

# COUNTRY REPORT GREECE

## Franchising

prepared by

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**Last update: March 31, 2022**

### 1. LEGAL SOURCES.

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#### ***What are the rules governing commercial franchising agreements (if any) in your country?***

In Greece, a specific franchise regulation is absent. The Courts tend to examine any litigation on franchise in concreto, according to the case's specific facts. Moreover, regarding pre-contractual disclosure, general commercial laws and the regulations based on the responsibility arising from negotiations (Articles 197 and 198 of the Greek Civil Code<sup>2</sup>). In so far as the contract obligations of the parties are concerned, some articles of the Greek Civil Code regarding prohibited transactions and disposal and transactions contrary to morality concerning the obligation to act in good faith and according to the business ethics (Articles 174, 178, 179 and 288) apply.

Liability in torts could also apply in accordance with the general Articles 914 to 938 of the Greek Civil Code deriving from the infringement of the aforementioned articles.

Furthermore, Articles of Law 146/1914 on Unfair Competition<sup>3</sup> protect the weakest party of the contractual equation prohibiting the abusive exploitation of its financial dependency. Also, Presidential Decree 219/1991 on Commercial Agents ("PD") (being in compliance with Directive 86/653/EEC<sup>4</sup>) which was supplemented by Presidential Decrees 264/1991, 249/1993, 88/1994 and 312/95 [in compliance with Directive 86/653 / EEC of the Council of the European Communities and 249/1993 (Commercial Agents)] are applicable mutatis mutandis. In spite the fact that the PD solely regulates commercial agency agreements relating to the sale of goods and as per Article 14(4) of Law 3557/2007, the PD also applies mutatis mutandis to commercial agency agreements relating to the

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<sup>1</sup> We acknowledge the valuable contribution of Polyxeni Tsiotoni towards this report. She has participated in the preparation of the previous versions of the Greek report for the IDI, and some of their original material remains intact in this updated version.

<sup>2</sup> Supreme Court of Greece 483/2021, Athens Court of Appeal 309/2021, 2068/2021, 2560/2015

<sup>3</sup> Athens Court of Appeal 976/2021, 2222/2021

<sup>4</sup> Athens Court of Appeal 309/2021, 2560/2015, Piraeus Court of Appeals 674/2017

provision of services.

Finally, the European Commission's Communication (C-291/2000) guidelines for franchising agreements apply in the case where transfer of property rights also takes place. The European Code of Ethics for Franchising and the Greek Code of Ethics for Franchising are non-mandatory, however same offer significant guidelines for relevant matters to franchising.<sup>5</sup>

## **2. NOTION OF FRANCHISING CONTRACT.**

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### **2.1 General notion of franchise contracts.**

***Which agreements are normally qualified as franchising agreements in your country?***

According to the constant jurisprudence of Greek Courts, franchising is a continual co-operation contract between two separate business entities that undertake mutual responsibilities concerning their role as the franchisor (who owns of the franchise) or as the franchisee (who purchases a franchise). The Greek term means "the right to use" and it has the same meaning as it is provided in the relative European texts.

According to what is mentioned above, franchising is a mixed framework agreement regulating the parties' main obligations under the principle of freedom of contract which is based on the articles of the Greek Constitution and articles on contractual obligation of the Greek Civil Code (Art. 361). It may contain elements of a hire of fruit-bearing thing (article 638 et seq.) or provisions of independent services (Article 648 et seq.) or a mandate (Article 713 CC). This is the widely accepted definition of the franchising contract by the Greek jurisdiction.

### **2.2 Agreements which are covered by special rules on pre-contractual disclosure.**

***Which are the agreements to which special rules on pre-contractual disclosure (if any) apply?***

There are no special rules in Greek legal system for franchising (including pre-contractual disclosure), thus the abovementioned rules and/or provisions apply.

### **2.3 Distinctive criteria with respect to employment contracts.**

***According to the law of your country, in what situations could a franchisee be considered as an employee of the franchisor?***

The Greek legal system provides the parties involved within a franchising contract with vast freedom. Therefore, as long as it is clear that the two parties qualify and operate as separate and distinctive business entities of conflicting interests, the regulations of the labour law are not applicable (regarding the relationship between the franchisor and the franchisee). Court decisions have not recognized the relationship between the parties as labour law disputes but rather, as commercial ones. Only in cases of extreme dependence, through the above mentioned Articles 178, 179 of the Civil Code<sup>6</sup> (acts and agreement contrary to morality, abusive and oppressive arrangement) the labour law is potentially applicable.

### **2.4 Distinctive criteria with respect to distributorship contracts.**

***According to the law of your country, how are franchising contracts dis-***

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<sup>5</sup> "New forms of contracts". Apostolos S. Georgiades. p.251-252,

<sup>6</sup> "New forms of contracts", Apostolos S. Georgiades, p.246-247, Efarmoges Astikoy Dikaioy3-4/2016, p. 248-256

***tinguished from distributorship contracts?***

The legal framework (Presidential Decree 219/1991 for exclusive distribution, and Greek Civil Code (especially Articles 713-729 for distribution) that specify the terms and conditions of the distribution contracts, sets clear boundaries, so it gives a distinct operation and purpose to this kind of contacts. More specifically, as the Greek legal theory<sup>7</sup> and case law has shown<sup>8</sup>, distribution contacts concern intermediate operations in commerce. The principle idea of franchising, namely the granting of the right to use its trademark or trade-name or product services in general, is not present here. The integration into the grantor's (the ones who grants certain rights) system differs. Moreover, it is possible that a distribution contract is included as an accessory contract within the main franchising arrangement.

**2.5 Possible application of rules on commercial agency.**

***Is there a risk of application of the rules or case-law principles provided for commercial agents also to franchisees?***

***Can you provide details of the relevant circumstances and application by case-law?***

As mentioned above (see Question 1), Presidential Decree 219/1991 on Commercial Agents (being in compliance with Directive 86/653/EEC<sup>9</sup>), which was supplemented by Presidential Decrees 264/1991, 249/1993, 88/1994 and 312/95 [in compliance with Directive 86/653 / EEC of the Council of the European Communities and 249/1993 (Commercial Representatives)] are applicable *mutatis mutandis*.

According to case law of the Greek Supreme Court, Presidential Decree 219/1991 on commercial agents (implementing EC Council Directive 86/653) apply by analogy to other types of distribution agreements, to the extent that the latter have the same essential characteristics as a commercial agency agreement (indicatively: distributor's high degree of integration in the principal's network, similar high degree of dependence on the principal, distributor's contribution to the extension of principal's clientele by undertaking responsibilities similar to those of a commercial agent, non-compete obligation, principal's access to distributor's clientele and customer data etc). The Supreme Civil Court has also taken the view that such application by analogy is not possible in case of non-exclusive distribution agreements, where the distributor also sells products competing with the contract products.

***Is there anything that can be done to help mitigate this risk?***

Ensuring a sufficient degree of independence for the franchisee, in order to differentiate him from a commercial agent, could mitigate the risk.

**2.6 Possible reference to other contracts with respect to the sale of goods (for distribution franchising contracts).**

***Is it possible to include in the franchising contract rules whereby the franchisor puts the contractual products (which remain his property until they are sold to the end user) at the franchisee's disposal, and the franchisee sells the goods for the account of the franchisor (like a commission agent)? If so, does this modify the nature of the franchising agreement?***

The franchisor and the franchisee should remain two separate and distinct enterprise entities. In this case, whether the abovementioned scenario will modify or not the nature of the franchising agreement will be decided in concreto. It should be clear to third parties that the franchisee is still making business on his

<sup>7</sup> "New Forms of Contracts", Apostolos S. Georgiades, p. 248-250,

<sup>8</sup> Court of Appeal of Athens 288/2015, 552/2017 Court of Appeal of Thessaloniki

<sup>9</sup> Athens Court of Appeal 309/2021, 2560/2015, Piraeus Court of Appeals 674/2017

behalf and not for the account of the franchisor, (see below paragraph 9). In some cases, according to the Greek Jurisprudence, the commercial agency regulations could apply.

## **2.7 Requirements concerning the performance of the franchise activity.**

***Is there any condition required by the laws of your country for being allowed to perform the franchising activity (e.g. citizenship)?***

***Are there any registration requirements or other formalities required as a pre-condition to establish and/or manage a franchise system in your jurisdiction?***

Greek Law does not provide for any specific requirement concerning the performance of the franchise activity. General requirements regarding companies' establishment, tax registration, or/and registration within the context of other laws such as Law 4679/2020 (implementing Directive 2015/2436) on trademarks may be deemed necessary.

## **3. PRE-CONTRACTUAL DISCLOSURE OBLIGATIONS.**

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### **3.1 Rules on disclosure in general.**

***Which rules govern precontractual disclosure obligations in your country?***

The general rules of above mentioned Articles 197 and 198 of the Greek Civil Code could apply, since there are no specific rules on pre-contractual disclosure.

The non-binding rules of Article 3 of the Greek Code of Ethics for franchising mention the disclosure obligations of the franchisor and the franchisee, and could be used as explanatory guidelines for the application of the aforementioned articles.

### **3.2 The rules contained in the specific statute (if any) on disclosure.**

***Which information is to be provided to the prospective franchisee before signing the contract?***

The Code of Ethics of the Franchise Association of Greece provides for a number of pre-contractual obligations for the franchisor. Within the disclosure obligation of the franchisor, later shall provide the franchisee with various information of the franchise system essential to any potential franchisees about to make a significant investment, permitting to the franchisees to have a thorough knowledge of the system in order to decide if they will participate in such.

Such information may include, indicatively and not restrictively, franchisor's details, including legal history, company structure, financial status and agreements, existing franchisees, a general description of the franchise business and its financial results, the principal characteristics of the operation, the particularity of its know-how, an estimate of the total costs associated with establishing and put in operation a franchise business within the specific franchise system, information on to the possible licenses required by law for the establishment and operation of a franchise business and the essential elements of the franchise agreement, including restrictions and ways of termination.

***How often must the disclosures be updated?***

There are no specific update requirements under Greek Law.

### **3.3 Consequences of the non-respect of the rules regarding pre-contractual disclosure.**

***What are the consequences of the non-observance of the rules on pre-contractual disclosure?***

The general provisions of the Greek Civil Code apply, under which there is an obligation to deal in good faith, both, during the course of negotiations (Articles 197-198 of the Greek Civil Code) and in performing the obligations under the franchise agreement (article 288 of the Greek Civil Code). Additionally, provisions of Articles 140 –149 of the Greek Civil Code on error and fraud would be applicable, on the basis of which a party who has been in error or has been defrauded on material aspects of the agreement has the right to terminate the agreement and, in the event of fraud, claim compensation for any damage suffered.

### **3.4 Choice of law and mandatory rules on disclosure.**

***Are the rules on disclosure to be observed in any case, even if the parties have chosen to submit the franchising contract to a law other than the law of your country?***

There are no specific update requirements under Greek Law.

### **3.5 Possible translation into the local language.**

***Is there a requirement for disclosure documents to be translated into the local language?***

There are no specific update requirements under Greek Law.

## **4. OBLIGATION OF THE FRANCHISOR TO TEST THE BUSINESS FORMULA.**

***Is it necessary that the franchising formula has been tested before proposing it to prospective franchisees?***

The franchisor is under no obligation to test the franchising formula before proposing it to prospective franchisees, since both these parties are active in the commercial world and both are subjective to the commercial or business risk. However, in some cases claims for damages may arise through the combination of the above mentioned Articles 178, 179 and 914 et seq. of the Greek Civil Code for compensation . Also, Law 2251/1994, for The Protection of the Consumers as amended could apply in cases of exploitation of one's economic position, under specific circumstances.

## **5. FORMALITIES REGARDING THE FRANCHISING CONTRACT AND ITS MODIFICATIONS.**

### **5.1 Formalities required by law.**

***Is any formality (written form, notarisaton, registration, etc.) required for the validity of a franchise contract in your country?***

***If so, what are the consequences of the non observance of the above formalities?***

The norm in trade practice is the written agreement. However, the Greek law does not require that all contracts should be made in writing, unless there is a special provision for certain agreement<sup>10</sup>. The lack of *lex specialis*, theoretically considers oral franchise arrangements valid. Nevertheless, the individual contracts and clauses, regarding competition, are required by law (i.e. *mutatis mutandis* Presidential Decree 219/1991) to be made in writing. Also, the individual contracts of special nature, i.e. the transfer of know-how (Art.21 of law 1733/1987 as amended by the Law 4512/2018), are lawfully susceptible to written form.

<sup>10</sup> "New forms of contracts", Apostolos S. Georgiades, p.252-252

**5.2 Contractual requirement of written form for modifications.**

*In case the contract requires the use of writing for possible future amendments, what are the consequences of non observance?*

The amendments are not valid, unless the contracting parties act like they are.

**5.3 Specific acceptance of onerous conditions contained in non-negotiated contracts.**

The aforementioned in paragraph 5.1 are applicable.

**5.4 Form requirements and applicable law.**

*How is the law governing the form of the franchising contract to be determined under the law of your country?*

Article 11 of Rome I and Articles 4 - 34 (private international law section) of the Greek Civil Code, generally state that the law that favours the validity of the contract is applicable.<sup>11</sup>

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**6. OTHER PROVISIONS WHICH MAY HAVE AN IMPACT ON FRANCHISING.**

**6.1 Antitrust rules.**

*Are there any antitrust rules which should be taken into consideration when drafting (or carrying out) a franchising contract?*

The Greek legal system offers protection against antitrust business practises with the law 3959/2011 on the "Free Competition". Both legislations regulate the proper operation of the market, so franchising businesses should operate under these legal commands.

**6.2 Good faith.**

*Is there a general legal obligation on parties to deal with each other in good faith? If so, how does it affect franchise relationships?*

See above answers.

**6.3 Consumer protection.**

*Does any law provision treat franchisees as consumers for the purposes of consumer protection or other legislation?*

According to Art. 1a par. 1 of Law 2251/1994 for The Protection of the Consumers as amended, as a 'consumer' may be considered any natural person who is acting for purposes which are outside of his trade, business, craft or profession. Therefore, a franchisee is unlikely to be considered as a consumer.

**6.4 Possible other rules.**

*Which other rules of general nature should be considered when dealing with franchising?*

Please see above and below questions/answers.

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**7. THE FRANCHISEE'S OBLIGATION NOT TO COMPETE.**

**7.1 Non competition during the contract.**

*If there is no contractual provision prohibiting the franchisee to sell com-*

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<sup>11</sup> "New Forms of contracts", Apostolos S. Georgiades p. 292-294,



***peting goods or to engage with competing franchising networks, does it mean that the franchisee is free to act for competitors of the franchisor?***

***To what extent are contractual non-competition clauses admissible?***

They are admissible to the point that their terms are not abusive or unfair for one of the parties involved according to the general principles of competition. The terms of article 5 paragraph 3 of the Regulation 330/2010 regarding the EU competition rules of vertical agreements and concerted practices apply. Moreover, according to the guidelines adopted by the Hellenic Competition Commission, being the authority responsible for the enforcement of Law 3959/2011 "On the Protection of Free Competition " and is competent to enforce the provisions of articles 81 and 82 of the EC Treat, accept such clauses as valid under the prerequisite that they are in accordance with the general competition rules.

***Is it possible to extend the franchisee's non competition obligation to non competing goods?***

The lack of autonomous, solid legislative framework allows the parties interested in forming this arrangement with great freedom, extended also on non competition clauses, during or after the duration of the contract. If such agreement is absent from the terms of the franchise arrangement, Article 1 of the above mentioned Law 146/1914 is applicable prohibiting competition acts that are against the morality, honest practices in industrial or commercial matters and good faith. According to case law, such obligation could be lawful under the light of the Regulation 330/2010.

## **7.2 Post-contractual non-competition obligation.**

***Is it possible to agree with the franchisee an undertaking not to compete in the period after contract termination? If so, is this obligation subject to specific conditions (i.e. time limit, territorial extension, etc.)?***

The post-contractual non-competition clause is effective in compliance with the abovementioned rules and the Supreme Court's decision. Post-termination non-competition clause should be in written form according to the provisions of Presidential Decree 219/1991 and Regulation 330/2010.

## **8. EXCLUSIVITY.**

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### **8.1 Rights of the franchisee in the absence of contractual rules on exclusivity.**

***If there is no written contract or if the contract does not state anything about the franchisee's exclusivity, does it mean that the franchisor is free to appoint other franchisees and to sell the products or services in competition with the franchisee?***

The nature of the franchise agreement and the lack of specific legal provisions within the Greek legislation, impose the need to apply the provisions of Article 288 of the Greek Civil Code on good faith and commercial usages. This Article provides that the debtor should perform the obligation according to good faith and honest practices in industrial or commercial matters. In other words, both parties should take into consideration exclusivity obligations, depending on the nature and special characteristics of the object of the franchising contract. Moreover, exclusivity clauses should be treated in such manner<sup>12</sup>.

### **8.2 What is actually covered by exclusivity clauses?**

***What are the franchisor's obligations under a clause granting a territorial exclusivity to the franchisee?***

The franchisor's obligations, if not clearly stated in an express clause, should be

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<sup>12</sup> "New forms of contracts", Georgiades, p. 235-238

seen through the above mentioned article 288 of the Greek Civil Code and through the articles of the Greek Code of Ethics for Franchising<sup>13</sup>. More specifically, the Franchisor may not grant another franchise to a third party in the exclusive territory of the Franchisee, as well as the Franchisor may not open itself and operate another franchised outlet in the exclusive territory of the Franchisee.

## **9. RESPONSIBILITY OF THE FRANCHISOR FOR ACTS OF THE FRANCHISEE.**

***Under which circumstances the franchisor may be held responsible for acts of the franchisee? In which cases customers or employees of the franchisee may have a direct action against the franchisor?***

Responsibility of the franchisor for the acts of the franchisee is possible based on the legal notion of “apparent representation”, composed by the Articles regarding representation and attorney (Art. 221, 224 and 426) applicable by analogy, and also regarding abuse of right (Art. 281) of the Greek Civil Code. In the decision of the Athens’ Court of Appeal No 7371/2003, it is stated that responsibility is held since the consumer was under the plausible and justifiable impression that they were dealing with the franchisor, without the intervention of the franchisee, and they were not row separate business entities (see “New forms of Contracts”, Georgiadis).

## **10. FRANCHISOR'S CONTROL OVER THE FRANCHISEE'S ACTIVITY.**

### **10.1 General limitations.**

***Are there any rules of case law principles limiting the franchisor's right to impose a specific conduct upon the franchisee?***

No. The purpose of the franchising agreement is to form a similar functioning network under a common trademark or trade name. Therefore, the franchisor is able to set certain rules regarding the operation of the franchisee's business, since they are characteristic traits of the franchise's operation. The only exception lies in the infringement of the abovementioned prohibitions of competition.

### **10.2 Obligation to sell from the franchised outlet.**

***Would the franchisee's obligation to sell only from the franchised outlet be lawful under the law of your country?***

Taking into consideration that such limitations are not provided by Greek legislation, such an agreement would be lawful. Such limitations may be deemed lawful as long as they are not unfair and serve a specific purpose of the franchise system and organization according to the Greek and European laws of competition and the Regulation 330/2010.

### **10.3 Prohibition to change the place of the outlet.**

***Would a prohibition to change the place of the outlet without the franchisor's approval be valid under your law?***

A prohibition to change the place of the outlet without the franchisor's approval would be deemed valid, under the principle of the contractual freedom. However competition principles should be taken into consideration by the franchisee.

### **10.4 Use of Internet.**

***Is the franchisor free, under the law of your country, to sell through the Internet in competition with his franchisees?***

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<sup>13</sup> “New forms of Contracts”, Georgiades.



***Is the franchisor entitled, under the law of your country, to prohibit the franchisee to sell through Internet (or otherwise limit his right to promote his business through the Internet)?***

Taking into consideration that there is no specific provision in the Greek legislation, such matter would be decided in concreto. Par. 52, 53 and 54 of the Guidelines of the E.U. Regulation 330/2010 apply. According to the Regulation, limitations are lawful, only if they are not limitations of resale and act against the principles of competition of Article 101 of the Treaty of the Functioning of the European Union<sup>14</sup>.

**10.5 Limitations as to the customers to whom the franchisee may sell.**

***Are possible limitations as to the customers to whom the franchisee may sell lawful under the law of your country?***

Competition clauses regarding the limitation of the franchisor's clientele may be deemed as valid, to the extent that they do not infringe either the provisions of article 288 of the Greek Civil Code or the general regulations on the exploitation of one's economic position of the Greek Competition laws and the Regulation 330/2010 of the E.U.

**10.6 Resale prices.**

***Would a clause which obliges franchisees to respect certain resale prices of the products supplied by the franchisor be lawful under the law of your country?***

The Hellenic Competition Commission has ruled that such agreement may be against the article 101 of the Treaty of the Functioning of the European Union Articles of 3959/2011 on Free Competition, unless it is part of a low-price campaign of a short-duration, namely 2 to 6 weeks. This is also confirmed by the Supreme Court decision Number 123/2017.

**11. INTELLECTUAL PROPERTY AND CONFIDENTIALITY.**

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**11.1 Use of the trademarks and symbols during the contract.**

***Would a use of the franchisor's trademarks which does not conform to the franchisor's indications be a substantial breach, justifying contract termination?***

Provisions on the license to use the franchisor's trademark, other industrial or intellectual property rights, designs, patents, models and know-how are regulated directly by Laws 1733/1987, 2121/1993 and 4481/2017. Contracting Parties may adopt contractual provisions that differ from the laws. General provisions of Greek Civil Code, and especially of Articles 374 (contract not performed), 382 (failure to perform obligations by own liability) or 914 (tort) are applicable.<sup>15</sup>

**11.2 Obligation to cease using trademarks after contract termination.**

***Are clauses which require the franchisee to remove and cease using the franchisor's trademarks, after contract termination enforceable in your country?***

Yes, clauses which require the franchisee to remove and cease using the franchisor's trademarks after contract termination are enforceable under Greek legislation, in accordance with the provisions re trademark and intellectual property rights legislation.

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<sup>14</sup> "Law for Business and Companies" (Dikaio Epichiriseon kai Etairion), (DEE8-9/2010) p. 871-872

### 11.3 Domain names.

As far as domain names are concerned, in case of registration by the franchisee/master of a domain name which includes the franchisor's trademark, at the end of the contract the franchisor will have interest that the franchisee/master stops using such domain name and possibly to have the domain name transferred to him.

***Are there any limitations on a franchisor being able to require a former franchisee to assign local domain names to the franchisor on the termination or expiry of the franchise agreement?***

There is no legal limitation. The validity of such contractual clause will be judged within the framework of the abovementioned legislation.

***In the absence of a contractual provision regulating domain names, is the franchisor entitled to claim the transfer of possible domain names registered by the franchisee/master, which include the franchisor's trademark, in your jurisdiction?***

There is no such a legal provision covering this matter, however, a franchise contract should include such possibility.

### 11.4 Confidentiality.

***Is the franchisee obliged to treat the information received from the franchisor as confidential?***

Article 1 of Law 146/1914 provides that any act contrary to accepted principles of morality is forbidden in commercial transactions. The offended party may seek a court decision to rule for failure and for compensation for damage incurred. The obligation to confidentiality, in relation to unfair competition, is an expressed aspect of the notion of morality. Therefore, the franchisee is committed to it, even at the absence of a respective clause.

## 12. TERM AND TERMINATION OF THE CONTRACT.

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### 12.1 Contract for a fixed period or for an indefinite period.

***Is it possible to choose between a contract for a fixed term and a contract for an indefinite period? What are the main differences?***

According to Greek Civil Code, a contract can be either of a fixed or of an indefinite period, where the former cease being valid with the passing of the agreed term, while the latter have to be terminated by the parties. For the maximum and minimum duration of the contracts, provisions of Articles 178 and 179 of the Greek Civil Code and of Article 18a of Law 146/1914, (Unfair Competition) must be taken under consideration. The terms and conditions should not be unfair or abusive, but in accordance with the elements and characteristics of the specific franchising Business and its product market.

### 12.2 Contract for a fixed period (without automatic renewal clause) which continues to be performed after its expiry.

***What happens, under your law, if a contract concluded for a fixed term (and not containing a clause for automatic renewal) continues to be performed after its term?***

In such cases, it will be deemed that the contract has been extended tacitly and has an indefinite duration provided that the Franchisor does not oppose to it.

### 12.3 Termination notice (contract for an indefinite period).

***Does the legislation of your country require a minimum period of notice for the parties to terminate a franchise contract made for an indefinite***

***term?***

No, it does not. Since a specific franchising legislation does not exist in Greece, the general rules of the Civil Code will apply. The Civil Code articles require a standard termination notice period only for specific types of contracts. The minimum or maximum will be decided in concreto. Articles 281 and 288 of the Civil Code will determine whether such legal act is lawful or not according to the general principle of good faith and the prohibition of misuse of this right of termination<sup>16</sup>.

***If so, is such period mandatory? For both parties?***

***If no period of notice is required by law, will it be fixed by the courts?***

If one of the parties doubts about the validity of the termination notice, same may bring this issue for determination before Court. Court will decide according to the aforementioned principles.

***In the latter case, will the courts intervene only if no period of notice has been agreed contractually? Or will the courts establish a reasonable period if the period agreed in the contract is considered too short?***

The parties are free to set contractual rules regarding the termination of the contract. When a dispute re the validity of the contract arises, courts can examine the lawfulness of these rules according to the aforementioned articles and principles.

**12.4 Form of the notice of termination and effectiveness.**

***Is there a form (e.g. registered letter) that must be respected for the termination notice to be effective?***

The law requires that the party gets a notice of termination. This act falls under the notion of legal acts regulated by Articles 127 et seq. of the Greek Civil Code. The notice should be clear about the termination terms towards the other party and it could be oral or written. However, the norm is to be in written form.

***Is the termination considered to have been validly given when it is sent or when it is received?***

According to the general rule based on the provision for the declaration of will (Art. 167 of the Civil Code), the termination notice has been validly given when the other party is able to receive knowledge of its content. In case the termination notice is in written form, it is valid from the moment of its reception by the party concerned.

***If the addressee is a company, is there a specific person to whom the notification must be made in order to be effective?***

That depends on the responsibilities provided for by the company statute. When the termination notice is made to an unauthorized person, it may be deemed effective only if the sender was acting on good faith and had the lawful impression that he was addressing the legal representatives of the addressee.

***In case the form imposed by law or prescribed in the contract has not been respected, what are the consequences?***

In this case, the termination notice is not valid and the contract remains in force.

**12.5 Earlier termination.**

***Which reasons can normally justify earlier termination by the franchisee and/or by the franchisor?***

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<sup>16</sup> "New forms of Contracts", Georgiades, p.274-289, "Sindedemenes Simbaseis"( linked contracts), Margaritis p.176, 182--186

The parties can terminate their fixed period agreement on serious grounds that will be examined by the courts in concreto, such as lack of trust or good faith between the parties (i.e. mutatis mutandis Art. 672, 766, 725 of the Greek Civil Code). However, according to jurisprudence in a large number of cases, the presence of serious grounds, i.e. a serious breach of the agreement, is a reason for termination, thus it produces legal results ex tunc, when the notice took place.

***Can a party terminate the contract for a breach which such party has tolerated in the past without complaining?***

There is no such prohibition in the Greek legal system. However, Article 281 of the Greek Civil Code and the case law, define that in some cases the termination that takes place under these circumstances can be a misuse or an unfair exercise of one's right. The termination notice won't be valid in that case. In other words, that will be decided in concreto.

***If the answer is no, would the result be different if the contract contains a «waiver clause» (e.g. a clause saying that «Any waiver on the part of either party hereto of any right or interest shall not imply the waiver of any other right or interest, or any subsequent waiver»)?***

The waiver clause is frequently used in the Greek agreements and protects the contracting parties in this kind of situation.

#### **12.6 Unjustified earlier termination.**

***What is the effect of an unlawful earlier termination of a franchising contract under the law of your country?***

If the arguments are unfounded, the termination is not justified. An unjustified action will be declared void, with no legal consequences. The contract will remain into force. However, it is possible for the action to produce performance claims or claims for damages based on the law of torts, which will be judged in concreto.

#### **12.7 Compensation for unjustified earlier termination.**

***Please, explain if there are legal rules (or principles established by case law) for calculating the amount of compensation for unjustified earlier termination.***

Article 298 of the Greek Civil Code defines that the compensation includes both the reduction of one's fortune and property and the expected profit's loss.

#### **12.8 Possible other cases of illicit termination by the franchisor.**

***Are there other types of protection of the franchisee provided either by law or by case-law in your country protecting the franchisee at the end of the contractual relationship?***

Please see above and below questions and answers.

***Are Courts in your countries entitled to apply the principle of good faith and fair dealing, challenging the franchisor's termination of the contract and possibly granting damages to the franchisee?***

Yes they are. Please see above and below questions and answers.

***If so, under which circumstances and how do they assess and calculate damages?***

Please see above and below questions and answers.

***Is there a notion of "abuse of law or "abuse of economic dependence" in your jurisdiction?***

Please see above and below questions and answers.

***Does it apply to franchising contracts? If yes, under which circumstances and how do they assess and calculate damages?***

Please see above and below questions and answers.

**13. GOODWILL COMPENSATION (INDEMNITY).**

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***Does the law or jurisprudence of your country recognise a goodwill compensation to the franchisee?***

Greek Legislation does not provide for goodwill compensation. Applicable mutatis mutandis are: i) Article 630 par. 3 of the Greek Civil Code, according to which a goodwill compensation is recognised for the tenants or/and ii) Article 9 par. 2 and 3 of Presidential Decree 219/1991, which provides for various exemptions from the right to goodwill compensation for the commercial agents/representatives.

**14. LIMITATION OF ACTION.**

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***Does your legislation provide limitation periods (or similar systems) for the exercise of the rights of the parties under a franchise agreement and which is their duration?***

***Can the limitation periods be contractually modified according to your law?***

Articles 247, 249 and 250 of the Greek Civil Code provide for the basic terms for limitation periods and deadlines. Article 250 provides for a 5-year time limit for commercial claims while, Article 49 provides for a 20-year limitation period for lawful claims in cases of enrichment without just cause. Provisions of the Greek Civil Code for specific contractual and obligation law, may set different time limits, i.e. Sale and exchange, (Art. 554) or law of torts (art. 937) sets a 5 year time limit within which the parties must exercise their rights. Moreover, in some cases the law permits to the parties to set their own time limits, i.e. the provisions about the contractual rescission, namely Article 395 regarding the rights' extinction. However, such a contractual limitation must be clearly provided within the contract, as such provisions are rather mandatory regulations and not soft law.

**15. APPLICABLE LAW.**

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**15.1 Legal sources.**

***What are the rules of your legal system concerning applicable law to franchising contracts?***

Greece has ratified Regulation EC No 593/2008 (Rome I). Therefore, for the contracts concluded after 17-12-2009, Regulation's provisions supersede the provisions of Articles 4-34 of the Greek Civil Code (provisions on Private International Law).

**15.2 Applicable law in the absence of choice.**

***If there is no choice of law by the parties, which criteria are used by the courts of your country for determining the applicable law in case of a franchising contract with a foreign counterpart?***

Rome I is applicable and prevails. It is mentioned that the legislation applied should fall under a causal link with the legal relationship according to the provision of the Rome I. In various cases the link is the habitual residence of the franchisor (art. 4 of the Rome I), however in other cases it is the place where the franchise contract is performed.<sup>17</sup>

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<sup>17</sup> "New forms of contracts", Georgiades, p. 292-294

**15.3 Effectiveness of a choice of law excluding the law of the franchisee's country.**

***Is it possible to submit the contract with a franchisee belonging to your country to the law of a foreign country?***

Yes, it is possible to submit the contract with a Greek franchisee to the law of a foreign country under the principle of the contractual freedom.

**16. JURISDICTION AND ENFORCEMENT OF FOREIGN JUDGMENTS.**

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**16.1 Legal sources.**

***What are the rules of your legal system concerning jurisdiction as well as recognition and enforcement of foreign decisions?***

Articles of the Greek Code of Civil Procedure regarding the recognition of the execution in Greece of foreign judgments and arbitration awards (Art. 904 et seq.) and Article 323 regarding the res judicata, are enforceable. Greece has also ratified the Brussels and the Lugano Conventions and is subjected to the rules of the Regulation (EC) 1215/2012 (Brussels I and Ia), all having legislative power over the national law, according to Art. 28 of the Greek Constitution. Bilateral or multilateral conventions between Greece and other countries also apply overruling national legislation.

**16.2 Jurisdiction without a choice of jurisdiction clause.**

***If there is no valid jurisdiction clause, is a franchisee of your country entitled, under the procedural rules of your country to bring a claim before his courts against a foreign franchisor?***

***If there is no valid jurisdiction clause, is a franchisor of your country entitled, under the procedural rules of your country to bring a claim before his courts against a foreign franchisee?***

Yes, he is entitled either in accordance with the provisions of Regulation Brussels I and Ia, where both parties are residents in EU, or in accordance with the provisions of the Hague Convention of 2005 where one of the parties is resident in a non-EU country.

**16.3 Effectiveness of a jurisdiction clause in favour of foreign courts.**

***Do judges of your country have exclusive jurisdiction to settle disputes concerning franchisees, who carry out their activity between the boundaries of your country?***

***Would a clause included in a contract between a foreign franchisor and a franchisee of your country under which a foreign court has jurisdiction on disputes arising out of the contract be valid and effective in your country?***

Article 3 of the Greek Code of Civil Procedure establishes the international jurisdiction of the Greek Civil Procedure. When there is no valid jurisdiction clause agreed by the parties, the aforementioned rules offer the guidelines for a solution. In accordance to such provisions, a jurisdiction clause in favour of a foreign court is effective, since formal and substantive conditions of the law are fulfilled. The same would apply even if the franchisee is a private individual.

**16.4 Recognition - enforcement.**

***Is it possible to recognise and enforce a foreign judgment against citizens of your country?***

Judgments rendered in EU member state are automatically recognized and enforceable in Greece if the Brussels I Regulation (Recast) is applicable, following



no special procedure. The official copy of the foreign decision with the corresponding order of the competent authority of the EU state where the judgment is issued can be served by the bailiff on the adversary party.

Judgments rendered in state that is party to a convention are recognized in most times according to those treaties with no special procedure and they are executed according to the Hellenic Code of Civil Procedure in regards to the enforcement procedure ("exequatur" proceedings are relatively simple).

Judgments rendered in another state without the application of a special convention must be introduced before a Greek Court in order to get a court order's enforceable title rendered if the formal and substantives conditions set out by the relevant Articles of the above mentioned Code are met.

The time needed for such a procedure could be from 6 months to 1 year for the issue of a judgement in the first instance, and it may continue for more time in case of judicial remedies against the aforesaid judgement. It is not possible to say how long the enforcement proceedings will last, as it depends on the actions of the parties.

## **17. ARBITRATION.**

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### **17.1 Legal sources.**

***Is your country part of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)?***

***Are there other rules applicable to international arbitration provided by the law or jurisprudence of your country?***

The Greek Constitution (art. 28) recognizes that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) supercedes national laws. Also, Greek legislation provides regulations through Law 2735/1999 on International Commercial Arbitration, which is applicable in the absence of a lex specialist or an international multilateral convention.

### **17.2 Arbitrability.**

***Are franchising contracts considered a subject matter capable of settlement by arbitration, according to your legislation?***

Yes, they are since they are related to commercial and civil disputes. This applies both for the franchisees who are individuals and for the franchisees who are not.

### **17.3 Arbitration clauses.**

***Would an arbitration clause providing for arbitration abroad, included in a franchising agreement be valid and effective in your country?***

***Would the courts of your country refuse jurisdiction with respect to a franchising contract providing for such a clause?***

An arbitration clause providing for arbitration abroad with the use of a foreign or the Greek Language is valid and it is accepted by the Greek Courts. General provisions of the Greek Civil Code must be observed.

### **17.4 Recognition of foreign awards.**

***Would a foreign arbitration award dealing with a franchising agreement be recognised by the courts of your country?***

Yes, it would be recognized by the Greek Courts, following the procedure stipulated by Articles 903 and 905 of the Greek Code of Civil Procedure. Such articles provide for the terms and conditions for the recognition and enforceability of

a foreign arbitration award.

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