



# Franchise

in 30 jurisdictions worldwide

Contributing editor: Philip F Zeidman

# 2012



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**Franchise 2012**  
Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910  
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2011

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ISSN 1752-3338

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Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112

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# Romania

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## Overview

### 1 What forms of business entities are relevant to the typical franchisor?

As a general principle, any form of business entity can be franchised. However, the typical franchisor would most likely use the form of a limited liability company (SRL) or a joint-stock company (SA).

The SRL is the most attractive business vehicle in Romania for both domestic and foreign prospectors, by virtue of its comparably low administrative, reporting and capital requirements and management flexibility.

The SA is the most complex form of business entity in Romania. Its advantages are the possibility of listing, as well as being entitled to perform any type of activity whatsoever (including banking and insurance, which cannot be undertaken by SRLs). On the downside, SAs require more intricate management, administrative and reporting formalities.

### 2 What laws and agencies govern the formation of business entities?

The formation and activity of business entities are sanctioned by Company Law No. 31/1990 and Trade Registry Law No. 26/1990.

Business entities are registered with the Trade Registry Office.

### 3 Provide an overview of the requirements for forming and maintaining a business entity.

A business entity gains legal personality upon registration with the Trade Registry. Registration formalities depend on the legal form of the business.

An SRL may be formed by a minimum of one shareholder and a maximum of 50. The shareholders may include individuals and business entities. A person, either natural or legal, cannot be the sole shareholder of more than one SRL. Moreover, an SRL cannot have as its sole shareholder an entity with a sole shareholder.

The shareholder liability is limited to the amount subscribed as participation to the company's share capital. The share capital of an SRL must be at least 200 lei, divided into shares with a minimum nominal value of 10 lei each. An SRL is managed by one or more directors who may have full or limited powers and who may be either Romanian or foreign nationals. There is no distinction between Romanian or foreign shareholders.

To register an SRL with the Romanian Trade Registry a registration application must be filed together with the following documents, inter alia:

- the company's articles of incorporation; proof of availability of the company name (standard form);
- proof regarding the registered seat;
- copies of ID or passports of the shareholders or directors and their notarised signature specimens;
- proof of capital contributions;
- standard affidavits by the shareholders, directors and auditors; and

- proof of payment of the appropriate duties and fees (stamp duties, registration fees, the Official Gazette publishing fee).

Foreign shareholders shall submit a notarised affidavit stating they are not fiscally registered in Romania and have no debts towards the Romanian state.

If a shareholder is a legal entity, additional documents are required:

- registration documents;
- a letter of good standing issued by their bank;
- the statutory decision for the establishment of the new company and for the appointment of a legal representative; and
- the power of attorney granted to the legal representative.

For VAT payment purposes, the company will fill in an annex to the registration application.

All foreign documents shall be apostilled and translated into Romanian by a sworn translator.

An SA requires a minimum of two shareholders, which may be individuals or legal entities. There is no maximum limit.

The minimum required capital is the equivalent of €25,000 (approximately 90,000 lei). The minimum par value of one share is 0.1 lei.

An SA may be managed by one or more directors or an executive board and a supervisory board.

If an SA is managed by directors, the number of such directors should always be odd. If there is more than one director, they may form a board of directors. Certain joint-stock companies which, pursuant to special laws, are subject to mandatory financial auditing, are managed by at least three directors.

If an SA is managed by an executive board and a supervisory board, the executive board manages the company and reports to the supervisory board. The supervisory board monitors the activity of the executive board and reports to the general meeting of shareholders.

SAs should have at least three internal auditors and an alternate auditor, unless the articles of incorporation provide for a higher number. At all times, the number of internal auditors shall be odd. Certain SAs that, pursuant to special laws, are subject to mandatory financial auditing – as well as SAs managed by executive and supervisory boards – shall be audited by both internal and external auditors, either natural or legal persons. The external auditors control the activity of internal auditors and perform the external auditing. The internal auditors organise the internal audit in compliance with the guidelines provided by the Chamber of Financial Auditors in Romania.

The registration procedure and documents are more or less similar to the ones required for the registration of an SRL, with the main exception that only 30 per cent of the share capital has to have been paid up upon incorporation, while the remaining 70 per cent is to be paid within either 12 months or two years depending on the nature of contributions (namely, in cash or in kind, respectively).

The Trade Registry will issue the registration certificate within six working days of the submission of the complete registration file. The certificate will bear the registration number and the sole registration code assigned by the Ministry of Finance. Fiscal registration of a company is done by the Ministry of Finance upon request by the Trade Registry.

Overall registration costs amount to approximately 600 lei, exclusive of notary public and translation fees.

When franchising in Romania, a franchisor must be the holder (namely, either owner or holder of rights) of the relevant intellectual or industrial property right, and must register it with the Romanian State Office for Inventions and Trademarks.

**4** What restrictions apply to foreign business entities and foreign investment?

Foreign business entities and foreign investment are not subject to restrictions, with the exceptions of direct land ownership and certain public interest areas (for example, mining, air and railway transportation and energy).

**5** Briefly describe the aspects of the tax system relevant to franchisors. How are foreign businesses and individuals taxed?

Romanian tax law does not discriminate between franchising and other business activities. Romanian franchisors, like any other business, are subject to income tax at a flat rate of 16 per cent applicable to both legal entities and natural persons, and VAT of 24 per cent.

A foreign entity can be subject to taxation when establishing a branch, a subsidiary or a representative office, or by becoming subject to withholding tax on its Romania-sourced income.

Unless a double tax treaty is in place, non-resident business entities are subject to 16 per cent withholding tax on revenues derived from Romania, such as:

- royalties, interest, dividends, and revenues from services performed in Romania, and revenues obtained from management and consultancy services, irrespective of where the services are performed;
- commissions; and
- revenues derived from liquidation of a Romanian legal entity.

**6** Are there any relevant labour and employment considerations for typical franchisors? What is the risk that a franchisee or employees of a franchisee could be deemed employees of the franchisor? What can be done to reduce this risk?

There are no labour and employment considerations relevant to the typical franchisor; therefore, the risk that a franchisee or employees of a franchisee could be deemed employees of the franchisor is practically nonexistent.

Franchise Law No. 79/1998 (the Franchise Law) explicitly stipulates that it is an obligation of the franchisor to ensure that the franchisee, by means of adequate publicity, represents itself as a financially independent entity.

**7** How are trademarks and know-how protected?

The Romanian legal framework for the protection of trademarks is similar to that of other EU member states. Trademark protection is acquired by registration with the Romanian State Office for Inventions and Trademarks (OSIM) under the provisions of the Trademarks and Geographical Indications Law No. 84/1998 (the Trademarks Law). The Trademarks Law sets forth the requirements to register and have a trademark protected both locally and at European level. Following Romania's accession to the EU, virtually all community trademarks previously registered at the EU level are protected in Romania. Nonetheless, trademarks previously registered only at the Romanian national level are not protected across the EU countries unless separately registered. Trademarks under the Madrid System enjoy

protection, provided the corresponding indication is in place.

Trademarks can be registered in Romania provided that:

- they are distinctive (namely, the trademark must be capable of identifying a product or a service in a manner that should allow consumers to recognise and acknowledge it as such);
- they are available (namely, the trademark does not infringe prior intellectual property rights);
- they are lawful (namely, the trademark does not comprise elements that are contrary to public order and morale, does not bear false or deceiving indications, or defamatory signs to the representative symbols of the state, to international organisations or things having the value of universal symbols); and
- in the case of logos, they can be graphically represented (namely, the symbol chosen to become a trademark must be fit for graphic representation by full lines, colour or design).

The registration of a trademark with OSIM grants its owner protection of the right to exclusive use for 10 years as of the date of the application (submission of complete documentation and fees). Registration is renewable indefinitely. The rights deriving from a registered individual trademark may be transferred in whole or in part.

Well known trademarks (namely, such trademarks that are widely recognised among consumers) enjoy protection prior to or even in the absence of registration.

Trademark licences are also subject to registration with OSIM.

Know-how is defined according to the Franchise Law as the set of formulae, technical details, documents, drawings and models, recipes, procedures, and other similar elements contributing to the manufacturing and marketing of a product. While some of the above elements may enjoy stand-alone protection under intellectual property laws or if registered with the Romanian Copyright Office or OSIM, know-how per se is protected under the Franchise Law, which stipulates the non-disclosure obligation of the franchisee during both contractual and post-contractual relations. Furthermore, know-how may also be protected on grounds of fair competition regulations: that is, it enjoys protection as a 'business secret'.

Another means of protection is provided by the Romanian State Office for Inventions and Trademarks, through a service entitled the 'Idea Envelope'. This service is a mechanism for the safe storage and protection of works and creative ideas that do not explicitly benefit from protection under the laws in force.

**8** What are the relevant aspects of the real estate market and real estate law?

While there are no restrictions regarding real estate ownership in the case of domestic franchisors, whether foreign-owned or not, foreign individuals and entities may acquire land ownership depending on their place of residence, citizenship, and the nature of land to be purchased. The law differentiates among several classes of foreign nationals as follows:

- Romanian residents who are citizens or entrepreneurs of a member state of the EU may acquire land ownership in the same manner and under the same conditions as Romanian citizens;
- Romanian non-residents who are citizens or entrepreneurs of a member state of the EU may acquire land ownership as of five years since Romania's accession to the EU for residential land and seven years in the case of farmland or forest; and
- all other foreign citizens or entrepreneurs may acquire land ownership only when relevant bilateral international treaties between Romania and the foreign citizen's state are in place.

In respect of building structures, foreign citizens and entities may freely acquire ownership, whereas for the appurtenant land only the right of use is transferable.

Foreign investors may enjoy the benefits of using and developing land under different legal mechanisms such as leases, free-use agreements or concessions.

**Laws and agencies that regulate the offer and sale of franchises****9** What is the legal definition of a franchise?

A franchise is defined in article 1(a) of the Franchise Law as: ‘a market system based on the continuous flow of cooperation between financially independent natural or legal persons, under which the party called the franchisor grants to the other party, called the beneficiary, the exploitation or development rights in a business enterprise, product, technology or service.’

**10** Which laws and government agencies regulate the offer and sale of franchises?

The offer and sale of franchises is regulated in the Franchise Law. There is no government agency with specific authority over the offer and sale of franchises. Different aspects pertinent to franchise, such as competition (and especially distribution), are regulated by an autonomous administrative body, namely the Competition Council.

**11** Describe the relevant requirements of these laws and agencies.

The Franchise Law regulates the pre-contractual, contractual and post-contractual relationship between franchisor and franchisee.

‘Franchisor’ is construed to mean any business entity:

- holding the rights in a trademark and exercising such rights for a period of at least the duration of the franchising agreement;
- granting the right to exploit or develop a business enterprise, product, technology or service to a beneficiary;
- providing the beneficiary with appropriate initial training to use the trademark; and
- employing its own staff and financial resources in trademark promotion, research and innovation, so as to ensure product development and viability.

To conclude a franchise agreement in Romania, the franchisor must have previously operated the relevant business for a reasonable time period, allowing for the acquisition of the know-how to be subsequently transferred under a franchise agreement.

In the pre-contractual phase, the franchisor is obliged to provide prospective franchisees with accurate information regarding the business so as to enable them to make an informed decision (see question 15).

The franchise agreement will necessarily comprise clauses indicating: the object of the agreement; the rights and obligations of the parties; the financial terms of contract; the duration of the agreement; and the terms of amendment, extension and termination.

The Franchise Law stipulates the minimum obligations of the franchisor, as shown in the franchisor definition above. The obligations of the beneficiary are to develop the franchise network in a manner consistent with the franchisor’s concept; to provide the franchisor with all information relevant to their performance; and to refrain from disclosing the know-how, both during and after expiry of the franchise agreement.

Further, the franchise agreement will have to comply with the following principles:

- the duration of the agreement shall be so established as to allow the franchisee to redeem its franchise-related investment;
- if the agreement does not have an automatic termination upon expiry clause, the franchisor shall give sufficient notice to the beneficiary as to their intention of not renewing the agreement upon expiry;
- in any event, the termination clause shall clearly indicate such circumstances as may determine termination without prior notice;
- the agreement shall explicitly state the terms for assigning contractual rights, and especially for appointing a successor;

- the agreement shall stipulate a pre-emption right, should the franchise network development so require;
- the agreement shall incorporate a non-compete clause for the protection of know-how; and
- the beneficiary’s financial obligations shall be explicitly determined, so as to foster achievement of common goals.

Another set of rules governs exclusive franchising, namely:

- the exclusivity fee shall be proportional with and added to the entry fee, if any;
- if no entry fee is applied, the franchise agreement shall indicate how the exclusivity fee is to be reimbursed in the case of termination;
- the exclusivity fee may be used to cover part of the franchise implementation costs or to delimitate the exclusive territory or the shared know-how;
- the exclusivity agreement will necessarily comprise a termination clause convenient for both the parties; and
- the duration of exclusivity shall be determined by the specific features of each franchise.

With regard to post-contractual relations between franchisor and franchisee, fair competition rules are applicable.

Romanian Competition Law No. 21/1996 transposes the European competition rules for the segment relevant to franchising.

**12** What are the exemptions and exclusions from any franchise laws and regulations?

The Romanian legal provisions on franchise include neither exemptions nor exclusions.

**13** Does any law or regulation create a requirement that must be met before a franchisor may offer franchises?

The Franchise Law requires that a franchisor has to have operated the relevant business and to have held and exercised rights in the relevant trademark for a period of time no shorter than the duration for which the franchise agreement is to be concluded (see question 11).

**14** In the case of a sub-franchising structure, who must make pre-sale disclosures to sub-franchisees? If the sub-franchisor must provide disclosure, what must be disclosed concerning the franchisor and the contractual or other relationship between the franchisor and the sub-franchisor?

In the case of a sub-franchising structure, the information to be disclosed should be such as to enable the sub-franchisee to make an informed decision about the business. The exact content of such information and the party that will disclose it (the franchisor or the sub-franchisor) is for the parties to decide.

**15** What is the compliance procedure for making pre-contractual disclosure in your country? How often must the disclosures be updated?

The Franchise Law makes no reference to the disclosure procedure, to the form that the disclosure document should take, or to the frequency of updating.

The disclosure document, whatever the form, must be submitted before the franchisee undertakes any legal obligations with respect to the proposed business, the purpose thereof being that of enabling the franchisee to make an informed decision regarding whether or not to enter into the franchise relationship, as well as to calculate the prospected result and develop their financial plan.

It is common practice for disclosure to be updated upon renewal of contract.

**16** What information must the disclosure document contain?

The Franchise Law stipulates that disclosure must include, as a minimum requirement:

- a description of the franchisor's experience in the proposed business;
- information on the financial conditions of the franchise agreement (ie the entry fee and royalties to the franchise network);
- the extent of the exclusivity, if any;
- information on the duration, renewal conditions and termination; and
- assignment of the franchise agreement.

In practice, additional information is usually provided to the extent that such other information is of interest to the franchisee in making its business decision; such disclosure items are commonly the ones included in the US Uniform Franchise Offering Circular.

**17** Is there any obligation for continuing disclosure?

The Franchise Law does not expressly provide for continuing disclosure, but in practice, disclosure is updated upon the renewal of contract (see question 15).

Continuous disclosure may be contractually rendered compulsory by the parties to a franchise agreement. Independently, disclosure of certain events affecting or potentially affecting the contractual balance or the franchise network may be required by virtue of good faith and fair dealing.

**18** How do the relevant government agencies enforce the disclosure requirements?

The Franchise Law mentions no sanctions for failure to provide relevant information of this nature; nonetheless, and in the absence of relevant government agencies, such requirements may be enforced by the courts.

**19** What actions can franchisees take to obtain relief for violations of disclosure requirements? What are the legal remedies for such violations? How are damages calculated? If the franchisee can cancel or rescind the franchise contract, is the franchisee also entitled to reimbursement or damages?

There are no special actions related to relief for violations of disclosure requirements. The franchisee may bring a suit against the franchisor for damages caused by non-disclosure or incomplete or inaccurate disclosure, in violation of both the Franchise Law and the general contractual law principle of good faith.

Damages are calculated according to the mechanism agreed in the franchise contract and, in the absence of a mechanism, on the basis of the damage incurred to the franchisee as proven in court.

In theory, criminal liability for misrepresentation is also possible.

**20** In the case of sub-franchising, how is liability for disclosure violations shared between franchisor and sub-franchisor? Are individual officers, directors and employees of the franchisor or the sub-franchisor exposed to liability? If so, what liability?

Either the franchisor or the sub-franchisor may be jointly or severally liable for disclosure violations, according to the relevant contractual clause regarding disclosure.

Directors and employees may also be exposed to liability for disclosure violations under both the provisions of their labour contract and obligations resulting from the Franchise Law.

**21** In addition to any laws or government agencies that specifically regulate offering and selling franchises, what are the general principles of law that affect the offer and sale of franchises? What other regulations or government agencies or industry codes of conduct may affect the offer and sale of franchises?

Aside from the specific requirements of the Franchise Law (see question 11) and the Competition Council, no other regulations and government agencies affect the offer and sale of franchises.

Nevertheless, franchising is subject to the general principles of contract and commercial law, as well as to those of consumer protection and competition law.

**22** Other than franchise-specific rules on what disclosures a franchisor should make to a potential franchisee or a franchisee should make to a sub-franchisee regarding predecessors, litigation, trademarks, fees, etc, are there any general rules on pre-sale disclosure that might apply to such transactions?

Pre-sale disclosure is an explicitly regulated obligation on the part of a seller in the fields of franchising (see questions 11, 15 and 16), insurance and consumer protection. In addition to such targeted regulation of pre-sale disclosure obligations, virtually any sale or purchase transaction is built on pre-sale representations of the seller with regards the asset sold to the buyer (for example, mileage of a car, materials used in a building or, closer to the case in point, pending litigation, intellectual property, due taxes, etc of a company that is transferred). Since the rationale of such pre-sale disclosure, irrespective of subject matter, is to ensure that the parties make an informed decision when entering the contractual relationship, the principles governing the way disclosure is made are those of good faith, fair dealing, and exhaustive and accurate representations.

**23** What other actions may franchisees take if a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises? How does this protection differ from the protection provided under the franchise sales disclosure laws?

For fraudulent or deceptive practices in the offer and sale of franchises, the franchisee may seek damages in court and reinforcement of the franchisor's obligations under the law or contract.

Both this sort of protection and the protection provided under the law sanctioning franchise sales disclosures are governed by the same legal and contractual guarantees.

**Legal restrictions on the terms of franchise contracts and the relationship between parties involved in a franchise relationship****24** Are there specific laws regulating the ongoing relationship between franchisor and franchisee after the franchise contract comes into effect?

The Franchise Law regulates the ongoing relationship between franchisor and franchisee once the franchise contract is effected (see question 11).

**25** Do other laws affect the franchise relationship?

As well as the Franchise Law, the franchise relationship is subject to the general provisions of contract law, commercial law, consumer protection law, competition, and intellectual property law.

**26** Do other government or trade association policies affect the franchise relationship?

The franchise relationship may to a certain extent be affected by the Romanian Franchise Association Code of Ethics. However, membership of the Association is voluntary and, as a non-governmental entity, the Association itself is devoid of statutory powers other than those in respect of its members.

**27** In what circumstances may a franchisor terminate a franchise relationship? What are the specific legal restrictions on a franchisor's ability to terminate a franchise relationship?

A franchisor may terminate the franchise contract either upon expiry or for cause, if the franchisee fails to observe its obligations (for example, reaching a certain turnover threshold, violating disclosure terms or prejudicing the good name of the franchisor).

**28** In what circumstances may a franchisee terminate a franchise relationship?

A franchisee may terminate the franchise contract either upon expiry or for cause, if the franchisor fails to observe its obligations (for example, failing to provide specialised personnel for the implementation of know-how, failing to provide for a certain advertising volume for the franchised business, failure to renew trademark licence and failure to observe disclosure rules).

**29** May a franchisor refuse to renew the franchise agreement with a franchisee? If yes, in what circumstances may a franchisor refuse to renew?

The renewal of a franchise agreement is exclusively a matter of contractual freedom; hence, a franchisor may or may not renew the franchise agreement, in accordance to what has been agreed between the parties in this respect (please refer also to question 11).

**30** May a franchisor restrict a franchisee's ability to transfer its franchise or restrict transfers of ownership interests in a franchisee entity?

Restricting the franchisee's ability to transfer its franchise or restricting transfers of ownership interests in a franchisee entity are exclusively matters of contractual freedom; hence, the parties may secede either way (please refer also to question 11).

**31** Are there laws or regulations affecting the nature, amount or payment of fees?

None of the amounts paid by a franchisee to a franchisor are specifically regulated, being subject to the parties' agreement, with the sole reservation that such amounts shall be set so as to foster the achievement of common goals (please refer also to question 11).

**32** Are there restrictions on the amount of interest that can be charged on overdue payments?

Romanian law does not restrict or set thresholds as to the amount of interest on overdue payments. Excessive interest (for instance, more than 20 per cent) may be reduced by the court, but case law decisions on this matter are not unanimous.

**33** Are there laws or regulations restricting a franchisee's ability to make payments to a foreign franchisor in the franchisor's domestic currency?

There are no such restrictions on foreign currency payments.

**34** Are confidentiality covenants in franchise agreements enforceable?

While confidentiality covenants are enforceable, difficulty may arise in assessing and substantiating particular damages; therefore, clearly phrased contractual provisions as to penalties and compensation are advisable.

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

Franchising and franchise relationships are subject to the general legal obligation of dealing in good faith. The principle of good faith governs the parties' dealings throughout their relationship.

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

No Romanian laws treat franchisees as consumers for the purposes of consumer protection or other legislation.

'Traders' and 'consumers' are clearly distinguished under consumer protection law: the consumer is defined as a natural or legal person, or group of persons forming an association, that acts for purposes outside what could be deemed business activity.

The Franchise Law defines the franchisee as a 'trader', be it either a natural or a legal person, who is selected by the franchisor to develop the franchise network in accordance with the latter's concept.

**37** Must disclosure documents and franchise agreements be in the language of your country?

Disclosure documents and franchise agreements may be concluded in any language.

**38** What restrictions are there on provisions in franchise contracts?

With the exception of competition law restrictions (see question 39) and certain compulsory guidelines regarding duration, exclusivity and termination of the franchise contract stipulated in the Franchise Law (see question 11), most of the provisions in a franchise agreement can be freely determined by the parties.

**39** Describe the aspects of competition law in your country that are relevant to the typical franchisor. How are they enforced?

Romanian Competition Law No. 21/1996 (the Competition Law) prohibits anti-competitive agreements and practices and the abuse of a market dominant position. In this respect, the Competition Law represents the transposition of articles 101 and 102 of the Treaty on the Functioning of the European Union.

Provisions regarding vertical agreements are particularly relevant to the typical franchisor. EC Regulation 2790/1999 of 22 December 1999 on the application of exemptions to vertical agreements has been transposed into Romanian legislation by means of regulation of the application of articles 5 and 6 of the Competition Law, as approved under Order No. 87/16.04.2004 and the Guidelines for the application of article 5 of the Competition Law in the case of vertical agreements, as approved under Order No. 77/14.04.2004.

To the extent that vertical restraints resulting from franchise contracts benefit competition, especially inter-brand competition, exemptions apply on the condition that such contracts fulfil certain requirements and do not contain hard-core restrictions to trade. The conditions under which a franchise agreement is not deemed to be anti-competitive refer, inter alia, to:

- not directly or indirectly fixing purchase or sale prices;
- not limiting or controlling production, markets, technical development or investment;
- not allocating distribution markets or supply sources by territorial criteria, purchase value or other criteria;
- not imposing unequal terms for equivalent services to trading partners;

- not conditioning the conclusion of agreements on link clauses;
- not eliminating competitors from the market; and
- not limiting or preventing access to the market.

The negative effects on the market that may result from vertical restraints in a franchise contract, which both Romanian and EC competition law aims to prevent, are mainly:

- foreclosure of other suppliers or other buyers by raising barriers to entry;
- reduction of inter-brand competition between the companies operating on a market;
- reduction of inter-brand competition between distributors; and
- limitations on the freedom of consumers to purchase goods or services in a member state.

In respect of effect assessment, the Guidelines for the application of article 5 of the Competition Law in the case of vertical agreements and a considerable share of the Romanian Competition Council's practice indicate that franchisors with a market share of below 30 per cent do not need to notify the Competition Council to obtain an individual exemption.

Competition law aspects are enforced by the Competition Council – which imposes sanctions ranging from fixed fines to fines calculated as percentage of annual turnover, or even suspension of business – and the courts of law.

- 40** Describe the court system. What types of dispute resolution procedures are available relevant to franchising?

The Romanian court system is a four-tier system comprising courts of first instance, intermediate appellate level courts, the High Court of Cassation and Justice, and the Constitutional Court. As of joining the EU, Romanian natural persons and entities have gained access to two additional courts of law, namely the Court of Justice of the European Communities and the Court of First Instance.

Romanian law allows for arbitration as an alternative to litigation in front of a court. A dispute may be referred for arbitration if so agreed by the contracting parties at dispute. Only disputes that can be financially assessed may be referred for arbitration.

Romania has ratified the main arbitration conventions of Geneva and New York. In terms of commercial disputes, the International Court of Arbitration functions in Romania as a permanent independent arbitration body attached to the Chamber of Commerce and Industry of Romania and Bucharest.

Franchisors, however, usually refer any disputes to the International Court of Arbitration of the European Chamber of Commerce, Industry and Franchise in Romania, due to the shorter duration of the proceedings.

#### Update and trends

The Romanian Franchise Law has seen no amendment in the past 12 years, while related case law has been quite uniform. While this is the sort of climate that hardly allows for hot topics, it is, nonetheless, a much appreciated stable foundation by international franchises seeking to expand to Romania.

However, October 2011 will witness the coming into force of the new Romanian Civil Code, alongside which the Commercial Code will be repealed – a major change, which will mean a considerable number of new institutions, both civil and commercial, find themselves bound under the same new Civil Code that will have a particular relevance to contractual mechanics, and thus indirectly to franchising as well.

- 41** Describe the principal advantages and disadvantages of arbitration for foreign franchisors considering doing business in your jurisdiction.

Arbitration is generally considered by the dedicated doctrine to be more advantageous than state jurisdiction in terms of flexibility, confidentiality, time efficiency and, sometimes, cost.

Flexibility is of the essence in arbitration. The parties have the possibility of choosing the arbitrators from reputable professionals in the field circumscribing the dispute, while insufficient qualification in such field can be solid ground for an arbitrator to be recused.

The parties can also choose the structure of the panel: ie number of arbitrators, venue, and language of proceedings.

Confidentiality may be a considerable advantage for the foreign franchisor: the arbitration procedures can be closed, thus safeguarding commercial secrets by avoiding judicial publicity. Moreover, arbitrators are accountable under the law for breaching confidentiality.

Although this is not always the case, arbitration may prove to be less time-consuming than court adjudication, and the arbitration decision is final and binding for the parties.

Cost efficiency is generally deemed to be an advantage of arbitration, but it is a highly relative matter, since it always depends on the value and nature of the dispute.

For instance, witnesses and experts testify without taking an oath, and preliminary injunctions and interlocutory measures ordered by the arbitration court can only be enforced after obtaining a relevant decision from a court of law.

As the arbitration decision is mandatory and binding, the parties waive the right to have the dispute decided in the law court. Additionally, since arbitration awards are only subject to annulment on account of procedural matters, an erroneous decision cannot be easily overturned.

- 42** In what respects, if at all, are foreign franchisors treated differently from domestic franchisors?

There is no discriminatory treatment as to foreign franchisors.

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