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PARTNERS

MARIOS BAHAS
YANOS GRAMATIDIS
NASSOS FELONIS
DIMITRIS EMVALOMENOS
SPYROS ALEXANDRIS

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HARRY AGATHOS
VALERIA KOKKINOY
ELENI LOLI
EVELINA DAFNI

OF COUNSEL

PANOS KOROMANTZOS
NIKOS DELIANNIS
CHRISTOS PAPADIMITRIOY
GEORGE STATHOPOULOS
GEORGE HADZIS

26 Filellinon Str.
105 58 Athens, Greece
Tel.: +(30) 210 3318170
Fax: +(30) 210 3318171
www.bahagram.com

A new law in Greece enables franchisees to increase their profits

*By John Nasiaras and Maria-Christina Gramatidis, Trainee Associates
of Bahas, Gramatidis & Partners*

SUMMARY

It is a common fact that commercial cooperation agreements were always of great concern to Greek entrepreneurs, and especially to Greek franchisors. The adoption of Presidential Decree 219/1991 that regulates exclusive commercial agency agreements, highlights the evidence of this concern. Further, the enactment of Law No 3557/2007 followed, of which article 14 par. 4 states that the provisions of Decree 219/1991, as in force, apply also to contracts involving: a) agency, which concerns the provision of services, and b) exclusive distribution, if the distributor, in the frame of the respective contract, acts as part of the supplier's commercial organization.

Although there was no corresponding legislative application of the above provision on franchise agreements, still the Greek Courts consider franchise agreement as a mixed nature contract providing for the main obligations of the parties thereto, namely the franchisor and the franchisee, in the context of the principle of freedom of contract, while it contains elements of several contracts regulated by the Greek Civil Code, such as the lease of a profitable object (Articles 638 et seq.), the provision of independent services (Articles 648 et seq.) and a mandate contract (Articles 713 et seq.). Therefore, we witness the attitude of the Greek Courts to apply the provisions of Law No 3557/2007, Article 14 para 4 also on franchise agreements especially when it comes to the calculation of the compensation of the franchisee as a result of termination of the franchise agreement.



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Today, however, despite any difficulties that have arisen due to the economic consequences of the pandemic crisis and the ongoing war in Ukraine, the interest of the Greek State and of the entrepreneurs in commercial cooperation agreements remains undiminished. The cornerstone of the Greek Government's effort to strengthen commercial partnerships and franchise contracts, in particular, is the adoption of Law No. 4935/2022 on 'incentives for business development through partnerships and corporate transformation'. Furthermore, the recent case-law offers vital information for the legal approach of franchise agreements and the other commercial cooperation agreements, while a most recent research indicates a fertile ground for the future of investing on franchising in Greece.

TAX INCENTIVES FOR INVESTMENTS IN THE FRANCHISE SECTOR

The aim of Law No. 4935/2022 is, with the incentive of reducing income tax by 30% or even 50% for up to 9 years, to reduce tax liabilities through company mergers and at the same time encourage the transformation of the production model so as to ensure companies' viability. Therefore, one of the key points of the new law is to encourage the establishment of more commercial cooperation agreements.

At this point, the question is how the new Law define the term "partnership". This question is significant as there is a need to clarify who may be subject to the provisions of the Law regarding the exemption from income tax. According to Article 2 re: "Definitions" of the Law, the term "partnership" means the creation of a contract between two or more unrelated persons, including joint venture, cooperatives, organizations or producer groups, irrespective of their legal form for the purpose of establishing any form of a legal entity, or for the purpose of creating cooperation farming contracts or franchise agreements. In conclusion, the concept of "cooperation" cannot be conceived without the creation of a legal entity.



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Other conditions for the inclusion of a legal entity in the provisions of the Law are that the partnership:

- aims at jointly promoting the business activities of the cooperating companies or persons.
- lasts for at least five (5) years from the date of conclusion of the agreement or establishment of the legal entity; and that
- the total average financial turnover of the participating companies, taking into account the preceding three years, is at least 150% of the turnover of the company with the highest average financial turnover among the cooperating companies over the preceding three years.

More specifically, in regard to franchise agreements, Article 6 of the abovementioned Law sets out the general provisions for the exemption from income tax and emphasizes that, if the partnership is established under a franchise agreement, the incentive for the exemption (exempt from paying 30% income tax for up to nine years) is granted exclusively to franchisees. In this way, the retail sector is being strengthened in the form of encouraging franchising, but only for the franchisees.

Since the aim of the law's enactment is to relief businesses from the impacts of Covid-19, the question remains why the emphasis is solely on the franchisees while also the franchisors were directly affected by Covid-19.

One could argue that both have been significantly impacted. However, the explanatory memorandum of the law specifically states that for a small shop to compete in the market offering services or products, it must be given the opportunity to buy at a discount. The new reality that we are currently facing due to Covid-19 is causing franchise chains to reconsider their strategy and investors to rethink their selection criteria. An important finding is that many stakeholders are turning to franchise to broaden the scope of their business as their existing business activities have become obsolete.



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NEWEST INSIGHTS IN TERMS OF CASE-LAW

Greek Courts via recent case-law have significantly contributed to a variety of matters in the field of franchising and other partnership agreements that concern entrepreneurs.

A very interesting aspect that arose in case-law is related to the franchisor's obligation of integrating franchisees into their own distribution system. In general, this is an expected obligation of the franchisor that consists of ensuring the organizational and technological integration of the franchisee into the franchising system so that the business of the franchisee is responsive to market conditions and constitutes a functional link in the franchisor's business activity. According to the Supreme Court's case-law this obligation derives not only from the contract between the parties but also from the principles of good faith and fair trading. Based on this expectation, the Supreme Court has ruled that omission on the side of the franchisor to inform the franchisee of the legal provisions re the issuing of the operating license of its business constitutes grounds for extraordinary termination of the franchise agreement and accordingly establishes an obligation on the part of the franchisor to repay the franchisee for improper performance of the franchise agreement.

This obligation refers to the restitution not only of the positive damages but also of the loss of profit which, on the basis of the expected course of events, would have been probably obtained by the other party to the agreement in the frame of the cooperation between them, until the expiry of the contractually determined period of the agreement (Supreme Court No. 483/2021, 1180/2019, 180/2019). In addition, if the franchisor intentionally does not inform the franchisee of the legal provisions re the issuing of operating license of its business, the Supreme Court has judged that this incident establishes a non-contractual obligation for repayment.

From the aspect of civil procedural law, the Athens Court of Appeal has published a very interesting decision that contributes to the interpretation of the legal term "designated action" that is a necessary element for the admissible execution of the action by the Courts. More specifically, the Court has judged that the circumstances determining the expectation of a certain profit on the basis of the expected course of events, as well as the specific circumstances and the preparatory measures taken,



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must be set out in the action, and it is not sufficient merely to state the total amount of the alleged loss of profit, but the specific circumstances and measures which make the profit probable must also be set out in detail in each case with reference to the individual amounts, and those amounts must be cited and indicated (Athens Three Member Court of Appeal No. 845/2021).

SURVEY FINDINGS ABOUT THE FUTURE OF FRANCHISING IN GREECE

Over the period 2008 to 2020, a total number of 134.965 franchise stores had been established in Greece. Actually, 2019 and 2020 were the most significant years for franchising in Greece, since 11.468 franchise stores were created in the first year and 11.600 in the next one. In general, since 2015 an increasing trend is seen in new franchise store establishment with the smallest increase in 2019 due to the impact of the Covid-19 pandemic on the global and domestic market.

Although the war in Ukraine has spread disturbance around the world, it does not seem to be an inhibitory factor for a significant proportion of new investors, while, indeed, the majority of them are new entrants to the field. The findings of a recent survey carried out by PANORAMA FRANCHISE journal are the evidence that the future of franchising in Greece is auspicious. More specifically, an important trend that is noticed in the franchising market, is the continued growth of franchise networks, with more than 4% in new stores in the two years of the pandemic, and 80 new chains choosing franchising as a method of growth.

To sum up, it would be very useful for new investors to examine the most preferable and profitable fields of franchising in Greece. It is a common fact that the catering sector is a very popular investment field through franchise agreements since it represents a percentage of 25% of franchise networks, while the Super Market/ Convenience Stores are the leading one. These fields have been found to be the most durable investing fields during the pandemic crisis that Covid-19 spread, however, it should be mentioned that the leading trend for the year 2022 is investing in the field of technological and digital transformation as also the increasing research for brands that invest in social responsibility.