

BELARUS

The Civil Code of Belarus, which was adopted on 7 December 1998 and entered into force on 1 July 1999, contains a Chapter on the “*Complex entrepreneurial licence*” or franchise. On 18 August 2004 amendments to this regulation were adopted, and they entered into force on 27 February 2005. In part the terminology used is the same as that used by the Russian Civil Code. Thus, a franchisor is the “right-holder” and the franchisee the “user”.

Article 910 equates a franchise agreement to what is termed a “licence complex”. In order to be recognised as a franchise, or licence complex, a contract must include:

- 1 the right to use the franchisor’s (right-holder’s) trade name,
- 1 the right to use confidential, or undisclosed, information: technical, commercial (including know-how), and organisational.

Furthermore, the contract can provide for the right of the franchisee to use other intellectual property such as trademarks and service marks.

The franchise agreement must provide for a franchise fee, which may be fixed payments, a once-only payment, or periodic payments calculated as a percentage of proceeds or in any other manner determined by the franchise agreement. The rights granted by the franchisor must be used in a commercial activity which must be of a certain size (maximum or minimum).

The duration of the agreement may be for a fixed term, or for an indefinite term, and the agreement may have territorial restrictions. The agreement must be in writing and must be registered with the patent authority (“The National Centre of Intellectual Property”). If the contract is not registered, it will be null and void. Modifications to the agreement must also be registered. General rules apply to the termination of the agreement.

Only certain persons are permitted to engage in franchising: only a legal person can be an owner of a trade name, and therefore be a franchisor, whereas also natural persons (entrepreneurs) are permitted to be franchisees.

Master franchise agreements are permitted, but the duration of the sub-franchise agreements may not extend beyond that of the master agreement.

The Code also provides for a certain number of rights and duties of the parties which cannot be modified by the contract. The franchisor is obliged to supply technical and other information and to instruct the franchisee and the franchisee’s employees. Furthermore, the franchisor is obliged to give the franchisee the licences necessary to use the intellectual property and to provide for their registration in the prescribed manner. The franchisee on the

other hand is obliged to use the franchisor's trade name and/or trademark, to ensure the quality standards of the goods or services it offers, to follow the instructions of the franchisor, to provide customers with additional services, not to disclose confidential information, to conclude the required number of sub-franchise agreements in the case of a master franchise, and to inform customers that the outlet is a franchise.

Furthermore, there are a certain number of obligations of the franchisor which may be modified by the contract, such as the duty to control the quality of the goods or services supplied by the franchisee.

The Code also lists a number of obligations which may be included in the contract despite the fact that they restrict competition. These include an obligation placed upon the franchisor not to grant other persons similar franchises to be used in the territory assigned to the franchisee and to desist from engaging in a similar activity in that territory.

The Code fixes the terms of the franchisor's liability for claims filed against its franchisees. These terms cannot be modified by the contract. Thus, the franchisor is subsidiarily liable for claims filed against the franchisee for the franchisee's not respecting the quality standards for the goods or services it sells. The franchisor is further jointly liable with the franchisee for claims filed against the franchisee for goods produced by the franchisee under the franchise agreement which do not respect the required quality standards.

The Code also provides a few rules as regards the change of trade name of the franchisor, the change of the franchisor company, and the expiration of the term of the exclusive rights.