

UKRAINE

In 2004 the Ukraine adopted a new Civil Code. Chapter 76 (Articles 1115 – 1129) contains provisions on franchising which the Ukrainian legislator calls “commercial concession”, thus following the precedent of the Russian legislator.

Article 1115 defines a commercial concession agreement, stating that under such an agreement one party (a titleholder) “shall be obliged to grant to the other party (a user) for a fee the right of use pursuant to its claims of a set of rights belonging to it aimed at manufacturing and/or sale of a specific type of goods, and/or providing services”. The Civil Code, or other legislation, shall regulate relations connected with granting the right of a set of rights of use.

Article 1116 specifies that the subject-matter of commercial concession agreements is the right to use intellectual property objects (trademarks, industrial samples, inventions, works of art, commercial secrets etc.), and commercial experience and business reputation.

The second paragraph of Article 1116 provides further specifications which in translation are not clear: “Commercial concession agreement may stipulate the use of the subject matter of the agreement mentioning or not mentioning the use area for a specific field of the civil turnover”. Should a reader of this page be able to clarify its meaning, any assistance would be much appreciated. Please write to: I.peters@unidroit.org.

Article 1117 indicates that both physical and legal persons may be parties to a commercial concession agreement, and Article 1118 deals with both the form of the agreement (requiring the written form – para. (1)), and the registration of the agreements (state registration is required).

Article 1119 deals with commercial sub-concession agreements, i.e. master franchises. Article 1120 specifies the obligations of the titleholder (i.e. franchisor), and Article 1121 those of the user (i.e. franchisee). Article 1122 indicates that the agreement may determine specific provisions such territorial exclusivity (Article 1122(1)(1)), non-compete clauses (Article 1122(1)(2)). Price-fixing is invalid (Article 1122(2)) and provisions limiting the operation of the franchisee to a certain area or to a specific category of clients are invalid (Article 1122(3)).

Article 1123 deals with vicarious liability and Article 1124 with the right of the user to conclude an agreement for a new term upon the same conditions. Paragraph (2) states that the law may determine the conditions under which a titleholder may refuse concluding a concession agreement for a new term.

Article 1125 deals with modifications to commercial concession agreements, and Article 1126 with their termination. The right to terminate the agreement belongs to both parties.

Article 1127 deals with the preserving of the validity of the agreement when the parties change, and Article 1128 with the consequences of changes in the trademark of the titleholder. Finally, Article 1129 deals with the consequences of termination of a right of which use has been granted: the agreement as such is not terminated, only the provisions affected by the right terminated (para. (1)).