

## AZERBAIJAN

In Azerbaijan franchising is regulated by the Civil Code of December 1999, in force since 26 May 2000.

The Special Part of the Civil Code is divided into Sections, sub-divided into Chapters. Section 7 deals with obligations derived from agreements, Chapter 35 (Articles 723-731) with Franchising. The Code does not specify any disclosure obligations, it provides for a generic duty of both parties to provide information (Article 727).

Article 723 defines franchising agreements as a long-term liability relationship on which independent enterprises, where necessary, base their mutual undertaking to execute specific obligations to produce goods, sell goods and provide services.

Article 724 deals with the obligations of the franchisor, whereas Article 725 deals with the obligations of the franchisee.

The franchisor undertakes to give the franchisee intellectual property rights to the standard form, the trademarks of the commodities, samples of the goods, [information on] the weight of the containers, on the production, procuring, selling and conception of the organisation of the activity, as well as other information necessary for the franchisee to sell in the same manner as the franchisor (Article 724(1)). The franchisor further undertakes to protect the franchise system from third persons, to continuously improve upon it and to support the franchisee by providing [information on] business practices and training (Article 724(2)).

The franchisee, on the other hand, must pay the franchisor franchise fees, which take into account the [expenses incurred in] implementing the franchise system. The franchisee must operate as an honest entrepreneur, must obtain services and products directly from the franchisor or from persons authorised by the franchisor in cases directly connected with the purpose of the [franchise] agreement (Article 725(1)). When the franchisee pays an entrance fee at the signing of the agreement, and this entrance fee is not taken into consideration in the calculation of the franchise fee, then the franchisor undertakes to return the entrance fee when the agreement is terminated (Article 725(2)).

At the signing of the franchise agreement, the parties must make each other simply and completely acquainted with the conditions that relate to the franchise, especially with the franchise system, informing each other honestly. They are under an obligation not to disclose the information received, even if the agreement is not signed (Article 726).

The franchise agreement must be in writing and must specify precisely the mutual obligations of the parties, the term of the agreement, the conditions for the termination or renewal of the agreement, as well as other important elements of the agreement, describing the entire franchise agreement.

The term of the agreement is determined by the parties taking into account the demand for the goods sold and services provided (Article 728(1)), it is not decided by the franchisor alone. If the term of the agreement is longer than ten years, either party is entitled to terminate the agreement, giving a notice of one year. If neither party terminates the agreement, it is automatically renewed for two years. When the term of the agreement expires, or if either party takes the initiative of terminating the agreement, then in consideration of the principle of mutual confidence the parties must endeavour to prolong the term of the agreement, at the same or altered conditions, up to the date of completion of the mutual business relations of the parties (Article 728(2)).

Parties are required to compete with each other fairly, even after agreement relations have ended. Competition by the franchisee may be prohibited within a certain area for a period of up to one year after the ending of the agreement (Article 729(1)). Where the prohibition of competition endangers the professional activity of the franchisee, it must be paid relevant financial compensation despite the ending of the term of the franchise agreement (Article 729(2)).

The franchisor is responsible for the rights granted and information given by the franchise system. If the franchisor fails to execute the obligations fixed by the agreement, the franchisee may reduce the compensation it pays. The amount of the reduction must be decided on the basis of the opinion of an independent expert. The expenses of the expert are to be borne by the parties (Article 730).

If the subject of a franchise agreement is the granting of right to use the intellectual property, the provisions of the legislation on copyright and related rights, as well as on patent rights, are applied to such relations (Article

731(1)). If the franchisee is permanently engaged in the distribution of the franchisor's products, or of any enterprise related to the franchisor, the provisions on commercial representation and concession agreements are applied (Article 731(2)). If the parties to a franchise agreement undertake other obligations in respect of the parties' legal relations (including buying and selling, the renting of property, the provision of contract and services), then the provisions applicable to those types of contract are applicable (Article 731(3)).

*(The Secretariat would greatly appreciate receiving any clarifications or corrections of the description of the legislation above, as the translation available is not always clear)*