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Belgium - Franchise Legislation

Law relative to pre-contractual information in the framework of agreements of commercial partnership

Law adopted on December 19, 2005, modified on December 27, 2005; comes into force as of 1 February 2006.

Article 1

The present law regulates a matter referred to in Article 78 of the Constitution.

Article 2

The present law applies to agreements of commercial partnership concluded between two parties, who each act in their own name and own interest, whereby one of the parties concedes to the other party the right, in return for a fee of any nature, direct or indirect, to use in view of the sale of products or the providing of services, a commercial formula which includes one or more of the following:

- a common brand,*
- a common commercial name,*
- the transfer of know-how,*
- the providing of commercial or technical assistance.*

Article 3

The party who concedes the right provides the other party, at least one month before the conclusion of the agreement of commercial partnership referred to in article 2, the project of the agreement as well as a particular document comprising the elements described in article 4. The project of the agreement and the particular document will be provided in writing, or in a "hard" format, and accessible to the party being granted the right.

No obligation may be engaged, no fee, advance payment or gage may be asked for or paid before the expiration of the one-month delay which follows the delivery of the document referred to in this article.

Article 4

4.1 The particular document referred to in article 3 comprises 2 parts which cover the following elements:

- 1. Important contractual provisions, in so far as they are foreseen in the agreement of commercial partnership:*
 - a) the mention that the agreement of commercial partnership is concluded or not in consideration of the person*
 - b) the obligations,*
 - c) the consequences of the non-realization of the obligations,*
 - d) the manner of calculating the fee owed by the receiving party, and its mode of revision during the course of the contract and at its renewal,*
 - e) the non-compete clauses, their term and conditions,*

- f) *the term of the agreement of commercial partnership and the conditions of its renewal,*
- g) *the conditions of notice and of termination of the agreement, notably in relation to the expenses and investments,*
- h) *the right of pre-emption or the purchase option of the conceding party, and the rules for determining the value of the business at the moment this right or option is being exercised,*
- i) *the exclusive rights reserved to the conceding party,*

2. *Facts contributing to the correct appreciation of the agreement of commercial partnership:*

- a) *the name or denomination of the party conceding the right as well as its contact references,*
- b) *in case the right is being conceded by a moral person, the identity and the status of the physical person acting in its name,*
- c) *the nature of the activities of the party conceding the right,*
- d) *the intellectual property rights whose use is being conceded,*
- e) *as the case may be, the annual accounts of the last three accounting years of the party conceding the right,*
- f) *the experience of the commercial partnership, and the experience of the operating of the commercial formula independently of an agreement of commercial partnership,*
- g) *the history, the state and the perspectives of the market on which the activities are exercised, from a general and local point of view,*
- h) *the history, the state and the perspectives of the market share of the network, from a general and local point of view,*
- i) *for each of the last three years, as the case may be, the number of partners belonging to the Belgian and international network, as well as the expansion perspectives of the network,*
- j) *for each of the last three years, as the case may be, the number of agreements of commercial partnership signed, the number of agreements ended by the initiative of the conceding party, the number of agreements ended by the initiative of the receiving party, as well as the number of agreements which were not renewed at the end of their term,*
- k) *the expenses and investments that the receiving party agrees to at the beginning and in the course of the execution of the agreement, detailing their amount, destination and their depreciation term, the moment of their engagement as well as their lot at the end of the contract.*

- 4.2 *The King may determine the form of the particular document referred to in 4.1. He may also complete or bring precisions to the list of requirements under 4.1 and 4.2.*

Article 5

In case of the non-respect of one of the provisions of Article 3, the party receiving the right may invoke the nullity of the agreement of commercial partnership within two (2) years following the conclusion of the contract.

If the particular document does not comprise the elements detailed in Article 4.1.1, the party receiving the right may invoke the nullity of the provisions in question in the agreement of commercial partnership.

Article 6

The parties are held to the confidentiality of the information that they obtain in view of the conclusion of the agreement of commercial partnership, and may not use this information, directly or indirectly, outside of the agreement of commercial partnership to be concluded.

Article 7

The clauses of the agreement of commercial partnership and the elements to be provided in the particular document as defined in article 4, will be written in a clear and comprehensible manner. In case of doubt on the

meaning of a clause or an element to be disclosed, the interpretation that will prevail is that which is in favour of the receiving party.

Article 8

The provisions of the present law are applicable irrespective of any contractual clause to the contrary.

Article 9

The pre-contractual phase of the agreement of commercial partnership is governed by Belgian law and is subject to the jurisdiction of Belgian courts when the party receiving the rights exercises the activity which is the object of the agreement principally in Belgium.

Article 10

The present law enters into force on September 1st, 2005. (Amended on Dec. 27, 2005 to enter into force on February 1, 2006)

The government will submit an evaluation report to the Chamber of Representatives before July 1, 2006.

This evaluation will carry, at least, on the following points:

a) the measure by which pre-contractual information contributes entirely to the clarity and balance of agreements of commercial partnership;

b) the presence in these agreements of provisions that create a manifest imbalance between the parties, including the non-compete clauses, the clauses that determine the value (of the franchisee's business) in case of re-purchase, the conditions of resolution and of termination of the contract, and the obligations of result.

In addition, the King will constitute an Arbitration Commission composed of an equal number of organisations representing the interests of each of the parties.

This Commission will also submit, before September 1, 2006 an evaluation report to the Chamber of Representatives.

In the report, article 10, paragraph 3 will be taken into account.

Brussels, 19 December 2005

First Vice President of the Chamber of Representatives.

Free translation into English by the EFF