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**THE RISKS AND REWARDS OF
FRANCHISING ON THE PATH LESS TRAVELED**

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THE RISKS AND REWARDS OF FRANCHISING ON THE PATH LESS TRAVELED

I. INTRODUCTION

As franchisors look for opportunities in new international markets, many are contemplating less commonly-considered markets that they may have initially (or entirely) overlooked, or into which their peer franchisors have not yet ventured. Many, if not most, of the least commonly-entered international markets in the world do not have franchise-specific laws and regulations; therefore, there may be perceived low barriers to entry from a legal standpoint. However, in some of these less frequented countries that have franchise-specific laws, regulations, and protocols, franchisors have less guidance, precedent, and/or assistance from experienced franchise practitioners from which to draw and prepare applicable materials than they do in some of the more commonly-entered countries. This paper discusses these less conventional but still regulated markets, provides information about the requirements in those countries, describes some challenges faced from franchising there, and, where possible, provides tips on overcoming these challenges. Ultimately, there can be unexpected benefits that come with planting the flag in new terrain, but those benefits do not come without minding the risks.

One of the threshold questions in this exercise is what, precisely, constitutes a “less frequented” or “less conventional” international market. There is no clear metric to determine this designation (for example, it could be measured by a country’s franchised business production expressed as a percentage of GDP, the number of franchised brands present in the country, the proportion of “foreign” brands in a country versus domestic brands, or other considerations). But, because these and other franchising metrics are not available for all countries on a consistently-applied basis, perhaps the most simplistic and objective manner to separate common from less-common franchising-regulated countries is by the measure of its gross domestic product (GDP) as determined by purchasing product parity. By isolating the countries of the world that have franchise-specific laws, the least commonly-discussed and covered countries seem to be those with an annual GDP of less than \$250 billion dollars. The jurisdictions that meet this threshold (*i.e.*, those that regulate franchising in some manner and that have an annual purchasing product parity GDP of less than \$250 billion dollars) are: Albania, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Lithuania, Moldova and Macau.¹

Franchise laws and regulations typically come in the form of pre-sale registration and/or disclosure laws, relationship laws, or both. Pre-sale disclosure laws address the information that the parties must exchange with each other before entering into a franchise agreement.² In most cases, this means information that the franchisor must provide to the franchisee, but in some jurisdictions the franchisee is also required to share pre-sale information with the franchisor.³ A “registration” law requires franchisors to have pre-sale disclosures reviewed and, where applicable, approved by relevant governmental agencies at some point in the franchise sales process. Franchise “relationship” laws typically apply to, and may impose certain

¹ Central Intelligence Agency (“CIA”), The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/>; each of these countries’ GDP figures are estimated for 2011. Note in addition that while Croatia, with an estimated GDP of \$80 Billion, is considered to have a franchise-specific law, the law merely provides a definition of what a franchise is, without additional requirements.

² We note that with the possible exception of Kazakhstan (see Kazakhstan discussed *infra*), none of the jurisdictions reviewed in this paper require translations of the agreement and/or disclosure materials into the local language.

³ See, *e.g.*, Georgia, discussed *infra*.

conditions on, some of the more critical elements of a franchisor-franchisee relationship, such as transfers, terminations and renewals of the franchise contract.

Other laws affecting franchising transactions in international markets include trademark laws (that may require registrations and/or translations of the trademark license portion of the franchise agreement) and technology transfer laws (that may not have originally been intended to regulate franchises, but which nevertheless may apply to a franchise transaction). Franchisors also frequently resort to arbitration as the mechanism for dispute resolution in international franchising, and one of the more important treaties addressing arbitration agreements and the cross-border enforcement of arbitral awards is the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the “New York Convention.” The New York Convention requires courts in the countries which have adopted the treaty to give effect to private agreements to arbitrate, and to recognize and enforce arbitration awards made in other countries that are parties to the treaty. Franchisors who agree to resolve disputes with their franchisees by arbitration should therefore determine whether the country(ies) included in an international franchise transaction are signatory to the New York Convention. Each of the jurisdictions addressed in this paper have adopted the New York Convention.⁴

II. THE BENEFITS AND DRAWBACKS OF ENTERING LESS FREQUENTED MARKETS

The primary benefit of franchising in a less frequented market is being the “first mover” in a relatively new market segment. As such, franchise companies may gain a foothold in certain markets before their competitors, permitting them to develop a brand presence and possibly create critical mass in a new market unencumbered (or perhaps less encumbered) by the pressures of the marketplace. Sometimes, untested markets can also be like the “wild west” in the sense that, despite applicable franchise laws and regulations, a franchisor has control and influence over the manner in which those laws are applied. There can, however, be significant downsides to entering into markets that have franchise regulations without experience in implementing and interpreting the laws applicable to franchising in those markets. These markets may also have a bar and judiciary that do not have experience with or fully understand the franchise-specific laws or the business peculiarities of franchising.

Before entering a new and unfamiliar market, a franchisor’s first task should be to obtain a copy of and review the relevant franchise laws and regulations in that market. This in no way obviates the need to engage local counsel in that market, which is critical, but is helpful to get an idea at the outset as to the requirements (and possible limitations) of the law, the timing and cost for an intended transaction, and the extent of the assistance that will be needed from local counsel. Some franchise-specific laws with robust requirements may nevertheless be detailed and relatively easy to understand, while other even simplistic franchise-specific laws may be so vague to the point of offering virtually no guidance at all. For a franchisor speaking a language different from that spoken in a target jurisdiction, direct translations of franchise laws and regulations are the only option. Reviewing translations of laws can have its limitations as important interpretive meanings can be lost in the translation. When a full translation of the law is not available, a translated summary is the next best option, but summaries are of course subject to the accuracy of the preparer. Local counsel may be helpful in providing guidance on foreign franchise laws and regulations, but for a franchisor and its counsel, anything short of

⁴ United Nations Commission on International Trade Law, Status of 1958 - Convention on the Recognition and Enforcement of Foreign Arbitral Awards (2012), http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html.

being able to review a law in its original form is a compromise and subject to misunderstandings.

In some jurisdictions (especially less frequented markets), even when asking well qualified local counsel what certain provisions of a franchise statute mean in practical terms, the response may be that there is little guidance on a specific point and that there are “options” on how that provision could be interpreted by a court or regulatory authority.⁵ It is helpful if governmental or other secondary interpretive materials are available, but such materials appear to be rare in less-frequented markets. Being an early mover in a market means there are fewer anecdotal examples or acquired best practices from other franchisor experiences upon which to draw. This sort of uncertainty must be factored in by both the franchisor and the franchisee when making investment decisions.

It is also important to understand that civil law jurisdictions are fundamentally different from common law jurisdictions in that the parties are often not free to agree to contract on terms different from those provided in the host countries’ statutes. Unlike common law jurisdictions, where that which is not expressly addressed (or restricted) in the law is deemed contractually permissible, in civil law jurisdictions the opposite can be true – as in that which is not expressly permitted under the law is deemed prohibited. This can have a dramatic effect upon the inclusion (or invalidity) of contractual provisions that are typically found in franchise agreements.

Obviously, there are many civil law jurisdictions around the world in which franchise agreements are drafted, negotiated and enforced, and in which franchising laws and regulations are applied and understood, in a predictable and reasonable manner. In some cases, this is because the laws are clearly written or there is enough guidance on the laws available to practitioners. In other cases, there is ample local or other experience with the application of the law so as to help streamline the process.

Some less frequented markets have neither of these advantages in that the laws are not often applied nor is there much, if any, experience with the application of the laws. This combination often leaves a franchisor, considering entering into the market, with a dilemma in the sense that there is additional risk associated with the transaction. As an example, in Macau, the franchise statute states that termination of franchise agreements is regulated by the provisions on termination governing commercial concession contracts.⁶ The relevant provision of the commercial concession contract law states that termination of a concession contract law is regulated on termination of the agency contract.⁷ The rules relating to the termination of an agency contract require a franchisor to terminate the contract within “one month from the knowledge of the facts that justify [termination].”⁸ In theory, this means that a franchisor has 30 days to terminate a franchisee for non-compliance with the franchise agreement, a virtually unworkable requirement that discourages franchisors from working with franchisees and ensures the harshest possible result in default situations. Both the franchisor and franchisee

⁵ As an example, Stephan Wagner in Kyrgyzstan notes that franchising is relatively rare in that jurisdiction. See *infra* Section III.F. Moreover, Mr. Wagner advises that there is no such thing as a compilation of court decisions and therefore it is very difficult to (i) find precedents if any (although Kyrgyzstan has no obligatory precedent system) and to (ii) foresee the outcome of court proceedings.

⁶ Code Commercial art. 704 (Macau SAR P.R.C.).

⁷ *Id.* at art. 673.

⁸ *Id.* at art. 651.

should seriously consider the implications of such a rule prior to establishing and investing in a franchise system. There may be other, equally concerning, restrictions on the franchised business that make entering less frequented markets risky. Partnering early with the correct local counsel is a critical first step in the expansion decision.

III. LESS FREQUENTED JURISDICTIONS AND THEIR FRANCHISE-SPECIFIC LAWS AND REGULATIONS

A. Albania

In the early 1990s, Albania ended 46 years of secretive communist rule in exchange for a democratic government. Since that time, Albania has also been making the difficult transition toward a more modern open-market economy. The transition has proven challenging as successive governments have faced high unemployment, corruption, an aging physical infrastructure, powerful organized crime networks, and combative political opponents.⁹ Albania's estimated 2011 GDP is \$24 billion dollars.¹⁰

Albania enacted a franchise-specific law in October 2000.¹¹ The law is part of the Albanian Civil Code, and is described below.

1. Franchise Relationship Law Requirements

a. Form and Content of Franchise Agreements

Under the Albanian franchising law, a franchise agreement must be in writing.¹² The franchise agreement must also describe the obligations of the parties as well as the duration of the agreement and other material terms.¹³ Further, the agreement must contain a full description of the franchise system and of the parties' obligations.¹⁴

The parties to a franchise agreement must agree upon the duration of the agreement, which is decided by taking into consideration the relevant market requirements and the services to be provided in connection with the business.¹⁵ The law also governs the early termination of the franchise agreement. If an agreement is for a term of ten years or more, or is of an indefinite duration, the terminated party must be provided with notice at least one year in advance of termination.¹⁶ Franchise agreements with terms of less than ten years do not have the one year of notice requirement. When a franchise agreement expires or is terminated early,

⁹ CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/>.

¹⁰ *Id.*

¹¹ Code Civil ch. XX – Franchising, arts. 1056-1064 (Albania).

¹² *Id.* at art. 1059.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at art. 1060.

¹⁶ *Id.*

the law suggests that the parties should try to negotiate and agree upon terms for the renewal of the agreement on either the same or on different terms from the original agreement.¹⁷

b. Obligations of the Parties

Article 1057 of the Albanian law identifies the franchisor's obligations, and provides that the franchisor is obliged to protect the franchisee's granted rights against infringement by third parties. The franchisor is also required to assist the franchisee's development and to support the franchisee in the operation of the business by providing instructions, information and updates.¹⁸ The Albanian franchise law does not impose any obligations on the part of a franchisee.

c. Termination, Non-competition and Damages

Once the franchise agreement terminates or otherwise comes to an end, the Albanian franchise law provides that the parties have a reciprocal obligation to compete fairly.¹⁹ The franchisor may restrict the franchisee's right to compete in the "local market" for up to one year after termination or expiration of the agreement.²⁰ If, however, as a result of the post-term non-competition restrictions, the franchisee's revenues or "professional activity" decrease, then the franchisee is entitled to "equivalent" financial compensation from the franchisor.²¹

The Albanian franchise law requires a franchisor to ensure the rights it is granting to the franchisee. If, for example, the rights granted to the franchisee are infringed upon by a third party, or if the franchisor itself infringes those rights, the franchisee has the right to reduce the royalties or other compensation it may be required to pay the franchisor.²² The amount of the compensation reduction is to be determined by an impartial expert.²³

Each party to the franchise agreement is entitled to claim damages against the other party if the other party does not fulfill its obligations under the agreement. A franchisee may request compensation from the franchisor for damages it suffers as a result of the franchisor's breach of the franchise agreement, or if the franchisor's grant of rights is found to be invalid.²⁴ A franchisor may request compensation for damages if the franchisee does not comply with its obligations under the franchise agreement.²⁵ In addition, if a failure to comply with the obligations of the agreement by either party would have the effect of "placing the franchised

¹⁷ *Id.*

¹⁸ *Id.* at art. 1057.

¹⁹ *Id.* at art. 1061.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at art. 1062.

²⁵ *Id.* at art. 1063.

activity at serious risk,” the other (non-infringing) party has the right to withdraw from the franchise agreement without being bound by the remainder of its term.²⁶

2. Form and Content of Disclosure Documents

During pre-sale negotiations of franchise agreements in Albania, the parties to the proposed agreement are required to exchange information on all matters relevant to the business to be franchised.²⁷ Although the law specifies that the disclosures should relate in particular to the parties’ respective obligations,²⁸ the law does not specify the precise information that must be disclosed or exchanged. The law also does not prescribe the time period for making disclosures. The parties are, however, required to disclose information to each other in good faith, and are bound to keep all disclosures confidential, even if the franchise agreement is not consummated.²⁹

This pre-sale duty of confidentiality extends for a three-year period, and either party has three years from the date of the pre-sale negotiations within which to claim damages for an infringement of this duty of confidentiality.³⁰ If the franchise agreement is ultimately not entered into as a result of “an intentional act” of one of the parties, the other party is entitled to claim compensation for the expenses it incurred in negotiating and preparing the franchise agreement, so long as that party undertook the negotiations and preparations in good faith and with the belief that the franchise agreement would be concluded.³¹

3. Registration Requirements

Registration of the disclosure document is not required in Albania.

B. Belarus

Belarus declared independence in 1991 following the dissolution of the Soviet Union. Belarus maintains closer political and economic ties to Russia than any of the other former Soviet republics.³² Alexander Lukashenko has been president of Belarus since 1994. He has steadily consolidated power through authoritarian means, and government restrictions on freedom of speech and the press, peaceful assembly, and religion remain in place.³³ Belarus’ estimated 2011 GDP is \$141 billion dollars.³⁴

²⁶ *Id.* at art. 1064.

²⁷ *Id.* at art. 1058.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/>.

³³ *Id.*

³⁴ *Id.*

The Civil Code of Belarus entered into force on July 1, 1999 and included a basic article on franchising that simply defined a franchise.³⁵ The Civil Code was later amended in August 2004, which amendments came into force on February 27, 2005, and included more details regarding the rules governing franchises in Belarus.³⁶ The Belarus Civil Code borrows terminology from the Russian Civil Code, and a franchisor is referred to as the “rights-possessor” and the franchisee as a “user.”

1. Franchise Relationship Law Requirements

a. Form and Content of Franchise Agreements

Under the Belarus Civil Code, a franchise agreement (called a “license complex”) must include: (a) the right to use the franchisor’s (right-holder’s) trade name; and (b) the right to use confidential, or undisclosed, information, including technical, commercial (including know-how), and organizational information.³⁷ In addition, the franchise agreement can provide the user with the right to use other intellectual property such as trademarks and service marks.

A franchise agreement in Belarus must include a franchise fee, which may be a one-time payment, fixed payments, periodic payments calculated as a percentage of sales, or any other payments that are set out in the franchise agreement.³⁸ The rights granted by the franchisor under the agreement must be for a commercial activity which must be of a certain size (maximum or minimum).³⁹

The law specifies that the agreement may be for either a fixed term or indefinite term, and may also have territorial restrictions.⁴⁰ The agreement must be in writing, and there are certain general rules that apply to the termination of the agreement.⁴¹

The law specifies that a franchisor must be a legal person and the owner of a trade name, and that a franchisee may be a natural person.⁴² Master franchise agreements are permitted under the law, but the duration of subfranchise agreements may not extend beyond that of the master franchise agreement.⁴³

³⁵ Integrated Entrepreneurial License, Code Civil ch. 53 art. 910 (Belarus).

³⁶ International Institute For The Unification of Private Law (“UNIDROIT”), Guide to International Franchise Arrangements, Legislation and Regulations Relevant to Franchising (Annex 3 2005), <http://www.unidroit.org/english/guides/2007franchising/country/belarus.htm>.

³⁷ Integrated Entrepreneurial License, Code Civil ch. 53 art. 910 (Belarus).

³⁸ UNIDROIT, Guide to International Franchise Arrangements (Annex 3 2005), <http://www.unidroit.org/english/guides/2007franchising/country/belarus.htm>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

b. Obligations of the Parties

The Belarus franchise law provides for the parties to a franchise agreement to enjoy certain rights and obligations regardless of the terms of the franchise agreement. The franchisor is obligated under the law to: 1) supply the franchisee with “technical and other information”; 2) instruct the franchisee and the franchisee’s employees; and 3) provide the franchisee with the licenses necessary to use the franchisor’s intellectual property and to provide for their registration in the prescribed manner.⁴⁴

The franchisee also has obligations under the Belarus law, which include the requirement to: 1) use the franchisor’s trade name and/or trademark; 2) ensure the quality standards of the goods or services it offers; 3) follow the franchisor’s instructions; 4) provide customers with additional services; 5) not disclose confidential information; 6) enter into the required number of subfranchise agreements in the case of a master franchise; and 7) inform customers that the outlet is a franchise.⁴⁵

The law also identifies certain provisions that a franchisor may include in the franchise agreement, including an obligation upon the franchisor not to grant other persons similar franchises in the franchisee’s territory and also not to itself engage in similar activities in that territory.⁴⁶ The law also includes a few rules regarding the expiration of a franchisee’s protected rights in the territory, and changes to the franchisor’s trade name or company.⁴⁷

c. Franchisor Liability

The Belarus franchise law provides that, regardless of the terms of the franchise agreement, a franchisor is liable for claims filed against its franchisees. In particular, the law states that a franchisor is “secondarily” liable for claims filed against the franchisee if the franchisee does not respect the quality standards for the goods or services it sells.⁴⁸ The franchisor is also jointly and severally liable with the franchisee for claims by third parties with respect to goods the franchisee produces under the franchise agreement that do not meet required quality standards.⁴⁹

2. Disclosure and Registration Requirements

There are no disclosure requirements in Belarus. A franchise agreement must, however, be registered with the Belarus patent authority (the National Centre of Intellectual Property (“NCIP”)). If the franchise agreement is not registered with the NCIP, it will be deemed null and void. If there are any amendments or modifications to the franchise agreement, those must also be registered with the NCIP.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

C. Estonia⁵⁰

Estonia borders the Baltic Sea and Gulf of Finland, between Latvia and Russia. Founded as an independent state in 1918, Estonia was incorporated into the USSR in 1940. Estonia regained its independence in 1991 and joined the European Union in 2004. Estonia has a market-based economy with one of the higher per capita income levels in Central Europe and the Baltic region.⁵¹ Estonia's successive governments have pursued a free market, pro-business economic agenda that has resulted in balanced budgets and low public debt.⁵² Its estimated 2011 GDP is \$27 billion dollars.⁵³

Estonia is a civil law jurisdiction. Franchising is governed by the Law of Obligations Act, which was enacted in 2002.⁵⁴ The following laws regulate commercial activities in Estonia: The Commercial Activities Act (2004); The Economic Activities Register Act (2004); The Consumer Protection Act (2004); The Trademarks Act (2004) and The Competition Act (2001). Franchisors should review these acts to determine their applicability to the franchised concept.

1. Franchise Relationship Law Requirements

a. What is a Franchise?

Under the statute, a franchise is defined as the undertaking of the franchisor to grant the franchisee “a set of rights and information which belongs to the franchisor for use in the economic or professional activities of the franchisee, including the right to the trade mark, commercial identifications and know-how of the franchisor.”⁵⁵ The concept of subfranchising is not addressed.

b. Form and Content of Franchise Agreements

There is no requirement that the franchise agreement be in writing. The statute does not mandate specific terms that must be in franchise agreements.

c. Obligations of the Parties

The Law of Obligations Act requires both the franchisor and franchisee to deal with one another in good faith.⁵⁶ One commentator has stated that “in determining whether a contractual provision is reasonable or if it is a breach of the principle of good faith, the Estonian practice is

⁵⁰ Franchising in the Baltics, Legal Framework of Franchising Development in Estonia, http://www.franchising.lv/new_site/en/legislation_estonia.shtml.

⁵¹ CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Law of Obligations Act 2002 ch. 19 (Estonia).

⁵⁵ *Id.* at art. 375.

⁵⁶ John Sotos, *Recent Trends in Franchise Relationship Laws*, Sotos LLP Blog, Jan. 17, 2012, <http://www.sotoslip.com/wp-content/uploads/2012/01/John-Sotos-Recent-Trends-in-Franchise-Relationship-Laws-IBA-Dubai-2011.pdf>.

to consider the nature of the contractual obligation, the purpose of the agreement, the usages and practices in the relevant field of activity, and any other circumstances.”⁵⁷

Pursuant to the statute, franchisors are obligated to “provide the franchisee with instructions for the exercise of the rights thereof and to provide permanent assistance related thereto to the franchisee.”⁵⁸ Franchisors have the right (but apparently not the obligation) to “check the quality of the goods manufactured or services provided by their franchisees.”⁵⁹ Franchisees are obligated to: 1) use the trade name and service marks of the franchisor; 2) ensure that the quality of the goods manufactured or services provided by the franchisee are the same as those manufactured or provided by the franchisor; 3) follow the instructions of the franchisor “which are directed at the exercise of rights on the same bases and in the same manner as the franchisor”; and 4) provide clients with all additional services which they could expect upon acquiring goods or contracting for services from the franchisor.⁶⁰

d. Termination, Non-renewal and Transfers

The statute does not require the franchisor to permit renewal or transfers, nor does it have specific requirements related to termination.⁶¹

2. Form and Content of Disclosure Documents

There is no disclosure requirement.

3. Registration Requirements

Registration is not required.

D. Georgia⁶²

Georgia has a complicated ancient history of occupying forces and influences, including those of the Persians, Arabs, Mongols, Turks, and Russians. Georgia was incorporated into the Soviet Union in 1921 and regained its independence when the Soviet Union dissolved in 1991. Georgia has made progress on market reforms and democratization since independence, but this progress has been complicated by issues with Russia and certain separatist regions of the country.⁶³ Georgia’s estimated 2011 GDP is \$25 billion dollars.⁶⁴

⁵⁷ *Id.*

⁵⁸ Law of Obligations Act 2002 art. 376 (Estonia).

⁵⁹ *Id.* at art. 378.

⁶⁰ *Id.* at art. 377.

⁶¹ American Bar Association Fall Meeting Paper, *Dublin 2011*, http://www2.americanbar.org/calendar/section-of-international-law-2011-fall-meeting/Meeting%20Materials/Global%20Overview%20of%20Current%20Developments%20in%20the%20Regulation%20of%20the%20Offer%20and%20Sale%20of%20Franchises/Daigle_Global_Overview.pdf.

⁶² The authors wish to thank Sandro Bibilashvili of BGI Advisory Services Georgia in Tbilisi, Georgia for information used in preparing the Georgia portion of this paper.

⁶³ CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook>.

⁶⁴ *Id.*

Georgia's franchise law is part of the Georgia Civil Code, which was adopted on June 26, 1997. Specifically, Book Three, Title One, Part Two, Chapter Seven of the Georgia Civil Code has provisions that address franchising, and those provisions are described below.

1. Franchise Relationship Law Requirements

a. What is a Franchise?

The Georgia law includes a broad definition of a franchise, as follows: "A franchise agreement is a long-term relationship whereby independent enterprises reciprocally undertake, where necessary, to promote the production and marketing of goods and provision of services by performing specific obligations."⁶⁵ This is an expansive definition to say the least, and means that the Georgia franchise law potentially applies to businesses that do not meet the traditional definitional elements of a franchise in the United States and elsewhere.

b. Form and Content of Franchise Agreements

In Georgia, a franchise agreement must be in writing and must include provisions on termination, a description of the franchise system and "other essential clauses."⁶⁶ The law also provides that the term of the franchise agreement is to be determined by the parties, but if the term exceeds ten years, either party is entitled to terminate the agreement subject to a one-year notice; but if neither party terminates, the agreement is automatically extended for two years beyond expiration.⁶⁷ If the franchise agreement expires or is terminated by either party, then "the parties shall try, observing the principles of mutual confidence, to continue the contract on the same or altered terms up until the time the business relationship is actually ended."⁶⁸

c. Obligations of the Parties

Franchisors are required under the Georgia law to provide the franchisee with intellectual property rights, sample products and packaging, and information on the franchise system (including information on the management, production, purchase and marketing of the goods).⁶⁹ Franchisors are also obligated to protect the franchise system from third parties, to develop the system and to support the franchisee by, among other things, providing training.

The franchisee also has obligations under the Georgia law. These obligations include: 1) to conduct the business in good faith; 2) to receive services and purchase goods from the franchisor or its designated suppliers; and 3) pay the franchise fee.⁷⁰ The amount of the franchise fee is calculated by "taking into account the contribution made [by the franchisee]

⁶⁵ Code Civil bk. 3, tit. 1, ch. 7 art. 607 (Georgia).

⁶⁶ *Id.* at art. 611.

⁶⁷ *Id.* at art. 612.

⁶⁸ *Id.*

⁶⁹ *Id.* at art. 608.

⁷⁰ *Id.* at art. 609.

toward the implementation of the system of the franchise.”⁷¹ Both parties have a duty of confidentiality under the law, and may not disclose information learned from the other party even if the franchise agreement is not consummated.⁷²

d. Non-competition and Liability

The Georgia law addresses the scope of the non-competition restrictions that the franchise agreement may include. It provides that a franchisee may be restricted from competing with the franchisor within a certain area following the expiration of the franchise agreement, but only for a period that does not exceed one year.⁷³ If the post-term non-competition restriction “jeopardizes the business of the franchisee,” then the franchisee is entitled to receive appropriate monetary compensation.⁷⁴

The Georgia law provides for general liability to the franchisor for the rights and information to be provided under the franchise agreement.⁷⁵ If the franchisor is negligent and breaches its contractual obligations, the franchisee is entitled to reduce the franchise fee, and the amount of the reduction will be determined by an “independent expert.”⁷⁶

2. Form and Content of Disclosure Documents

In Georgia, both parties are required to “openly and completely” inform each other regarding the circumstances of the franchise, including information about the franchise system, “at the time of execution of the contract.”⁷⁷ The parties are required to communicate the information to each other in good faith.⁷⁸ The Georgia law is silent as to what specifically must be disclosed to a franchisee, other than a complete description of the franchise offered.⁷⁹

⁷¹ *Id.* Sandro Bibilashvili notes that there is no case law to provide interpretation of this provision, and believes that as long as the principles of fairness and good faith are not violated, any fee/royalty amount that the parties agree upon at arms-length should be legal and enforceable in Georgia.

⁷² *Id.* at art. 610.

⁷³ *Id.* at art. 613.

⁷⁴ *Id.*

⁷⁵ *Id.* at art. 614.

⁷⁶ *Id.* at art. 614. In Georgia, most reputable expert opinions that are considered by courts and that are most commonly used by private parties are given by the “National Bureau of Expertise of Georgia,” which Sandro Bibilashvili instructs is a legal entity of public law.

⁷⁷ *Id.* at art. 610. Sandro Bibilashvili believes that Georgian courts would interpret the timing of disclosure requirement to require both parties to have enough time to evaluate and make an informed decision regarding the proposed franchise.

⁷⁸ *Id.* at art. 610

⁷⁹ Sandro Bibilashvili notes that Georgia courts will look to whether the information is sufficient to allow the parties to make an informed decision, and in this respect believes that the disclosure requirements in Georgia do not differ very much from the types of information required in the United States.

3. Registration Requirements

There are no registration requirements in Georgia.

E. Kazakhstan⁸⁰

The territory that is now Kazakhstan had ties with Russia for centuries, and Kazakhstan became a member of the Soviet Union as the Kazakh Soviet Socialist Republic in 1936 (although in 1922 the area that now comprises Kazakhstan was incorporated into the Kyrgyz Autonomous Socialist Soviet Republic, and in 1925 became the Kazak Autonomous Soviet Socialist Republic). Kazakhstan gained its independence in 1991 following the demise of the Soviet Union. It is interesting to note that Kazakhstan's economy is larger than those of all the other Central Asian states principally because of the country's vast natural resources.⁸¹ Kazakhstan's estimated 2011 GDP is \$216.4 billion dollars.⁸²

There are two laws addressing franchising in Kazakhstan: Kazakhstan Law No. 330-II of 24 June 2002 concerning the Integrated Business License (Franchise) ("Law 330"); and the Civil Code of Kazakhstan, Chapter 45 – Integrated Entrepreneurial License (Franchise) (Articles 896-909) ("Kazakhstan Civil Code"). Many of the provisions of these two laws overlap or are similar, but together, they form the rules and regulations that govern franchising in Kazakhstan.

1. Franchise Relationship Law Requirements

a. What is a Franchise?

Article 1 of Law 330 includes definitions for certain franchising-related terms, and defines an "integrated business license (franchise)" as "business activities under which the right-holder of the set of exclusive rights gives it into use on the paid basis to another person."⁸³ It goes on to define the "set of exclusive rights" as "rights to a number of items of intellectual property (the trade mark, the firm name, the service mark, the patent, non-disclosed information, in particular secrets of production (know-how))."⁸⁴ Law 330 and the Kazakhstan Civil Code require that the rights to use know-how and the firm name are transferred from a franchisor to a franchisee, while the transfer of the other rights to use a trademark or service mark, patents, and other intellectual property, is optional.⁸⁵ Law 330 goes on to define other terms, such as the licensor, licensee, broker, and franchise activities.

⁸⁰ The authors wish to thank Vsevolod Markov and Yuri Bolotov of BMF Group LLP in Almaty, Kazakhstan, for information used in preparing the Kazakhstan portion of this paper.

⁸¹ CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/>.

⁸² *Id.*

⁸³ Law No. 330-II, art. 1 (Kazakhstan).

⁸⁴ *Id.*

⁸⁵ As described by Yuri Bolotov.

b. Form and Content of Franchise Agreements

In Kazakhstan, a franchise agreement must be in writing.⁸⁶ Under a franchise agreement, one party is obliged to grant to the other party, in exchange for payment, a set of exclusive rights, which includes the right to use the franchisor's firm's name, protected commercial information, as well as other exclusive rights (such as a trade mark, a service mark, a patent, etc.) in connection with the franchisee's entrepreneurial activities.⁸⁷ The law also discusses the requirements if a franchisee is obligated under the agreement to have an established or defined volume of business.⁸⁸

The Kazakhstan franchise law also prescribes certain restrictive conditions that may (and may not) be included in a franchise agreement.⁸⁹ For example, it provides, among other things, that a franchise agreement may restrict the franchisor from offering similar franchises in the territory, and the franchisee from receiving a license from the franchisor's competitors.⁹⁰ Franchise agreement provisions allowing the franchisor to determine the prices for the products or services of the franchise (or to establish maximum or minimum pricing) are not permitted.⁹¹ Franchise agreements also are not permitted to allow the franchisee to sell products or render services "exclusively to a certain category of buyers (clients), or exclusively to buyers (clients) who are located (reside) on the territory defined in the contract."⁹²

c. Obligations of the Parties

The Kazakhstan franchise law provides for both obligations and rights on the part of franchisors and franchisees. A franchisor's express obligations under the Kazakhstan law are to: 1) transfer to the franchisee technical and commercial documentation and to present other information which is necessary for the franchisee to exercise its rights; 2) carry out training and consulting; and 3) not disclose confidential commercial information received from the franchisee.⁹³ Notably, a franchisor bears secondary liability for claims against the licensee

⁸⁶ Code Civil ch. 45 art. 897; see also Law No. 330 art. 11 (Kazakhstan). Vsevolod Markov notes that under the Law of Kazakhstan on Languages, domestic contracts must be expressed in Kazakh and Russian, and contracts with foreign individuals must be in Kazakh and another language acceptable to the parties. Failure to comply with this rule does not, according to Markov, invalidate a transaction, but he recommends compliance with the rule and, where possible, to translate cross-border transactions into at least Kazakh and English. However, if a franchise agreement is to be registered with the Kazakhstan Ministry of Justice (as noted below), the agreement must be submitted for registration in both the Kazakh and Russian languages.

⁸⁷ Code Civil ch. 45 art. 896; see also Law No. 330 art. 10 (Kazakhstan).

⁸⁸ Code Civil ch. 45 art. 896 (Kazakhstan).

⁸⁹ *Id.* at art. 900.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Law No. 330 art. 15 (Kazakhstan).

relating to claims regarding the quality of the goods and services provided under the franchise agreement.⁹⁴

The franchisee's obligations under the Kazakhstan law are to: 1) use the franchisor's licensed materials in the manner prescribed in the franchise agreement; 2) permit the franchisor to visit/inspect and to provide the documents for the franchisor's supervision; 3) observe all of the franchisor's instructions regarding the use and terms of the exclusive rights; 4) not disclose the franchisor's trade secrets and other confidential information; and 5) inform customers that the business is a franchised business.⁹⁵ A franchisee is also required in Kazakhstan to: 1) not participate in activities of the franchisor's competitors; 2) not disclose any know-how, trade secrets or confidential information upon the expiration of the term of the franchise agreement; 3) make timely payments to the franchisor; 4) undertake any remedies necessary as a result of a franchisor's inspections; 5) not carry out actions with the intent of transferring the set of exclusive rights granted under the franchise agreement; and 6) ensure the quality of the work and goods manufactured and services performed in connection with the franchise agreement.⁹⁶

Franchisors also have certain rights that are prescribed under the Kazakhstan franchise law. These are the right to: 1) supervise the quality of goods (work, services) produced by the franchisee; 2) have preferential purchase rights where the franchisee "alienates . . . its own enterprise"; 3) act as a guarantor or warrantor for the franchisee; 4) conclude other contracts with the franchisee, in particular to act as a lessor; and 5) terminate the franchise agreement on a unilateral basis and collect damages if the franchisee seeks to impermissibly transfer its exclusive rights.⁹⁷

A franchisee's express rights under the Kazakhstan franchise law include the right to: 1) enter into contracts with third parties in connection with the franchise, unless prohibited by the franchise agreement; and 2) enter into other contracts with the franchisor which are provided for by the civil legislation of the Republic of Kazakhstan.⁹⁸

d. Transfers and Termination

With respect to transfers of a franchise agreement, a franchisor or franchisee in Kazakhstan is not permitted to amend or rescind a franchise agreement if the other party wants to transfer to another entity any of the exclusive rights which are a part of the agreement. The transferee under those circumstances must enter into an agreement that grants the rights and obligations relating to the transferred exclusive right.⁹⁹ Kazakhstan law also addresses what happens upon the death of a franchisor (if an individual), and provides that their rights and

⁹⁴ Code Civil ch. 45 art. 901 (Kazakhstan).

⁹⁵ Law No. 330 art. 17 (Kazakhstan).

⁹⁶ *Id.*

⁹⁷ *Id.* at art. 14. With respect to the provision in Article 14(2) regarding a franchisor's "preferential purchase rights" where the licensee alienates its own enterprise, this could be interpreted to provide a franchisor with a statutory right of first refusal for franchisee transfers. Vsevolod Markov acknowledges that it is unclear what this provision addresses and how it would in practice operate.

⁹⁸ *Id.* at art. 16.

⁹⁹ Code Civil ch. 45 art. 909 (Kazakhstan).

obligations are to be transferred to an heir so long as the heir has been “registered as an entrepreneur” within six months of the inheritance or else the franchise agreement is terminated.¹⁰⁰ A trustee is to manage the business during the time period that the heir is being registered as an entrepreneur.¹⁰¹

In Kazakhstan, a party to a franchise agreement with an indefinite duration has the right to terminate the agreement by notifying the other party at least six months in advance, unless the franchise agreement stipulates a longer period for notification.¹⁰²

If, during the term of a franchise agreement, any of the exclusive rights granted to the franchisee expire or are transferred to another party or terminate for other reasons, then the franchise agreement will remain in effect except for the provisions which relate to the expired, transferred or terminated rights.¹⁰³ If this happens, however, the franchisee will have the right, unless the franchise agreement provides otherwise, to require a “commensurate reduction of the remuneration due to the franchisor.”¹⁰⁴

2. Form and Content of Disclosure Documents

The Kazakhstan franchise law is widely considered to have only “relationship” law requirements and no pre-sale disclosure requirement. Franchise practitioners in Kazakhstan have indicated otherwise, however, and indeed Kazakhstan’s franchise law requires the disclosure of certain information before the franchise agreement can be signed. A franchisor is required to provide a prospective franchisee with information on the exclusive or protected rights that are granted under the franchise agreement.¹⁰⁵

The franchisor must also inform the franchisee of the confidential commercial nature of the information provided in connection with the franchise.¹⁰⁶ A prospective franchisee does not have the right to disclose any pre-sale disclosure information without the franchisor’s consent.¹⁰⁷ If any of this information is disclosed, the prospective franchisee is obligated to compensate the franchisor for its losses as a result of this breach, as further mandated according to the civil legislation of Kazakhstan.¹⁰⁸

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at art. 908.

¹⁰³ *Id.* at art. 907.

¹⁰⁴ *Id.*

¹⁰⁵ Law No. 330 art. 18 (Kazakhstan). Vsevolod Markov indicates that a franchisor should provide information in the scope sufficient for a franchisee to make an informed decision whether or not to enter into a franchise agreement.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

3. Registration Requirements

There are no requirements to register franchise documents in Kazakhstan. However, if a franchise agreement grants a franchisee the right to use trademarks or patents or other intellectual property that can be registered, the agreement must be registered with the IP Rights Committee of the Kazakhstan Ministry of Justice.¹⁰⁹ Without this registration, the license of rights will be deemed to be invalid. For purposes of this registration, and in order to avoid registration of the entire franchise agreement, franchisors may elect to prepare and register a separate (short form) license agreement that licenses the relevant intellectual property.

4. Other

a. Subfranchising

Kazakhstan's Civil Code expressly permits subfranchising on the terms agreed upon between the franchisor and franchisee.¹¹⁰ A franchise agreement may require the franchisee to develop, within a defined period of time, a defined number of sublicenses.¹¹¹ In addition, a franchisee bears secondary liability for damages caused to the franchisor as a result of actions of subfranchisees, unless stipulated otherwise in the franchise agreement.¹¹² Just as with franchise agreements, subfranchise agreements licensing trademarks and other intellectual property must be registered with the IP Rights Committee of the Kazakhstan Ministry of Justice.

b. Brokers

The Kazakhstan franchise law contemplates the use of franchise brokers, and expressly allows a broker to act both on its own behalf and for its own risk, or on behalf and for the risk of the franchisor, franchisee and other parties to a franchise agreement.¹¹³ Payments to a franchise broker must be in the form of fixed one-time or periodic payments or in another form that is provided by contract.

F. Kyrgyzstan¹¹⁴

Kyrgyzstan, like its Central Asian neighbor, Kazakhstan, has a proud nomadic tradition. Kyrgyzstan became a part of the Soviet Union in 1936 as the Kyrgyz Soviet Socialist Republic (although the area that now comprises Kyrgyzstan was formally incorporated into the Russian Empire in 1876, became the Kara-Kyrgyz Autonomous Oblast with the Russian SFSR in 1924, and became the Kyrgyz Autonomous Socialist Soviet Republic in 1926). Kyrgyzstan gained its independence in 1991 after the Soviet Union dissolved. Following independence, Kyrgyzstan

¹⁰⁹ As described by Yuri Bolotov.

¹¹⁰ Code Civil ch. 45 art. 902 (Kazakhstan).

¹¹¹ *Id.*

¹¹² *Id.* at art. 904.

¹¹³ Law No. 330 art. 13 (Kazakhstan).

¹¹⁴ The authors wish to thank Stephan Wagner of the Lorenz law firm in Bishkek, Kyrgyzstan for information used in preparing the Kyrgyzstan portion of this paper.

was aggressive in carrying out market reforms, and was the first Commonwealth of Independent States country to be accepted into the World Trade Organization.¹¹⁵ In recent years, and with the exception of 2010, during which there was political unrest, Kyrgyzstan has made significant strides in controlling its fiscal deficit and growing the economy.¹¹⁶ Kyrgyzstan's estimated 2011 GDP is \$13.1 billion dollars.¹¹⁷

Kyrgyzstan is a civil law jurisdiction. Franchising is regulated in Kyrgyzstan under Chapter 44 of the Kyrgyzstan Civil Code, entitled "Complex Business License."¹¹⁸

1. Franchise Relationship Law Requirements

a. What is a Franchise?

Under the Kyrgyzstan Civil Code, a franchise is a contract where "one party (complex licensor) provides another party (complex licensee) with a set of exclusive rights (license set) for a fee, which includes the right to use the firm name of the licensor and protected commercial information, as well as other exclusive rights (trade mark, service mark, patent) provided by the contract, in the licensee's business activities."¹¹⁹

b. Form and Content of Franchise Agreements

A franchise agreement in Kyrgyzstan must be in writing and a failure to comply with this requirement will invalidate the contract.¹²⁰ In addition, the franchise agreement must "provide for the use" of the licensor's "license set, business reputation and commercial experience" in a definite volume (the contract must establish the minimum and/or maximum volume of use).¹²¹ The contract does not need to provide for a specific territory within which the licensee may implement the granted scope of activities.¹²²

The parties to a franchise agreement in Kyrgyzstan can only be commercial organizations and citizens, who are registered as businessmen.¹²³ A franchise agreement can be entered into with or without indication of term (termless contracts are permitted).¹²⁴

¹¹⁵ CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Code Civil ch. 44 art. 866 *et seq.* (Kyrgyzstan).

¹¹⁹ *Id.* at art. 866.1.

¹²⁰ *Id.* at art. 867.

¹²¹ *Id.* at art. 866.2.

¹²² *Id.*

¹²³ *Id.* at art. 866.3.

¹²⁴ *Id.* at art. 866.4.

A franchise agreement may provide for restrictive (exclusive) conditions, in particular: 1) the licensor's obligation to refrain from issuing other similar franchises or conducting independent activities in the territory granted to the licensee; 2) the licensee's obligation to refrain from competing with the licensor in the territory granted under the franchise agreement using the licensor's exclusive rights; 3) the licensee's waiver (termination) of other franchises it may have with the licensor's competitors (or potential competitors); and 4) the licensee's obligation to coordinate the approved location(s) of the business with the licensor as well as the licensee's obligation to decorate the interior and exterior of the premises.¹²⁵

If any of the restrictive conditions of a franchise agreement contradict applicable antitrust legislation, giving consideration to the state of the corresponding market and economic status of the parties, an antitrust agency or any other interested person may render the restrictive conditions of a franchise agreement invalid.¹²⁶ In addition, the restrictive conditions of a franchise agreement can be rendered invalid if: 1) the licensor can determine, or set the minimum or maximum limits, of the prices of the goods to be sold by the licensee or the work (service) performed (granted) by the licensee; or 2) a licensee may sell goods, perform works and grant services only to a definite category of buyers (customers) or only to buyers (customers) located (living) in a territory specified in the contract.¹²⁷

A licensor bears joint and several liability on claims against the licensee for damages caused by the activities carried out by the licensee under the licensor's supervision, unless the licensor can prove that the damage is inflicted by the licensee's default or improper performance under the franchise agreement.¹²⁸

c. Obligations of the Parties

The licensor must transfer to the licensee "technical and commercial documents and provide [him] with other information necessary for the licensee to exercise [his] rights" and must also provide the licensee and its employees with instructions that further detail the granted rights.¹²⁹

A licensee's duties under the Kyrgyz Civil Code are more detailed than those of the licensor. A licensee must perform each of the following: 1) use the licensor's firm name while implementing the activities provided by the contract, in the manner specified in the contract; 2) ensure that the quality of goods produced, services rendered, and works performed under the contract are of equal quality to those produced, rendered or performed directly by the licensor; 3) follow all licensor's instructions and directives, aimed at achieving exact compliance with the nature, manner and conditions of using the licensor's exclusive rights; 4) render all additional services to buyers (customers), which they expect while purchasing (ordering) goods (service, work) directly from the licensor; 5) refrain from revealing licensor's production secrets and other confidential commercial information; 6) issue a stipulated number of sublicenses, if required by

¹²⁵ *Id.* at art. 872.1.

¹²⁶ *Id.*

¹²⁷ *Id.* at art. 872.2.

¹²⁸ *Id.* at art. 873.

¹²⁹ *Id.* at art. 870.

the contract; and 7) inform buyers (customers), in a conspicuous manner, that the licensee uses the licensor's name and marks pursuant to a franchise agreement.¹³⁰

d. Transfers and Termination

The transfer of any rights under a franchise agreement cannot be used as grounds to terminate the contract, and the new licensor (if applicable) must enter into or maintain the contract with respect to the transferred rights.¹³¹ In the event of a licensor's death, the licensor's rights and obligations under the franchise agreement pass to his/her heir so long as the heir "is registered or will register as a businessman (entrepreneur) within six months from the day of commencement of inheritance . . . otherwise, the contract shall be terminated."¹³²

If a franchise agreement does not specify a term, either of the parties may waive (terminate) the contract at any time with six months advance notification to the other party, unless the contract provides for a longer term of notification.¹³³ The franchise agreement will also terminate if the firm name or trademark granted under the franchise agreement is terminated without the substitution of another name.¹³⁴

If, during the term of the franchise agreement, any of the licensor's exclusive rights (trademarks, confidential information, etc.) expire or are terminated, then the franchise agreement will remain effective except for the provisions addressing the terminated right.¹³⁵ In this case, the licensee is entitled to a "commensurate reduction of the remuneration due to the licensor," unless the franchise agreement provides otherwise.¹³⁶

If the licensor changes the firm name (the trademark under which the business operates), the licensee is entitled to demand "annulment of the contract and indemnification of losses."¹³⁷ If the agreement remains in force, the licensee is entitled to demand a commensurate reduction of the remuneration due to the licensor.¹³⁸

2. Disclosure and Registration Requirements

There are no disclosure or registration requirements.

¹³⁰ *Id.* at art. 871.

¹³¹ *Id.* at art. 876.1.

¹³² *Id.* at art. 876.2.

¹³³ *Id.* at art. 875.2.

¹³⁴ *Id.* at art. 875.3.

¹³⁵ *Id.* at art. 878.

¹³⁶ *Id.*

¹³⁷ *Id.* at art. 877.

¹³⁸ *Id.*

3. Sublicensing

Sublicensing is expressly permitted under the Kyrgyzstan Civil Code, which permits a franchise agreement to offer sublicensing rights and also to provide for a sublicense development schedule, with or without a development territory.¹³⁹ A sublicense agreement, however, cannot be entered into for a term that exceeds the underlying franchise agreement.¹⁴⁰ The termination of the franchise agreement granting sublicense rights means that the sublicense agreement also terminates.¹⁴¹ Unless a franchise agreement provides otherwise, if the franchise agreement granting sublicense rights is terminated early, then the licensee's rights and obligations with respect to the sublicensees will transfer to the licensor "unless he refuses to undertake rights and obligations under [the] contract."¹⁴² A licensee bears secondary liability for damage inflicted upon the licensor by the actions of its sublicensees.¹⁴³

G. Lithuania¹⁴⁴

Lithuania borders Latvia, Belarus, Poland and Russia. Lithuania was incorporated into the USSR in 1940. Lithuania regained its independence in 1991 and joined the European Union in 2004.¹⁴⁵ Foreign investment and business support have helped transition Lithuania's economy to a market economy. Hit hard by the 2008 financial crisis, the government launched a campaign to attract foreign investment and to develop export markets leading to an economic recovery.¹⁴⁶ It has an estimated 2011 GDP of \$43.2 billion dollars.¹⁴⁷ There are many international franchises in the travel and car hire, clothing retail and food and beverages sectors.¹⁴⁸

Franchise relationship regulation was introduced on July 1, 2000 after the new version of the Civil Code of the Republic of Lithuania.¹⁴⁹ Franchising in Lithuania is also indirectly regulated by a number of other legislative acts of the Republic of Lithuania. These acts relate to taxation (Law on Profit Tax, Law on Personal Income Tax, Law on Value Added Tax, Law on Tax Administration); unfair competition (Law on Competition and explanatory legislative acts on implementation); and intellectual property protection (Patent Law, Law on Trademarks, Design

¹³⁹ *Id.* at art. 868.1.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at art. 868.2.

¹⁴² *Id.* at art. 868.3.

¹⁴³ *Id.* at art. 868.4.

¹⁴⁴ For an interesting overview of franchising in the Baltics, see Michailovska et al, *Buying a Franchise: Highway to Business Success* (2011), www.aadvice.lt/doc/54-2011-06-21b4bknygaengpdf_

¹⁴⁵ CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/>.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Code Civil ch. XXXVII (Lithuania).

Law, Copyright Law and related rights, etc.).¹⁵⁰ Franchisors should consider the impact of these acts prior to launching a franchise program in the country.

1. **Franchise Relationship Law Requirements**

a. **What is a Franchise?**

The Lithuanian franchise relationship statute defines the “concept of a contract of franchise” as:

Under a contract of franchise, one party (franchiser) shall take an obligation to grant to the other party (franchisee) for remuneration for a certain period or without specifying the period the right to use in the business activity of the franchisee a complex of exclusive rights which belong to the franchiser (right to the firm name, right to the trade or service mark, right to protected commercial (industrial) information, etc.), while the other party shall be obliged to pay for that the remuneration determined in the contract.”¹⁵¹

To break this into its individual parts, a franchise is a contractual relationship in which the franchisor grants a franchisee the right to use a trade mark and access to franchisor “know-how” in exchange for a fee.

Subfranchising is permitted under Lithuanian law.¹⁵² Subfranchise agreements may not be for a term longer than the master franchise agreement. If a master franchise agreement is not valid, the subfranchise agreements that flow from it are also void.¹⁵³ In the event a franchise agreement is terminated, the rights and duties of any subfranchisees “shall” pass to the franchisor if the franchisor agrees to accept the rights and duties under the subfranchise agreement, unless the parties have agreed otherwise.¹⁵⁴

b. **Form and Content of Franchise Agreements**

The statute requires franchise agreements to be in writing to be enforceable.¹⁵⁵ Failure to memorialize the franchise agreement in written form renders the franchise null.¹⁵⁶ Only “enterprises” and “entrepreneurs” may be parties to a franchise agreement.¹⁵⁷ An enterprise is

¹⁵⁰ See, ABA Fall Meeting Paper, *Dublin 2011*, http://www2.americanbar.org/calendar/section-of-international-law-2011-falleeting/Meeting%20Materials/Global%20Overview%20of%20Current%20Developments%20in%20the%20Regulation%20of%20the%20Offer%20and%20Sale%20of%20Franchises/Daigle_Global_Overview.pdf.

¹⁵¹ Code Civil 2000 art. 6.766(1) (Lithuania).

¹⁵² *Id.* at art. 6.768.

¹⁵³ *Id.* at art. 6.766(2).

¹⁵⁴ *Id.* at art. 6.768(4).

¹⁵⁵ *Id.* at art. 6.767(1).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at art. 6.766(3).

a company organized as a legal entity and an entrepreneur is an individual engaged in business activity under the appropriate business license.¹⁵⁸

There are statutory requirements relating to the content of franchise agreements. First, franchise agreements must contain a specific grant detailing the extent and use of the grant of the franchisor's trademarks and franchise system. While the statute states that the franchise agreement "may" define the territory that is being granted to the franchisee, a prudent franchisor ensures that critical business terms are clearly set forth in the franchise agreement, especially in light of the fact that oral franchise agreements are not valid under the law.¹⁵⁹

c. Obligations of the Parties

Under the statute, franchisors are required to: 1) transfer to the franchisee necessary technical and commercial documentation to implement the rights granted to the franchisee (i.e., the know-how); 2) train the franchisee and his employees on the franchise system; 3) issue any licenses required by the contract and ensure their formalization in accordance with the established procedure (such as the right to use the trademark); 4) register the franchise agreement with the Register of Legal Entities; and 5) maintain quality control over "goods produced by the franchisee, and the work performed or services rendered by the franchisee."¹⁶⁰

Franchisees also have specific obligations under the statute. Franchisees must: 1) use the trade and service mark of the franchisor as directed by the franchisor; 2) ensure the quality of the goods produced, work performed or services rendered to conform to the requirements of the franchise agreement; 3) comply with the directions and instructions of the franchisor concerning the use of trademarks, trade dress and any "other conditions or activity specified in the contract of franchise"; 4) provide to customers any additional services which they could reasonably expect in ordering goods or services directly from the franchisor; 5) maintain the confidentiality of any commercial secrets or any other confidential information received from the franchisor; 6) "conclude a contract of sub-franchise in the event of such duty thereof being provided for in the contract of franchise" (i.e., meet development obligations); and 7) inform customers that the franchisee is, in fact, a franchisee.¹⁶¹ Franchisees have a statutory obligation to pay royalties and other fees. These fees may be in a fixed lump sum and/or payable in installments, and may be deducted from the receipts of the franchisee or calculated in any other way specified in the contract.¹⁶²

The parties may mutually agree to restrict rights relating to competition if such restrictions are not prohibited by Lithuania's competition law.¹⁶³ Limitations that violate competition law are void.¹⁶⁴ Provisions that are void under competition law include the

¹⁵⁸ See Michailovska et al, *Buying a Franchise: Highway to Business Success* (2011), p. 54, www.aadvice.lt/doc/54-2011-06-21b4bknygaengpdf.

¹⁵⁹ Code Civil 2000 art. 6.766(2) (Lithuania).

¹⁶⁰ *Id.* at art. 6.770.

¹⁶¹ *Id.* at arts. 6.771, 6.772.

¹⁶² *Id.* at art. 6.769.

¹⁶³ *Id.* at art. 6.772(1).

¹⁶⁴ *Id.* at art. 6.772 *et seq.*

franchisor dictating the price on goods or services sold by the franchisee and any right of the franchisee to sell goods or render services exclusively to a certain category of customers or customers residing on the franchisee's territory.¹⁶⁵ If restrictions negotiated in the franchise agreement comply with competition law, the following limitations of the rights of the parties are permitted: 1) the franchisor may grant other franchisees exclusive rights in the franchisee's territory and may compete directly with the franchisee in the territory; 2) the franchisee may agree to a non-compete; 3) the franchisee may execute licenses with competitors; and 4) the franchisor may dictate the location of the business.¹⁶⁶

d. Termination, Non-renewal and Transfers

Once a franchise is granted, franchisors must renew franchise agreements if the franchisee is in compliance with the franchise agreement at the time of expiration. Further, franchisees have the right to renew on the same terms as the prior franchise agreement.¹⁶⁷ Franchisors may decline to renew a franchisee if the franchisor intends to withdraw from the territory by not granting another franchise relating to the same concept in the territory in the three-year period following expiration. If the franchisor does intend to grant another franchise agreement to a different franchisee, the franchisor is required to offer the current franchisee a new franchise agreement or pay damages as a result of a non-renewal.¹⁶⁸

With respect to termination, parties to a franchise agreement for an "indeterminate term" may terminate the franchise agreement upon six months' notice, "unless a more extended period has been established in the contract."¹⁶⁹ It is not uncommon for franchisees to negotiate a longer termination notice provision, in order to permit them to wind up their business post-notice. If the franchise agreement is for a fixed term, but does not provide for a notice period, the conventional wisdom is that of a thirty-day notice period applies.

Termination may also occur if the franchisee is deprived of the right to the trade name or service mark without a replacement being granted.¹⁷⁰ In the event of a change of the franchisor's trade name or service mark which is the subject matter of the franchise, the franchise will be valid in respect to the new trade name or service mark unless the franchisee demands termination of the contract and damages in compensation. In the event that the contract remains valid, the franchisee will have the right to require commensurate reduction of the remuneration paid to the franchisor unless otherwise provided for in the contract.¹⁷¹

¹⁶⁵ *Id.* This is not to be confused with an exclusive operations territory, which is permitted. Michailovska et al, *Buying a Franchise: Highway to Business Success* (2011), p. 59, www.aadvice.lt/doc/54-2011-06-21b4bknyaengpdf.

¹⁶⁶ *Id.* at art. 6.772, *et seq.*

¹⁶⁷ *Id.* at art. 6.775(1).

¹⁶⁸ *Id.* at art. 6.775(2).

¹⁶⁹ *Id.* at art. 6.776.

¹⁷⁰ *Id.* at art. 6.776.

¹⁷¹ *Id.* at art. 6.778.

In the event of bankruptcy proceedings being started against either the franchisor or the franchisee, the franchise agreement will terminate.¹⁷²

Franchisees are permitted to transfer franchise agreements as part of estate planning. The franchise agreement shall pass to a franchisee's heirs "on condition that he is an entrepreneur and continues the business or starts the business within six months from the date of opening the inheritance. Otherwise, the contract of franchise shall terminate."¹⁷³

2. Form and Content of Disclosure Documents

There is no disclosure requirement.

3. Registration Requirements

In order to enforce franchise and subfranchise agreements against third parties (such as where there is unauthorized trademark usage in the territory) the franchisor must register the franchise agreement with the Register of Legal Entities where the franchisor business is registered. If the franchisor is registered in a foreign jurisdiction, the franchise must be registered with the same register of legal persons where the franchisor is registered. As an example, if a U.S.-based franchisor is registered in the United States with the Delaware Secretary of State, Lithuania requires the franchisor to complete local registration in Delaware.¹⁷⁴

Where the subject matter of the franchise agreement is subject to patent legislation, the franchise agreement must be registered "in accordance with the procedure established by laws in the relevant institution effectuating registration of objects of industrial property rights and the rights thereto."¹⁷⁵ Franchise agreements may be amended; however, all amendments to a franchise agreement must be registered.¹⁷⁶ The termination of a franchise agreement must also be registered.¹⁷⁷

4. Other Issues

a. Joint and Several Liability

One critical issue that franchisors should consider before franchising in Lithuania is that franchisors are jointly and severally liable for the actions of franchisees. As an example, if a customer slipped and fell at a restaurant, the franchisor would be secondarily liable for the customer's damages. This is termed "subsidiary liability" under the statute.¹⁷⁸ Claims brought against a franchisee for the manufacture of goods may also be brought against the franchisor.¹⁷⁹

¹⁷² *Id.* at art. 6.776.

¹⁷³ *Id.* at art. 6.777.

¹⁷⁴ *Id.* at art. 6.767(2).

¹⁷⁵ *Id.* at arts. 6.767(2) and (3).

¹⁷⁶ *Id.* at art. 6.775(2).

¹⁷⁷ *Id.* at art. 6.776.

¹⁷⁸ *Id.* at art. 6.773.

b. Tax Concerns

Lithuania requires that transactions must be at “market price.” This means that the fee for a franchise transfer, or for a franchise application or initial fee must correspond to the real market price of such activity. Given that a franchise consists primarily of intangible assets that may be difficult to value, there may be uncertainty relating to the validity of the fees charged and subsequent inquiry by the government related to those fees. The goal here is to discourage franchisors and franchisees from structuring fees in a manner that would permit either to avoid taxation.¹⁸⁰

H. Macau

Macau is located in East Asia and is bordered by China and the South China Sea. At 28.4 square kilometers, it is smaller than the size of Washington, DC.¹⁸¹ Macau was originally colonized by the Portuguese. In 1987, Macau became the Macau Special Administrative Region (SAR) of the People’s Republic of China. China agreed that Macau would not be subject to China’s political or economic system and that Macau would enjoy a high degree of autonomy in all matters other than foreign affairs and defense.¹⁸² In 2001, Macau opened its casino industry to foreign competition, attracting significant amounts of foreign investment, and transforming Macau into one of the world’s largest gaming centers. This led to a corresponding increase in the number of franchises, particularly in the hotel industry, being established in Macau.¹⁸³ Its estimated 2011 GDP is \$18 billion dollars.¹⁸⁴ Macau’s franchise relationship statute was enacted in 1999.¹⁸⁵

1. Franchise Relationship Law Requirements

a. What is a Franchise?

The Macau statute defines a franchise as “that by which one of the parties, against a direct or indirect payment, grants to the other, in a certain zone and in a stable manner, the right to produce and/or to sell certain goods or services under his entrepreneurial image, according to his know-how, with his technical assistance, and subject to his control.”¹⁸⁶ Subfranchising is permitted, if expressly provided for in the franchise agreement.¹⁸⁷

¹⁷⁹ Michailovska et al, *Buying a Franchise: Highway to Business Success* (2011), p. 58, www.aadvice.lt/doc/54-2011-06-21b4bknygaengpdf.

¹⁸⁰ *Id.*

¹⁸¹ CIA, *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook>.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Code Commercial 1999, Law 6 2000, Decree-Law no. 40/99/M 1999 (Macau SAR P.R.C.).

¹⁸⁶ Code Commercial 1999 art. 679 (Macau).

¹⁸⁷ *Id.* at art. 659.

b. Form and Content of Franchise Agreements

Franchise agreements must be in writing.¹⁸⁸ Franchise agreements must be for a minimum term of three years. If the franchise agreement is silent with respect to term, the contract is presumed to last for an indeterminate term.¹⁸⁹ Under the statute, the parties may not “manufacture nor sell goods nor render services in competition with those of the franchisor, nor can the latter, directly or indirectly, compete with the former, except if there is a written agreement to the contrary.”¹⁹⁰ Accordingly, careful detail to the parties’ rights (or lack thereof) should be clearly set forth in the franchise agreement. A franchisor cannot, directly or indirectly, forbid a franchisee from freely choosing the equipment, the installations and the suppliers of goods or services to be used in the assembly or in the functioning of the franchise, except to the strict extent to which it is necessary to protect the franchisor’s industrial and intellectual property rights or to maintain the common identity and reputation of the franchise network.¹⁹¹

c. Obligations of the Parties

Franchisors have several obligations under the statute, including the obligation to act in good faith in the performance of their duties under the franchise agreement.¹⁹² Many of the obligations are relatively standard, including the requirement that the franchisor: 1) grant the franchisee the right to use the franchisor’s industrial and intellectual property rights and other elements that identify the franchise; 2) ensure peaceful enjoyment of the industrial and intellectual property rights authorized, and of the know-how provided to the franchisee; 3) provide training; 4) supply goods necessary to run the franchise; and 5) supervise the franchise system by verifying the performance of all system franchisees to ensure the common identity and reputation of the franchise system.¹⁹³ A franchisor is further obliged to “timely” inform a franchisee of any and all alterations introduced in the composition and presentation of the goods, in the conditions of sale, or in the rendering of the service, or any others concerning the running of the franchise.¹⁹⁴

There are also a number of more atypical obligations, including the requirement that a franchisor: 1) ensure the constant updating of know-how; 2) ensure the advertising of the franchise network at regional and international levels; and 3) compensate the franchisee for the obligation of non-competition after termination of the contract.¹⁹⁵ Franchisors are further obligated to “adequately compensate the franchisee for new experience gained, in accordance

¹⁸⁸ *Id.* at art. 681.

¹⁸⁹ *Id.* at art. 659.

¹⁹⁰ *Id.* at art. 683.

¹⁹¹ *Id.* at art. 689.

¹⁹² *Id.* at art. 686.

¹⁹³ *Id.* at arts. 687, 689.

¹⁹⁴ *Id.* at art. 688.

¹⁹⁵ *Id.* at art. 687.

with article 697, in the running of the franchise.”¹⁹⁶ In other words, franchisors must pay for franchisee-driven system innovation.

Franchisees also have an obligation to act in good faith during the course of the franchise relationship and “should watch over the maintenance of the identity, image and good reputation of the franchise and develop adequate activities in order to fully achieve the contractual aim.”¹⁹⁷ In addition, franchisees are required to:

- 1) pay fees;
- 2) use the franchisor’s trade names and service marks;
- 3) follow the instructions of the franchisor regarding the equipment and the uniform presentation of the premises of the franchise;
- 4) produce, sell, and use goods that satisfy the minimum objective quality specifications set by the franchisor;
- 5) not change the location of the premises without franchisor consent;¹⁹⁸
- 6) not use the know-how for purposes other than running the franchise, nor disclose its content to third parties, without franchisor consent;¹⁹⁹
- 7) communicate to the franchisor any new experience gained in running the franchise that amounts to an improvement to its conditions of functioning and efficiency, as well as to grant both authorization to use such know-how and the right to allow its use by the other franchisees”;²⁰⁰
- 8) attend training organized by the franchisor, with the frequency required in the franchise agreement;²⁰¹
- 9) obtain the franchisor’s approval prior to the use of any advertising; and²⁰²
- 10) inform the franchisor of any breach to the industrial and intellectual property rights that are the object of the franchise, which may come to his knowledge, and take action, or support the franchisor, in any judicial proceedings against the infringer.²⁰³

¹⁹⁶ *Id.* at art. 692.

¹⁹⁷ *Id.* at art. 694.

¹⁹⁸ *Id.* at art. 695.

¹⁹⁹ *Id.* at art. 696.

²⁰⁰ *Id.* at art. 697.

²⁰¹ *Id.* at art. 698.

²⁰² *Id.* at art. 699.

²⁰³ *Id.* at art. 700.

d. Termination, Non-renewal and Transfers

With respect to transfers, franchisors may refuse to permit transfers if the transferee does not meet the franchisor's standards for new franchisees or does not offer sufficient guarantees as to performance.²⁰⁴ Further, the franchisor, or a third party indicated by him, has a right of first refusal in the event of the proposed transfer of the franchise.²⁰⁵ Franchise agreements do not automatically terminate as a result of the death of the franchisee or, in the case of a corporation, by its dissolution, if its successor continues the operation of the franchise. Franchisors may subject the transfer to the condition of successful attendance by the transferee at the training program which new franchisees are required to complete.²⁰⁶

Termination of a franchising contract is regulated, with the necessary adaptations, by the provisions on termination of the commercial concession contract, in all respects not especially provided for in the statute.²⁰⁷ As detailed in Section II above, if the franchisor does not terminate the franchise agreement within 30 days of the default, it may waive its right to terminate.

If a franchise agreement is terminated by the franchisor for a reason other than default of the franchisee, the franchisor is required either to repurchase goods not sold by the end of the term, for the price at which they were sold to the franchisee, or allow the franchisee to continue to use the industrial or intellectual property rights until such goods are sold. Expenses related to promotional activities and advertising continue beyond termination of the franchise agreement.²⁰⁸

2. Form and Content of Disclosure Documents

Macau has a robust franchise disclosure statute. Macau's disclosure statute requires franchisors to provide a written disclosure document with an "adequate advance," an undefined term. The conventional wisdom is to follow a thirty-day waiting period as required by the Chinese franchise legislation upon which the statute is based.²⁰⁹ The disclosure document must contain "complete and truthful information" and adequate for the franchisee to make a "balanced and informed assessment of the advantages and disadvantages of concluding the contract."²¹⁰

The law requires the following disclosures:

- a) the identification of the franchisor;

²⁰⁴ *Id.* at art. 672.

²⁰⁵ *Id.* at art. 703.

²⁰⁶ *Id.* at art. 705.

²⁰⁷ *Id.* at art. 704.

²⁰⁸ *Id.* at arts. 704, 707.

²⁰⁹ S. Giles, A. Loewinger and S. Sakr, *Go East Young Franchisor: Franchising in the Asia-Pacific Region*, American Bar Association, 34th Forum on Franchising (2011) (citing www.chinabusinesslaw.com.blogspot/).

²¹⁰ Code Commercial 1999 art. 680(1) (Macau).

- b) the franchisor's annual accounts for the last two accounting periods;
- c) judicial proceedings in which the franchisor, the holders of trademarks, patents and other industrial or intellectual property rights related to the franchise are or have been involved, as well as their subfranchisors, which may directly or indirectly come to affect or render impossible the functioning of the franchise;
- d) a detailed description of the franchise;
- e) the profile of the ideal franchisee regarding previous experience, level of education and other characteristics that compulsorily or preferably he must have;
- f) the necessity and extent of the franchisee's personal and direct participation in the exercise of the franchise;
- g) the specifications as to the estimated sum of the initial investment needed for acquisition, installation and entry into functioning of the franchise;
- h) the value of the periodic payments and other amounts to be paid by the franchisee to the franchisor or to third parties indicated by him, specifying the respective bases of calculation and what these remunerate, or the purpose for which they are destined;
- i) the composition of the franchise network, lists of franchisees, subfranchisees and subfranchisors of the network, as well as of those who have left the network in the last 12 months;
- j) the profitability of the franchisees' enterprises and the incidence of bankruptcies;
- k) the professional experience gained, his know-how and entrepreneurial methods; and
- l) any services that the franchisor obliges himself to render to the franchisee for the duration of the contract.²¹¹

In addition, franchisors are required to provide copies of the form franchise agreement and all documents the franchisee is required to execute prior to or in conjunction with the franchise agreements.²¹² Failure to properly disclose a franchisee candidate “grants the franchisee the right to demand annulment of the contract.”²¹³

3. Registration Requirements

There is no registration requirement.

²¹¹ *Id.*

²¹² *Id.* at art. 680(2).

²¹³ *Id.* at art. 680(3).

I. Moldova

Formerly part of Romania, Moldova was incorporated into the former Soviet Union at the end of World War II. While Moldova has been independent since 1991, Russian forces remain in the eastern part of the country where local residents have proclaimed a "Transnistria" republic. Moldova has showed signs of political instability, with various political factions unable to gain enough votes to elect a president.²¹⁴ Moldova experienced significant political uncertainty in 2009, holding two general elections, each of which failed to adopt a coalition government. A government was finally formed in January 2011 and its estimated 2011 GDP is \$11.93 billion dollars.²¹⁵ Two statutes govern franchising: "*The Law of the Republic of Moldova on Franchising*" No. 1335 of 1 January 1997, and Chapter XXI of the 2003 Civil Code.

1. Franchise Relationship Law Requirements

a. What is a Franchise?

A franchise is a contract by which "independent enterprises" agree to contribute reciprocally to distribute the goods and services.²¹⁶

b. Form and Content of Franchise Agreements

Franchise agreements must be in writing.²¹⁷ Either the franchisor or franchisee may enter into the franchise agreement "at the suggestion" of the other party. If the term of the franchise agreement is not specified in the franchise agreement and it exceeds ten years, either party may terminate on one year's advance notice. If the termination right is not exercised, the contract is renewed in two-year increments.

The franchise agreement must include provisions detailing:

- a) the parties to the agreement;
- b) the type, field [of activity] and the name of the business;
- c) the amount and terms of the payments (initial fee, royalty, advertisement fees);
- d) the rights and obligations of the parties, including rights and obligations after the end of the agreement;
- e) the franchisor's duty to help the franchisee;
- f) the liability of the parties for non-performance of the agreement;
- g) a dispute resolution clause;

²¹⁴ CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook>.

²¹⁵ *Id.*

²¹⁶ Code Civil 2003 article 1172 (Republic of Moldova).

²¹⁷ *Id.* at art. 1172.

- h) the territory in which the trade mark is going to be used;
- i) the term of the agreement and conditions when its provisions can be changed, when the agreement can be extended or terminated;
- j) the place of residence of the parties, their bank accounts and their signatures; and
- k) other conditions required by the parties which are in conformity with the legislation.²¹⁸

c. Obligations of the Parties

Under Moldovian law, the franchisor is obligated to: 1) transfer to the franchisee intellectual property rights to operate the franchise; 2) protect the franchise program from the intervention of third parties; 3) update the program continuously; and 4) support the franchisee in his activity by way of training, and information.²¹⁹ The franchisor is responsible for all the rights it grants, i.e., it must have registered the trade marks, etc. The statute also provides for a right of the franchisee to reduce the amount of money to be paid to the franchisor if the rights do not exist or if the franchisor does not perform its obligations.²²⁰

Franchisees are required to pay royalties, follow the business format and to buy the goods and services required from the franchisor or a person indicated by the franchisor.²²¹ Both parties are required to keep commercial secrets confidential, and each of the parties must inform the other of “all circumstances related to the franchise in question” and have a general obligation to deal in good faith with each other.²²²

d. Termination, Non-renewal and Transfers

Franchise agreements may be terminated: 1) if the parties agree; 2) upon contract breach; 3) upon bankruptcy; 4) if the Court declares the formation documents invalid; 5) upon the death of the responsible person who represented the parties at the signing of the agreement; or 6) in other circumstances or situations as agreed by the parties or prescribed by law.²²³ Franchise agreements must contain a dispute resolution clause.²²⁴ Jurisdiction lies with the “economic courts” which may be international or by commercial arbitration.²²⁵

²¹⁸ Law No. 1335 with Respect to Franchising 1997 art. 9 (Republic of Moldova).

²¹⁹ Code Civil 2003 art. 1173 (Republic of Moldova).

²²⁰ *Id.* at art. 1178.

²²¹ *Id.* at art. 1174.

²²² *Id.* at arts. 1175, 1177.

²²³ Law No. 1335 with Respect to Franchising 1997 art. 10(2) (Republic of Moldova).

²²⁴ *Id.* at art. 9(2)(g).

²²⁵ *Id.* at art. 16(6).

2. Form and Content of Disclosure Documents

Franchisors must provide the following information to the franchisee:

- 1) the business plan specifying the provision of goods or services;
- 2) the parameters of the production process;
- 3) remuneration of employees;
- 4) anticipated income;
- 5) the amount and purpose of additional investments; and
- 6) any other clauses requested by the franchisor or franchisee.²²⁶

3. Registration Requirements

The franchise agreement must be registered with the Intellectual Property State Agency for the Protection of Industrial Property in order to be enforceable.²²⁷

IV. CONCLUSION

While this paper has outlined the franchise-specific laws in certain less-frequented jurisdictions that regulate franchising – it is candidly, and for the reasons noted above, a limited primer on how to franchise in these jurisdictions. This is a snapshot of what we know, based on a review of the statutes that have been translated into English, other sources, and limited local counsel input. As noted above, reviewing a jurisdiction's franchise law should be the first step in understanding the general requirements, but nothing is as valuable as local counsel guidance based on previous transactions and experience.

In many less-frequented jurisdictions, even local counsel guidance, however, can be of limited practical value. In some cases, even the quintessential experts on franchising in the country have no practical experience with the application of the franchise law. In other cases, even if local counsel has experience with franchising, there are no court or tribunal decisions, prior experiences, or other precedents to draw upon in interpreting how the franchise law will apply and/or how a franchise agreement should be prepared. Being an early mover in a market means there are fewer anecdotal examples or acquired best practices from other franchisor experiences upon which to draw. This combination often leaves a franchisor considering entering into the market with a dilemma in the sense that there is additional risk associated with the transaction.

Nevertheless, less-frequented markets have a lot of potential upside. They may present an opportunity for franchisors looking to expand their international presence in markets thus far untouched by competitors. Obviously finding the right franchisee(s) is critical, but this is true of any market. By gaining a foothold in these less-frequented markets, franchisors can blaze the

²²⁶ *Id.* at art. 8(1-2).

²²⁷ *Id.* at art. 9(4).

path to create critical mass in a new market unencumbered (or perhaps less encumbered) by the pressures of the marketplace. Ultimately, there can be unexpected benefits that come with planting the flag in new terrain, but those benefits do not come without minding the risks.

BIOGRAPHIES

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Michael Laidhold is a partner at Plave Koch PLC in Reston, Virginia. He focuses his practice on domestic and international franchising, licensing, general dealership and distribution matters. Michael works with clients to structure new franchise programs and restructure existing franchise programs; draft and negotiate franchise, master franchise, licensing, development and distribution agreements, asset purchase agreements, and related commercial contracts; counsel clients with respect to compliance with state, federal, and international regulatory issues; and provide advice with respect to franchise, license, and dealership and distribution relationships. He has authored and co-authored several articles on branding, licensing, franchising, and distribution issues, and spoken on those topics at industry seminars.

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