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Greek Franchising Law

by

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1. Introduction

Franchising first appeared in Greece in the mid 1970s when the Greek fast-food company "Goody's" and the chain stores "Studio Kosta Boda Illum" introduced franchising schemes. It was, however, only after the early 1990s that franchising was further developed. Indeed, 84 percent of the current Greek franchisors commenced their commercial activities in 1992, with only 7.4 percent having started before 1985. Franchising is, therefore, a recently established form of commercial activity in the Greek economy, which keeps expanding rapidly. Today there are more than 644 franchisors in Greece.

2. Legislative framework

There is no specific legislation in Greece regulating franchising. By and large, franchising agreements are governed by the Greek Civil Code and the laws on competition and commercial agents which apply to franchising by way of analogy.[1] To name but a few, the provisions of the Greek Civil Code, the provisions of Presidential Decree 219/1991 on Commercial Agents, Statute 703/1977 on the Protection of Competition, Statute 2251/1994 on Consumer Protection and Statute 1733/1987 on the Transfer of Technology are some of the key pieces of legislation that affect franchising schemes.[2]

Given that the franchising agreement is an agreement whose terms are almost solely determined by the franchisor, terms that unduly restrict the freedom of the franchisee may be declared null and void. Indeed, undue restriction is determined by the extent of the commitment

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[1] See, inter alia, Apostolos Georgiadis, *Nees Morfes Symvaseon tis Sychronis Oikonomias* (New Forms of Contracts of Modern Economy), Athens: Sakkoulas, 2000, pp 193 - 259; Ilias Soufleros, *I Symvaseis Franchising sto Elliniko Dikaio kai to Koinotiko Dikaio Antagonismou* (Franchising Agreements in Greek and European Competition Law), Athens: Sakkoulas, 1989; and Dimitrios Kostakis, *Franchising: Nomiki kai Epichirimatiki Diastasi* (Franchising: Legal and Commercial Aspect), 2nd ed., Athens: Nomiki Vivliothiki, 2002, pp 71 – 363.

[2] See, inter alia, Dimitris Kostakis, "The responsibility of the Franchisor and the Franchisee on Franchising Agreements", *Dikaio Epichiriseon kai Etairion*, Vol. 4, Athens, Nomiki Vivliothiki, 1998, pp 459 – 462; Sotiris Giannakakis, "The New Community Competition Rules on Franchising and on Agreements for Supply and Distribution", *Dikaio Epichiriseon kai Etairion*, Vol. 7, Athens, Nomiki Vivliothiki, 2001, pp 697 - 699; Dimitris Kostakis, "The Clause for Exclusive Protected Region in Franchising Agreements", *Dikaio Epichiriseon kai Etairion*, Vol. 7, Athens, Nomiki Vivliothiki, 2001, pp 1208 – 1214; Sotiris Giannakakis, "The Legal Frame and Practice of the Franchising Agreement in Greece", *Dikaio Epichiriseon kai Etairion*, Vol. 3, Athens, Nomiki Vivliothiki, 1997, pp 1046 – 1098; Apostolos Georgiadis, "The Franchising Agreement", *Nomiko Vima*, Vol. 39, Athens, 1991, pp 193 – 209; and Konstantinos Alepakos, "Legal Nature and Characteristics of the Franchising Agreement", *Nomiko Vima*, Vol. 43, Athens, 1995, pp 933 – 948.

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of the franchisee, the duration of the agreement and the provisions for financial reward. Such peculiarities make the protection of the franchisee all the more necessary because the franchisee is not only bound by the provisions of the agreement but also undertakes to follow the instructions and commercial options of the franchisor. To protect the franchisee from the franchisor's abusive practices, the provisions of articles 174, 178, 179, 371 and 372 of the Greek Civil Code may be called upon to regulate one-sided franchising agreements. Moreover, if the agreement is against moral values, good faith or the social and financial object of the contract or constrains the financial freedom of the franchisee excessively, it may be declared void and not bind the parties.[3]

Certain EU Regulations also apply to franchising agreements for they are binding and immediately enforceable in EU member states without any legislative intervention. In 1988, the European Commission issued Regulation 4087/1988 of 30 November 1988 "On the Application of Article 85 (3) of the Treaty to Categories of Franchising Agreements" whose provisions remained in force till 31.05.2000. In 1999, the Commission issued Regulation 2790/1999 of 22 December 1999 "On the Application of Article 81(3) of the Treaty to Categories of Vertical Agreements and Concerted Practices" whose provisions came into force on 01.06.2000. The new Regulation is only indirectly relevant to franchising: it regulates vertical agreements for the supply or sale of products and services with subordinate clauses relating to the rights of intellectual property.

Although not legally binding, the European Code of Ethics for Franchising, which has been drafted by the European Franchising Federation, was adopted by the Greek Franchising Federation in 1999 and has proved to be a useful tool for the resolution of disputes arising from franchising agreements.

3. The Franchising Agreement

3.1. The Provisions of the Franchising Agreement

There is no legislative provision imposing an obligation on the parties to enter into a written franchising agreement, yet written agreements are a necessity resulting from provisions of competition and tax law.[4] For instance, the provision of article 10, paragraph 2, section a, of Presidential Decree 219/1992 on Commercial Agents which applies, *mutatis mutandis,* to franchising agreements provides that clauses aiming at restricting competition after the termination of an agency agreement are null and void if not concluded in writing. For clauses relating to the transfer of know-how, article 21, paragraph 1, of Statute 1733/1987 imposes an obligation on the parties to enter into a written agreement that must be filed with the Industrial Property Organization and be recorded in the Registry of Transfer of Know-how. Furthermore,

[3] See Ilias Soufleros, *I Symvaseis Franchising sto Elliniko Dikaio kai to Koinotiko Dikaio Antagonismou* (Franchising Agreements in Greek and European Competition Law), Athens: Sakkoulas, 1989.
[4] See Ilias Soufleros, *I Symvaseis Franchising sto Elliniko Dikaio kai to Koinotiko Dikaio Antagonismou* (Franchising Agreements in Greek and European Competition Law), Athens: Sakkoulas, 1989.

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according to article 8, paragraph 1, of Statute 1882/1990 on Measures for the Limitation of Tax Avoidance etc., as well as to Circular No. 1142/1997 of the Ministry of Finance, the franchising agreement must be filed with the tax authority of both the franchisor and the franchisee within ten days from the date the agreement was signed, or else it is unenforceable and void. As is also the case in countries such as the United States, Russia, Mexico or Spain, there is no special registry for franchising agreements in Greece. The existence of such a registry would, nonetheless, facilitate the transparency of franchising schemes.

A Greek franchising agreement is expected to deal at least with the following:[5]

- Specify in detail the intellectual property rights whose use and exploitation is assigned by the franchisor to the franchisee, e.g. trademark rights, designs, know-how, patent rights etc.[6]
- Describe in detail the equipment and the decorative set-up that the franchisor uses for the organization and promotion of his commercial activities.
- Determine the commercial terms of the cooperation.
- Spell out the obligations of the parties.
- Define the duration of the agreement. [7]
- Determine the causes for the termination of the agreement and its implications.
- Indicate the governing law of the contract and the jurisdiction to which the parties will be subject.

The above list is, of course, not exhaustive. On the contrary, it is clear that every franchising agreement is a unique instrument with its own distinctive features and should therefore be dealt as such given the absence of specific legislation or considerable case law on franchising.[8]

3.2. The Industrial and Intellectual Property Rights of the Franchisor

The right to a Greek trademark is obtained according to the provisions of Statute 2239/1994.[9]

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[5] See Apostolos Georgiadis, *Nees Morfes Symvaseon tis Sychronis Oikonomias* (New Forms of Contracts of Modern Economy), Athens: Sakkoulas, 2000, pp 193 – 259.

[6] The Competition Committee has ruled that it is necessary to clearly determine the products of the franchising agreement so that the obligations mentioned thereunder for the exclusive supply are valid.

[7] Both the European and the Greek Code of Ethics on Franchising indicate that franchising agreements should have a duration that creates stability in the contractual relation and enables the parties to work long-term on the prospects of the partnership. The Hellenic Competition Committee has found that the five-year minimum contractual duration of a franchising agreement was reasonable (Competition Committee Decision No. 252/1995).

[8] See Sotiris Giannakakis, "The Legal Frame and Practice of the Franchising Agreement in Greece", *Dikaio Epichiriseon kai Etairion*, Vol. 3, Athens, Nomiki Vivliothiki, 1997, pp 1046 – 1098; Apostolos Georgiadis, "The Franchising Agreement", *Nomiko Vima*, Vol. 39, Athens, 1991, pp 193 – 209; and Konstantinos Alepakos, "Legal Nature and Characteristics of the Franchising Agreement", *Nomiko Vima*, Vol. 43, Athens, 1995, pp 933 – 948.

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The owner of the trademark may, by virtue of a franchising agreement, assign the right of use to third parties. The license for use may either be exclusive, disallowing the use of the trademark by third parities and by the proprietor, or non-exclusive, in which case the proprietor of the trademark may himself use the trademark and/or assign more licenses to third parties. In the case of termination of the contract, the license to use the trademark is discontinued.

The right to a name and a distinctive title is obtained by its use in transactions (article 13, section 1, Statute 146/1994); its registration with the relevant registry of the Commercial and Industrial Chamber is of a declaratory nature. The granting of a license to use the right to a name is allowed only if a danger of confusion of the public does not exist (article 3, Statute 146/1994 on Unfair Competition). If the license creates such confusion, the relevant contract is completely void. The most important cause for the termination of the right of the licensee is the termination of the contract upon which the right to use the name is grounded. If the licensee continues to use the name after his right of use has been terminated, he may be sued by the proprietor in accordance with the provisions of Statute 146/1914 on Unfair Competition and, possibly, the provisions for tortuous conduct. In practice, the right to the name is not assigned in most franchising agreements contrary to the trademark and the distinctive title by which the undertaking and the products of the franchisor are known.

Distinctive marks which cannot be considered either as names or as distinctive titles are used in transactions to distinguish business undertakings. Such marks are perceived either as figurative or as name marks. Figurative marks may be symbols on the store, on printed material, pricelists and letterheads of the undertaking, on personnel uniforms etc. Figurative marks are protected pursuant to article 13, paragraph 2, of Statute 146/1994 on Unfair Competition. The right to such marks is absolute and is obtained when these marks prevail in transactions. Name marks are those formed by abbreviations of names or parts of names. If these marks are used to designate the name of the undertaking and have distinctive power, they are protected pursuant to article 13, paragraph, 1 of Statute 146/1994 on Unfair Competition and to article 58 of the Civil Code, irrespective of whether they have prevailed in transactions; otherwise, they are protected as figurative marks and their protection depends on their transactional use. The right of the licensee to use distinctive marks ceases when the contract on which it is based is terminated. If the licensee continues to use the distinctive marks of the licensor after the agreement is terminated, he may be sued on the basis of the provisions of Statute 146/1914 as well as on the basis of tortuous conduct.

3.3. Rights to Commercial and Industrial Secrets

Commercial and industrial secrets are protected from abuse of confidence according to articles 16 to 18 of Statute 146/1914 on Unfair Competition. Protection may be granted even after the contract has been terminated. Offenders may include employees, workers or trainees or any

[9] See Thanassis Liakopoulos, *Viomichaniki Idioktisia* (Industrial Property), 5th ed., Athens, Sakkoulas, 2000, pp 366 – 378.

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person having a contractual relationship with the person to whom the confidential information relates, or any person who entices someone to commit such an offense. Commercial and industrial secrets are also protected pursuant to article 1 of Statute 146/1914, articles 281, 914 and 919 of the Civil Code, articles 252, 371, 390 and 370B of the Criminal Code and article 22a of Statute 2190/1920 on *Societe Anonymes*.

3.4. Tax and Accounting Issues relating to the Franchisor

When the franchisee is a foreign legal entity, it must be examined whether it has a permanent establishment in Greece or not. This is because, in case it does, the tax and accounting treatment of the franchising agreement shall be the same as if the franchisee were a domestic legal entity. The notion of "permanent establishment" is set out in article 100 of Statute 2238/1994 (Code of Income Taxation). The foreign legal entity is considered to have a permanent establishment in Greece if it:

(a) maintains one or more stores, agencies, offices, storehouses, factories or work-shops as well as establishments that aim at exploiting natural resources;
(b) industrializes raw materials or processes agricultural products using its own equipment or the equipment of third parties in Greece which act on its instructions and on its behalf;
(c) conducts works in Greece or supplies services through a representative;
(d) retains a reserve of products to carry out orders;
(e) participates in a partnership with legal personality or a limited liability company which has its registered seat in Greece.

In case the franchisor does not have a permanent establishment in Greece, it should first be examined whether a treaty for the avoidance of double taxation exists between Greece and the country where the foreign legal entity has its tax residence.[10] If such a treaty exists, its provisions shall be applicable as they prevail over national legislation. The same tax treatment shall be applicable in case the franchisor is a domestic legal entity that enters into an agreement with a foreign franchisee.

[10] Greece has signed treaties for the avoidance of double taxation with the following countries: the United States of America (Legislative Decree 2548/1953), the United Kingdom (Legislative Decree 2732/1953), Sweden (Legislative Decree 4300/1963), France (Legislative Decree 4386/1964), India (Legislative Decree 4580/1966), Italy (Statute 1927/1991), Germany (Statute 52/1967), Cyprus (Statute 573/1968), Belgium (Legislative Decree 117/1969), Austria (Statute 994/1971), Finland (Statute 1191/1981), Holland (Statute 1455/1984), Hungary (Statute 1496/1984), Switzerland (Statute 1502/1984), Czechoslovakia (Statute 1838/1989), Poland (Statute 1939/1991), Norway (Statute 1924/1991), Denmark (Statute 1986/1991), Romania (Statute 2279/1995), Bulgaria (Statute 2255/1994), Luxemburg (Statute 2319/1995), Korea (Statute 2571/1998), Israel (Statute 2572/1998), Croatia (Statute 2653/1998), Uzbekistan (Statute 2659/1998), Albania (Statute 2755/1999), Portuguese (Statute 3009/2002), Armenia (Statute 3014/2002), Spain (Statute 3015/2002), Georgia (Statute 3045/2002), Ukraine (Statute 3046/2002), Russian Federation (Statute 3047/2002), Slovenia (Statute 3084/2002), South Africa (Statute 3085/2002), Ireland (Statute 3300/2004), Latvia (Statute 3318/2005), Kuwait (Statute 3330/2005), Lebanon (Statute 131/1967), Moldova (Statute 3357/2005), China (Statute 3331/2005), Mexico (Statute 3406/2005), Lithuania (Statute 3356/2005), Slovakia (Statute 1838/1989) and Turkey (Statute 3228/2004).

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If the franchisor is a foreign legal entity which has its tax establishment in a country with which Greece does not have a treaty for the avoidance of double taxation, article 13, paragraph 6, of Legislative Decree 2238/1994 (Code of Income Taxation), which provides for withholding tax of 20 percent on the gross fee paid to the franchisor are applicable. After withholding, the foreign legal entity incurs no further tax obligation for its income generated in Greece. The payment of tax takes place within the first fifteen days of the month following the one in which withholding was made.

3.5. Penalty Clauses in the Franchising Agreement

Penalty clauses are often found in franchising agreements and aim at forcing the debtor, i.e. the franchisee, to fulfill his obligations arising from the agreement. Nonetheless, excess use of penalty clauses which may result in an imbalance of interests should be avoided. Unreasonable penalty clauses may be reduced on the basis of article 281 of the Civil Code on excessive commitment of the freedom of a person; on article 388 on burdensome provisions; and on article 288 on performance according to good faith and moral values.[11]

3.6. Competition Rules

Franchising agreements constitute agreements between enterprises that fall within the scope of article 1, paragraph 1, of Statute 703/1977 on the Control of Monopolies and Oligopolies and on the Protection of Free Competition i.e. illegal concentrations. Clauses that are considered to constrain competition of the members of the franchise network are those that impose prescribed prices, forbid the making of passive sales and impose on the franchisee the prior approval of its advertising campaign by the franchisor. Such clauses may be declared void and their invalidity is examined by the court at its own motion.

The fact that a franchise network is active in Greece does not in itself mean that its operation may not affect community trade because such impact depends on various factors and not only on the geographical area of its commercial activity. It is therefore necessary that contracts between Greek enterprises are drafted in a way so as not to involve clauses that are contrary to articles 4 and 5 of Commission Regulation 2790/1999.[12]

3.7. The Obligation Not to Compete

Under Greek law, the obligation to abstain from competitive actions is permissible as long as the relevant provision is not contrary to article 179, section a, of the Civil Code, i.e. it does not

[11] See Apostolos Georgiadis, *Nees Morfes Symvaseon tis Sychronis Oikonomias* (New Forms of Contracts of Modern Economy), Athens: Sakkoulas, 2000, pp 193 – 259 and Dimitrios Kostakis, *Franchising, Nomiki kai Epichirimatiki Diastasi* (Franchising, Legal and Commercial Aspect), 2nd ed., Athens: Nomiki Vivliothiki, 2002, pp 71 – 363.

[12] See Sotiris Giannakakis, "The New Community Competition Rules on Franchising and on Agreements for Supply and Distribution", *Dikaio Epichiriseon kai Etairion*, Vol. 7, Athens, Nomiki Vivliothiki, 2001, pp 697 – 699.

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constrain the freedom of the person excessively.[13] The parties may freely agree on a prohibition of competition for the time the agreement is in force, limit it, particularize it or expand it as long as the constraint is justifiable in view of the object of the agreement, its duration, the financial activities that the franchisee is allowed to exercise and the degree to which the interests of the party that benefits from the limitation should be legitimately protected. This position is confirmed both by Greek case law and legal theory and is strengthened by some legislative provisions imposing or explicitly allowing for the conclusion of non-competition clauses in some contracts (e.g. article 10, paragraph 4, Presidential Decree 219/1991 on Commercial Agents).[14]

Moreover, the obligation to abstain from competitive actions may be supported by the principle of good faith (article 288 of the Civil Code) or by the rules of articles 173 and 200 of the Civil Code, even if such obligation has not been explicitly agreed upon. The breach of the principle of proportionality set out in article 179 of the Civil Code renders the contractual prohibition for non-competition unjustifiable and abusive and therefore void. It must be pointed out, however, that the invalidity of such clauses does not affect the remaining clauses of the franchising agreement, which stay intact.

In case the franchisee breaches the obligation to abstain from competitive actions after the agreement is terminated, the franchisor may, according to article 374 of the Civil Code, deny outstanding payments. Moreover, the franchisor may request compensation for the failure to perform the agreement and, if a penalty clause has been agreed, to demand payment of such clause (article 406 of the Civil Code). The franchisor may file an interim measures petition requesting the court to order the franchisee not to compete by, for instance, temporarily disallowing the franchisee to sell competitive products or provide competitive services.

3.8. Frustration of the Contract

If one of the parties fails to perform, the other party has the right to compensation but not the right to rescind the agreement. Non-performance must relate to the breach of a principal obligation.[15]

Regular Termination

[13] According to the Hellenic Competition Committee, the imposition of the obligation to abstain form competitive actions for one year on the franchisee is justified if it aims at safeguarding the franchisor from the possible exploitation of know-how that the franchisor provides pursuant to the franchising agreement without excessively constraining the freedom of the franchisee to continue his business activities in the particular sector (Decisions No. 252/1995 and 51/1997).

[14] Dimitrios Kostakis, *Franchising, Nomiki kai Epichirimatiki Diastasi* (Franchising, Legal and Commercial Aspect), 2nd ed., Athens: Nomiki Vivliothiki, 2002, pp 71 – 363.

[15] See Apostolos Georgiadis, *Nees Morfes Symvaseon tis Sychronis Oikonomias* (New Forms of Contracts of Modern Economy), Athens: Sakkoulas, 2000, pp 193 – 259 and Dimitrios Kostakis, *Franchising, Nomiki kai Epichirimatiki Diastasi* (Franchising, Legal and Commercial Aspect), 2nd ed., Athens: Nomiki Vivliothiki, 2002, pp 71 – 363.

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A franchising agreement of indefinite duration may be terminated regularly with a statement to the opposing party. Such statements have legal results only when the opposing party receives it (article 167, Civil Code). Franchising agreements usually contain provisions regarding the notice period for regular termination. In case no relevant contractual provision exists, the provisions of article 8, paragraphs 3 to 7, Presidential Decree 219/1991 on Commercial Agents, apply. According to paragraph 4 of said article, the notice for regular termination shall be at least one month for the first year and shall increase gradually for every subsequent year reaching a maximum of six months. The parties may not set shorter periods but they may set longer ones, provided that the termination notice for the franchisor is not shorter than that of the franchisee (article 8, paragraph 5, Presidential Decree 219/1991). Although no specific penalty is provided for the breach of the above provision, it is accepted that such breach results in the shorter notice being void and the longer one being applicable.

Irregular Termination

The franchising agreement, either of definite or of indefinite duration, may be terminated at any time by any of the parties for a material cause. A relevant provision can be found in article 8, paragraph 8, of Presidential Decree 219/1991 on Commercial Agents.

De Jure Termination

The franchising agreement is terminated *de jure* when its contractual duration ends, and in the event of death, bankruptcy, judicial restraint or dissolution of the legal entity of the franchisor or the franchisee (article 726 of the Civil Code). The contract may provide that the agreement shall be terminated *de jure* due to other serious causes such as liquidation by any of the parties.

Termination following an Agreement of the Parties

The parties may at any time terminate the franchising contract with a common written agreement. Such an agreement may also regulate the post-contractual relations of the parties.

3.9. Remedies

When the termination is effected by the franchisor for reasons of *force majeure*, the franchisor is under no obligation to pay damages if he proves that his failure is not due to his fault. On the contrary, when the contract is terminated for a material cause which may be attributed to one of the parties, the party at fault is obligated to pay damages. The damages that the franchisee may demand shall comprise of the income that it would have received in the normal course of events for the period that the agreement would have been in force as well as the investment costs he incurred and were left unredeemed. The liability for the payment of damages after the termination of the franchising agreement may also be based on the provisions of articles 197,

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198, 914 and 919 of the Civil Code.

Crucially, the franchisor may have to pay damages to the franchisee after the termination of the agreement for the clientele that the franchisee created as well as for the contribution of the franchisee to the enhancement of the commercial reputation of the franchise network. This particular claim may be drawn, *mutatis mutandis,* from article 9 of Presidential Decree 219/1991 on Commercial Agents, which refers to the damages of the commercial agent and which may apply to a franchising agreement. According to said article, a commercial agent shall be entitled to an indemnity if and to the extent that:

(a) he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers;

(b) the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers;

(c) The amount of the indemnity may not exceed a figure equivalent to an indemnity for one year calculated from the commercial agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question.

Damages are not payable:

(α) where the principal has terminated the agency contract because of a default attributable to the commercial agent which would justify immediate termination of the agency contract under national law;
(β) where the commercial agent has terminated the agency contract, unless such termination is justified by circumstances attributable to the principal or on grounds of age, infirmity or illness of the commercial agent in consequence of which he cannot reasonably be required to continue his activities;
(χ) where, with the agreement of the principal, the commercial agent assigns his rights and duties under the agency contract to another person.

3.10. Dispute Resolution

There is a tendency towards submitting franchising agreements to arbitration. Arguably, this is the most appropriate way to solve disputes arising from such agreements, mostly because the arbitrators appointed shall probably have solid knowledge on franchising arrangements. This is quite important in Greece where experience in relation to franchising agreements is still limited.

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Moreover, arbitration is clearly not as time consuming as ordinary litigation.[16]

The agreement to submit future disputes arising from a franchising contract to arbitration (article 868 of the Code of Civil Procedure) is valid only if made in writing and if it refers to a particular legal relationship from where the disputes will arise. In any case, the arbitration clause is applicable not only for disputes that will arise from contractual claims but also for those arising from torts. The arbitration clause may also contain the appointment of a judge or other person/s as arbitrators (article 871 of the Code of Civil Procedure).

4. Greek Case Law

Greek case law on franchising is poor. This is primarily due to the fact that Greek undertakings have only recently started using franchising as a form of commercial arrangement. Interestingly, the success of franchising does not leave much room for the creation of serious disputes. Most court judgments have been given following an application for an injunction. Injunction procedures are constrained by certain rules that do not allow the court to fully adjudge a claim: it may only order temporary measures to protect the claimant – a protection that cannot amount to the full protection of a claim. The following are recent judgments that have ruled on disputes arising from franchising agreements and have set the tune on the approach Greek courts take to such cases.

Polymeles Protodikeio Athinon (Multi-member Court of First Instance of Athens) (No. 8091/2001)[17]

A lawsuit against a franchisee who terminated a franchising agreement shortly after its conclusion is lawful. The claim of the franchisor for the payment of an entrance fee and royalties was well-founded and a proper cause for termination.

Polymeles Protodikeio Athinon (Multi-member Court of First Instance of Athens) (No. 3749/2001)[18]

The lawsuit of the franchisor, following the termination of the agreement with the franchisee and the purchase by the latter of the equipment of the franchisor and the remaining products, is admissible. This is because the purchase took place pursuant to the obligations of the franchisee arising from the franchising agreement; the receipt of payment by the franchisor for equipment and products does not entail that the franchisor resigned from his right to damages, especially given that the lawsuit was filed shortly after the termination of the contract.

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[16] For an outline of the procedural steps see Yannis Kelemenis and Athanassia Papantoniou, "Greece", *ICLG to: Litigation & Dispute Resolution 2008*, London: The International Comparative Legal Guide, 2007.
[17] Unpublished; extracted from electronic database *Nomos.*
[18] Unpublished; extracted from electronic database *Nomos.*

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Monomeles Protodikeio Athinon (Single-member Court of First Instance of Athens), Interim Measures Procedure (No. 7869/2001)[19]

The court ruled on a case where the franchisees terminated the agreement for a material cause, on the allegation that the franchisor did not offer its know-how, commercial support and competitive advantage. Following the termination, the franchisees continued to operate in the same premises, selling similar products and maintaining the same external and internal appearance in their stores. The court found that the franchisees acted in a manner amounting to unfair competition, and ordered the franchisees (a) to abstain from trading products similar to those traded when they were members of the franchise network and (b) to set up their stores in such a manner as not to resemble the stores of the franchise network.

Monomeles Protodikeio Athinon (Single-member Court of First Instance of Athens), Interim Measures Procedure (No. 9526/2001)[20]

The franchisee claimed that: (a) the franchisor did not offer know-how, (b) the trademarks of the franchisor was imitative, (c) the raw materials of the network were too expensive, and (d) the equipment for the preparation of products was defective. The court found that the allegations were not well-founded and, given the refusal of the franchisee to resolve the dispute in good faith as the franchisor had suggested, ordered the franchisee to continue the franchising contract and to bring its store back to the way it looked before the termination.

Monomeles Protodikeio Athinon (Single-member Court of First Instance of Athens), Interim Measures Procedure (No. 10232/2000)[21]

The court found that the termination of the franchising contract due to the repetitive failure of the franchisee to pay royalties was well-founded. It also ruled, however, that the obligation imposed on the franchisee not to exercise the same activity in the same area for one year after the termination of the agreement constrained the freedom of the franchisee excessively and was void. The court took into consideration the fact that there was no other franchisee in the area, that the franchisee published the termination of the franchising agreement, that it changed its commercial name and that it had made a very significant investment to develop the premises.

Monomeles Protodikeio Athinon (Single-member Court of First Instance of Athens), Interim Measures Procedure (No. 1733/2001)[22]

The court found that franchisees are under an obligation to notify their income to the franchisor in order for the latter to be in a position to calculate the royalties payable to it. Such notification

[19] Published in journal *Dikaio Epichiriseon kai Etairion* (2002).
[20] Unpublished; extracted from electronic database *Nomos.*
[21] Unpublished; extracted from electronic database *Nomos.*
[22] Published in journal *Dikaio Epichiriseon kai Etairion* (2000).

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may be requested with an injunction application and includes the display of accounting books and any other means that show the economic performance of the franchisee.

5. Conclusion

The number of franchising agreements has increased significantly in Greece over the past few years. This is primarily due to the financial growth of the Greek economy and the arrival of important international players for whom franchising constitutes a useful tool to develop their business. Although franchising agreements have overall functioned successfully, the absence of a specific legislation regulating them still creates barriers, confusion and uncertainty allowing conflicting interpretations to emerge when disputes arise.