

ITALY

On 6 May 2004 Law no. 129 bringing "Provisions for the discipline of commercial affiliation" (franchising) ("*Legge 6 maggio 2004, n. 129 Norme per la disciplina dell'affiliazione commerciale*") was signed by the President of the Italian Republic. It is a brief law, comprising only 9 articles.

Article 1 contains relevant definitions ("commercial affiliation", "know-how", "entrance fee", "royalties" and "goods of the affiliating party").

Article 2 turns to the scope of application of the law, specifying that it applies also to master franchise agreements and to agreements under which the affiliated party, in an area available to it, fits out a space exclusively devoted to the conducting of the franchise. In an earlier draft this description was identified as a corner franchise, even if there were those that questioned this definition.

Article 3(1) states clearly that the contract must be in writing, failing which it will be considered null and void. Furthermore, paragraph (2) contains a general requirement that the franchisor's commercial formula has been tested, with no specification as to the length of the testing or the number of units that should have been involved. Article 3(3) provides that the term of a definite period contract must be sufficiently long for the franchisee to amortise his investment, but in any event it must not be shorter than three years. Paragraph (4) specifies the information that the contract must contain: "(a) the amount of the investment or possible other expenditure for entry [into the franchise system] which the affiliated party must sustain before the beginning of the activity;

(b) the modalities for the calculation and payment of the royalties and the possible indication of the minimum receipts to be collected by the affiliated party;

(c) the limits of any possible territorial exclusivity, both in relation to other affiliated parties and in relation to sales outlets and channels [of distribution] managed directly by the affiliating party;

(d) the specification of the know-how that the affiliating party provides the affiliated party with;

(e) the possible modalities for the recognition of the contribution to the know-how of the affiliated party;

(f) the characteristics of the services offered by the affiliating party in terms of technical and commercial assistance, planning and decorating, training;

(g) the conditions for the renewal, resolution or possible assignment of the contract."

Article 4 details the obligations of the affiliating party (franchisor), which are limited to additional disclosure, in that paragraph (1) provides that at least thirty days before the signing of the contract, the franchisor must hand over to the prospective franchisee the whole contract with a number of appendices containing the information to be disclosed:

(a) the main data on the affiliating party, amongst which the legal name and the capital of the company and, at the request of the prospective affiliated party, a copy of its financial statements of the last three years or from the date of the beginning of its activity if this took place less than three years previously;

(b) the indication of the [trade] marks used by the system with the details of the registration or deposit of each, or of the licence granted to the affiliating party by the third party who is the owner of the marks, or the documentation which demonstrates the actual use of the mark;

- (c) a synthetic description of the elements which characterise the activity which is the object of the commercial affiliation;
- (d) a list of the affiliated parties currently operating in the system and of the sales outlets directed by the affiliating party;
- (e) an indication of the variation, year by year, of the number of affiliated parties with an indication of their respective locations in the last three years or from the date of start-up of the activity of the affiliating party if this took place less than three years previously;
- (f) a synthetic description of any judicial or arbitral proceedings relating to the commercial affiliation system concerned which were concluded in the last three years and which were initiated against the affiliating party by affiliated parties, by third parties or by public authorities, but with due respect to the regulations in force on privacy.

Paragraph (2) specifies that, with reference to the information required under paragraph (1)(d), (e) and (f), the franchisor may limit himself to providing the information that relates to activities in Italy. By a decree of the Ministry for productive activities, to be emanated within ninety days of the date of entry into force of the law, the information that must be provided by franchisors who prior thereto operated exclusively abroad will be specified.

Article 5 contains provisions on the obligations of the franchisee, which basically are reduced to two: the prohibition to transfer the outlet without the prior consent of the franchisor, and the respecting of confidentiality.

Article 6 refers to pre-contractual behaviour of the two parties: it requires each party to behave towards the other with loyalty, honesty and good faith. Furthermore, each of the two parties is under an obligation to provide the other with information that the other would consider necessary or useful with a view to concluding the contract. The difference is that the franchisor must give this information if the franchisee requests it, whereas the franchisee must give the franchisor the information even if he does not request it.

Article 7 provides that before either a court or arbitration is resorted to, a conciliation procedure be conducted before the Chamber of Commerce in the territory where the franchisee has its seat.

Article 8 provides that a party may request the annulment of the contract and compensation for damages if the other provided false information.

Finally, Article 9 contains transitional provisions and final clauses, including the provision that contracts not in written form that were concluded earlier than the entry into force of the law must be formalised in writing within one year of the entry into force of the law.

Decree No. 204 of the Ministry for productive activities with the regulation required by Article 4(2) was finally adopted on 2 September 2005 (*Decreto 2 settembre 2005 n. 204 Regolamento recante norme per la disciplina dell'affiliazione commerciale di cui all'articolo 4, comma 2, della legge 6 maggio 2004, n. 129*). The Decree entered into force on 19 October 2005. It is a very short decree, comprising only three articles. The first specifies its scope of application, i.e. franchisors who, before the date of signature of the franchise agreement, have been active only abroad (paragraph (1)). Paragraph (2) further specifies that the scope

of application of the regulation is limited to cases in which, according to private international law, Italian law applies to the contract.

Article 2(1) of the Decree reiterates the obligations specified in Article 4(1)(a), (b) and (c) of the Law of 6 May, stating that at least thirty days before the signing of a franchise agreement a franchisor to which Article 1 of the Decree refers must hand the prospective franchisee a complete copy of the contract to be signed, together with the appendices specified in paragraphs (2), (3), (5) and (6) of the article.

Article 2(2) states that within the deadline specified in paragraph (1) (i.e. 30 days before the signing of the agreement) the franchisor must provide the prospective franchisee with a numerical list country by country of the franchisees that at that moment in time are active, as well as of direct sale outlets. Article 2(3) instead states that, at the request of the prospective franchisee, the franchisor must also provide a list with the data relating to the location and contact details of at least twenty active franchisees. If the total number of franchisees is less than twenty, the franchisor must provide a complete list of the franchisees that are active. Article 2(4) states that the lists required under paragraphs (2) and (3) may be provided also electronically or published on the web site of the franchisor.

Paragraph (5) states that the franchisor must provide an indication of the variations, year by year and country by country, of the number of franchisees over the last three calendar years, or from the date of the beginning of the business activity of the franchisor where this is more recent than three years, with an indication of their location.

Paragraph (6) states that the franchisor must provide the prospective franchisee with a synthetic description of judicial proceedings, if any, which came to an end with a final judgment in the three calendar years before the deadline specified in paragraph (1), as well as of arbitral proceedings which were finalised with a definitive award in the same period. Paragraph (7) specifies that for the judicial or arbitral proceedings at least the names of the parties, the court seized, the submissions and the judgment itself must be indicated.

Article 3 states that, at the request of the prospective franchisee, the franchisor must provide the information regarding the contract and the appendices in Italian (paragraph (1)), and that the prospective franchisee must use the information specified in Article 2 of the Decree exclusively for the purposes of an evaluation of the franchise offered.