

GEORGIA

In the Civil Code of Georgia, adopted on 26 June 1997, Book Three, Title One, Chapter seven, has provisions that deal specifically with franchising (Articles 607 – 614).

Article 607 contains a definition of a franchise agreement. It is a broad definition, which does not contain the elements usually considered to be characteristic of franchising: “A franchise agreement is a long-term relationship whereby independent enterprises reciprocally undertake, where necessary, to promote the production and marketing of goods and provision of services by performing specific obligations”.

The following provisions deal with

- 1 the obligations of the franchisor (Article 608),
- 1 the obligations of the franchisee (Article 609),
- 1 the duty of confidentiality (Article 610),
- 1 the form of the agreement (Article 611),
- 1 the term of the agreement (Article 612),
- 1 a duty of loyal competition (Article 613), and
- 1 a provision on the liability of the franchisor (Article 614).

Article 608 distinguishes two different categories of obligations that are imposed upon the franchisor. The first includes providing the franchisee with intellectual property rights, samples and packaging, and information on the franchise system (the concepts of management, production, purchase and marketing of the goods). Into the second category fall the obligations of the franchisor to protect the franchise system from third parties, to develop the system and to support the franchisee by, *inter alia*, providing training.

- 1 The obligations of the franchisee, on the other hand, are detailed in Article 609, and include to conduct the business in good faith,
- 1 to purchase goods from the franchisor or persons nominated by the franchisor and
- 1 the payment of the franchise fee.

The franchisee also has an obligation to “receive services”, but there is no indication as to what this might include.

Article 610 places a duty of confidentiality upon both parties, and Article 611 requires contracts to be in writing. It further specifies a few of the provisions that the contract must include (provisions on termination “and other essential clauses”, a description of the franchise system).

Article 612 considers the duration of the agreement, specifying that its term shall be determined by the parties (paragraph (1)). However, if the term of the contract exceeds ten years, either party is entitled to terminate the contract subject to a one-year notice, or the contract is automatically renewed by two years.

Article 613 is a provision on non-competition. In paragraph (1) it states that, within the limits of loyal competition, the franchisee may be restricted from competing with the franchisor within a certain area, but for a period not exceeding one year. It is to be presumed that this restriction is post-term, as the provision opens with “despite the expiration”. If this prohibition jeopardises the business of the franchisee, the franchisee shall receive appropriate monetary compensation even if the term of the contract has expired (paragraph (2)).

Article 614 provides for a general liability of the franchisor for the rights and information provided. If the franchisor negligently breaches his contractual obligations, the franchisee is entitled to reduce the franchisee fee, the precise amount of the reduction being determined by an independent expert.