

8

Consumer Protection

Luis Diego Barry and María Carolina Abdelnabe Vila¹

Introduction

In this chapter we analyse franchise agreements from the perspective of consumer protection. Consumer protection issues are dealt with by jurisdictions at national or regional level. For this reason, this chapter has limited scope; however, we highlight some jurisdictions that are of interest for the purposes of this chapter in view of their peculiarities or the markets involved.

We will begin by dissecting the franchise agreement to identify the different relationships existing within it and to identify whether a consumer is involved. The latter is of utmost importance since, as an almost universal principle, for application of the consumer protection regime there must be a consumer involved.

In brief, there is a franchise when a party (the franchisor) grants another (the franchisee) the right to use a proved system, with the purpose of marketing certain goods or services under the commercial name, emblem or brand of the franchisor. The franchisor provides technical instructions as well as technical and commercial assistance, and in return the franchisee pays a direct or indirect price.²

The following relationships can be found in any franchise agreement:

- A principal relationship between the franchisor and the franchisee that regulates how the franchise will work: as regards this first relationship, the question that we pose, and will try to answer in this chapter, is whether the franchisee would be considered a consumer or not. That is, can the franchise agreement be considered to involve a supplier and a consumer? Or is it considered to be a joint contract between parties with equal power, or even a standard form agreement? The answers to these questions are essential, as the existence of a consumer determines whether the consumer protection regime applies. Furthermore, if the franchise agreement were to be drafted as a standard form contract, an intermediate

1 Luis Diego Barry is a managing partner and María Carolina Abdelnabe Vila is a counsel at Pérez Alati, Grondona, Benites & Arntsen.

2 Article 1512 of the Argentine National Civil and Commercial Code.

protection arises, which can be quite similar to the one for consumers. All this has a very important commercial impact.

- A subsequent relationship (and the direct consequence of the relationship described in the point above) is the one existing between the franchisee and its client: there is almost no doubt that, with only a few exceptions, the client will be a consumer, sheltered by the consumer protection regime. However, other queries arise from this second relationship and concern the matter of who is liable towards this client.

However, these are not the only relationships to consider. Franchise agreements are very complex and there are cases in which a particular franchisor wants to extend its entrepreneurship beyond a certain border and to do so the following third relationship may be needed:

- The franchisor grants to a franchisee a territory or scope of action that may be national, regional or provincial, as well as the right to appoint sub-franchisees. In this relationship we have the same questions as above: can any of these parties be considered consumers? Who is responsible if a consumer is hurt?

The concept of 'consumer'

Although the goals of consumer protection regimes across different jurisdictions may be similar, the scope of application of those regimes varies. The reason is quite simple: the subjective scope of the regime is usually linked to the concept of 'consumer', which differs between jurisdictions. In fact, even the point at which a certain person may be considered a consumer differs between jurisdictions. We examine these differences, and how they are treated, in the subsection below.

In most countries,³ it is clear that the consumer protection regime is designed to protect persons who are the end users of products or services acquired for personal consumption.

Another criterion followed by certain countries⁴ is the identification of a consumer as a natural (ie, physical) person. Hence, if the purchaser is organised as a corporation, it cannot be entitled to any of the benefits arising from the consumer protection regime. This criterion is also usually an inherent aspect of the end-user criterion.

Some countries⁵ have a third way of resolving this matter, by establishing as a trigger point for application of the protective regime a characterisation of the purchaser or the purchase made as very small or micro.

Criteria applied in relevant jurisdictions

Where the European Union is concerned, the notion of consumer is limited to physical persons, and corporations are not included in this protective regime. However, as the Community legislation works as the minimum standard of protection, member states can provide more extensive protection, and there are countries that embrace a broader definition of a consumer. To be included in the concept of 'consumer', the physical person has to make a transaction that it is

3 Such as countries in the European Union and Mercosur (Argentina, Brazil, Paraguay and Uruguay) and Chile, Bolivia and Peru.

4 Such as Spain, Germany, Italy and the United Kingdom.

5 Such as Mexico, Australia and South Africa.

not linked to his or her professional activity.⁶ Therefore, it would be almost impossible for a franchisee to seek protection under the consumer protection regime.

Spanish law establishes that a consumer must be a physical person acting with a purpose other than his or her business, trade or profession. However, it further states that 'For the purposes of this regulation, legal persons and entities without legal personality that act on a non-profit basis in a field other than a commercial or business activity are also consumers.'⁷ Although this notion of a consumer is broader than that provided by the Community directives, we think that a franchisee would still have difficulty seeking a claim in Spain based on consumer protection rules.

Germany limits the notion of a consumer to a physical person 'who enters into a legal transaction for purposes that are predominantly outside his trade, business or profession'.⁸ Philip Zeidman maintains that 'in small transactions where the franchisee is deemed a "founder", those [consumer protection] laws might apply in Germany'.⁹ In the words of Jiri Jaeger and Frederik Born:

Actually, it is not about whether a person is a consumer according to the statutory definition but, in fact, about whether a person has entered into a consumer business or a non-consumer business. A franchisee is not regarded as a consumer. When the franchisee signs the franchise agreement, this action is already viewed as business conduct and, thus, conducted by an entrepreneur. However, it is a matter of ongoing discussion as to whether the franchisee is entitled to similar protection [a cooling-off period] when it comes to the conclusion of a franchise agreement as a business start-up. Furthermore, consumer protection rights could be invoked if the franchisee is required to make consistent purchases from the franchisor and if the franchisor sells the same products in his or her own franchise outlet.¹⁰

France has recently defined a consumer¹¹ as 'any natural person who acts for purposes that do not fall within the scope of his or her commercial, industrial or artisanal activity' and, in this sense, we agree with Philip Zeidman, who indicates that a franchisee can be considered a consumer under France's consumer regime only 'if the franchisee is viewed as a "non-professional"'.¹²

Italy also limits the application of the protective regime to cases in which a physical person makes a purchase for purposes unrelated to his or her trade, business, craft or profession,¹³ in which case, once again, it is unlikely that a franchisee would be considered a consumer.

6 Refer to Directives 2011/83/EU; 1993/13/EEC; 1998/6/EC; 2005/29/EC; 2002/58/EC; and 2014/40/EU.

7 Free translation of article 3 of Royal Legislative Decree 1/2007 (<https://www.boe.es/buscar/act.php?id=BOE-A-2007-20555>).

8 Free translation of section 13 of the German Civil Code (https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html).

9 <http://www.franchisetimes.com/March-2016/Is-a-franchisee-a-consumer-or-not>.

10 <https://thelawreviews.co.uk/editorial/1159189/franchisees-as-consumers>.

11 Consumer Code (consolidated version as of 1 October 2018) (<https://wipolex.wipo.int/en/text/488685>).

12 <http://www.franchisetimes.com/March-2016/Is-a-franchisee-a-consumer-or-not>.

13 Article 3 of Legislative Decree No. 206/2005 of 6 September 2005 Consumer Code (<https://en.agcm.it/en/scope-of-activity/consumer-protection/detail?id=19e078de-f7e6-4f67-8ed0-eb1d3a768573&parent=Legislation&parentUrl=/en/scope-of-activity/consumer-protection/legislation>).

In the United Kingdom, a consumer is defined as an individual acting for purposes that are wholly or mainly outside his or her trade, business, craft or profession.¹⁴ Most scholars do not believe that a franchisee falls within this definition of a consumer. In addition, as far as we know, UK courts have not yet granted franchisees consumer rights.

Under Mercosur rules,¹⁵ a consumer is any individual or legal entity that acquires or uses products or services for personal use. It is specifically indicated that:

A consumer is not considered to be one who, without becoming the final recipient, acquires, stores, uses or consumes products or services in order to integrate them as a direct input to other products or services in the process of production, transformation, marketing or provision to third parties.

As it would be difficult for a franchisee to be considered the end user, it is quite unlikely that a franchisee would be considered a consumer under Mercosur rules. However, the rules establish that each member state can provide a higher standard of protection and, therefore, the end-use principle does not necessarily apply in all Mercosur countries.¹⁶

Argentina's legislation on this matter¹⁷ has undergone various amendments, with the definition of a consumer becoming more comprehensive every time. Accordingly, consumers are not only natural persons but also legal entities. Although end use is a requirement, the requirement of integrating the acquired business or product into a commercialisation chain has been eliminated. Therefore, some scholars (although these are in the minority) consider that there are cases where the franchisee can be deemed to fall within the scope of the consumer protection regime, inasmuch as the franchisee is the end user of the franchise agreement.

Brazil has a wide definition of a consumer that includes not only physical persons but also legal entities that acquire goods and services as end users.¹⁸ The case is similar to that described for Argentina.

Chile has expressly stipulated that end use is the distinguishing feature of a consumer and has established that anyone who can be considered a supplier cannot be protected as a consumer.¹⁹ Therefore, we must infer that a franchisee will not be considered a consumer under the Chilean consumer protection regime.

Uruguay holds that both natural persons and legal entities can be considered consumers. However, Uruguayan consumer law specifically states that: 'A consumer is not considered to be one who, without becoming the final recipient, acquires, stores, uses or consumes products or

14 Section 2(3) of the UK Consumer Rights Act 2015 (<https://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>).

15 Free translation of article 1(A) of Resolution No. 34/2011 Common Market Group (GMC), Mercosur.

16 Article 2, Resolution No. 34/2011 GMC, Mercosur.

17 Consumer Protection Law No. 24,240 and provisions of the National Civil and Commercial Code referring to consumer contracts.

18 Law No. 8.078 on the Consumer Protection Code.

19 Law No. 19,496 [with scope provided by Decree-Law No. 3 of 31 May 2021 – <https://www.bcn.cl/leychile/navegar?idNorma=1160403>].

services in order to integrate them into processes of production, transformation or marketing.²⁰ We believe, therefore, that it would be difficult for a franchisee to be considered a consumer.

Paraguay has a broader definition of a consumer, which includes physical and legal entities. However, a consumer has to be the end user of the goods or service acquired.²¹ The same criteria as described for Argentina apply.

Bolivia also employs a broader definition of a consumer – one including physical and legal entities, and sustaining the criterion that end use is required.²²

The situation in Peru is quite particular and although end use is considered a required feature to distinguish a consumer, the law also includes the following in the category of consumers or users:

1.2 Micro-entrepreneurs in a situation of information asymmetry with the supplier regarding those products or services that are not part of its own line of business.

1.3 In cases of doubt regarding the final destination of a certain product or service, the one who acquires, uses or enjoys the product or service qualifies as a consumer.²³

Given this extension of the concept of ‘consumer’ to cases of asymmetry between parties, the franchisee is likely to be considered a consumer.

Ecuador also defines a consumer as the end user of a particular product or service, whether it is a physical person or a legal entity.²⁴ The same criteria as those set out for Argentina apply.

Panama follows the end-user criterion and its legislation establishes that the acquisition of goods or services with a view to integrating them into a process of production, transformation or commercialisation will be excluded from the country’s consumer protection regime.²⁵

Colombian law is quite particular in that it establishes that a person (physical or legal) can fall within the scope of an end user even that person’s use of the product or service satisfies a business need, providing that this is not directly related to the person’s main economic activity.²⁶ Therefore, if a franchisee enters into a franchise agreement but the franchise is not its main economic activity, that franchisee can be considered a consumer and entitled to all the protection provided under the regime.

Guatemalan law is also quite distinct as it provides a very broad definition of a consumer that includes physical or legal persons (national or foreign, and public or private) that acquire, use or enjoy any kinds of goods.²⁷ Given this broad definition, we are of the opinion that a franchisee may be considered a consumer under Guatemalan law.

20 Free translation of article 2 of Law No. 17250 (<https://www.impo.com.uy/bases/leyes/17250-2000>).

21 Article 4, Law No. 1,334.

22 Article 5.1, Law No. 453.

23 Free translation of article IV Law No. 29571.

24 Article 2, Law No. 2000-21.

25 Article 2, Decree No. 46, 2009.

26 Article 5, Law 1480.

27 Article 3, Decree No. 006-2003.

Mexican regulation is distinctive because although it establishes the end-use criterion to identify a consumer, it does make an exception, to qualify for which the franchisee must fulfil the following two requirements:

- it has to be a small business duly registered as such with the corresponding administrative authorities; and
- the transaction for which the small business seeks consumer protection cannot exceed a certain amount.²⁸

If the franchisee fulfils these two requirements then the consumer protection regime applies.

South Africa is an interesting case as it simply opts for forcing the franchisee into the common definition of a consumer. Specifically, the South African Consumer Protection Act 68 provides a definition of a consumer and then adds that a consumer is also 'a franchisee in terms of a franchise agreement'.²⁹ Thus there is no doubt that in this case the franchisee is a consumer. In fact, before the Consumer Protection Act 68 entered into force in 2008, there was no specific legislation regulating franchises.

The United States also warrants special analysis as the Federal Trade Commission (FTC), the nation's consumer protection agency, has prepared 'A Consumer's Guide to Buying a Franchise' addressed to the franchisee (considered a consumer) to help him or her decide whether entering into a franchise is the right decision:

*It [the Guide] suggests ways to shop for a franchise opportunity and highlights key questions you need to ask before you invest. The Guide also explains how to use the disclosure document that franchisors must give you – under the FTC's Franchise Rule – so you can investigate and evaluate a franchise opportunity.*³⁰

The Australian Consumer Law (ACL) indicates that for the purposes of the ACL, a person is considered a consumer if he or she acquires goods or services that are priced at less than AU\$100,000. A person is also a consumer if he or she acquires goods or services priced at more than AU\$100,000 but 'of a kind ordinarily acquired for personal, domestic or household use or consumption' and it provides the following example: a person who acquires a vehicle for use in the transport of goods on public roads, irrespective of price, is also considered to be a consumer for the purposes of the ACL.³¹

Therefore, franchisees may be considered to be consumers when they acquire goods or services from the franchisor up to that threshold, or when a person acquires the goods (no matter their price) for the purpose of using them.

28 Article 2 of the Federal Consumer Protection Law.

29 Chapter 1, Part A, section 1 of the Consumer Protection Act 68.

30 <http://www.ftc.gov/tips-advice/business-center/guidance/consumers-guide-buying-franchise>.

31 Chapter 1 of the ACL. Note that recent changes have been made to the definition of a consumer: for goods and services supplied from 1 July 2021, the threshold amount has been increased from AU\$40,000 to AU\$100,000.

From this overview, we can conclude the following:

- some jurisdictions have a narrow definition of a consumer, such that a franchisee would never be considered a consumer;
- some jurisdictions may apply their consumer protection regime to franchisees if certain requirements are met (eg, size of the franchisee, amount of the purchase, use made of the purchase); and
- some jurisdictions simply deem a franchisee to be a consumer.

Consequences of applying the consumer protection regime to the franchise agreement

It is important to determine whether the franchise agreement falls within the scope of application of the consumer protection regime and to what extent. This regime, like every protective regime, provides leverage for the consumer – leverage that the franchisor must be aware of.

The consumer protection regime is based mainly on the premise that the parties involved in a consumer relationship are unequal: an expert and strong supplier and an inexperienced and weak consumer. Following this premise, different jurisdictions have special obligations that suppliers must comply with, and special rights for consumers to ensure they are protected.

Duty to provide information

Although in every contractual relationship parties are generally obliged to act in good faith and not conceal relevant information, the duty to provide information as set out under consumer protection regimes is an enhanced version of this good-faith obligation and it is only imposed on the supplier. Information about the essential characteristics of the product or service, as well as the conditions of its commercialisation and any other circumstance relevant to the contract, must be given to the consumer in an honest, clear and detailed way. This obligation is considered to exist from the very beginning (ie, from the advertisement of the product or service) and continues to exist after the agreement has been executed, up until the goods or service ceases to exist.³²

Where a franchise is concerned, the application of this obligation means that the franchisor must provide accurate information about the franchise to the franchisee and that the franchisee (as the supplier of the service or product to the end consumer) must duly inform its clients.

Regarding franchise arrangements, the South African Consumer Protection Act 68 provides that false or misleading representations concerning the performance, characteristics and benefits of the business are not allowed. In addition, the franchisor must provide a potential franchisee with a disclosure document at least 14 days before the franchisee signs the franchise agreement. This document must include information relating to the franchisor's turnover and net profit and projected sales, income and profits for the franchised business or franchises of a similar nature. This is nothing more than an actual application of the duty to provide information.

Under the Franchise Rule enforced by the US FTC, the franchisee must receive the franchise disclosure document at least 14 days before he or she is asked to sign any contract or pay

32 The extension of this duty is clear in article 1(F) of Resolution No. 34/2011 GMC, Mercosur.

any money to the franchisor or an affiliate of the franchisor. This document provides information regarding:

- the franchisor's background;
- the business background;
- litigation history;
- bankruptcy;
- initial and ongoing costs;
- supplier, territory and customer restrictions;
- the franchisor's advertising and training;
- renewal, termination, transfer and dispute resolution;
- financial performance representations;
- franchisee and franchise system information; and
- financial statements.³³

Similarly, in Australia, the Australian Government Productivity Commission stated that ensuring consumers are sufficiently well informed has the purpose of helping to 'meet the needs of those who, as consumers, are most vulnerable or at greatest disadvantage'.³⁴ It also states that '[m]ore-informed consumers not only make better choices but also drive competition and innovation in markets.'³⁵

Another example of this enhanced duty to provide information is the obligation to inform consumers of their right to withdraw from a contract if certain requirements are met.³⁶ In the event of a lack of, or insufficient, information about cooling-off rights, the sanction in some jurisdictions is that the period granted to consumers to exercise this right never ends.³⁷

If the supplier does not comply with this duty, it faces the possibility of not only being sued by the consumer for damages but also being sanctioned by the corresponding administrative authority. In fact, in almost all jurisdictions, there is an administrative authority empowered to issue infringement notices, conduct investigations and impose fines³⁸ and, perhaps with greater impact, impose the obligation to publish details of paid infringement notices in a publicly accessible register.

Judicial revision of the legality of contractual clauses

The *pacta sunt servanda* principle is not as rigidly applied when a consumer is involved, so clauses included in franchise contracts may be subject, at the consumer's request, to judicial scrutiny.

33 <http://www.ftc.gov/tips-advice/business-center/guidance/consumers-guide-buying-franchise>.

34 Australian Government Productivity Commission, Review of Australia's Consumer Policy Framework, Productivity Commission Inquiry Report, Volume 1, No. 45 (2008), p. 13.

35 Explanatory memorandum, Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010, 'Consumer guarantees', p. 72.

36 For more details, see 'Cooling-off period'.

37 Such is the case in Argentina; see article 1111 of the National Civil and Commercial Code.

38 For example, in South Africa a violation of its consumer protection regime can lead to a fine, which can be as high as 10 per cent of the franchisor's turnover in the previous year. It is not clear whether the fine is calculated by taking into consideration only the turnover in South Africa or the global turnover. Another example is Argentine law, which provides for fines of up to 5 million Argentine pesos.

Some jurisdictions even go further and provide for the possibility of having judicial control over standard form contracts, even when there is no consumer involved. This is particularly important in franchise agreements as almost all of these are standard form contracts.

This is the case in Argentina, where, regardless of consumer status, if a relationship is based on a standard form contract, specific provisions of the National Civil and Commercial Code automatically apply.³⁹ These provisions stipulate that general standard clauses must be understandable and self-sufficient and that the wording should be clear, complete and easily readable, and texts or documents that are not provided to the counterparty before or at the same time as the execution of the contract are considered not to have been agreed. These specific provisions establish that abusive clauses will be null and void, and the notion of abusive clauses includes clauses that place a waiver or restriction on the rights of the adherent or extend predisposing rights that arise from statutory provisions. Hence, in almost all cases, the franchisee, whether considered a consumer or not, will be protected by the standard form contract regulations.

In Germany, as in Argentina, contractual clauses are subject to an in-depth review by the courts and ambiguous clauses are interpreted in favour of the franchisee. Clauses deemed contrary to statutory provisions are deemed invalid. Provisions identified as void by the courts are not reduced to a level at which they are legally valid but are simply considered invalid as a whole. Although a franchisee is not a consumer under German law, the level of his or her protection is similar.

Special attention should be paid to the United Kingdom as it is an evolving jurisdiction and court decisions are embracing new paradigms. Freedom of contract is still the main principle and in business-to-business relationships (such as the relationship between the franchisee and the franchisor), the principle of good faith is applied less frequently. However, if the franchise agreement is entered into as a standard form contract, the franchisee can invoke the Unfair Contract Terms Act 1977, which aims to reduce the possibility of limiting liability, and if the franchisee is considered a consumer, he or she can claim further protection under the Consumer Rights Act. Courts are adjusting the freedom-of-contract principle to make it work together with other principles, such as the duty of good faith.

The regulation of franchising in South Africa should be studied carefully as it establishes several limitations on franchise agreements that the franchisee can rely on. Furthermore, the South African legislation regulates prices and states that the performance description must be fair, reasonable and just. In contrast, in principle, these elements (price and performance description) cannot be subject to court scrutiny under German, UK⁴⁰ or Argentine law.⁴¹

Joint and several liability for the chain of commercialisation

It is common legal advice that franchisors should include provisions dealing with vicarious liability, indemnification and insurance issues in the franchise agreement. This, of course, is highly recommended and we are not criticising the inclusion of these defence clauses; however, we want to point out that these clauses are not always infallible and do not create a safe harbour.

39 Articles 984 to 989 of the National Civil and Commercial Code.

40 Explanatory notes, Consumer Rights Act 2015, paragraph 18.

41 Article 1121 of the National Civil and Commercial Code.

In fact, when dealing with a consumer, clauses aiming to limit responsibility may not be valid at all or at least may not be effective against the consumer, and they will be subject to court scrutiny.

One advantage for consumers is being able to sue for damages all the people involved in the commercialisation of a certain product or service. So a client who buys from a franchisee a certain product that causes him or her damage will be entitled to sue the franchisee, and also the franchisor and the franchisee that has the right to sub-franchise in a given territory, if applicable.

In Argentina, the Consumer Protection Law No. 24,240 establishes that:

If damage to the consumer results from a flaw or defect of the product or provision of the service, the producer, manufacturer, importer, distributor, supplier, seller and whoever has put their brand on the product or service will be liable

The responsibility is joint and several, without prejudice to the corresponding actions for recovery. Only those who prove that the cause of the damage was beyond their control will be totally or partially released.⁴²

Cooling-off period

Once again, the *pacta sunt servanda* principle is applied in a flexible way when a transaction involves a consumer. This means that upon signing a contract consumers have a certain period within which they are still able to withdraw. Justification for withdrawal is found in an alleged distortion of the decision-making process arising from the inferior situation of one party (the consumer) in relation to the other.

In this context, in the European Union, consumers have the right of withdrawal in distance and off-premises contracts.⁴³ This right has been transposed into member states' national law; for example, Germany's Civil Code states the following:

(1) If a consumer is given, by statute, a right of withdrawal according to this provision, then the consumer and the trader are no longer bound by their declarations of intention to conclude the contract if the consumer withdraws from his declaration of intention within the period specified. The withdrawal is effected by a declaration being made to the trader. The declaration must unambiguously reflect the consumer's decision to withdraw from the contract. The withdrawal does not have to provide any grounds. Dispatch of the withdrawal in good time is sufficient to comply with the time limit.⁴⁴

42 Article 40 of the Consumer Protection Law No. 24,240.

43 Directive 2011/83/EU.

44 Section 355 of the Civil Code. In addition, if information on the right to a cooling-off period is not duly provided, the contract withdrawal period does not begin to run (see 'Duty to provide information'). Providing the correct information about the right to withdrawal is not easy for the franchisor as the legislation provides limited advice for drafting. At least there is now a directive that contains a sample revocation instruction from the German Franchising Association, although this is not mandatory for German courts (<https://en.franchiseverband.com/>).

In South Africa, 'A franchisee may cancel a franchise agreement without cost or penalty within 10 business days after signing such agreement, by giving written notice to the franchisor.'⁴⁵

In addition, the Australian Franchising Code of Conduct⁴⁶ provides that a prospective franchisee is entitled to a cooling-off period of seven days after entering into a new franchise agreement.

Argentina also applies the right to a cooling-off period but only in distance and off-premises contracts, and, as in Germany, this right is granted for a period of 10 days, as long as information about the right is duly provided.⁴⁷ The supplier must inform the consumer about the power of revocation by including it in prominent characters in any document presented to the consumer at the negotiation stage or in the document that implements the concluded contract, located as a provision immediately before the consumer's signature. The right of revocation is not extinguished if the consumer has not been duly informed about his or her right.⁴⁸

These are just some of the potential consequences when considering a franchise agreement within the scope of application of a consumer protection regime. There are many more that could not be analysed in this chapter for the sake of brevity, such as procedural advantages (eg, abbreviated proceedings for consumers' claims, dynamic distribution of evidentiary burden, consumers bringing a claim free of judicial costs) and damages that can be claimed, such as punitive damages.

Conclusion

From the jurisdictions we have analysed, it is clear that while the consumer protection regime is a relatively new phenomenon, it is one that is seeing continuous growth, expanding in terms of both its subjective scope and the scope of its actual subject matter. Franchise agreements are anything but alien to the paradigm, principles and new rules established by this phenomenon, and in order to be prepared both franchisors and franchisees must be aware of consumer protection legislation.

45 Chapter 1, Part B, section 7(2) of the Consumer Protection Act 68. However, unlike in Germany, the Act provides guidance for the franchisor on how to inform the franchisee about this right.

46 Part 3, division 5, section 26.

47 Article 1110 of the National Civil and Commercial Code and article 34 of the Consumer Protection Law No. 24,240.

48 Article 1111 of the National Civil and Commercial Code.