INTELLECTUAL PROPERTY

CLIENT ALERT

JANUARY/2020

NEW BRAZILIAN FRANCHISE LAW

On December 27, 2019, the new Brazilian Franchise Law was published in the Official Gazette and will come into force on March 26, 2020.

The Law No. 13,966, of December 26, 2019, provides for the business franchising system in Brazil and revokes the former franchise law (Law No. 8,955 of December 15, 1994). The franchise agreements executed before the new law becomes effective will remain valid, without the need for adjustment or amendment.

The Bill of Law to improve the franchising system had been pending in the Brazilian Congress since 2015 and was sanctioned by the President issuing a single veto over article 6 due to conflict of laws relating to the bidding rules applicable to the franchising system implemented by state-owned companies.

The new law introduces more detailed rules and concepts aiming to ensure clarity, transparency and legal certainty to the franchising system.

The main changes brought by the new law are the following:

- The update of the definition of franchising extending the right to use other intellectual property rights, rather than only patent and trademark, as determined by the former law.
- The franchisor-franchisee relationship is not a consumer relationship.
- Absence of employment relationship between franchisor and franchisee and franchisor and franchisee's employees, even during the training period.
- The franchising system may be implemented by a private company, state-owned company or non-profit entity, regardless of its field of business.
- New content requirements for the Franchise Disclosure Document (FDD) – maintaining the franchisor's obligation to provide the prospective franchisee with the FDD at least ten (10) days prior to the execution of the agreement and/or any payment relating to the franchise –: (i) written in Portuguese; (ii) overview of the franchise business; (iii) list of all franchisees, subfranchisees or subfranchisor that have left the franchise business in the past twenty-four (24)

PRACTICE AREA
Intellectual Property

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For further information, please send a message to **news@veirano.com.br**

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- months, as opposed to past twelve (12) months set forth in the former law; (iv) rules and information related to the territorial competition between franchisor-owned and franchised units; (v) detailed information and conditions of what the franchisor offers to the franchisee with respect to support, incorporation of technological innovations and franchise facilities – layout, architectural standards, equipment and instruments, project specifications, composition and sketch -, besides the products/services maintained from the former law; (vi) assignment or succession rules; (vii) events subject to penalties, fine or compensation and the corresponding amount; (viii) minimum purchases of products/services and conditions for refusal by the franchisee; (ix) existence of franchisee's council or association and its tasks, powers and competences; and (x) term of the agreement and renewal conditions.
- Possibility of the franchisor to sublet the facility to the franchisee for a higher amount than the rent paid to the landlord, which must be expressly stated in the FDD and the agreement and does not impose an excessive burden on the franchisee. In case of sublease, both the franchisor and the franchisee will be entitled to propose the renewal of the rental agreement.
- In addition to providing false information (as incorporated from the former law), the failure of the franchisor to provide the FDD mandatory information will be subject to penalty.
- Franchise agreement effective solely in Brazil must be written in Portuguese and governed by Brazilian law.
- International franchise agreements must be written in Portuguese or have a certified translation into Portuguese at the franchisor's expense, with the possibility of choosing the jurisdiction of either of the parties' domicile and the parties' obligation to maintain a representative or attorney with powers of representation in the country of the chosen jurisdiction.
- Possibility of electing arbitration to resolve any dispute involving the franchise agreement.

Our Intellectual Property team is at your disposal for further information on this matter.

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