

## **Franchising in Mexico**

### **FRANCHISING IN MEXICO**

#### **General Presentation**

Mexico has a population of 110 million and covers a surface of 1,923,040 sq km. It is Latin America's highest per capita income, and its GNP was 886.4 billion dollars in 2007.

Franchising in Mexico began in the middle of the Eighties, and since then it has continued to grow representing nearly 5% of GNP in 2007. Its franchise network ranks 11<sup>th</sup> worldwide and generated an estimated 12 billion dollars turnover.

There is no specific franchise law. The "Law of Industrial Property" (LIP), published on 27<sup>th</sup> of June 1991 was the first to include franchising provisions.

Many franchisees still complained of abuses from their franchisors in the early years of development of franchising in Mexico. On 25<sup>th</sup> of January 2006 amendments were made to article 142 of the "Law of Industrial Property" which greatly improved existing franchise regulations and provided additional protection for Mexican franchisees.

Article 142 et seq. contain the main provisions and provide a definition to franchising (1), the content of the disclosure document to be delivered to the franchisee (2), and the items which must be included in franchise agreements (3).

#### **The definition of franchising**

Article 142 provides a precise franchising definition. Franchising is the situation where both a trademark license is granted and technical know-how is transferred or technical assistance is provided. The person to whom the license is granted will be able to manufacture, sell goods or provide services under the licensed trademark pursuant to the operational, commercial and administrative methods established by the owner of the trademark, given that quality, prestige and reputation of said products or services is maintained at all times.

#### **The disclosure information document**

In the same way as the Doubin Law in France and the Laruelle Law in Belgium, here above article 142 requires prior to the execution of any franchise agreement that franchisor provides prospective franchisee with a disclosure information document. It is to be provided to the prospective franchisee at least thirty days prior to execution date.

However, and such differing from the French Doubin law, the Mexican legislator hasn't specifically defined the contents of information which is to be provided to the prospective franchisee.

The only clear requirement is that it is to contain information on franchisor's corporate body and on licensing rights over each and every trademark, which is to be used in the franchise.

Any inaccuracy in the content of such information is likely to cause said franchise agreement to be deemed nil and void and give rise to damages claim against franchisor. Unlike French case law, in such a case it appears that the Mexican judge could consider the agreement to be nil and void prima facie without having to determine the degree of inaccuracy and its consequences on franchisee's consent, on the condition legal action has been taken within the first year following the agreement's execution.

It should be noted that these provisions are too recent and still have to be confronted to the courts and hence the law is still in the making regarding the franchise disclosure information.

In many ways, the disclosure phase still raises many questions that have not been resolved yet. Hence it is advisable for franchisors to take utmost precautions to avoid franchise agreements to be in jeopardy.

## **The franchise agreement's content**

Section 142 bis contains a list of items to be imperatively included in franchise agreement.

The franchise agreement should contain the usual standard information (geographical area of operations, training of franchisee, franchisor's assistance, network's marketing and advertising policy), and information that would better fit in a disclosure document such as investment details, or the profit or commission margins that franchisee can expect with franchise operation.

In order to protect prospective franchisee, the new provisions of Article 142 bis 1 et seq. of 27<sup>th</sup> of June 1991 Law insist on defining franchisee as independent and remind franchisor that it has no right over the organization and daily management of franchisee.

Finally, Article 142 bis 3 organizes franchise agreement's expiration. To avoid abusive unilateral early termination of contract by some franchisors, the Mexican legislator has formalized in the Law the following principle: franchisee and franchisor cannot unilaterally terminate the contract unless there is good cause or unless contract has been executed for an indefinite period (which is very rare).

Non-compliance with these provisions may give rise against the defaulting party to a damages claim.

In conclusion, recent changes in Mexican law do clarify some aspects of the franchise business but several key issues shall remain unclear until Mexican case law resolves them.

Although the law has increased franchisees legal protection and has put an end to franchisors prior total freedom of action as observed in the previous fifteen years, franchising in Mexico has great potential of development.

**May 2008**

**Gilles Menguy**

**Avocat & Solicitor, GM Avocats**

***gmenguy@gm-avocats.com***