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### Lithuania: franchise legislation

Specific legislation on franchising in the Republic of Lithuania came into force on 1 July 2001. It is in Chapter XXXVII, Vol. 6 of the new *Civil Code of the Republic of Lithuania*<sup>1</sup>. (referred to as LCC, Articles 6.766 – 6.779).

(<sup>1</sup> Civil Code of the Republic of Lithuania No 74 of 6 September 2000.)

It is borrowed word for word from Part II, Chapter 54 (Articles. 1027 – 1040) of Russian Civil Code (hereinafter referred to as R.C.C.) except for the wording: the LCC speaks of “franchising”. The RCC speaks of “Commercial Concession”.

#### EFF note of caution:

Adopted before Lithuania joined the European Union, this law contains articles that that set it significantly apart from other Pre-contractual disclosure legislation that has been passed in the older EU Member States.

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LITHUANIA  
CHAPTER XXXVII.  
Franchise

**Art. 6.766. Concept of Franchise Contract**

1. Under a franchise contract, one party (the rightholder) shall undertake to grant the other party (the user) for a remuneration and for a specified or unspecified period of time the right to use in the course of the user's entrepreneurial activity a complex of exclusive rights belonging to the rightholder (the right to use the firm name, the trade mark, the service mark, protected commercial information, and the like), and in return the other party shall undertake to pay a remuneration stipulated by the contract.
2. The franchise contract shall provide for the use of complex of exclusive rights, business reputation and commercial expertise of the rightholder to a specified extent (establishing the minimum or maximum method or other form of use). The franchise contract may also provide for the territory of the application of such exclusive rights, business reputation or commercial expertise, or the sphere of entrepreneurial activity to which it shall be applied (sales of goods, provision of services, etc.).
3. Acting as parties to the franchise contract may be enterprises (entrepreneurs) only.

**Art. 6.767. Form of Franchise Contract**

1. The franchise contract must be concluded in written form. Failure to observe the written franchise contract form shall invalidate it.
2. The franchise contract may be used against third persons only upon the registration thereof pursuant to the procedure established by laws with the register of legal entities to have registered the rightholder. If the rightholder is registered in foreign state, the registration of the franchise contract shall be effectuated by the register of legal entities to have registered the user.
3. If the subject matter of the franchise contract is an object protected by industrial property rights, the franchise contract must be also registered pursuant to the procedure established by laws with the appropriate agency to have performed the registration of objects of industrial property and the rights thereof.

**Art. 6.768. Subfranchise**

1. The franchise contract may provide for the user's right to permit the use of the complex of exclusive rights granted to him or its part to other persons on subfranchise terms. The terms of subfranchise contract must be stipulated before-hand in the franchise contract or agreed upon with the rightholder later on. The franchise contract may also provide the user's obligation after conclusion of the contract to grant other persons for a specified period of time the right to use the said rights on subfranchise terms.
2. The subfranchise contract may not be concluded for a term longer than the term of the franchise contract.

3. Should the franchise contract be deemed invalid, the subfranchise contract shall also be deemed invalid.

4. Unless provided otherwise by the franchise contract concluded for a specified term, in the event of its termination before time, the rights and obligations of the subuser<sup>2</sup> under the subfranchise contract shall be transferred to the rightholder, provided that the latter consents to assume the rights and obligations under the subfranchise contract. This rule shall respectively apply to the cancellation of the franchise contract concluded for an unspecified period of time.

5. The user shall be subsidiary liable to the rightholder for the subusers' actions, unless provided otherwise by the franchise contract.

6. Applied to the subfranchise contract shall be the rules of this Chapter, provided that peculiarities of subfranchise enable to do so.

#### **Art. 6.769. Remuneration under Franchise Contract**

1. The user must pay the rightholder a remuneration stipulated in the contract.

2. Remuneration may be paid in the form of fixed lump sum and (or) periodical payments, deductions from the user's proceeds, or in any other form stipulated in the contract.

#### **Art. 6.770. Rightholder's Obligations**

1. The rightholder shall be obligated to:

1) transfer technical and commercial documentation to the user, and provide other information necessary for the user to exercise the rights granted to him under the franchise contract, as well as instruct the user and his employees on all issues related to the execution of granted rights;

2) issue licences stipulated in the contract to the user and ensure the formalisation thereof in accordance with the established procedure.

2. Unless provided otherwise by the franchise contract, the rightholder shall be obligated to:

1) ensure the registration of the franchise contract;

2) render continuous technical and consulting assistance to the user and assist in training his employees;

3) supervise the quality of goods manufactured, work performed or services rendered by the user in compliance with the franchise contract.

#### **Art. 6.771. User's Obligations**

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<sup>2</sup> It is an obvious error of drafters while translating Russian into Lithuanian. In the light of Art. 6.768 (4), the proper party is "user" or "subrightholder".

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With the account of the nature and specifics of the activity as well as terms of the franchise contract, the user shall be obligated to:

- 1) when performing the activity stipulated by the contract, use the rightholder's firm name, trade mark and service mark as provided by the franchise contract;
- 2) ensure a proper quality of goods manufactured, work performed or services rendered under the franchise contract;
- 3) observe the rightholder's directions and instructions concerning the use of rights, the exterior and interior decoration of the commercial premises used by the user and any other terms of the activity stipulated by the franchise contract;
- 4) render buyers (customers) additional services which they could reasonably count on when purchasing (ordering) goods (work, services) directly from the rightholder;
- 5) not to disclose the rightholder's know-how or any other confidential information received from him to other persons;
- 6) conclude a subfranchise contract, should the franchise contract stipulate this obligation;
- 7) inform buyers (customers) in a way most obvious for them that he is operating under the franchise contract and using the rightholder's firm name, trade mark, service mark or any other symbol to have individualized the rightholder.

#### **Art. 6.772. Restraints of Rights of Contractual Parties**

1. The parties to the contract may stipulate in the contract only such terms restraining competition, which are not prohibited by competition law.
2. Should the requirement provided in paragraph 1 of this Article is satisfied, the franchise contract may stipulate the following restraints of rights of the parties to this contract:
  - 1) the rightholder's obligation not to grant other persons similar complexes of exclusive rights to be used on the territory assigned to the user or desist from performing on his own a similar activity on this territory;
  - 2) the user's obligation not to compete against the rightholder on the territory covered by the franchise contract with respect to the entrepreneurial activity performed by the user by using the exclusive rights belonging to the rightholder;
  - 3) prohibition imposed upon the user to enter into franchise contracts concerning similar rights with the rightholder's competitors (potential competitors);
  - 4) the user's obligation to coordinate with the rightholder the location of commercial premises defined in the contract, as well as the exterior and interior decoration thereof.
3. The terms of the franchise contract that restrain the rights of the parties to this contract may be deemed invalid upon the bases and procedure established by competition law should such terms

restrain competition.

4. Deemed as null and void shall be terms which are prohibited by competition law, specifically:

- 1) the terms that entitle the rightholder to determine the price of goods manufactured or work performed, or services rendered by the user, or establish the minimum of such prices;
- 2) the terms that entitle the user to sell goods, perform work or render services exclusively to a specific group of buyers (customers) or exclusively to buyers (customers) residing on the territory defined in the contract.

#### **Art. 6.773. Rightholder's Liability for Claims Filed Against User**

1. The rightholder shall be held subsidiarily liable for claims filed against the user with respect to the quality of goods (work, services) sold by the user under the franchise contract.
2. With respect to claims filed against the user as the manufacturer of the rightholder's goods (products), the rightholder shall be held liable jointly and severally with the user.

#### **Art. 6.774. User's Right to Renew Contract**

1. The user who has been properly performing his obligations under the franchise contract shall have the right on the expiry of the contract term to renew the contract on the same terms.
2. The rightholder shall have the right to refuse to renew the contract, provided that within three years after the expiry of the contract term he will not conclude with other persons a similar franchise contract to cover the same territory previously covered by the terminated contract. Should the rightholder, before the expiry of a three-year term, wish to grant another the same rights as those granted to the user under the terminated contract, he shall be obligated to offer the user to conclude a new contract or compensate the latter for losses incurred. The new contract must be concluded on terms no less advantageous for the user than those under the terminated contract.

#### **Art. 6.775. Amendment to Terms of Franchise Contract**

The parties may amend the terms of the franchise contract in conformity with general rules.

Amendments to the franchise contract may be used against third persons only upon the registration thereof pursuant to the procedure established in paragraph 2 of Article 6.767 of this Code.

#### **Art. 6.776. Termination of Franchise Contract**

1. Should the franchise contract be concluded for an unspecified term, either party shall have the right to terminate the contract at any time by notifying the other party six months in advance, unless the contract stipulates a longer notification term.

2. Termination of franchise contract must be registered in accordance with the procedure established in paragraph 2 of Article 6.767 of this Code.

3. Should the rightholder forfeit his rights to the firm name or trade (service) mark and remain unreplaced by new similar rights, the franchise contract shall be terminated.

4. Should bankrupt proceedings be instituted against the rightholder or the user, the franchise contract shall be terminated.

#### **Art. 6.777. Change of Contractual Parties**

1. Should any of exclusive rights which constitute the object of the franchise contract be transferred to another person, the franchise contract shall remain valid. The new rightholder shall become a party to the franchise contract in respect of the rights and obligations related to the exclusive right transferred.

2. In the event of the rightholder's or user's death, his rights and obligations under the franchise contract shall be transferred to his heir, provided the latter is an entrepreneur and continues or undertakes a entrepreneurial activity within six months from the date of the inheritance opening. Otherwise the contract shall be terminated. The performance of the rights and obligations of the deceased rightholder under the contract until the heir has assumed the inheritance and has undertaken an entrepreneurial activity shall be effectuated by an administrator of the assets appointed by the court.

#### **Art. 6.778. Consequences of Change in Rightholder's Firm Name or Trade (Service) Mark**

Should the rightholder's firm name or trade (service) mark which constitute the object of the franchise contract change, the franchise contract shall remain valid with respect to the rightholder's new firm name or trade (service) mark, unless the user demands cancellation of the contract and compensation of losses. Should the contract remain in force, the user shall have the right to demand a commensurate decrease of remuneration due to the rightholder, unless provided otherwise by the contract.

#### **Art. 6.779. Consequences of Termination of Exclusive Right**

1. Should the term of an exclusive right which constitute the object of the franchise contract expire, or should such right terminate on any other grounds, the franchise contract shall remain valid, except the provisions related to the terminated right, while the user, unless provided otherwise by the contract, shall have the right to demand a commensurate decrease of remuneration due to the rightholder.

2. Unless the user demands to cancel the contract and to compensate the losses, in the event of expiration of exclusive right, the franchise contract must be re-registered.