

FRANCHISE LAW IN BELGIUM

Part 1: Unilateral termination of franchise agreements

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1. In this first article in a series of selected topics on franchise law in Belgium, we will have a closer look on the possibilities for parties to a franchise agreement to unilaterally terminate this franchise agreement under Belgian law.

I. LACK OF LEGAL RULES

2. First, we have to point out that in Belgium – despite a growing trend in surrounding countries – there are **no specific legal rules** concerning franchise agreements, not even a unique legal definition.

II. GENERAL RULE AND OTHER (REGULATED) DISTRIBUTION AGREEMENTS

3. To fully understand the possibilities concerning the termination of franchise agreements under Belgian law, we have to refer first to the general rule of law and specific rules concerning other (regulated) distribution agreements.

4. Belgium is still one of the very few countries that has an explicit set of rules governing the **unilateral termination of sole distributorship agreements** (Act July 27, 1961). These rules stipulate that certain categories of sole distributorship agreements cannot be unilaterally terminated without a reasonable notice period (unless a serious breach of contract can be proven). The Courts will determine case by case the length of such reasonable notice period (or indemnity in lieu), taking into consideration a wide range of possible criteria (f.e. turnover, duration, territory, ...).

5. The general rule under Belgian law stipulates that all agreements of indeterminate duration **can be unilaterally terminated**. As such termination is considered a right of each party, such right may **not be exercised in an abusive manner**. Belgian case law considers a unilateral termination abusive when the termination is too abrupt. Therefore, the party who wishes to unilaterally terminate an agreement of indeterminate duration, should always grant a notice period (except in cases of serious breach). The duration of this notice period depends again on the circumstances surrounding each case.

6. Contrary to the agreements of indeterminate duration, the general rule under Belgian law **prohibits the unilateral termination of agreements of determinate duration** before the end of the term, unless proven serious breach or parties agree otherwise. The damages of such unlawful termination before the end of the term, will be calculated on basis of what the terminated party would have gained if the agreement would have been executed properly until the end of the term.

7. Agreements of both indeterminate and determinate duration can be immediately terminated if a party commits a serious breach. The other party can terminate unilaterally on its own initiative (with a possible *a posteriori* control by the Courts) or claim the cancellation of the agreement in Court.

8. Contrary to some other countries, a termination is **definite** under Belgian law **even if ruled unlawful**. The Courts can only allocate an indemnity and – *notwithstanding a few exceptions* – never a reinstatement of the agreement.

III. UNILATERAL TERMINATION OF FRANCHISE AGREEMENTS UNDER BELGIAN LAW

III.1 Immediate termination because of serious breach

9. In Belgian case law over the last years, one can find several examples of franchise agreements that are terminated immediately because of a serious breach by one of the parties.

These circumstances can be considered as serious breach by the franchisor (non-exhaustive):

- unilateral change of an essential element of the franchise agreement;
- competition against his own franchisee;
- lack of cooperation and assistance to the franchisee;
- lack of willingness to adapt the concept when figures are collapsing;
- serious breach with delivery of the products.

10. Following circumstances can be considered as serious breach by the franchisee (non-exhaustive):

- violation of the interdiction to transfer the agreement without the consent of the franchisor;
- violation of the hygienic guidelines of the franchisor;
- violation of the obligation to cooperate (f.e. refusal to attend trainings);
- buying supplies with a competitor of the franchisor;
- violation of the obligation of secrecy;
- non-payment of royalties.

III.2 Contractual termination mechanism

11. Belgian case law confirmed that parties can terminate unilaterally their franchise agreement if this agreement **foresees** such possibility and the terminating party **respects the terms agreed upon**.

If the terms are respected by the terminating party, Belgian case law ruled that the termination does not need further motivation.

Parties can foresee in their franchise agreement a clause whereby parties agree that a certain circumstance is defined as a serious breach and gives the other party the right to unilaterally terminate the agreement with immediate effect. However, it is advisable that parties define this circumstance very clearly to limit the risk that the Courts can still verify if this right accorded by the agreement was not used in an abusive manner by the terminating party.

III.3 Notice period

12. If the franchise agreement does not foresee any contractual termination mechanisms and there is no serious breach, Belgian case law stipulates that a franchise agreement can only be unilaterally terminated under Belgian law by **granting a notice period**.

13. With regards to the calculation of such notice period, some Belgian case law have expressly referred to the criteria withheld under the aforementioned Act July 27, 1961. In general, the importance of the franchise and the investments will be taken into consideration.

14. Important to know is the fact that Belgian Courts can also apply the so-called '*acte équi-pollent à rupture*' on franchise agreements. This '*acte équi-pollent à rupture*' can be defined as a behavior of one party that can only be interpreted as the will of that party to terminate the agreement. Such 'implicit' termination is always considered as an immediate termination without notice period and can therefore be qualified as an unlawful termination of a franchise agreement.

IV. CONCLUSIONS

15. As the Belgian law does not foresee specific rules concerning (the termination of) franchise agreements, such termination is governed by the general rules of Belgian contract law. Parties to franchise agreements have considerable freedom to agree upon contractual termination mechanisms. Just as any other given right, parties should only beware not to use their rights in an abusive manner.

16. The pitfalls concerning termination of franchise agreements under Belgian law are therefore hidden in the **requalification** of the franchise agreement under Belgian law as a protected employment contract or sole distributorship agreement. We will therefore in the second part investigate the (re)qualification of franchise agreements under Belgian law.

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