

ROMANIA

On 28 August 1997 the Romanian Government issued *Ordinance 52/1997* on the legal regime applicable to franchising.¹ This Ordinance was both approved and modified by a Law enacted by the Romanian Parliament on 9 April 1998.²

Article 1 of the fifteen-article Ordinance provides a number of definitions. It is interesting to note that the definition of “franchise” indicates that the right to franchise includes the right not only to operate, but also to develop a business, a product, a technology or a service.

A general disclosure obligation on the part of the franchisor is provided in Article 2, which *inter alia* specifies that the franchisor must provide the future franchisee with information that enables the latter to participate in a franchise agreement in full awareness. Article 3 furthermore indicates that the franchise agreement must reflect the interests of the members of the franchise network, as well as protect the franchisor’s industrial or intellectual property rights by maintaining the common identity and the reputation of the franchise network. The idea of the fairness of the franchise relationship is further stressed also in relation to its termination, in that Article 8 specifies that post-contractual relations shall be based on the rules of fair competition, even if the franchisor may impose strict obligations on its former franchisee in order to ensure the protection of the confidential nature of the business and, in particular, to ensure that a competing network does not use its know-how.

Article 4 states first the general principle that the franchise agreement must define, free of any ambiguity, the obligations and liabilities of each of the parties (Article 4(1)), and then goes on to specify what the obligations of the franchisor and the franchisee are (Article 4(2) and (3) respectively). It should be noted that Article 4(2)(a) requires the franchisor to have business experience, in that it provides that the franchisor must hold and operate a commercial activity for a certain period of time prior to the inception of the franchise network, although it does not indicate that the commercial activity must be the activity of the franchise.

A list of clauses that the franchise agreement must include is provided in Article 5, and a list of principles that the franchise agreement must observe is provided in Article 6(1). The latter include *inter alia* that the term of the agreement must be sufficiently long to permit the franchisee to recover the franchise-specific investments it has made, that the termination clause(s) must define precisely the conditions that permit termination without notice and that the agreement must contain non-competition clauses to protect the know-how.

It should be noted that Article 6(2) states that the franchisor’s trademark, as a symbol of the identity and reputation of the franchise network, is the guarantee of the quality of the

¹ *Ordonanța nr. 52 din 28-8-1997 privind regimul juridic al francizei, Monitorul Oficial nr. 224 of 30 August 1997.* For an English translation, see CCH, *Business Franchise Guide*, at ¶ 7225.

² *Lege nr. 79 din 9 aprilie 1998 pentru aprobarea Ordonanței Guvernului nr. 52/1997 privind regimul juridic al francizei, Monitorul Oficial nr. 147 of 13 April 1998.*

product/service/technology that is supplied to consumers. It further specifies that this guarantee is ensured by the transmittal and control of the observance of the know-how, and by the delivery of a homogeneous range of products and/or services and/or technologies. In addition, Article 11 provides that, on the strength of its contractual relations with its franchisees, the franchisor shall set up a franchise network which must be operated so as to permit the maintenance of the identity and reputation of the network for which the franchisor is a guarantor. Furthermore, the second paragraph of Article 15 states that in its capacity as initiator and guarantor of a franchise network, the franchisor must ensure that the network maintains its identity and reputation.

In accordance with Article 7 the franchisor must notify the franchisee of any breach of its contractual obligations and must also grant the franchisee a reasonable time to remedy the breach.

Article 9 provides details in relation to any exclusivity agreements that might be concluded, and Article 10 states that the franchisor may impose a non-competition and confidentiality clause in order to prevent the know-how being transferred for as long as the exclusivity agreement is in force.

Article 12 considers the social utility of the franchise: it provides that by its organisation and development, a franchise network must contribute to the improvement of production and/or distribution of products and/or services.

Articles 13 and 14 deal with advertising and Article 15 with the selection of franchisees by the franchisor.