

## MOLDOVA

The Republic of Moldova has two instruments regulating franchising: “*The Law of the Republic of Moldova on Franchising*” No. 1335 of 1 January 1997, and *Chapter XXI* of the 2003 Civil Code. This brief summary will treat the two separately, starting with the Civil Code which is more general. (*The translation of the legislation used and quoted in this entry was contributed by Ms Viorica Laticevschi of the International Independent University of Moldova (Universitatea Libera Internationala din Moldova - ULIM).*)

### 2003 Civil Code

Chapter XXI of the 2003 Civil Code contains eight articles (1171 – 1178):

*Article 1171* contains a definition of the franchise contract as an instalment contract by which “independent enterprises (franchisee and franchisor) agree to contribute reciprocally to distribute the goods and services each provides the other with”.

*Article 1172* deals with the form and conditions of the contract. While the requirement that the franchise contract be concluded in writing is not surprising, the requirement of the second paragraph, that the franchise contract must contain a full description of the procedure for the transfer of the franchise in addition to the reciprocal obligations of the parties, the term of the contract, a provision regarding the termination and extension of the contract “and other important elements” is more unusual in the way it is couched.

*Article 1173* specifies the obligations of the franchisor in a general manner: according to *paragraph (1)* the franchisor “is obliged to transfer to the franchisee the totality of the relevant intellectual property rights, trade marks, models, elements [parts] of equipment, trade dress, concepts of delivery, supply, organisation and other information necessary to the organisation on the work of the franchise”. *Paragraph (2)* indicates that in addition “the franchisor has the obligation to protect the common franchise programme from the intervention of third parties, to update the programme continuously and to support the franchisee in his activity by way of training, and information”.

*Article 1174* specifies the obligations of the franchisee, which include the payment of royalties, the observance of the business format and the obligation, if the contract so requires, to buy the goods and services required from the franchisor or a person indicated by the franchisor.

*Article 1175* provides that both parties have an obligation to keep commercial secrets confidential, and that each of the parties must inform the other of “all circumstances related to the franchise in question”.

*Article 1176* specifies that the term of the contract is determined by the parties (*paragraph (1)*), and indicates the conditions of termination of long-term or indefinite contracts (*paragraph (2)*).

*Article 1177* provides for an obligation of fair competition for both parties, and

*Article 1178* returns to the obligations of the franchisor by stating that the franchisor is responsible for all the rights it grants, i.e. it must have registered the trademarks, etc. It also

provides for a right of the franchisee to reduce the amount of money to be paid to the franchisor if the rights do not exist or if the franchisor does not perform its obligations.

#### *Law of the Republic of Moldova on Franchising No. 1335 of 1 January 1997*

The *Law of the Republic of Moldova on Franchising No. 1335 of 1 January 1997* is more detailed. It comprises nineteen articles divided into five Chapters: Chapter I: General Provisions (Articles 1 – 7), Chapter II: The Franchise Agreement (Articles 8 – 12), Chapter III: Rights and Obligations of the Parties (Articles 13 – 15), Chapter IV: Guarantees and the Protection of the Rights of Participants in the Franchise (Articles 16 – 17), and Chapter V: Final Provisions (Articles 18 - 19).

#### *Chapter I: General Provisions (Articles 1 – 7)*

*Article 1* provides a definition of franchising, *Article 2* of the franchisor and *Article 3* of franchisees. *Article 4* lists the legislation that applies to franchising.

*Article 5* considers the field of application and the purpose of the franchise, and *Article 6* the different forms of franchising, i.e. corporate or commercial. These are defined as:

“(2) In the corporate form of franchising the franchisees participate in all stages of production of the franchisor. The characteristics of the corporate form are:

- a) a close relationship between franchisor and franchisee;
- b) the regular sharing of information;
- c) a detailed regulation of the activity and a high level of responsibility of the franchisee.

(3) The commercial form of franchising provides for the distribution of goods or the providing of services. The characteristics of the commercial form are:

- d) a narrow specialisation of the franchisee by the distribution of one type of product or the providing of one type of service;
- e) the receipt by the franchisor of a fixed part of the revenue;
- f) the franchisee bearing the risk for products sold or services provided;
- g) the franchisee’s obligations not being precisely regulated.”

*Article 7* deals with legal forms and the registration procedure of the parties. In general terms it provides that the legal forms permitted are those admitted by the legislation in the place of residence of the parties.

#### *Chapter II: The Franchise Agreement (Articles 8 – 12)*

*Article 8* deals with the preparation of the franchise proposal, which can be made by either party. The article specifies that

“(2) The proposal must contain a business-plan with specifications for the production and/or distribution of the product, the providing of the service, the volume of the production, the salary levels of the employees, the prospective income, the volume and directions of the supplementary investments, and other conditions required by the franchisee or the franchisor”.

It also indicated that “[i]nformation about existing or potential participants of the franchise is collected and kept by the State Agency for the Protection of Industrial Property” (*paragraph (3)*), and that “[p]otential franchisors and franchisees have the right to ask the State Agency

for the Protection of Industrial Property for necessary information. The fee for information provided is fixed by the Agency” (*paragraph (4)*).

*Article 9* regulates the franchise agreement, and in *paragraph (2)* specifies that the agreement must contain indications regarding:

- “(a) the parties to the agreement;
- (b) the type, field [of activity] and the name of the business;
- (c) the amount and terms of the payments (initial fee, royalty, advertisement fees);
- (d) the rights and obligations of the parties, including rights and obligations after the end of the agreement;
- (e) the franchisor’s duty to help the franchisee;
- (f) the liability of the parties for non-performance of the agreement;
- (g) a dispute resolution clause;
- (h) the territory in which the trade mark is going to be used;
- (i) the term of the agreement and conditions when its provisions can be changed, when the agreement can be extended or terminated;
- (j) the place of residence of the parties, their bank accounts and their signatures;
- (k) other conditions required by the parties which are in conformity with the legislation”.

*Paragraph (4)* contains a registration requirement, in that it states that “[t]he franchise agreement is registered with the State Agency for the Protection of Industrial Property. The registration fee is fixed by the Government”.

*Article 10* considers changing, extending or terminating the agreement. To be noted is that the same provision deals with both parties. Thus, *paragraph (2)* states that:

“The parties have the right to ask for the termination or revision of the agreement in the following situations:

- a) the parties agree to it;
- b) the breach of the agreement by one of the parties;
- c) liquidation of one of the parties;
- d) bankruptcy of one of the parties;
- e) a court decision regarding the invalidity of the formation documents of one of the parties;
- f) the death of the responsible person who represented the parties when the agreement was signed;
- g) in other situations provided for by the agreement or by law”.

*Article 11* considers the payments the franchisee has to make, including the royalties and the initial fee. *Paragraph (1)* states clearly that “[t]he franchisee has to pay an initial fee and a royalty”. *Article 12* considers investments.

### *Chapter III: Rights and Obligations of the Parties (Articles 13 – 15)*

*Article 13* briefly considers the rights and obligations of the parties (“[t]he rights and obligations of the parties are regulated by law and by the franchise agreement”), *Article 14* labour relations and social security and *Article 15* taxes.

### *Chapter IV: Guarantees and the Protection of the Rights of Participants in the Franchise (Articles 16 – 17)*

*Article 16* provides guarantees and the protection of the rights of the participants in the franchise by stating that:

- “(1) The franchisor – foreign legal or natural person – has the guarantees and rights provided for by the foreign investments legislation.
- (2) The franchisor and the franchisee – local legal or natural person – have the rights provided for by the legislation.
- (3) The franchisor’s property rights which are temporarily transferred to the franchisee are protected.
- (4) It is prohibited to go after the franchisor’s assets which were transferred to the franchisee.
- (5) The franchise agreement is valid throughout the whole period for which it was concluded, even if new legislation is adopted aggravating the situation of the parties.
- (6) The protection of the rights of the parties is effected by the competent economic courts, which may be international, or, if the parties agree, by commercial arbitration”.

*Article 17* deals with associations of franchisors (but not with associations of franchisees). *Paragraph (1)* indicates specifically that “[i]n order to establish provisions on ethics for franchising and ensure their protection, franchisors have the right to associate in national or international associations”.

#### *Chapter V: Final Provisions (Articles 18 - 19)*

*Article 18* deals with the entry into force of the law and *Article 19* with adjustments of existing legal provisions to the law.