



# ICLG

The International Comparative Legal Guide to:

## Franchise 2016

**2nd Edition**

A practical cross-border insight into franchise law

Published by Global Legal Group, with contributions from:

Adams & Adams

Anderson Mori & Tomotsune

Bustaman

Daniel Advogados

DBB

Debarliev, Dameski & Kelesoska,  
Attorneys at Law

DLA Piper Hong Kong

DLA Piper UK LLP

Dorsey & Whitney LLP

Drakopoulos Law Firm

Dubler Attorneys at Law

Gorodissky & Partners (Ukraine)

GRATA Law Firm

HH Partners, Attorneys-at-law, Ltd.

Jacobsen + Confurius Rechtsanwälte

Karimov and Partners Law Firm

LINKEA

Monereo Meyer Marinel-lo Abogados

RASS – Studio Legale Rinaldi e Associati

Uskov & Partners

Zumtobel + Kronberger + Rechtsanwälte OG

**GLG**

Global Legal Group

**Contributing Editor**

Iain Bowler,  
DLA Piper UK LLP

**Head of Business Development**

Dror Levy

**Sales Director**

Florjan Osmani

**Account Directors**

Oliver Smith, Rory Smith

**Senior Account Manager**

Maria Lopez

**Sales Support Manager**

Toni Hayward

**Sub Editor**

Nicholas Catlin

**Senior Editor**

Suzie Levy

**Group Consulting Editor**

Alan Falach

**Group Publisher**

Richard Firth

**Published by**

Global Legal Group Ltd.  
59 Tanner Street  
London SE1 3PL, UK  
Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
Email: info@glgroup.co.uk  
URL: www.glgroup.co.uk

**GLG Cover Design**

F&F Studio Design

**GLG Cover Image Source**

iStockphoto/GLG

**Printed by**

Ashford Colour Press Ltd  
December 2015

Copyright © 2015  
Global Legal Group Ltd.  
All rights reserved  
No photocopying

ISBN 978-1-910083-73-4

ISSN 2055-8082

**Strategic Partners**



**General Chapter:**

1	<b>Building an International Franchise System from Scratch – Where Do I Start?</b> – Iain Bowler, DLA Piper UK LLP	1
---	--	---

**Country Question and Answer Chapters:**

2	<b>Albania</b>	Drakopoulos Law Firm: Ekflodia Leskaj & Besnik Duraj	4
3	<b>Austria</b>	Zumbel + Kronberger + Rechtsanwälte OG: Dr. Amelie Pohl	10
4	<b>Belgium</b>	DBB: Benoit Simpelaere & Leonard Hawkes	15
5	<b>Brazil</b>	Daniel Advogados: Hannah Vitória M. Fernandes & André Ferreira de Oliveira	22
6	<b>China</b>	DLA Piper UK LLP: Paula Cao & Claudio d’Agostino	30
7	<b>England &amp; Wales</b>	DLA Piper UK LLP: Iain Bowler	37
8	<b>Finland</b>	HH Partners, Attorneys-at-law, Ltd.: Esa Korkeamäki & Tapio Siilola	46
9	<b>France</b>	LINKEA: Cecile Peskine & Olivier Deschamps	53
10	<b>Germany</b>	Jacobsen + Confurius Rechtsanwälte: Dr. Kay Jacobsen	60
11	<b>Greece</b>	Drakopoulos Law Firm: Panagiotis Drakopoulos & Dr. Evangelos Margaritis	67
12	<b>Hong Kong</b>	DLA Piper Hong Kong: Scott Thiel & Louise Crawford	74
13	<b>Italy</b>	RASS – Studio Legale Rinaldi e Associati: Marco De Leo & Beatrice Masi	81
14	<b>Japan</b>	Anderson Mori & Tomotsune: Kenichi Sadaka & Aoi Inoue	87
15	<b>Kazakhstan</b>	GRATA Law Firm: Aizhan Mukhammad	95
16	<b>Macedonia</b>	Debarliev, Dameski & Kelesoska, Attorneys at Law: Jasmina Ilijeva Jovanovik & Dragan Dameski	103
17	<b>Malaysia</b>	Bustaman: Adhuna Kamarul Ariffin & Nur Atiqah Samian	110
18	<b>Romania</b>	Drakopoulos Law Firm: Adrian Roseti	118
19	<b>Russia</b>	Uskov & Partners: Vadim Uskov	125
20	<b>South Africa</b>	Adams & Adams: Eugene Honey & Manisha Maganbhai-Mooloo	132
21	<b>Spain</b>	Monereo Meyer Marinel-lo Abogados: Sönke Lund & Belén Arribas Sánchez	141
22	<b>Switzerland</b>	Dubler Attorneys at Law: Dr. Andreas M. Dubler	152
23	<b>Ukraine</b>	Gorodissky & Partners (Ukraine): Nina Moshynska & Oleg Zhukhevych	160
24	<b>USA</b>	Dorsey & Whitney LLP: Gary R. Duvall & Josh Piper	170
25	<b>Uzbekistan</b>	Karimov and Partners Law Firm: Bobir Karimov	179

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

**Disclaimer**

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

# Macedonia

Debarliev, Dameski & Kelesoska,  
Attorneys at Law

Jasmina Ilieva Jovanovik



Dragan Dameski



## 1 Relevant Legislation and Rules Governing Franchise Transactions

### 1.1 What is the legal definition of a franchise?

There is no legal definition of a franchise in Macedonian legislation. Usually, a franchise is understood as a package of intellectual property (IP) rights relating to trademarks, utility models, industrial designs, copyrights, etc.

### 1.2 What laws regulate the offer and sale of franchises?

Franchise agreements are actually a combination of several different agreements such as: a sales agreement; an agreement for trade representation; a distribution agreement; a licence agreement for IP rights; and a know-how agreement. Under Macedonian legislation those agreements are regulated by the law on intellectual property and the law on obligations.

### 1.3 Are there any registration requirements relating to the franchise system?

There is no register of franchises or registration requirements for a franchise but, considering that a franchise is a combination of different rights and obligations including IP rights, according to Macedonian legislation, IP rights shall be registered.

On the other hand, for certain sectors such as pharmacy, there are specific requirements under the pharmacy regulations for registration of the distributors and retailers of pharmacies in Macedonia.

### 1.4 Are there mandatory pre-sale disclosure obligations?

No, there are no mandatory pre-sale disclosure obligations. Pre-sale obligations are subject to agreement between the parties and the parties may set any obligation which is not contrary to the legal system of Macedonia.

### 1.5 Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?

Although this is not an issue specifically regulated by the law, in practice if the master franchisee is free to sub-franchise the franchise,

then the master franchisee shall make the necessary disclosures. This shall be regulated within the agreement between the franchisor and the master franchisee.

### 1.6 Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?

There is no prescribed format of disclosure.

### 1.7 Are there any other requirements that must be met before a franchise may be offered or sold?

No specific requirements are prescribed by the law for offering or selling a franchise. However, the franchisor, before offering and/or selling the franchise, shall register the IP rights which are included in the franchise.

### 1.8 Is membership of any national franchise association mandatory or commercially advisable?

So far, there is no record of any franchise associations existing in Macedonia.

### 1.9 Does membership of a national franchise association impose any additional obligations on franchisors?

Please see question 1.8 above.

### 1.10 Is there a requirement for franchise documents or disclosure documents to be translated into the local language?

In cases where one of the parties of the franchise agreement is a domestic entity, it shall have the document translated into the Macedonian language. It is not specifically regulated by any special law, but this requirement comes indirectly from various laws regulating different sectors such as tax laws, accountancy regulations, payment system regulations, etc. Namely, agreements in foreign languages are binding for domestic companies, yet domestic companies must obtain a translation of the agreement into Macedonian language in case the agreement is subject to review or any kind of registration by Macedonian authorities.

## 2 Business Organisations Through Which a Franchised Business can be Carried On

### 2.1 Are there any foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a business in your jurisdiction?

No; foreign investors have the same rights and obligations as Macedonian nationals with respect to ownership or control of a business in Macedonia.

### 2.2 What forms of business entity are typically used by franchisors?

In case of direct franchising, the franchisor usually establishes a limited liability company (Ltd.) in Macedonia and afterwards expands the network by establishing branch offices of the local Ltd. Another method for expanding the network is the joint venture agreement or franchising agreement with local entities. Direct franchising (through its own related companies) certainly enables the franchisor to have 100% control of the franchise system, but is definitely more costly than indirect franchising established by selling the franchise to non-related companies.

### 2.3 Are there any registration requirements or other formalities applicable to a new business entity as a pre-condition to being able to trade in your jurisdiction?

First of all, each business entity (Ltd., joint stock company, etc.), must be registered within the Trade Companies Register in Macedonia. If it is controlled or 100% owned by a foreign entity, there are also requirements on the foreign investor to register itself in the Register of Foreign Investments in Macedonia. Generally, the business entity, before starting the trade activity: shall register the commencement of the activity with the Ministry of Economy; shall register its working hours; and shall register itself with the Public Revenue Office as a VAT obligor.

## 3 Competition Law

### 3.1 Provide an overview of the competition laws that apply to the offer and sale of franchises.

The Competition Law recognises franchises as a type of vertical agreement. Thus the Competition Law, through the Decree on block exemption of certain categories of vertical agreements, applies to the franchise by the provisions prescribing: (i) the scope of application of the block exemption (exemption of application of the provisions on prohibited agreements) of certain vertical agreements including the franchise, the detailed conditions in terms of market share and the conditions for exemptions; and (ii) the restrictions and obligations that certain categories of vertical agreement, including franchising, shall not contain.

For example, some of the hardcore restrictions for vertical agreements, prescribed by the Decree on block exemption of certain categories of vertical agreements, are:

- a) the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier to impose

a maximum sale price or recommend a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties;

- b) the restriction of the territory into which, or of the customers to whom, a buyer party to the agreement, without prejudice to a restriction on its place of establishment, may sell the contracted goods or services;
- c) the restriction of active or passive sales to end users by members of a selective distribution system operating at the retail level of trade;
- d) the restriction of cross-supplies between distributors within a selective distribution system, including between distributors operating at different levels of trade; and/or
- e) the restriction, agreed between a supplier of components and a buyer who incorporates those components, of the supplier's ability to sell those components as spare parts to end users or to repairers or other service providers not entrusted by the buyer with the repair or servicing of its goods.

### 3.2 Is there a maximum permitted term for a franchise agreement?

There is no provision or law directly prescribing the term of a franchise agreement. The franchise agreement's term generally depends on the term of the IP right involved in the franchise agreement.

On the other hand, the Competition Law and the Decree on block exemption of certain categories of vertical agreements (the franchise agreement falls under one of these categories), prescribes that the exemption shall not apply to vertical agreements containing:

- a) any direct or indirect non-compete obligation, the duration of which is indefinite, whereupon the non-compete obligation which is tacitly renewable beyond a period of five years shall be deemed to have been concluded for an indefinite duration; or
- b) any direct or indirect non-compete obligation, the duration of which exceeds five years, except when contracted goods or services are sold by the buyer from business premises and land owned by the supplier or leased by the supplier from third parties not connected with the buyer, provided that the duration of the non-compete obligation does not exceed the period of occupancy of the business premises and land by the buyer.

### 3.3 Is there a maximum permitted term for any related product supply agreement?

Please see question 3.2.

### 3.4 Are there restrictions on the ability of the franchisor to impose minimum resale prices?

The Competition Law and the Decree on block exemption of certain categories of vertical agreements prescribe that the block exemption shall not apply to agreements which contain a restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier to impose a maximum sale price or recommend a sale price, provided that they do not lead to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties.

### 3.5 Encroachment – are there any minimum obligations that a franchisor must observe when offering franchises in adjoining territories?

There are no mandatory rules prescribing minimum obligations that a franchisor must observe, however it should not breach the local competition law requirements, the IP law requirements or the tax law requirements, since those laws are connected with franchise agreements and in certain respects may have exclusive jurisdiction on the parties of the franchise agreement.

### 3.6 Are in-term and post-term non-compete and non-solicitation of customers covenants enforceable?

Non-compete and non-solicitation agreements are enforceable as long as the concerned party – the customer – does not challenge that agreement in front of the competent courts and the regulatory bodies do not suspend those agreements according to proper procedure for protection of competition, or for reasons of customer protection.

## 4 Protecting the Brand and other Intellectual Property

### 4.1 How are trade marks protected?

The legal protection of trademarks and other IP rights is regulated by the Law on Industrial Property.

Works related to the acquiring and protection of IP rights shall be performed by the State Office of Industrial Property. The State Office decides on the granting of trademark rights and maintains the register of trademarks. The procedure for granting a trademark right shall be initiated by the filing of a trademark application with the Office.

If the application is correct, the Office shall examine whether the requirements for the grant of the trademark right have been fulfilled. Afterwards, the application shall be published in the Official Gazette of the Office.

Once the application is published, any legal or natural person may send to the Office a written intervention explaining the reasons for which he considers that the filed sign may not be granted. Opposition to a published trademark application may be submitted within 90 days of the publication date.

If no opposition is submitted or all opposition is refused by the Office, the Office will call the applicant to pay the fee and expenses for registration of the trademark and afterwards, the Office shall issue a decision for the grant of a trademark right and shall enter the granted right in the trademark register. The trademark term is 10 years as of the date of filing the trademark application and it is renewable.

### 4.2 Are know-how, trade secrets and other business-critical confidential information (e.g. the Operations Manual) protected by local law?

Know-how is not regulated by Macedonian legislation; it is recognised by the competition regulations, but there are no prescribed legal procedures for protection of know-how. Also, there is no legal definition of trade secrets and other business information, but each company shall define its business and trade secrets within its internal acts and shall be responsible for implementing those acts in its practices with business partners (by signing non-disclosure agreements) as well as employees.

### 4.3 Is copyright (in the Operations Manual or in proprietary software developed by the franchisor and licensed to the franchisee under the franchise agreement) protected by local law?

Copyrights are protected in Macedonia under the Law on copyrights and other related rights.

Copyright and related rights enjoy criminal, civil and misdemeanour protection.

The criminal protection of copyright and related rights is exercised under the provisions of the Criminal Code and Criminal Procedure Code regulations.

Civil protection of copyrights and related rights is exercised in accordance with the regulations in the Law on litigation procedure, the Law on securing of claims, the Law on obligations and the Law on copyrights and other related rights.

Misdemeanour protection of copyright and related rights is exercised under the Law on offences and the Law on copyrights and other related rights.

## 5 Liability

### 5.1 What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations? Is a franchisee entitled to rescind the franchise agreement and/or claim damages?

There are no prescribed mandatory disclosure obligations under Macedonian law, but such obligations can be, and usually are, defined within the franchise agreement as well as the consequences against the franchisor for failure to comply with such disclosure obligations. Based on the Law on obligations, which shall apply to the franchise agreement, in case the franchisor fails to comply with its obligations under the franchise agreement, the franchisee will be entitled to terminate the franchise agreement and claim damages, except if the parties have agreed otherwise within the franchise agreement.

### 5.2 In the case of sub-franchising, how is liability for disclosure non-compliance or for misrepresentation in terms of data disclosed being incomplete, inaccurate or misleading allocated between franchisor and franchisee? If the franchisor takes an indemnity from the master franchisee in the Master Franchise Agreement, are there any limitations on such an indemnity being enforceable against the master franchisee?

In case of sub-franchising, the directly responsible party for any non-compliance or misrepresentations towards the individual unit franchisees is the master franchisee. If the master franchisee and the franchisor have agreed any penalties or indemnities for such failures of the master franchisee in the master franchise agreement then the franchisor will be entitled to such indemnities against the master franchisee. Even so, the indemnities are not defined in the master franchisee agreement, yet if the franchisor suffers any damages as a result of the failures of the master franchisee towards the sub-franchisee, the franchisor will be entitled to damage compensation against the master franchisee in accordance with the general rules on damage compensation.

### 5.3 Can a franchisor successfully avoid liability for pre-contractual misrepresentation by including disclaimer clauses in the franchise agreement?

The contractual liability can be avoided and excluded by including such disclaimer in the contract, but the disclaimer cannot apply to liability for gross negligence and intentional actions resulting in any damage to the contracting party.

### 5.4 Does the law permit class actions to be brought by a number of allegedly aggrieved claimants and, if so, are class action waiver clauses enforceable despite the expense and inconvenience of individual arbitrations?

Class actions or group lawsuits in front of the courts in Macedonia are recognised by Macedonian litigation law. The right to submit or join a class action cannot be limited or excluded within an agreement.

## 6 Governing Law

### 6.1 Is there a requirement for franchise documents to be governed by local law? If not, is there any generally accepted norm relating to choice of governing law, if it is not local law?

The parties to a franchisee agreement, where one of the parties is a non-resident of Macedonia, are free to choose a foreign law as the governing law. However, if the franchisee agreement is contrary to the legal system of Macedonia it cannot be enforceable in Macedonia, regardless of whether the agreement is in compliance with the chosen foreign governing law.

### 6.2 Do the local courts provide a remedy, or will they enforce orders granted by other countries' courts, for interlocutory relief (injunction) against a rogue franchisee to prevent damage to the brand or misuse of business-critical confidential information?

Macedonian courts, upon request of a concerned party, can provide temporary measures as an instant remedy (before or during an ongoing litigation process) against a rogue franchisee to prevent damage; also, it is possible for such measure granted by a foreign court or arbitration to be enforced in Macedonia, but only upon prior recognition of such foreign court or arbitration decision by the Macedonian courts.

## 7 Real Estate

### 7.1 Generally speaking, is there a typical length of term for a commercial property lease?

No, there is no prescribed length of term for a commercial property lease.

### 7.2 Is the concept of an option/conditional lease assignment over the lease (under which a franchisor has the right to step into the franchisee/tenant's shoes under the lease, or direct that a third party (often a replacement franchisee) may do so upon the failure of the original tenant or the termination of the franchise agreement) understood and enforceable?

The lease assignment, in case of replacement of the franchisee is not

mandatory, but it can be agreed in the franchise agreement and the lease agreement.

### 7.3 Are there any restrictions on non-national entities holding any interest in real estate, or being able to sub-lease property?

Non-national entities which are residents of the EU or of an OECD member country may hold interest in residential and business properties as well as construction land under the same terms as Macedonian entities, while all other non-nationals may acquire any interest in real estate under terms of reciprocity; i.e. under the same terms applicable to Macedonian entities pretending to acquire real estate in the countries of those non-nationals.

### 7.4 Give a general overview of the commercial real estate market. Specifically, can a tenant reasonably expect to secure an initial rent free period when entering into a new lease (and if so, for how long, generally), or are landlords demanding "key money" (a premium for a lease of a particular location)?

The real estate market in Macedonia has a good standard and satisfactory offer of commercial facilities; it can be said that currently the offer is actually exceeding requests on the market. The lease is more frequent and preferable to the purchase of commercial real estate.

With respect to the rent free period, it is not usual practice, but it is familiar as an option in cases where the tenant is obliged to provide the interior elements of the business premises facility, so the landlord may release the tenant from the rent obligation during the period of equipping the business premises.

## 8 Online Trading

### 8.1 If an online order for products or request for services is received from a potential customer located outside the franchisee's exclusive territory, can the franchise agreement impose a binding requirement for the request to be re-directed to the franchisee for the territory from which the sales request originated?

According to Macedonian regulations (Decree on block exemption of certain categories of vertical agreements), restriction of the territory into which, or of the customers to whom, a buyer party to the agreement, without prejudice to a restriction on its place of establishment, may sell the contract goods or services, is not allowed except for:

- the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier, to another buyer, where such a restriction does not limit sales by the customers of the buyer;
- the restriction of sales to end users by a buyer operating at the wholesale level of trade;
- the restriction of sales by the members of a selective distribution system to unauthorised distributors within the territory reserved by the supplier to operate that system; and
- the restriction of the buyer's ability to sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier.

Any territory restriction in a franchise agreement which is covered with any of the exceptions listed above under items a) to d) can be binding and result in a binding request for the re-direction of customers.

## 8.2 Are there any limitations on a franchisor being able to require a former franchisee to assign local domain names to the franchisor on the termination or expiry of the franchise agreement?

There are no legal limitations prescribed by the applicable laws, except if such limitations are provided with the franchisee agreement. Usually, if the domain consists of word(s) representing at the same time a verbal registered trade mark on behalf of the franchisor (such as Adidas, Nestlé, etc.), then the franchisee may use the domain or register such domain only with the prior consent of the franchisor (owner of the verbal trade mark), and if such consent is limited to the term of the franchise agreement, then the franchisor is entitled to request that the former franchisee return the domain.

## 9 Termination

### 9.1 Are there any mandatory local laws that might override the termination rights that one might typically expect to see in a franchise agreement?

There are no mandatory laws that might suspend the termination rights; on the other hand there are mandatory laws that may impose the termination of the agreement, such as: termination in case of opening a bankruptcy procedure against one of the parties to the agreement; termination in case the subject of the agreement ceases to exist (e.g. if the franchisor loses the intellectual property rights involved in the franchise agreement it will automatically lose the subject of the agreement and the agreement will become groundless), etc.

## 10 Joint Employer Risk and Vicarious Liability

### 10.1 Is there a risk that a franchisor may be regarded as a joint employer with the franchisee in respect of the franchisee's employees? If so, can anything be done to mitigate this risk?

The Macedonian legal system does not recognise the concept of a "joint employer". The employer is the one that has registered the employment of the employee with the Employment Agency. The franchisee's employees are duly registered with the Employment Agency; the franchise agreement defines clearly the rights and obligations of the parties, including the strict determination that the franchisee's employees, although doing works for the benefit of the franchisor, are only the franchisee's employees and not the franchisor's employees, so there is no risk that the franchisee's employees would be considered to be the franchisor's employees as well.

### 10.2 Is there a risk that a franchisor may be held to be vicariously liable for the acts or omissions of a franchisee's employees in the performance of the franchisee's franchised business? If so, can anything be done to mitigate this risk?

Generally, the franchisor shall not be liable to the acts and omissions of the franchisee's employees since the employer – the franchisee – is vicariously liable for the acts and omissions of its employees; however, each case of omission or violation should be reviewed separately.

## 11 Currency Controls and Taxation

### 11.1 Are there any restrictions (for example exchange control restrictions) on the repatriation of royalties to an overseas franchisor?

Pursuant to the Law on foreign exchange operation of the Republic of Macedonia, current transactions between residents and non-residents are free. The term "current transaction" includes transactions whose purpose is not the transfer of capital such as the trading of goods and services. Therefore, the payment of management services fees, royalties, advertising levies and payments for the supply of products to a franchisor overseas is not restricted.

### 11.2 Are there any mandatory withholding tax requirements applicable to the payment of royalties under a trade mark licence or in respect of the transfer of technology? Can any withholding tax be avoided by structuring payments due from the franchisee to the franchisor as a management services fee rather than a royalty for the use of a trade mark or technology?

Pursuant to the Macedonian Profit Tax Law, residents making payments of royalties, management, consulting, or financial services fees as well as fees for research and development services provided to non-residents, are obligated to withhold and pay profit tax in the amount of 10%. Payment of the withheld tax by the resident has to be made simultaneously with the payment of the appropriate fee toward the non-resident.

For both the payment of management services fees and the payment of royalties, the payer who is a resident is obligated to withhold tax in the amount of 10%.

If the receiver of the payment made upon the above-stated legal bases is a resident of a country that has signed an international agreement for avoidance of double taxation with the Republic of Macedonia, then the withholding tax rate shall not exceed the rate ascertained by the agreement. In order to be able to use the tax exemption or to apply a lower tax rate prescribed by the agreement, the payer of the fee (resident) is obligated to follow the prescribed procedure and to obtain the form verified by the foreign country whose resident is the receiver of the payment.

### 11.3 Are there any requirements for financial transactions, including the payment of franchise fees and royalties, to be conducted in local currency?

The Law on foreign exchange operation prohibits the collection or payment of receivables between Macedonian residents from being conducted in foreign currencies. Also, in contracts concluded between Macedonian residents, the use of foreign currency and other international measures of value is allowed only for the purposes of value expression, but the payment must be performed in MKD.

The above-stated restrictions apply only to relationships between Macedonian residents. If one of the parties is a non-resident, these restrictions are not applicable.

## 12 Commercial Agency

### 12.1 Is there a risk that a franchisee might be treated as the franchisor's commercial agent? If so, is there anything that can be done to help mitigate this risk?

Since there is no legal definition of a franchise in Macedonian legislation there exists a risk that the franchisee can be treated as a commercial agent of the franchisor. Macedonian legislation defines contracts with commercial agents and by the definition provided in the law, the contract for a commercial agent is a contract under which the commercial agent undertakes to negotiate and conclude transactions on behalf of the contractor, and the contractor is obliged to pay a certain amount of commission to the commercial agent for its services. The contract with the commercial agent may also contain some territorial bans or other provisions similar to franchise agreement clauses. However, the risk may be eliminated by the clear definition of the nature and the aim of the franchise agreement, and by inserting a disclaimer that the agreement shall not be interpreted as an agreement for commercial representation.

## 13 Good Faith and Fair Dealings

### 13.1 Is there any overriding requirement for a franchisor to deal with a franchisee in good faith and to act fairly according to some objective test of fairness and reasonableness?

One of the basic principles of obligation relationships is the principle of good faith and fair dealing, which is established by the provisions of the Law on obligation relationships of the Republic of Macedonia. Even though the Law does not explicitly define what this principle means in practice, it is considered that acting pursuant to this principle means that when two or more parties have established some kind of relationship, at the beginning of the same, the interest of the other party has to be considered and that party has to be notified of all circumstances that might be important to him and with which he is not familiar. Also, it is considered that pursuant to this principle, each party should do everything that is required in order for the other party's legitimate expectations from the established relationship to be fulfilled. Therefore, everything has to be done in order that the other party does not suffer any damage during the period from the establishment until the end of such relationship.

## 14 Ongoing Relationship Issues

### 14.1 Are there any specific laws regulating the relationship between franchisor and franchisee once the franchise agreement has been entered into?

There is no specific law regulating franchise agreements, but a franchise agreement may be interpreted as a complex agreement consisting of several different agreements such as: a sales agreement; an agreement for trade representation; a distribution agreement; a licence agreement for IP rights; a know-how agreement, etc. All these agreements are regulated by the Law on obligations, the Law on intellectual property rights, and the Law on copyrights and other related rights. Also, the Competition Law shall apply to franchise agreements as a type of vertical agreement according to the definition of vertical agreements provided in the Competition Law.

## 15 Franchise Renewal

### 15.1 What disclosure obligations apply in relation to a renewal of an existing franchise at the end of the franchise agreement term?

There are no specific mandatory laws and regulations applicable to disclosure obligations, so this issue shall be subject to the agreement between the franchisor and the franchisee. However, disclosure obligations shall be at a level satisfying the purpose and the nature of the agreement.

### 15.2 Is there any overriding right for a franchisee to be automatically entitled to a renewal or extension of the franchise agreement at the end of the initial term irrespective of the wishes of the franchisor not to renew or extend?

Macedonian laws and regulations do not recognise any rights of the franchisee for automatic renewal of an expired franchise agreement. It shall be subject to both parties' consent.

### 15.3 Is a franchisee that is refused a renewal or extension of its franchise agreement entitled to any compensation or damages as a result of the non-renewal or refusal to extend?

If the franchise agreement provides that the franchisee is entitled to the renewal or extension of the agreement, but the franchisor refuses such renewal, then the franchisee will be entitled to damage compensation resulting from such misconduct by the franchisor.

## 16 Franchise Migration

### 16.1 Is a franchisor entitled to impose restrictions on a franchisee's freedom to sell, transfer, assign or otherwise dispose of the franchised business?

As we have already set out above, the franchise is not regulated by specific regulations, and the obligations between the involved parties are grounded in their free will and regulated by the provisions set out in their franchise agreement. Based on our experience so far, we can confirm that agreements always contain provisions for restrictions on a franchisee's freedom to sell, transfer, assign or otherwise dispose of the franchise business. Such provisions are legitimate and do not conflict with positive laws in Macedonia.

### 16.2 If a franchisee is in breach and the franchise agreement is terminated by the franchisor, will a "step-in" right in the franchise agreement (whereby the franchisor may take over the ownership and management of the former franchisee's franchised business) be recognised by local law, and are there any registration requirements or other formalities that must be complied with to ensure that such a right will be enforceable?

The "step-in" right is recognised by local law. The requirements for its enforceability are that (i) the "step-in" right be clearly set out in the franchise agreement, and (ii) the procedure for "step-in" be clearly prescribed in the franchise agreement. In case of dispute, in order to skip the courts and any lengthy procedures, we suggest that the

franchise agreement should have an enforcement clause referring to the “step-in” right, whereby one can quickly and efficiently enforce this right through the Public Executor.

**16.3 If the franchise agreement contains a power of attorney in favour of the franchisor under which it may complete all necessary formalities required to complete a franchise migration under pre-emption or “step-in” rights, will such a power of attorney be recognised by the courts in the country and be treated as valid? Are there any registration or other formalities that must be complied with to ensure that such a power of attorney will be valid and effective?**

The franchise agreement can contain a power of attorney (PoA) and the same can be used for migration under a pre-emption or “step-in”

right, but the same shall be considered as valid and effective only if a notary certifies the signatures of the parties to the agreement. However, even in this case the franchisee may recall or cease the PoA given at any time. In order to ensure that the franchisee freely disposes of his will given in the PoA, we suggest that the franchise agreement should have an enforcement clause referring to the enforceability of the PoA, whereby one can quickly and efficiently enforce this right through a Public Executor.



**Jasmina Ilieva Jovanovik**

Debarliev, Dameski & Kelesoska,  
Attorneys at Law  
Albert Ajnstain 4/1  
1000 Skopje  
Macedonia

Tel: +389 2 321 5471  
Email: [ilieva@ddklaw.com.mk](mailto:ilieva@ddklaw.com.mk)  
URL: [www.ddklaw.com.mk](http://www.ddklaw.com.mk)

**Jasmina I. Jovanovik** joined Debarliev, Dameski & Kelesoska, Attorneys at Law in 2005. She passed the Bar exam and became a member of the Macedonian Bar Association in 2007.

Recently Jasmina was promoted to partner at DDK Attorneys at Law. She has extensive experience in the spheres of competition and corporate law, having participated in various projects, including representing and advising globally recognised companies in the hotel business, the food industry and restaurant chains, seeing them through the process of obtaining franchises for Macedonian entities.



**Dragan Dameski**

Debarliev, Dameski & Kelesoska,  
Attorneys at Law  
Albert Ajnstain 4/1  
1000 Skopje  
Macedonia

Tel: +389 2 321 5471  
Email: [dameski@ddklaw.com.mk](mailto:dameski@ddklaw.com.mk)  
URL: [www.ddklaw.com.mk](http://www.ddklaw.com.mk)

**Dragan Dameski** is one of the founders of Debarliev, Dameski & Kelesoska, Attorneys at Law. He is the head of the corporate department of the company. Corporate law, M&A, competition, public procurement and direct foreign investments are his most valued areas of expertise.

Dragan Dameski graduated from Iustinianus Primus Faculty of Law in Skopje, the Republic of Macedonia in 1999. He continued his postgraduate studies in business law at the Law Faculty in Skopje and in economics and business administration at Sheffield University in Thessaloniki, Greece.

In 2003, Dragan Dameski was admitted to the Macedonian Bar Association, and since 2005 he has been a member of the Management Board of the Association of Mediators of Macedonia. He is also a member of the International Advocates Union (UIA) and the International Bar Association (IBA).

He has represented and advised globally recognised companies in the hotel business, the food industry and restaurant chains, seeing them through the process of obtaining franchises for Macedonian entities.



DEBARLIEV, DAMESKI & KELESOSKA  
attorneys at law

Accepting the premise that no-one can be equally versed in all fields of law, Debarliev, Dameski & Kelesoska, Attorneys at Law (DDK) was created as a company committed to being the leading business law firm in Macedonia.

Debarliev, Dameski & Kelesoska, Attorneys at Law is also the first law company established in the territory of the Republic of Macedonia, distinguishing itself on the market with a clear business and corporate law orientation, complemented by an excellent network of legal experts covering the complete territory of the Republic of Macedonia.

The quality of Debarliev, Dameski & Kelesoska, Attorneys at Law rests mainly upon the quality of its attorneys, their accessibility and efficiency. DDK's attorneys share outstanding academic backgrounds, as well as a strong commitment to legal perfection.

The partners of DDK have more than 20 years' legal practice experience and exceed clients' expectations by providing sophisticated and efficiently managed legal services in all civil law areas including but not limited to: corporate law; labour law; competition and antitrust; M&A; contracts law; litigation; tax; public procurement and PPP; energy law; IP; telecommunications, etc.

## Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks



59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

[www.iclg.co.uk](http://www.iclg.co.uk)