exigé ou si un changement important ne lui a pas été communiqué. Si le franchiseur ne lui a jamais remis le document d'information, le franchisé peut résoudre dans un délai de deux ans.

Les provinces qui ont déjà adopté cette loi (l'Alberta, l'Ontario, l'Île du Prince Édouard et le Nouveau Brunswick) autorisent un franchiseur dont la juridiction exige également la divulgation d'un document d'information, de procéder ainsi pourvu que tous les éléments du document d'information exigés par la nouvelle loi de franchise soient inclus.

**Octobre 2011**

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## **The Franchise in Bolivia**

### **THE FRANCHISE IN BOLIVIA**

Bolivia is a country with great possibilities for the development of franchises in virtue of its general growth and development potential. There are a lot of economy sectors that have very little concurrence and with great commercial opportunities. In the last years there have been many changes in Bolivia, like for the example, the construction of malls, a major presence of foreigners and the increase of the purchase power of the Bolivian people.

The power and size of the trademark of the franchise does not assure its success in Bolivia, like for example, McDonald's after opening its first franchise in 1997 had to close just in 2002. The facility to adapt and modify to the circumstances in the country would be the main quality of a successful franchise.

Argentinean franchises are the ones with a major presence in the Bolivian market, followed by American franchises.

Some of the main franchises in Bolivia are: Muaa, Lolita, Dulces Jessen, United Colors of Benetton, Burger King, Havana, London Tie, Subway, Totto and Sweet.

Although there are many benefits for franchising, there are as well some disadvantages like for instance the excessive corruption in customs; making it very common the missing of merchandise or its substitution. This has led to many franchises to receive its merchandise via Chile, but because of the limited infrastructure in Bolivia, the duration of this route is approximately one and a half month. This should be taken into account when assuring a reception of the merchandises in time.

It is also worth mentioning the existing 35% tariff on textile products that enter Bolivia, via Europe.

There is no specific franchise law in Bolivia, so the main source of obligations in a franchise relation is the franchise contract itself. Nevertheless there is a Trademarks law and also, since Bolivia is part of the Andean Community, the decision 486 in the matter of Intellectual Property of the Andean Community, has full validity and applicability.

### **TRADEMARKS LAW**

The Trademarks Law (Ley de Marcas) in Bolivia, specifically article 12, establishes the general requirements for registering a trademark in the Industrial Property Office of Bolivia.

Article 18 establishes the obligation to renew the register of the Trademark every 10 (ten) years and if the power of attorney to do it was given in France, it will have to be properly legitimized.

### **DECISION 486 IN THE MATTER OF INTELLECTUAL PROPERTY**

As mentioned above, Bolivia is part of the Andean Community along with Colombia, Ecuador and Peru. This Community has established many laws in diverse matters, one of them being Intellectual Property. (Decision 486)

Most of its content has been established in the Trademarks Law of Bolivia, except for:

- A disposition that allows the owner of a trademark to license its use to other persons. Said license must be registered in the corresponding Intellectual Property office of the member country, in this case being the Industrial Property Office of Bolivia.
- The time of response of said office is 15 (fifteen) days maximum. If the request is missing some requirements, the office will notify the interested, so that in a period of 70 (seventy) days following the notification, they can make the necessary amendments.
- The consequence mentioned in the law of failure to register the license is that said license wouldn't be opposable to third parties, making it impossible to sub-license with other parties.

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## **The Franchise in Argentina**

### **THE FRANCHISE IN ARGENTINA**

Argentina has more than 450 franchises operating in its territory with more than 18,000 (eighteen thousand) establishments, representing 2% of its gross domestic product.

The franchise business started in the late eighties and has been growing since then. In 2008 there were 40 (forty) concepts of franchise created along with 1,500 (one thousand five hundred) establishments and 9,000 (nine thousand) jobs.

In Argentina, 90% of the franchises are domestic franchises, making Argentina the country with more domestic franchises in relation with the number of franchises in the country in all Latin America. The other 10% is formed mainly by American, French and Spaniard franchises.

There is a franchise association in Argentina called "Asociación Argentina de Marcas y Franquicias", which has for affiliates most of the franchises in the country. Said association has its own Ethics Code with proper sanctions for its violation.

Some of the main franchises are: Bonafide, Delicity, Fiestissima, El Noble Repulgue and Cremolatti.

It is worth mentioning that Argentina has signed many economics agreements that allow a foreign investor to have an excellent platform in order to introduce its products to other Latin American Countries. The most important of these agreements is the South Common Market (MERCOSUR), signed by Argentina, Paraguay, Uruguay, Venezuela,

Bolivia and Chile.

## LEGAL ASPECTS

There is no special law in Argentina that governs the franchise. Nevertheless the franchisor and franchisee must abide the following dispositions:

- **Trademarks Law:** It establishes the general requirements for trademark and license registration. It has importance significance the obligation of providing a domicile in the federal capital and the obligation of renewing the trademark registration every ten years.
- **Ethics Code:** It establishes obligations like assistance and supervision from franchisor to franchisee, to provide franchisee with a disclosure informative document and the possibility of going, in case of a dispute, to an established arbitration panel of the Argentinean franchise association.
- **Disclosure Informative Document:** It must comply with the following requirements:
  - Brief history of the company
  - Required investments (detailed)
  - List of existing franchisees
  - Services that franchisor offers to franchisees
  - Territory

Finally we must mention that there is a project for a franchise law in the Argentinean Congress; some of the highlights of said project are:

- The provision of a disclosure informative document and an operations manual in at least 10 working days prior to the signing of the contract.
- A minimum term of 3 (three) years of the franchise contract.
- The payment of a penalty from franchisor to franchisee in case that the first one terminates the contract without cause or prior notification.
- The right of franchisee of using the know-how acquired in virtue of the franchise contract, eighteen months after the termination of the contract.

**October 2011**

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## Franchising in Taiwan

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## I. Taiwan: general Information

The Republic of China (ROC), more commonly known as Taiwan, is a sovereign state located in East Asia whose capital city is Taipei. With a total area of 36,191 km<sup>2</sup> and an estimated population of 23 million inhabitants, the ROC governs the island of Taiwan as well as other minor islands (Penghu, Matsu, Kinmen ...).

## II. Taiwanese economy

Taiwan is a dynamic and developed country whose industry is mainly based on high technology. People's Republic of China is the main trading partner of Taiwan, followed by the US, the EU and Japan. With a total GDP of \$ 418.206 billion in 2010, Taiwan is the 24<sup>th</sup> largest economy in the world. Chain of stores and franchises play an important role in the development of Taiwan's economy and represented 48% of the turnover of the retail and food sector in 2008, i.e. NT\$ 1,7 trillion. The Taiwanese distribution network is characterized by the strong presence of convenience stores and shopping centers.

## III. Franchise legislation in Taiwan

Since there is currently no specific law governing franchising in Taiwan, the relationships between franchisors and franchisees are regulated by the franchise agreements. However, the validity and the enforcement of such agreements remain governed by the Fair Trade Act of 2010 which deals with trading order and fair competition matters. Besides, the Fair Trade Commission (FTC) adopted specific guidelines regarding franchising which have been amended in 2009.

These "*Disposal Directions (Guidelines) on the Disclosure of Information by Franchisers*" aim to "*ensure fair competition in franchise business and to avoid concealment by franchisers of important information during recruitment of franchisees*" (Article 1). According to Article 4, the franchisor shall provide written information to the prospective franchisee 10 days before they enter into contracts, including:

1. The name of the franchiser's enterprise and the date on which it began franchising operations.
2. The names and relevant business experiences of the responsible person and the chief management personnel of the franchiser.
3. The franchise fees and other charges collected by the franchiser before the entry into the franchising contracts and duration of the franchising contracts, including their types of fees, amounts, methods of collection and conditions for refunds.
4. The intellectual property rights including trademarks, patents, copyrights and so on that the franchiser authorizes the usage to the franchisee, in regard to the time that the intellectual property rights are filed or granted, the content and duration of the rights, plus the scope and any restriction of the authorization to the franchisee.
5. The content and methods of management assistance, training guidance and so forth to be provided by the franchiser to the franchisee.
6. The franchiser's management program concerning the franchisee's areas of operation with those of other franchisees or directly operated stores.
7. All the other franchisees' names and business addresses of the franchiser in the city or county where the franchisee will be located, as well as, within the last accounting year, the statistic data number of other franchisees and terminated numbers of the franchising contracts with the franchiser in the whole country and also the city or county where the franchisee will be located.
8. Within duration of the franchise contract, the restrictions over the business relationship between the franchiser and the franchisee in their operations of business.
9. Conditions and resolved means to modify, terminate and/or rescind the franchise contract.

Article 5 of the Guidelines provides that the franchisor must give the prospective franchisee a period of 5 days to review the proposed contract before signing such agreement.

Any violation of the Guidelines by a franchisor involving concealment or delaying disclosure of important information is considered as a violation of Article 24 of the Fair Trade Act if it is clearly unfair to the prospective franchisee and sufficient to affect the trading order of the franchising operations. According to Article 41, such an infringement may lead to corrective measures ordered by the FTC, administrative penalties (up to NT\$ 25,000,000) or a claim for compensation of damages (up to 3 times of the amount of the damages proven in case of an intentional infringement).

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## **Franchising in Canada**

### **FRANCHISE IN CANADA**

World's second largest country, Canada shares the longest common border with the United States to the South and Northwest. It counts a total population of 32 million, including 812,000 in its capital, Ottawa. Population growth is from immigration and, to a lesser extent, natural growth. There are 43 ethnic origins, the largest being English (21%), followed by French (15.8%), Scottish (15.2%), Irish (13.9%), German (10.2%), Italian (5%), Chinese (4%), Ukrainian (3.6%), and First Nations (3.5%).

As a federation comprising ten provinces and three territories, Canada functions within a framework of a federal system of parliamentary government and a constitutional monarchy, with Queen Elizabeth II as its head of state. It is a bilingual and multicultural country, with both English and French as official languages, both at the federal level and in the province of New Brunswick.

Many of the country's legislative practices derive from the unwritten conventions of unwritten conventions and precedents set by the United Kingdom's Westminster parliament. Thus, Canadian legal system has its foundation in the British common law system, inherited from being a former colony of the United Kingdom and later a member of the Commonwealth of Nations. Quebec, however, still retains a civil system for issues of private law. Both legal systems are subject to the Constitution of Canada.

### **Economy in Canada**

Technologically advanced and industrialized, Canada has a diversified economy reliant upon its abundant natural resources and upon trade. It is one of the world's wealthiest nations, with a high per capita income. As one of the world's top ten trading nations, it is also a mixed market, ranking lower than the U.S. but higher than most western European nations. Since the early 1990s, the Canadian economy has been growing rapidly, with low unemployment (7.77%) and large government surpluses on the federal level.

In the past century, the growth of the manufacturing, mining, and service sectors has transformed the nation from a largely rural economy into one primarily industrial and urban. As with other first world nations, the economy is

dominated by the service industry, which employs about three quarters of Canadians.

## **A franchise system not unified**

It is estimated that there are approximately 1,300 franchise systems operating in Canada, and approximately 78,000 franchise units across Canada. Close to 45% of all retail sales in Canada, particularly in the food service industry, are made through franchised businesses.

Franchisors operating are subject to both federal and provincial law, which may vary from province to province. The province with the most notable differences is Quebec. Quebec is predominantly French-speaking, and while the majority of Canada is governed by the common law, all contractual relationships in Quebec are governed by its Civil Code.

The average term of a franchise agreement in Canada is five years. However, franchise agreements come in several fixed periods including 10 and 20 years.

As the largest provincial economy in the country, Ontario has greater franchise business activity than any other province and inaugurated its first comprehensive law dealing with franchising in the province in 2001, with the Arthur Wishart Act. Actually, Ontario modeled its legislation on the Alberta Franchises Act, which went into effect on November 1, 1995.

Thereby, Alberta and Ontario are one of the few provinces to have specific Franchise Acts, which, in substance, are very similar. They provide for full disclosure of relevant facts and offer additional protection to prospective franchisees.

If the franchisor is operating in Alberta or Ontario, if the prospective franchisee is a resident of those provinces, or has a permanent residence in those provinces, the franchisor is required to provide with a copy of their disclosure document at least 14 days before the signing of any agreement relating to the franchise, or the payment of any consideration relating to the franchise, whichever is earlier.

Both Acts require the franchisor to provide details of any earnings claims information used by the franchisor, including material assumptions underlying its preparation and presentation

There is no legislation similar to Ontario's Arthur Wishart Act in Quebec and therefore no prescribed disclosure requirements. Instead, in Quebec, the Civil Code imposes an implicit obligation on parties to a franchise contract to deal with each other in good faith. This includes the requirement to act in good faith during negotiations and in drawing up franchise agreements. Franchisors have indeed a duty, which flows from the general duty to act in good faith, to inform the franchisee of any relevant information he is aware of that would affect the franchisee's decision to enter a franchise agreement. In return, franchisees have a duty to become informed and obtain relevant professional advice before they enter a franchise agreement. This obligation is similar to the common law duty of fair dealing and good faith in other provinces. This duty also extends to the performance of contractual obligations and to the termination of the contract.

Joining Alberta and Ontario, Prince Edward Island became in 2000 the 3rd Canadian province to enact franchise-specific legislation. Prince Edward Island's legislation is substantially similar to the legislation in the other two provinces.

Lastly, the province of New Brunswick introduced Bill 41 (Franchises Act) into its legislature, in 2007. It is quite similar to the franchise legislation already in place in Ontario, Alberta and Prince Edward Island and, like those laws, has three essential components to it, namely: a Duty of Fair Dealing, a Right for Franchisees to Associate and

an Obligation for Franchisors to Provide Pre-sale Disclosure.

Concerning franchise legislation in the province of British Columbia and the province of Manitoba, there is no specific franchise legislative initiative. Constitutionally, the federal government does not have jurisdiction to legislate franchising for the country as a whole.

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## **Franchising in Tunisia**

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### **I. Tunisia: essential data**

Located in northern Africa, Tunisia is a state, which sits in the north east of Maghreb; 162,155 km<sup>2</sup> of its territory are limited on the west by Algeria, on the southeast by Libya and on the north by the Mediterranean Sea. The country has a 1,300 km long coastline and is separated from Sicily by 140 km. 99% of the Tunisian population is Muslim, and the country is also populated by small Jewish and Christian communities. Tunisia appears as one of the most westernized countries of this region, and the practice of Islam is moderate. The country enjoys a dual culture thanks to a widespread use of the French language and an easy access to the western media, whose impact tends however to diminish. In 2009, Tunisia counted 10.4 million inhabitants. The position of women in the society is an exception in this region. Women's rights are almost the same as men's.

Independent since 1956, Tunisia is a Republic with a presidential regime. It pursues an economic and social policy characterized by the articulation of progressive liberalization and economic planning. This system has a strong political and social stability and the country enjoys economic performance, which make Tunisia one of the most developed countries in Africa and the Mediterranean region.

### **II. Economy in Tunisia and the retail trade**

In spite of the difficult international situation, Tunisia registered in 2009 an economic growth of 3.1%, compared to 4.6% in 2008. This rate is expected to reach 4% in 2010 and 4.5% in 2011. However, in the next years the country might have to face the consequences of the fall of the European demand, which could have a damaging impact on the production and exports of automobile components and clothing goods. The main challenge for the Tunisian economy is to reach a sufficient growth level in order to provide jobs for young graduates, whose unemployment rate stood at 19% in 2008.

On the international level, Tunisia has signed the founding agreements of the World Trade Organization such as the GATT and the General Agreement on Trade in Services. On a European level, Tunisia joined in 1985 the Barcelona Euromed process through a partnership agreement with the European Union. This process aims to



create a free trade area by the year 2010 between the EU and all Mediterranean countries parties to this agreement. On the regional level, Tunisia signed in 2004 with Egypt, Jordan and Morocco the agreement of Agadir, which plans to abolish tariffs on industrial, agricultural produce and grocery.

In Tunisia, the concept of franchising emerged in the Eighties during the important movement of liberalization of the economy and the opening-up to international trade.

However, franchising, which was only governed by contract law, did not enjoy a specific legal regime before the recent promulgation of act n° 2009-69 on 08/12/2009 (August 12<sup>th</sup>, 2009). Indeed, franchising had no official recognition and only existed under various forms and names (trademark licences, partnership agreements, technical support agreement...). This is mainly due to the fact that franchisees located in Tunisia were not legally authorized to pay royalties to foreign franchisors, as such payments were deemed as capital evasion, and were thus considered as a breach of the currency change regulation. Besides, access to distribution, wholesale, retail and non-tourist catering activities, is limited to foreigners because they have to obtain a special authorization (so called “business card”) card from the Trade Ministry, which, is rarely issued. Such regulations could explain why McDonald’s never managed to enter the Tunisian market.

### **III. The new regulation of franchising in Tunisia**

Act n°2009-69, passed on August 12<sup>th</sup>, 2009, relating to retailing, grants franchising an official recognition and status. Chapter V of the Act is dedicated to franchising and only contains four articles, which set out general principles and refer to application decrees. The only legally restrictive obligations are those who require the execution of a written contract and state that a disclosure document must be provided to prospective franchisees 20 days before the execution of any agreement. However, the law does not set out the contents of said disclosure document. Furthermore, the new act does not address the issue pertaining to exclusivity undertakings, although such provisions are one of the cornerstones of franchising. Besides, it has to be noted that although the act deals with franchising, it only governs retail franchising as the law concerns the distribution trade.

Another question concerns the scope of the new law, especially in respect of foreign franchising businesses. Indeed, the law remains silent about the nationality of the parties to a franchise agreement. This may be interpreted as meaning that foreigners are not exempted from the obligation to obtain a business card as required by decree n°61-14 of August 30<sup>th</sup> 1961. According to that rule, every non Tunisian person, corporation, company or entity, must seek and obtain from the Trade Ministry an authorization, commonly called “business card”, prior to the beginning of any business activity. The same rule applies to any every person of Tunisian nationality wishing to represent a foreign trademark in Tunisia.

Therefore, it is necessary to await the implementation of the corresponding decrees to enforce the new act in order to ascertain the existence of a real legal system of franchising in Tunisia. Such decrees are expected to be issued very shortly.

In any case, this new act must be highly welcomed as its represents the outcome of a process which started as early as the Nineties. This new law states the new approach of the Tunisian authorities towards franchising, and does undoubtedly aim at encouraging this kind of trade practice that has considerably developed elsewhere in the world.

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## **Franchising in Spain**

### **FRANCHISING IN SPAIN**

#### **I. Spain: Essential data**

With an area of 493,484 km<sup>2</sup> beside the Canaries Islands, the Balears Islands and the autonomous cities of Ceuta and Melilla, which amount to a total of 505,992 km<sup>2</sup>, Spain is the second biggest country in Western Europe and in the European Union after France. It is surrounded by the Mediterranean Sea in the South and East. At the North, it is separated from France, Andorra and the Bay of Biscay by the Pyrenees mountains. It is populated by more than 46 million inhabitants concentrated essentially on the maritime facades, with the exception of big cities as Madrid, Valladolid and Saragossa.

Spain has a central State administration and three levels of local administration:

- 17 autonomous communities (Comunidad autónoma),
- 50 provinces (Provincia),
- 8,112 municipalities (Municipio).

The official language of the country is Spanish, also called « Castillan ». However, every autonomous community has developed its own official language in addition to Spanish; in Mallorca for instance, inhabitants speak Mallorquin.

Spain is a hereditary constitutional Monarchy endowed with a bicameral parliament: the « Cortes ». The Spanish Constitution of 1978 was qualified as the « Constitution of the consensus ». It acknowledges the principle of judicial, executive and legislative separation of the powers.

#### **II. Economy in Spain and retail sector**

After recording one of the highest economic growth in Europe in the 2000's, Spain has been severely hit since the summer of 2008 by the global financial crisis. The Gross Domestic Product (GDP) stood in 2009 at 1.006 million euros (including 2.9% for agriculture, 30.4% for industry and 66.7% for services). The country registered a growth of 0.9% in 2008, and entered recession in 2009 (-3.7%). The forecasts for 2010 suggest a negative growth of 0.8%. The unemployment rate, which stood at 11% in 2008, rose to 17.9% in 2009. For 2010, it is estimated to a staggering 20%. Spain's Finance Minister, Elena Salgado, announced a possible return to growth with an estimated increase of the GDP (up 1.8% in 2010 and 2.7% in 2012).

Franchise law only appeared in Spain in the Fifties. Since then, franchising has considerably developed, in particular in domains such as the food industry, the hotel business, the clothing and cosmetics industry. The

franchise sector proved resistant to the crisis, which is currently hitting Spain. It recorded a 20.3 billion euro turnover in 2007 and grew to € 20.8 billion in 2008. Around 80% of franchises operating in Spain are from Spanish origin. The remaining 20% are mainly French (Phildar, Franck Provost) and American franchises.

### **III. The regulations of franchising in Spain**

Act n°7/1996 of January 15th of 1996 called « Ley de Ordenación del Comercio Minorista » governs Spanish franchising law. Chapter VI, entitled « de la actividad comercial en régimen de franquicia » pertaining to franchising includes only one article. Contrary to the French law, this article clearly defines franchising as a « commercial activity carried out by virtue of contract whereby a company, called franchisor, grants another one, called franchisee, the right to operate a system relating to the marketing of products or services (...) ». This article also imposes two obligations on the franchisor, which are further detailed by a royal decree n°2.485/1998 of November 13th of 1998.

The first obligation consists in the obligation for every franchisor to be duly registered with several authorities. Those registers are originally created by the competent administration; therefore every franchisor must, before starting his activity, complete registration formalities. This obligation also concerns franchisors who operated a franchising business before the entry into force of the decree. The latter had a deadline of a month to complete their registration. According to the law, this obligation must be complied with « every physical person or company who wishes to operate in Spain a franchising activity (...) ». This register works at the level of the Spanish state but is held by the autonomous communities of the registered office or the place of residence of the franchisor.

The second obligation, which directly stems from French law, relates to pre-contractual information. Article 62-3 of the act of 1996 requires that every supplier hands in to any prospective franchisee, at least 20 days before the signature of the contract or before the delivery by the franchisee of any payment, a written document containing all necessary information so that the prospective franchisee can decide freely and in any knowledge whether to join the franchising network. The contents of this disclosure document are dense and mainly relate to data of identification of the franchisor. The decree of 1988 detailed the contents of this obligation. Franchisors must therefore prove that they are duly registered on the franchisor's registry, that they are registered with the commercial registry and provide information as to the amount of their share capital.

Besides, every franchisor must prove his property right on the trademark or the distinguishing features. He also has to indicate to any prospective franchisee the number of franchisees having left the network during the last two years as well as the motive behind the end of the contractual relationship with these former franchisees. Finally, the franchisor must also clearly specify the future rights and obligations of the parties to the franchising agreement, the financial terms thereof and the provisions pertaining to renewal or termination of the contract.

During the execution of the contract, breach of contractual obligations by either party to the agreement can give rise to the termination of the franchising agreement. Spanish law has been widely inspired by French law, thus imposing on the franchisor a pre-contractual obligation pertaining to the clauses of the contract.

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## Franchising in Brazil

### FRANCHISING IN BRAZIL

#### I. Brazil: essential data

Brazil is the largest and most important country of Latin America, occupying an area of over 8.5 million square kilometers. Its population includes more than 180 million inhabitants, being the majority - 81% - situated in urban areas. Its population is a real racial mix, including African, Spanish, Portuguese, Jew, Italian, Arabian, Japanese people and their descendents, among many others.

The official language is Portuguese and its political and administrative organization includes three main Branches of Power: the Judiciary, the Executive and the Legislative. It is based on the French civil system.

The country is formed by 26 States and one Federal District, comprising 5,563 towns and cities.

Although more than 70% of the population is catholic, Brazil has no official religion, and religious freedom is guaranteed by its Constitution.

The country accounts for three fifths of the South American economy's industrial production.

#### II. Economy in Brazil and the sector of distribution

Brazil's Gross Domestic Product is around R\$ 2,900 billion dollars in 2008, or around \$ 1,480 billion (services accounting for 64%, industry for 30,9% and agriculture for 5,1%).

The country trades regularly with over one hundred nations, 74% of its exports are represented by manufactured or semi manufactured goods, producing an income of € 125 billion. Its main partners are: the European Union (26% of the balance), the United States (24%), Mercosur and Latin America (21%) and Asia (12%).

The retail sector is well developed with a total revenue of \$ 62 billion in 2007 and around 5 million sq.m of stocking surface. 397 shopping centers are in operation in 2009, maintaining 720,890 job positions and generating sales of \$ 33,1 billion.

The franchise sector in Brazil is really developed, encompassing different fields, such as shoes, accessories, clothing, food, beauty products, vehicles, hotels and tourism, language schools, among others. It is estimated that the franchising system had revenues of more than \$ 28.20 billion in 2008 rising 19.5% from 2007.

Brazil counts 1,379 franchising networks, responsible for 648,000 direct employees and 2.595,000 indirect job positions.

#### III. The franchise law in Brazil

Franchise in Brazil is ruled by the Franchise Law, number 8.955 from December 15th, 1994. This law was developed according to the American Franchise Act.

It states, on its article 2, the definition of franchising as "the system by which a franchisor grants to the franchisee the right of use of a trademark or a patent, along with the right of exclusive or semi exclusive distribution of

products and services and, eventually, includes the right of use of implantation technology and business management or operational system developed or owned by the franchisor before direct or indirect remuneration, expressly excluding any employment relationship between them”.

The procedures to the execution of a franchise agreement are the same as in France. Franchisor shall make available to the potential franchisee, 10 days prior the execution of the franchise agreement, a document (Circular de Oferta de Franquia) informing about the franchisors’ company, its history, its financial situation by the presentation of the financial statements for the 2 previous years, and its legal situation by the presentation of the pending litigations regarding the trademarks, patents, intellectual property involving the franchisor or the franchisees.

Such documents must also present all the franchise details, such as the kind of business developed, the activities to be performed, the list of the other franchisees, the ideal franchisee profile, a description of the territory (and its exclusive or non exclusive characteristics), the necessary amount for implementing the franchise including the entry fee, the conditions for the purchase of the products, the necessary equipments, the initial stock, among others, as well as the payment conditions. It must also clearly describe all periodic fees (such as royalties, leases, marketing fees, insurance) plus the method used to calculate them.

The franchisee might argue the nullity of the agreement, if such conditions were not properly observed.

Franchise is well organized in Brazil, represented by the Brazilian Association of Franchising (Associação Brasileira de Franchising-ABF).

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## **Franchising in Iran**

### **DEVELOPING FRANCHISE IN IRAN**

#### **Iran: essential data**

Iran is located in the Middle East, bordered to the north by Turkmenistan and the Caspian Sea, the east by Afghanistan and Pakistan, the south by the Persian Gulf and the Gulf of Oman, and the west by Iraq and Turkey. The centre and east of the country are largely barren undulating desert, punctured by irrigation canals and green oases, but there are mountainous regions in the west along the Turkish and Iraqi borders and in the north where the Elburz Mountains rise steeply from a fertile belt around the Caspian Sea.

Iran, with an area of 1,648,043 km<sup>2</sup>, has a youthful, growing population of 70 million, including 7.2 million residents in the capital, Tehran.

Persian (*Farsi*) is the most widely spoken language, used by the population, but Turkish and Turkish dialects, and Kurdish are also used. Arabic is spoken by 1% in Khuzestan in the southwest, and Turkish in the northwest around

Tabriz. English, French and German are spoken by many business-people and officials.

Islam is the country's official religion, but religious freedom is guaranteed by the Iranian Constitution. Of the 98% Muslim population, 89% are Shi'a and 9% are Sunni. The remaining 2% consists of Christian, Jewish, Zoroastrian and Baha'i faiths.

On the political level, Iran is an Islamic Republic since 1979. Based on the 1979 Constitution, the system comprises several connected governing bodies, at the top of which is the Supreme Leader of Iran, and below whom the Constitution places the President of Iran.

As far as the legal system is concerned, it is based on the Napoleonic Code (in particular commercial law), but incorporates the sharia since 1979 to bring it more in line with teachings of Islam.

## **Economy in Iran**

Iran's main sources of income are its huge oil and gas deposits, which are among the world's largest. It also has viable deposits of coal, magnesium ores and gypsum.

The agricultural sector is important, although output has been depressed by drought and migration of rural labour to the cities. Government policy has promoted the agricultural and light industry in order to reduce the economy's dependence on oil and increase the influence of the private sector – about 80% of economic activity is state controlled. Annual growth is about 4.3% (2006) with unemployment at 15% (2007). The rate of inflation in 2006 was estimated at 12%.

Economic policy is dominated by the fundamental difference of approach between the elected government and the ruling clergy. Iran has developed important new links with the newly independent states of central Asia as well as Turkey and China but, more important, existing trade with traditional partners in Europe, Japan and the Middle East have been restored.

## **Increasing franchise without any specific law**

The links with those countries have notably led to an increase of franchises. All the more as the Iranian market is the largest consumer market in the Middle East, with a youthful and growing population passionate and fascinated by Western countries. Iranians are indeed very brand-oriented: it is the name that sells, not the taste. Therefore, many western brands have successfully settled in Iran so far, like Mango and Benetton, whose franchises across the country became very quickly profitable.

Moreover, concerning more precisely domestic law, Iran has different well structured laws and regulations applicable to both domestic and foreign companies working in Iran such as commercial law, import and export regulations, labor law, social security regulations, taxation... However, Iran does not have any special law and regulations concerning franchise.

Because there is not a specific law dealing with franchise operation, instead, commercial and civil laws of Iran are relied on.

Thereby, practically, franchise exists in Iran but in the frame of sole agency agreement. The representative of any foreign company is entitled to develop his business with the special brand and the specifications of the owner of the brand.

Implicitly, the Iranian Civil Code imposes an obligation on parties to a franchise contract to deal with each other in good faith. This includes the requirement to act in good faith during negotiations and in drawing up franchise

agreements. This duty also extends to the performance of contractual obligations and to the termination of the contract.

Furthermore, there are two commercial regulations to differentiate: one is applicable to Main Land, and a different one to Free Zone, which is independent from the main land. Relying on particular economic and geographical advantages, Iran has indeed designated some areas as free trade zones. There are six Iranian free trade zones including Kish, Qeshm, Chabahar, Aras, Arvand, and Anzali. They play a very important role in Iran's economy, therefore, many legal facilities and advantages are available in these zones, including franchising.

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## **Franchising in Estonia**

### **FRANCHISING IN ESTONIA**

In Estonia franchising agreements are very briefly regulated in the Law of Obligations Act (in Estonian: *Võlaõiguseadus*), in force from 07, 2002.

Following is a short overview of the regulations set forth in the Law of Obligations Act as well as other relevant issues:

#### **Definition of franchise contract**

Pursuant to the Law of Obligations Act by a franchise contract, one person (the franchisor) undertakes to grant to another person (the franchisee) a set of rights and information which belongs to the franchisor for use in the economic or professional activities of the franchisee, including the right to the trade mark, commercial identifications and know-how of the franchisor.

#### **Form of agreement**

No mandatory form is prescribed in the law for franchise agreements, thus a franchise agreement may be entered into in any form. Considering Estonian legal practice written agreements are recommendable.

#### **Obligations of franchisor**

Pursuant to law of Obligations Act the franchisor is required to provide the franchisee with instructions for the exercise of the rights franchised and to provide permanent assistance related to the franchise.

## **Obligations of franchisee**

A franchisee is required:

- in his activities, to use the commercial identifications of the franchisor;
- to ensure that the quality of the goods manufactured or services provided by the franchisee pursuant to the contract is the same as those manufactured or provided by the franchisor;
- to follow the instructions of the franchisor which are directed at the exercise of rights on the same bases and in the same manner as the franchisor;
- to provide clients with all additional services which they could expect upon acquiring goods or contracting for services from the franchisor.

## **Franchisor's right to review**

A franchisor has the right to check the quality of the goods manufactured or services provided on the basis of a franchise contract by the franchisee.

## **Registration of franchising agreement**

There are no mandatory requirements to register the franchising agreement.

## **Sub franchising**

Sub franchise agreements are not specially regulated by the Law of Obligations Act, thus, regulation of the franchise applies.

## **Non competition**

Not regulated by law.

## **Liability**

With regard to claims brought to franchisee as the manufacturer of the goods no joint liability with the franchisor is set forth in the law, thus the liability is borne solely by the franchisee.

## **Termination of franchising agreement**

Not regulated by law, thus general rules set forth in the Law of Obligations Act apply.

## **Renewal of franchising agreement**

Not regulated by law, thus subject to the agreement by the parties of the franchise agreement.

## **Death of franchiser or franchisee**

Not regulated by law.

*July 2009*

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