

# France

Helen Coulibaly-Le Gac



HLG Avocats

Céline Tran



## 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 agreement under French law.

The European Code for Ethics for Franchising proposes a relevant definition which may be used to explain the basic principles of a franchise agreement. According to authors and French case law, a franchise may be defined as a business contract under which an independent contractor (the Franchisor) grants to another independent contractor (the Franchisee) the right to use a package of property rights, for the purpose of producing and/or marketing specified types of goods and/or services. It typically relates to trademarks, trade names, know-how, patents, or branded signs.

It is worth noting that in France, franchise is a generic term which might cover different types of contractual relationships, such as concession, affiliation and franchise agreements.

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

There is no franchise-specific regulation under French law. Offer and sale of franchises are mainly regulated by general principles of contract law, intellectual property law and competition law. However, as soon as the use of a brand, trademark and/or sign is granted in exchange of an exclusivity provision, mandatory provisions of Articles L. 330-3 and R. 330-1 of the French Commercial Code are applicable to offer and sale of franchises. In addition, specific mandatory provisions apply to retail trade according to Article L. 341-1 of the French Commercial Code.

In addition, the European Code for Ethics for Franchising supplements the applicable legal requirements and may be used as a guide to draft franchise agreements.

### 1.3 If a franchisor is proposing to appoint only one franchisee/licensee in your jurisdiction, will this person be treated as a “franchisee” for purposes of any franchise disclosure or registration laws?

Yes, if the Franchisor proposes to appoint only one Franchisee or licensee in a jurisdiction, this person will be treated as any Franchisee under French Law.

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

Under French law, in order to license a trademark or any distinctive sign, the Franchisor must register its trademark before the *Institut National de la Propriété Intellectuelle* (INPI).

The trademark must be lawful, distinctive and available.

In addition, any franchise of a regulated activity such as, notably, healthcare activities, sales of beverage, or real estate may need to fulfil specific requirements/registrations under French law.

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

The Franchisor has to provide its prospective Franchisee with all information necessary to allow an educated decision-making process. Thus, pursuant to Articles L. 330-3 and R. 330-1 of the French Commercial Code, the Franchisor has to provide the Franchisee with a pre-contractual information document at least 20 days before the signing of the contract, or before any payment related to it. The document discloses extensive information about the Franchisor and the franchise organisation which is intended to give to the potential Franchisee enough information in its decision-making process. The document shall give truthful information, allowing the Franchisee to commit to this contract in full knowledge of the business, legal and financial conditions.

It is worth noting that the latest reform of the French Civil Code, which entered into force on 1st October 2016, introduces a new Article 1112-1 to the French Civil Code. This Article reinforces obligations set forth in the above-mentioned articles regarding information that must be provided to the Franchisee. Pursuant to Article 1112-1, each party must provide all information that could be ignored by the other party and that could influence the consent of this party in the decision-making process to sign the agreement.

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

The obligation to provide a pre-contractual information document does apply to sub-Franchisees.

The Franchisee (in this case, the Master Franchisee) is required to provide the sub-Franchisees with any information necessary to make an educated decision at least 20 days before the signing of the contract, or before any payment related to it.

### 1.7 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?

The pre-contractual information document shall contain information as listed in Articles L. 330-3 and R. 330-1 of the French Commercial Code, and in particular:

1. information about the Franchisor's identity and its activities: company name; registered office; registration number; form; capital; name of the CEO, etc.;
2. trademark registrations and more generally all information on the property of the trademark licensed in the franchise concept, registration number of the trademark, and licence agreement, if any;
3. the Franchisor's bank account details (name, address of banks, etc.), limited to the five principal bank domiciliations, if applicable;
4. the date of incorporation of the Franchisor company and main steps of the development of the company and the network (past five years) including a focus on the personal experience of the CEO, founder, etc. This presentation must include financial statements for the past two years, information about financial health and experience of the Franchisor's company, a general and local market report on which the Franchisor is active, and the prospective view on the market concerned. It is worth noting that a general and local market report is different from market research. If the Franchisor includes such research in the pre-contractual information document, it must be complete, sincere and accurate. The Franchisor is, thus, bound by this document;
5. a global presentation of the undertakings of the network with the complete list and contact details of Franchisees: address of the undertakings and nature of the relationships with the Franchisor; and the number of Franchisees which have left the network during the last financial year, indicating, for each contract, the nature of the termination of the agreement and scope of exclusive rights, i.e. existence of potential or actual competitor members of the network; and
6. information about the franchise agreement: duration; termination; renewal; assignment; and all investments scheduled to start the franchise and develop it (i.e. royalties, entry fee, if any, all expenses linked to the implementation of the concept, training, hardware and software applications).

In addition, if the payment of a sum is required prior to the signing of the agreement, the benefits provided in return for this sum shall be specified in writing together with the reciprocal obligations of the parties in the event of renunciation.

The pre-contractual information document shall be updated for each prospective Franchisee. However, once the contract is signed, there is no such obligation for the Franchisor.

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

In the light of relevant case law, it is highly recommended to perform tests on the concept and business before offering and sale of the franchise. The standard recommendation is to operate at least three companies as pilots for at least two years each. The aim is to assess the "franchisability" of the concept. This recommendation must be adapted to each concept and business.

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

Under French law, there is no mandatory membership of any franchise association. Nevertheless, membership of the French Federation for Franchising is advisable in this area.

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

The French Federation for Franchising verifies if the pre-contractual information document and franchise agreements comply with the European Code of Ethics for Franchising.

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

There is no requirement for franchise documents or disclosure documents to be translated into French. However, as under French Law the Franchisor is requested to provide accurate and understandable information to prospective Franchisees, a translation of all the documentation is highly recommended.

## 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?

In France, there is no foreign investment law that imposes such restrictions.

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

Franchisors often use subsidiaries to develop their franchise in France. In such situations, different subsidiaries are used to develop all services provided to the Franchisee such as a supply chain, training sessions, logistic support, etc. In an international context, Master Franchises receive great endorsement. As an example, if the Franchisor is not a French company and has no experience in France, he could consider involving a legal or natural person who has a good knowledge of the French market. In this case, the Master Franchisor will have to consider the opportunity to develop its own network with sub-Franchisees. Another option is to create a joint venture in France with local partners to develop a network in France and ensure that all legal requirements are met for implementation. This type of partnership is under development in France as it offers to the Franchisor a solid presence in the country with a strong operational support with the local partner.

### 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?

Any legal or natural person contemplating starting a business in France through a new business entity in the country must be registered.

Depending on the form of the entity (a new company registered in France, a foreign entity, a specific status such as commercial agent, etc.), the new entity will have to meet specific requirements to be recognised by the French authorities.

### 3 Competition Law

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

A franchise network active in France shall comply with both the European regulation regarding anti-competitive practices (Article 101 of the Treaty on the Functioning of the European Union) and the French Regulation, which prohibit anti-competitive practices such as concerted actions, agreements, express or tacit undertakings or coalitions, and abuses of a dominant position (Article L. 420-1 et seq. of the French Commercial Code), and Article L. 442-1 et seq. of the French Commercial Code, which prohibit restrictive practices.

In particular, franchise networks set up in France must comply with Commission Regulation No 330/2010 of 20th April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, which provides the conditions under which vertical restraints are exempted from the prohibition on anti-competitive agreements.

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

Under French Law, there is no maximum permitted term for a franchise agreement. The nature of the activity and the investments required to launch a franchise are often considered to determine the first term of the franchise agreement.

However, should the franchise agreement provide for an exclusive supply provision, the term of the agreement shall be limited. See question 3.3 below.

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

If the agreement contains an exclusivity supply provision, the contract term shall be limited to 10 years, pursuant to article L. 330-1 of the French Commercial Code. However, should the franchise network be subject to European Union competition law (which is the case for all major Franchisor networks of supermarket chains for example), the term shall be limited to five years and does not have to involve a tacit renewal clause.

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

The fixing of a minimum resale price between independent contractors is prohibited under both French and EU law (Articles L. 420-1 and L. 442-5 of the French Commercial Code and Article 101 of the Treaty on the Functioning of the European Union).

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

Under French Law, there is no minimum requirement for the Franchisor when appointing franchises in adjoining territories.

However, if the Franchisor provides the Franchisee with an exclusive territory, the Franchisor must undertake not to compete directly or indirectly with the Franchisee in the same area as that granted under exclusivity; i.e., the Franchisor shall not open another sales outlet in the same area.

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

Under French Law, in-term non-compete obligations are enforceable. Non-compete-obligations may be directly related to the business of the Franchisor but may also be more specific and focused on a territory, should the Franchisee has been granted with an exclusive territory provision. In this case, the Franchisor has the right to limit the Franchisee's ability to solicit customers in territories where no exclusivity was granted.

Post-term non-compete obligations were subject to a recent reform, the purpose of which is to state as a principle that post-term non-compete provisions are deemed to be unwritten (Article L.341.2§1 of the French Commercial Code). However, as a derogation, post-term non-compete provisions may be seen as valid if the following four conditions are fulfilled:

- non-compete provisions must be directly related to the goods or services of the Franchisee;
- non-compete provisions must be limited to the specific commercial premises used by the Franchisee;
- non-compete provisions must be indispensably to protect the specific and secret know-how of the Franchisor; and
- the duration of the non-compete provisions must not exceed one year.

### 4 Protecting the Brand and other Intellectual Property

#### 4.1 How are trade marks protected?

Under French Law, trademarks have to be registered to be protected. The term "attributive registration" ("*dépôt attributif*") is used. Property right is not acquired through use: it is the registration that gives the applicant a property law on the trademark (Articles L. 712-1 and L. 713-1 of the French Intellectual Property Code). It has to be lawful, distinctive and available to be registered. Thus, the trademark is registered for a 10-year duration, renewable indefinitely.

If the applicant registers the trademark before the French National Institute of Industrial Property (*Institut National de la Propriété Industrielle*), a national protection will be granted. If the registration is made before the European Office of Harmonisation in the Internal Market (*Office de l'Harmonisation du Marché Intérieur*), the Franchisor will benefit from an EU protection.

It is worth noting that an inadequate protection of the trademark may have dramatic consequences for a Franchisor as distinctive marks represent a substantial part of a franchise business. Therefore, it is highly recommended to register and protect the trademarks in accordance with the franchise business contemplated.

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

Under French law, know-how, trade secrets and other business-critical confidential information are not protected as such. However,

commercial and civil laws offer different tools to protect business secrets among which the non-disclosure agreement constitutes the first and indispensable legal protection. Other provisions may be included in franchise agreements to protect business and trade secrets.

#### 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?

In France, the author's right ("*droit d'auteur*") protects original intellectual work.

Thus, the author's right may be an adequate protection if the Franchisor is able to evidence that, for instance, the operations manual and proprietary software are originals and bear the mark of the Franchisor's personality. The author's right and trademark law allow the Franchisor to protect rallying signs for customers, such as trademark, trade name, commercial sign, graphic charter, architectural concept, etc.

The author's right does not protect ideas under French law.

## 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?

Two remedies can be enforced against a Franchisor for failure to comply with the mandatory disclosure obligations (i.e. the obligations set forth in Article L.-330-3 and R.330-1 of the French Commercial Code):

(i) Cancellation of the agreement

Cancellation of the franchise agreement is generally granted by the courts when the Franchisee is able to evidence that the information provided by the Franchisor (mandatory information but also other information provided by the Franchisor as keys elements) were inaccurate, false or misleading and have fraudulently oriented the consent of the Franchisee. This rule is reinforced by the recent reform of the French Civil Code which provides that each party to an agreement must provide all information that could be ignored by the other party and that could influence the decision-making process of this party to sign the franchise agreement.

Cancellation of the agreement is a heavy process that might have irrevocable consequences on the network's existence.

Furthermore, it is worth noting that a violation of Article L. 330-3 of the French Commercial Code is also punished by a criminal penalty (a fifth class contravention may be pronounced).

(ii) Franchisor's civil liability

Even when the courts consider that the pre-contractual information provided by the Franchisor does not imply the cancellation of the agreement, the Franchisor may be held civilly liable. As such, the courts can order the indemnification of the Franchisee's damage due to the lack or incompleteness of information provided before the conclusion of the agreement.

The Franchisee must provide evidence that knowledge of missing information would have led the Franchisee to sign the contract under different conditions, thereby causing it a prejudice. In addition, parties can provide remedies of their choice, within the limits of the law.

#### 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 master 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 disclosure non-compliance or for misrepresentation in terms of data disclosed being incomplete, inaccurate or misleading, the Franchisor endorses the same risk and liability as set forth in question 5.1. In addition, the Master Franchisee must also comply with mandatory provisions of Article L.330-3 and R.330-1 of the French Commercial Code with regard to its proper sub-Franchisees.

No limitation exists regarding indemnity taken by the Franchisor from the Master Franchisee under French Law with the limitation of the abuse of rights.

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

Such a clause is prohibited under French Law. The obligation of pre-contractual information is mandatory (known in France as the "*Loi de police*"). A provision avoiding liability for pre-contractual misrepresentation by including disclaimer clauses in the franchise agreement is unenforceable.

#### 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?

Under French Law (Decree n° 2014-1081 of 24<sup>th</sup> September 2014), class actions are limited to litigations involving consumers (B2C relationships); in this case, the class action must be managed by a consumer association.

Class actions are not applicable to relationships between the Franchisor and its Franchisees. However, this does not prevent a group of unsatisfied Franchisees from launching coordinated individual actions before the French courts.

## 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?

There is no requirement for franchise documents to be governed by French law. However, the choice of governing law is of essence; it is to be noted that, even where French law is not used as the governing law, all mandatory provisions applicable under French law – the so-called "*Lois de Police*" – shall be enforceable.

#### 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?

French law provides for a general urgent interim relief and injunction

procedure. The Franchisor may use it before French courts to cease damage to the brand or misuse of business-critical confidential information. Furthermore, decisions of foreign courts may be enforced by French courts, according to European and international regulations and treaties.

## 7 Real Estate

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

In principle, any person who is registered in the commercial and companies register or in the trade register who wishes to carry on a commercial, industrial or artisanal business in the leased premises can sign a commercial lease. Under French law, commercial lease agreements benefit from the status of a public order, which means, notably, that the lack of one essential element of the status provokes the cancellation of the agreement. Generally speaking, the standard duration of a commercial lease is of a minimum of nine years. The parties can provide for a longer period. The tenant can terminate the agreement every three years.

It is highly advisable for both Franchisor and Franchisee to carefully analyse the commercial lease agreement, as it represents a powerful asset of the business carried on.

### 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?

If the concerned agreement provides so, the concept of an option/conditional lease assignment over the lease is enforceable.

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

Under French law, there are no such restrictions on non-national entities.

### 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 commercial real estate market is very heterogeneous and the value really depends on the geographic location.

An initial rent-free period is negotiable under French law.

Key money might be paid to the landlord by the tenant at the date of the conclusion of the commercial lease (entrance fee), depending on the place and location of the premises. The amount is freely set by the parties according to the attractiveness of the area.

## 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?

Under EU regulations, such an agreement is prohibited. Indeed, a clause providing the interdiction of passive sales is forbidden. As a consequence, a clause imposing the re-direction of such sales to another Franchisee would be prohibited.

### 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?

Under French law, such a clause would be enforceable.

## 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 such mandatory local laws. However, French courts are able to reduce or increase a penalty clause agreed between the parties. In addition, if a Franchisor suddenly and abruptly terminates a franchise agreement without sufficient notice, it may be held liable and be condemned to pay damages to its Franchisees (Article L. 442-6, I 5° of the French Commercial Code).

Liability can be triggered if the following conditions are all met:

- Existence of an established business relationship (where B2B relationships are concerned). The relationship has to be stable and ongoing.
- Existence of a break (be it a complete or even a partial break).
- The break is abrupt and sudden, meaning that the break has been given without prior written notice commensurate with the duration of the business relationship and consistent with the minimum notice period determined by the multi-sector agreements in line with standard commercial practices. Indeed, it is necessary to refer to French case law, which uses, in particular, the concept of economic dependence in order to determine the duration of the necessary notice.

## 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?

A franchise agreement may be reclassified as an employment contract if the Franchisee is not effectively independent from the Franchisor, meaning that a so-called subordinate relationship between the Franchisor and the Franchisee can be demonstrated. Therefore, it is of essence that the Franchisee is considered an independent contractor

and acts as such. The Franchisee must manage its company and its employers independently. In that respect, the Franchisor shall never act as an employer of the Franchisee's employees and shall not undertake any action that could suggest that the Franchisor and the network are a sole economic entity. In such situation, the risk will be dramatically increased and the Franchisee's employees could act directly against the Franchisor to claim their rights.

**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?**

Under French Law, the Franchisee is independent from the Franchisor, as stated above. In principle, the Franchisee has sole responsibility for acts or omissions of the Franchisee's employees in the performance of the franchised business. For the avoidance of doubt, it is highly advisable that the Franchisee undertakes, under the franchise agreement, to inform third parties and specifically the employees about its status.

## 11 Currency Controls and Taxation

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

Under French law, such restrictions do not exist.

**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?**

Under French law, such requirements applicable to the payment of royalties do not exist.

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

Under French law, such requirements do not exist. However, it is worth noting that financial transactions, such as the sale of business goodwill or shares of a company, may lead to the payment of local taxes that must be reviewed before the signing of the transaction.

## 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?**

Under French law, the qualification of an agreement does not bind the judge. In other words, even if the agreement is drafted as a franchise agreement, the judge may reclassify the agreement if it is considered that the Franchisee acts in practice as a commercial agent. Indeed, in principle, the Franchisee is acting in its name and on

its behalf and conducts its business independently. However, a reclassification of the franchise agreement as a commercial agent agreement is possible if, on the contrary, the Franchisee is acting on behalf of the Franchisor.

## 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 in its dealings with franchisees according to some objective test of fairness and reasonableness?**

Under French law, the obligation to act in good faith is qualified as a general principle of law. This general principle of law applies particularly to the relationships between the Franchisor and the Franchisee as the franchise is often described as a "shared success story".

It is worth noting that the recent reform of French civil law strengthens the obligation to act in good faith throughout the life of a contractual relationship, including during the negotiations phase (pre-contractual 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?**

General principles of civil and commercial law apply to the relationship between the Franchisor and the Franchisee once the franchise agreement has been entered into.

## 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?**

In case of a renewal of an existing franchise agreement (i.e. the signing of a new franchise agreement) at the end of the term, a new mandatory disclosure document (Articles L. 330-3 and R.330-1 of the French Commercial Code) must be provided by the Franchisor to the Franchisee, even in a case of long-term contractual relationships. However, it seems that if there is only an extension of the actual agreement, no disclosure agreement is provided.

However, those statements have to be balanced. Indeed, French case law is not unanimous on the matter. In the interests of legal certainty, it seems useful to advise Franchisors to provide a new mandatory disclosure agreement in both cases (renewal and extension).

As such, it is worth noting that an extension of the franchise agreement may trigger new questions on the implementation of the agreement that have to be raised before the extension can be executed.

**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?**

If the franchise agreement does not provide for a renewal or

extension provision, there is no obligation under French Law to renew or extend the contract. However, parties remain free to set such a provision.

In addition, the Franchisor must be cautious not to encourage (or request) important investments from the Franchisee before the term of the franchise agreement lapses should the Franchisor decide not to renew the agreement.

---

**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 does not provide for an obligation to automatically renew the agreement, the Franchisor is free to terminate the contract. However, if the termination is sudden and brutal and not commensurate with the duration or quality of the business relationship (i.e. the Franchisee has made investments to implement a new concept store), the Franchisor's liability could be challenged.

## 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?**

---

Under French law, such restrictions are possible. The franchise agreement is concluded *intuitu personae*, i.e. in consideration of the Franchisor's person, but above all, in consideration of the Franchisee's person. The right of first refusal in favour of the Franchisor is a standard requirement in France.

---

**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 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?**

---

French law does not recognise such a step-in right.

Regarding the step-in right under French law, it has to be noted that, in case of termination of the Master Franchise agreement, the principle of privity of contracts prevents sub-Franchisees being contractually bound to the Master Franchisor. Sub-franchise agreements are not automatically transferred to the Master Franchisor. To do so, the subrogation mechanism shall be used; thus, the Master Franchisor is subrogated to the Franchisee's rights with regard to sub-Franchisees. This mechanism shall be accepted by sub-Franchisees by having a clause in the franchise agreement. A contractual relationship is thus created between the Franchisor and the sub-Franchisees.

---

**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?**

---

This is not applicable under French law. The Franchisee is the owner of its business, and no pre-emption or step-in right can be provided.



**Helen Coulibaly-Le Gac**

HLG Avocats  
42 A, rue Montgrand  
13006 Marseille  
France

Tel: +33 4 84 25 54 03  
Email: [h.coulibalylegac@hlgavocats.fr](mailto:h.coulibalylegac@hlgavocats.fr)  
URL: [www.hlgavocats.fr](http://www.hlgavocats.fr)

The founding partner of HLG Avocats Law Firm, Helen is specialised in competition law, distribution law and contract law. Over the last 15 years, Helen has acquired significant international experience through her positions as both in-house and outside legal counsel. Helen holds a Ph.D. in French Law from the University of Paris 1 Panthéon-Sorbonne, for which she received the highest distinction with congratulations of the jury. She is a former member of the Paris Bar and she is currently member of the Marseille Bar.

Helen has also worked as in-house counsel in the pharmaceutical industry and contributed to the setting up of a wholesalers' network in a strictly regulated environment.

She regularly advises international firms in their development of franchise networks in France.

Helen speaks English and French.



**Céline Tran**

HLG Avocats  
42 A, rue Montgrand  
13006 Marseille  
France

Tel: +33 4 84 25 54 03  
Email: [ctran@hlgavocats.com](mailto:ctran@hlgavocats.com)  
URL: [www.hlgavocats.fr](http://www.hlgavocats.fr)

Céline Tran is a trainee lawyer preparing to join the Marseille Bar.

Céline graduated from Aix-en-Provence University – Institute of Business Law, France, with: a Master's degree in International Business Law; an in-house legal counsel university degree in International Contracts (in French, the "DJCE"); and a degree ("DESU") in Distribution Law.

Céline speaks English and French.

Her main areas of practice are distribution, competition and consumer law.



HLG Avocats is a French independent law firm specialised in competition, distribution, consumer law and contract law, advising clients throughout the development of their contractual relationships with suppliers or distributors.

HLG Avocats has an extensive experience of French and international environments, and is able to work with small businesses and larger companies, in terms of B2B and B2C relationships. In particular, the firm advises and assists clients in the redaction and the negotiation of business contracts (franchise agreements, commercial agency agreements, pre-contractual information document, general conditions of sales, etc.). Our law firm also has extensive experience in French and European competition law, such as anti-competitive practices, merger filings, or unfair competition law.

HLG Avocats has developed specific skills in the health, retail distribution, food processing, sports and electronics industries.