

Unofficial translation provided by the EFF

Note 1: This law affects franchising.

Note 2: Some unofficial translations in English have substituted the word “commercial affiliation” with Franchising. The EFF has chosen, in this translation, to refer as closely as it can to the original Italian terms, whilst marking their ‘franchising’ equivalents in blue:

- “commercial affiliation” = **franchising**
- “affiliant”(which does actually exist in English, but which can be understood) = **franchisor**,
- “affiliate” = **franchisee**.

Article 1 – Definitions

1. A “commercial affiliation” (“franchising”) is an agreement, whatever name it may have, between two legally and economically independent parties, whereby one party grants to another one, against consideration, a set of industrial or intellectual property rights, related to trademarks, trade names, shop signs, utility models, industrial designs, copyright, know how, patents, technical and commercial consulting and assistance, under which the “affiliate” (**franchisee**) joins a system (network) constituted by a number of “affiliates”(franchisees) operating in the territory, for the purpose of distributing specific goods and services.
2. The “commercial affiliation” (**franchise**) contract can be adopted in any sector of economic activity.
3. In the “commercial affiliation” (**franchise**) contract:
 - a) “know-how” means a body of non patented practical information, resulting from the “affiliant”’s (**franchisor’s**) experience and testing , which is secret, substantial and identified; “secret” means that the know-how, as a body of information or in the specific configuration and assembly of its components, is not generally known or easily accessible; “substantial” means that the know-how includes information which is indispensable to the “affiliate” (**franchisee**) for the purpose of use, sale or resale (distribution), management or organization of goods and services identified under the agreement; “identified” means that the know-how must be described in a sufficiently comprehensive manner to check that it fulfils the criteria of secrecy and substantiality;
 - b) “entry fee” means a fixed (financial) amount notably related to the economic value and to the potential development of the system which is paid by the “affiliate” (**franchisee**) at the moment the “commercial affiliation” (**franchise**) contract is signed;
 - c) “royalties” means a percentage fee requested by the “affiliant” (**franchisor**) of the “affiliate” (**franchisee**) and related to the business turnover of the latter, or consisting of a fixed rate, which can notably be paid by instalments.
 - d) “affiliant”’s (**franchisor’s**) goods” means goods manufactured by the “affiliant” (**franchisor**) or according to his instructions and marked with the “affiliant”’s (**franchisor’s**) name.

Article 2 - Scope of the law

1. The provisions regarding the “commercial affiliation” (**franchise**) contract, as defined in Article 1 also apply to the principal “commercial affiliation” (**Master Franchise**) contract, whereby an undertaking grants to another one, legally and economically independent from the former, against a direct or indirect consideration, the right to operate a “commercial affiliation” (**franchise**) for the purpose of having “commercial affiliation” (**franchise**) agreements signed with third parties and to “corner” “commercial affiliation” (**corner franchising**), whereby the “affiliate” (**franchisee**), fits out a space, in an area at its disposal, exclusively dedicated to the commercial activity mentioned in Article 1, paragraph 1.

Article 3 - Form and content of the contract

1. The “commercial affiliation” (**franchise**) contract must be in writing; otherwise it is null and void.
2. To set up a “commercial affiliation” (**franchise**) network, the “affiliant” (**franchisor**) must have tested its commercial formula on the market.
3. If the contract is defined for a limited term, the “affiliant” (**franchisor**) must guarantee the “affiliate” (**franchisee**) a minimum term to allow the latter to depreciate his investments, and in any case not less than three years, except in the case of earlier termination of the contract due to one of the parties not fulfilling its contractual obligations;
4. The contract must also expressly mention:
 - a) the amount of investments and other possible entry fees that the “affiliate” (**franchisee**) shall bear before the beginning of his activity;
 - b) the manner of calculating and paying the royalties, as well as the possible indication of minimum turnover to be realised by the “affiliate” (**franchisee**);
 - c) the scope of possible exclusive territorial rights granted either vis-à-vis other franchisees of the network, or vis-à-vis sales channels and outlets run directly by the “affiliant” (**franchisor**);
 - d) the details of the know-how provided by the “affiliant” (**franchisor**) to the “affiliate” (**franchisee**);

- e) the possible means of acknowledging the contribution of know-how by the "affiliate" (franchisee);
- f) the details of the services offered by the "affiliant" (franchisor) in terms of technical and commercial assistance, setting-up and furnishing of the outlet, training;
- g) the conditions for the contract's renewal, termination or possible transfer (assignment).

Article 4 - Obligations of the "affiliant" (franchisor)

1. At least 30 days before the signing of a "commercial affiliation" (franchise) contract, the "affiliant" (franchisor) must provide the prospective "affiliate" (franchisee) with a complete copy of the contract to be signed, together with the following annexes, except those (annexes) for which objective and specific confidentiality requirements exist, which however shall be mentioned in the contract:

- a) main information concerning the "affiliant" (franchisor), including corporate name and corporate assets and, if the prospective "affiliate" (franchisee) asks for it, a copy of the "affiliant"'s (franchisor's) balance sheets for the last three years or since the beginning of its activity, if the activity is in operation for less than three years;
- b) indication of the trademarks used in the system, including details relating to their registration or filing, or to the license granted to the "affiliant" (franchisor) by the third party who owns the trademarks, or any documentation proving the concrete use of the trademark in the system.
- c) a synthetic description of the elements characterizing the activity of the "commercial affiliation" (franchise);
- d) a list of the "affiliates" (franchisees) currently operating in the network as well as a list of the "affiliant"'s (franchisor's) direct outlets;
- e) indication of the variation, year by year, of the number of "affiliates" (franchisees), including their location during the last three years or from the date of the setting up the "affiliant"'s (franchisor's) business, if it is less than three years old;
- f) a short description of any eventual judicial or arbitral proceeding raised in relation to the "commercial affiliation" (franchise) system against the "affiliant" (franchisor) and concluded during the last three years, initiated both by "affiliates" (franchisees) and private parties or public authorities in compliance with privacy law in force;

2. For the Annexes covered by items d), e) and f) of paragraph 1, the "affiliant" (franchisor) may limit his information to his activities on the Italian market only. The Minister Production Activities (*Ministro delle attività produttive*) will, through a decree to be passed within 90 days of the entry into force of this law, rule on the information covered by the said items d),e),and f) to be provided by "affiliants" (franchisors) that in the past operated exclusively abroad.

Article 5 - Obligations of the "affiliate" (franchisee)

- 1. The "affiliate" (franchisee) cannot transfer its registered office, as mentioned in the contract, without the prior consent of the "affiliant" (franchisor), except in case of force majeure.
- 2. The "affiliate" (franchisee) undertakes to respect and have respected by its own collaborators and personnel, even after termination of the contract, the maximum confidentiality on the content of the activity which is the object of the "commercial affiliation" (franchise) contract.

Article 6 - Pre-contractual Behaviour Obligations

- 1. The "affiliant" (franchisor) must at all times behave towards the prospective "affiliate" (franchisee) with loyalty, fairness and good faith and must promptly provide the prospective "affiliate" (franchisee) with any data and information the latter deems necessary or useful for the purposes of signing the "commercial affiliation" (franchise) contract, except in the case of objectively confidential information or if such disclosure would violate the rights of a third party.
- 2. The "affiliant" (franchisor) must justify to the prospective "affiliate" (franchisee) any possible failure in disclosing the information and data requested by the "affiliate" (franchisee).
- 3. The prospective "affiliate" (franchisee) must behave towards the "affiliant" (franchisor) with loyalty, fairness and good faith and provide the "affiliant" (franchisor), promptly and in a correct and complete manner, with any information and data, whose knowledge is necessary or appropriate for the purposes of the signing of the "commercial affiliation" (franchise) contract, even if not expressly requested by the "affiliant" (franchisor).

Article 7 - Conciliation

- 1. In case of dispute over the "commercial affiliation" (franchise) contracts, the parties can agree that before addressing the case to the courts or to arbitration, they must try to conciliate through the Chamber of Commerce & Industry where the "affiliate"'s (franchisee's) registered office is located. Articles 38, 39 and 40 of the Legal Decree of January 12, 2003,N° 5, will apply, if compatible, to the proceedings of conciliation.

Article 8 - Annulment of the contract

1. If one party has provided false information, the other party may ask for the annulment of the contract according to art. 1439 of the Civil Code, as well as for damages, if due.

Article 9 - Provisional and final regulations

1. The provisions of the present law apply to any "commercial affiliation" ([franchise](#)) contract currently in force on the territory of the State at the date of entry into force of this law.

2. "commercial affiliation" ([franchise](#)) agreements signed prior to the entry into force of the present law, if not stipulated in the form required by Article 3, paragraph 1 (in writing), shall be formalized in writing according to the provisions of the present law within one year from the aforesaid date.

Prior written agreements shall have to conform to the provisions of the present law within the same delay.

3. The present law enters into force on the day following its publication in the Official Journal (*Gazzetta Ufficiale*).

