

FEATURES AND LEGAL REGULATION OF FRANCHISING IN GRATA INTERNATIONAL COUNTRIES



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> 22

countries of presence



> 31

years of experience



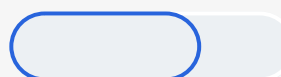
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professionals



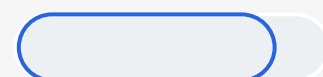
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practice areas



7 700+

clients



15 000+

projects

FEATURES AND LEGAL REGULATION OF FRANCHISING IN ARMENIA



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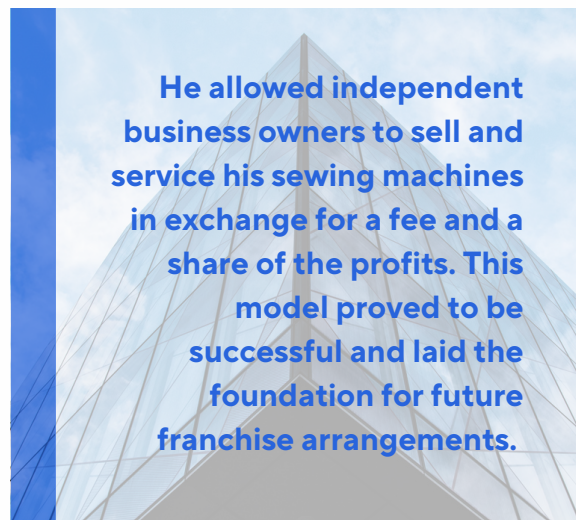
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- ▶ A franchise is a legal and commercial relationship between the owner of a trademark, brand, or business model (franchisor) and an individual or group (franchisee) who is granted the right to operate a business using that trademark, brand, or business model.

The concept of franchising dates back to the Middle Ages when English monarchs granted exclusive rights to certain individuals to conduct specific trades or sell certain products.

However, modern franchising as we know it today has its roots in the United States, where it first emerged in the early 20th century. One of the first successful franchise models was developed by Isaac Singer, the inventor of the sewing machine, in the 1850s.

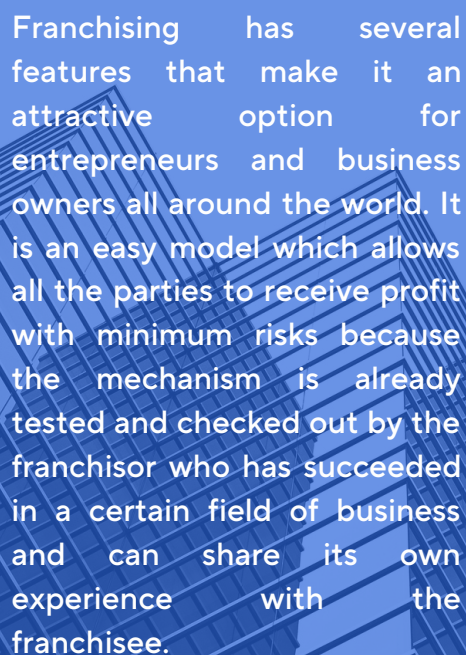


In the early 20th century, franchises started to gain popularity in the United States, particularly in the fast-food industry. Ray Kroc's acquisition of the McDonald's concept from the McDonald brothers in 1955 is often considered a landmark event in the history of franchising. Kroc transformed McDonald's into a globally recognized brand by franchising it to entrepreneurs who would open and operate their own McDonald's restaurants.

Since then, franchising has become a widely used business expansion strategy across various industries, including hospitality, retail, automotive, education, healthcare, and more. It offers entrepreneurs the opportunity to operate a proven business model with established brand recognition, marketing support, and ongoing training and support from the franchisor.

Franchising has become a popular business model also in Armenia and has gained traction over the years. In Armenia Franchise is also known as authorization for complex entrepreneurial activity. This model allows a company (the franchisor) to expand its business by granting the right to an independent operator (the franchisee) to use the system of exclusive rights belonging to the former in the entrepreneurial activity in exchange for a fee.

Due to its advantages, nowadays more and more people choose franchising as a comfortable and easy business model. It allows the franchisee to pass on the organizational details and stages such as the invention of brand name, advertisement, gaining reputation and a good name, details which would make the new business unique and successful. However, this business model can have some difficulties, as franchisees are somehow dependent on the franchisor that unable them to make independent decisions regarding changes in the local market.



Franchising has several features that make it an attractive option for entrepreneurs and business owners all around the world. It is an easy model which allows all the parties to receive profit with minimum risks because the mechanism is already tested and checked out by the franchisor who has succeeded in a certain field of business and can share its own experience with the franchisee.

**Here are
some of
the main
aspects:**

The Use of a Recognized Brand Name:

Franchisees are allowed to use the franchisor's established brand name, trademarks, and logos to market their products or services. This helps franchisees benefit from the brand's established reputation and attract customers. It also helps to gain the audience trust.

Standardized Operating Procedures:

- ▶ Franchise operating systems and procedures are the standardized methods and processes that franchisees must follow in running their business under the franchisor's brand. These systems and procedures are designed to maintain consistency and ensure that all franchise locations provide the same level of quality and service. Here are some common examples:

Training

Franchisees receive comprehensive training on various aspects of their business operations, including product or service knowledge, sales techniques, customer service, and administrative tasks. This training can be provided through classroom sessions, online modules, on-the-job training, or a combination of these methods.

Operations Manual

Franchisees receive an operations manual that outlines step-by-step instructions for various tasks and procedures. These manual covers everything from opening and closing procedures to inventory management, staff scheduling, cash handling, and equipment maintenance.

Hiring and Staffing

Franchisees may be provided with guidelines on the recruitment, selection, and training of their staff. This includes job descriptions, interview questions, and training materials to ensure that the franchise operates with skilled and knowledgeable employees.

Product/Service Standards

Franchisors set strict standards for product or service quality, including ingredients, preparation methods, presentation, and customer experience. Franchisees must adhere to these standards to maintain uniformity across locations.

Marketing and Advertising

Franchise operating systems often include guidelines for marketing and advertising activities. This can include recommendations for local marketing initiatives, approved marketing materials, and guidelines for using the franchisor's brand and trademarks in advertising campaigns.

Purchasing and Inventory Management

Franchisors may have preferred suppliers and negotiated contracts for purchasing products or raw materials. Franchisees are required to source their supplies from these approved suppliers and follow guidelines on inventory management and control.

Financial Reporting

Franchisees are typically required to provide regular financial reports to the franchisor. These reports may include sales figures, expenses, and other financial information necessary for monitoring the financial health of the franchise location.

Quality Control

Franchisees are subject to periodic inspections and quality control assessments by the franchisor or its representatives. This ensures that franchise locations meet the brand's quality standards and comply with operating procedures.

Communication Channels

Franchise operating systems often include established communication channels between the franchisor and franchisees. This facilitates regular updates, sharing of best practices, and addressing any issues or concerns that arise.

Continuous Improvement

Franchisors may encourage franchisees to provide feedback and suggestions for improving the operating systems and procedures. This helps in identifying areas that need refinement and continuously enhancing the overall franchise operations.

Fee:

- ✓ **The franchisees are required to pay an initial franchise fee to the franchisor and ongoing royalties based on a percentage of their sales. In return, they receive training and ongoing support from the franchisor in areas such as marketing, operations, and management.**

The difference between the initial franchise fee and ongoing royalties is that the initial franchise fee is the one-time payment made by a franchisee to the franchisor for joining the franchise system, usually upon signing the franchise contract and the royalty fee is an ongoing fee that is usually paid by a franchisee during the whole length of a franchise contract in return for use of the franchisor's trademark, systems and goodwill.

Territory Protection:

Franchisees also enjoy territory protection which means that they have exclusive rights to operate within a specific geographic territory.

A protected franchise territory refers to a specific area that a franchisor grants the franchisee the right to operate within, meaning other franchisees, and sometimes the franchisor itself is unable to enter that market.

By operating in a protected territory, however, the franchisee can gain assurance and some control of the brand's development in his local market. This allows to execute marketing within a certain territory without having to compete with a neighboring franchise of the same brand. Ideally, the franchisee does not want a potential customer to choose between his location and another one.

Armenian Law regulates almost every aspect of Franchising, including rights and obligations of the parties, form and registration of a franchise contract, conditions and legal regulation of sub-franchise, payment under the franchise contract, duties, and restrictions of the rights of the parties, etc. According to it, commercial organizations, and individual entrepreneurs can be parties under the franchising contract, and the registration of the contract must be carried out by the authorized state body which registered the right holder as a commercial organization or individual entrepreneur. Only in the situation when the latter's registration was carried out in another country, the contract must be registered in the state body which registered the user's commercial organization or private individual. In Armenia, such an authorized state body is the State Register of Legal Entities.

ⓘ It is important to refer to the contract registration form, which is the first and most important stage to start the mentioned relations. The only acceptable form of concluding the contract is the written version, the violation of which will lead to its invalidity and the contract will be considered null and void. The contract can be signed for a definite period and indefinite term.

In case the contract or the right holder allows, the user can conclude a complex sub-franchise contract, transferring the exclusive rights belonging to the right holder to third parties, but only for the period for which the contract for the main franchise contract was signed. For the sub-franchise contract, the legislator clearly defines that all the provisions related to the complex license contract apply to the Complex Sublicense contract.

The parties to the franchising contract have the right to refer to the contract in their relations with third parties only after it has been registered. The mechanism of registration of the Sublicense contract is the same, as in the case of the main License Contract. It means that the authorized body is also the State Register of Legal Entities.

The complex permission for the use of the object protected by the patent legislation is also subject to registration in the authorized body that is Intellectual Property Office. Failure to comply with this requirement renders the complex permit contract to be null and void.

Conclusion

In conclusion, franchising offers a valuable business opportunity for aspiring entrepreneurs. By becoming a franchisee, individuals can benefit from established brands, proven operating systems, and ongoing support from the franchisor. Franchising allows individuals to enter the business world with a greater chance of success compared to starting a business from scratch.

Franchising provides numerous advantages, including reduced risk and access to a ready-made customer base. Franchisees also benefit from comprehensive training, operational support, and marketing assistance from the franchisor. This support helps franchisees to effectively run their businesses and maintain consistency across multiple locations.

- ⚠ However, it is important to note that franchising also involves certain challenges. Franchisees must adhere to the franchisors' operating systems and procedures, restricting their flexibility and creativity to some extent. Plus, franchise contracts often require payment of ongoing fees, which can impact profitability.
- ⚠ Before entering into a franchise relation, it is crucial for individuals to thoroughly research and evaluate different franchise opportunities. This includes analysing the market potential, financial obligations, and support provided by the franchisor. Seeking legal and financial advice is highly recommended to ensure a clear understanding of the rights, obligations, and risks associated with franchising.

FRANCHISE AGREEMENT IN BELARUS: SPECIAL REQUIREMENTS



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SPECIAL REQUIREMENTS

- ▶ The franchise agreement is becoming more widely used in the activities of business entities in Belarus. Among the advantages that attract potential franchisees the use of already tested business model, consumer recognition, reduction of economic risks, lower advertising costs are pointed out. For franchisors conclusion of a franchise agreement provides an opportunity to develop business at regional level and create new sales channels with minimal financial and time costs.
 - It should be noted that the conclusion of a franchise agreement with residents of Belarus has a number of specifics, which relate to its form and content, as well as registration in the State Institution "National Center of Intellectual Property" (hereinafter - the patent authority).
 - Commercial organizations and individual entrepreneurs may act as parties to the franchise agreement. Belarusian legislation does not provide for the possibility to conclude such agreement with individuals or non-profit organizations.
 - When concluding a franchise agreement, special attention should be paid to reaching agreement on its subject matter and other essential conditions.
 - The subject matter of the franchise agreement is the transfer to the franchisee of the license complex in a certain amount, which must include the brand name of the franchisor and undisclosed information.
 - We note that other objects of intellectual property (trademarks, inventions, industrial designs, utility models and other) are not mandatory elements of the subject matter of the franchise agreement, but may be included in the franchise agreement by agreement of the parties.



The franchise agreement should

- contain information that allows to define fully and accurately the objects of intellectual property, the right to use which is granted. For example, when granting the right to use a trademark under the agreement, this agreement should include a description of the trademark, indicate its registration number, number and date of the certificate for such trademark, as well as classes of the International Classification of Goods and Services in respect of which the rights are transferred.
- provide for the use of the license complex in a certain amount, establishing the minimum and (or) the maximum amount of use.

- The franchise agreement must specify the types of business activities within which it is allowed to use the license complex.
- If any of the essential conditions are missing, for example, if the right to use the franchisor's brand name is not given to the franchisee, the franchise agreement will be considered uncompleted.
- When concluding a franchise agreement, it is important to verify that the rights to the license complex being transferred belong to the proper franchisor.

◀ SPECIAL REQUIREMENTS



It is also necessary to check whether the franchisor has the proper authority to transfer the license complex. Thus, the franchisor under the franchise agreement may be:



- the owner of the brand name, undisclosed information, other intellectual property objects (if any);
- the franchisee under the franchise agreement, if the right to enter into agreements of sub-franchising is granted;
- the owner of the brand name, undisclosed information, being a licensee under the license agreement, if it is permitted to grant sublicenses under this agreement.

- With regard to undisclosed information transferred under the franchise agreement, it will be necessary to make sure that such information is not easily accessible and does not constitute an object of exclusive rights to the results of intellectual activity.

- In addition to the subject matter of the agreement, an essential condition of the franchise agreement is the amount and form of remuneration payment for the provision of the license complex (par. 1 and par.4 of Art. 910 of the Civil Code). Par. 4 of Art. 910 of the Civil Code establishes the following forms of remuneration payment:
 - fixed, one-time and periodic payments;
 - deductions from the proceeds;
 - other forms of payment stipulated by the agreement.

- The parties may agree on remuneration payment in the form of lump-sum payment and (or) royalties.
- Par. 1 and par.2 of Art. 910 of the Civil Code stipulate that such conditions as the term and territory of use of the license complex may or may not be specified by the parties in the franchise agreement. In spite of that, we recommend to enshrine these conditions in the franchise agreement, because they are necessary for the purposes of registration in the patent authority.

SPECIAL REQUIREMENTS

- The agreement on the term during which the use of the license complex is allowed enables the franchisee to plan its business activities with the use of the license complex. In the absence of a term in the agreement, either party will have the right to withdraw from the agreement by giving six months' notice to the other party, unless the notice period is extended by the agreement.
- Indication of the territory of use of the license complex is important in order to prevent competition between the franchisor and the franchisee in the respective territory.
- In addition to the limitation by the territory of use of the license complex, Belarusian legislation allows to agree on other conditions that limit the franchisor and the franchisee. Because of such restrictions, the risk of collision of economic interests of the parties to the agreement is excluded.



The list of possible restrictions that the parties may agree on in the franchise agreement is contained in par. 1 of Art. 910-5 of the Civil Code:

- 1) the obligation of the franchisor not to provide to other persons equivalent license complexes for their use on the territory attributed to the franchisee or to refrain from their own equivalent activities on this territory;
- 2) the franchisee's obligation not to compete with the franchisor in the territory covered by the franchise agreement in respect of business activities carried out by the franchisee with the use of exclusive rights owned by the franchisor and undisclosed information;
- 3) the franchisee's refusal to obtain equivalent exclusive rights and undisclosed information from competitors (potential competitors) of the franchisor under the franchise agreement;
- 4) the franchisee's obligation to agree with the franchisor on the location of premises used in the performance of the franchise agreement, as well as their external and internal design.

When incorporating such restrictions in the franchise agreement, parties should take into account that there is possible risk of recognition of aforesaid restrictions as invalid by the court at the request of the antimonopoly authority or another interested person (par. 2 of Art. 910-5 of the Civil Code). The condition for such recognition is the contradiction to the antimonopoly legislation of Belarus. At the same time, the state of the relevant commodity market and the economic situation of the parties should be taken into account.

◀ SPECIAL REQUIREMENTS

- Consequently, when including restrictions agreed by the parties in a franchise agreement, it is necessary to additionally check them from the point of view of compliance with the requirements of the current antimonopoly legislation in Belarus.
- The franchise agreement may also stipulate additional obligations of the parties to share the organization's experience, including, for example, personnel training, instructions on management, the creation of a distribution network, the operation of equipment, customer service, etc.
- The franchise agreement may provide for measures that exclude misleading the consumer. In accordance with legal requirements, the consumer of goods, works or services must be aware that the franchisee is an independent business entity and carries out business activities within the framework of the franchisor's single network. In this regard, the agreement must include the obligation of the franchisee to inform customers in the most obvious way for them that the license complex is used on the basis of a franchise agreement (par. 2 of Art. 1016 of the Civil Code, Art. 910-4 of the Civil Code).

In accordance with par. 1 of Art. 910-1 of the Civil Code the franchise agreement is concluded in simple written form. The simple written form implies the drafting of a single text document, including a document in electronic form (in particular electronic document), or the exchange of text documents, including documents in electronic form (in particular electronic documents).

Based on the fact that two original copies of the franchise agreement and one certified copy thereof must be submitted for registration, it is more preferable to draw up the agreement as a single text document signed by both parties.

The franchise agreement, as well as the amendments and termination of the agreement, are subject to registration by the patenting authority in the state register. The registration procedure is regulated by the Resolution of the Council of Ministers of the Republic of Belarus of March 21, 2009 № 346 "On registration of license agreements, agreements of assignment of rights to objects of industrial property rights, agreements on pledge of property rights, certified by a certificate for a trademark, service mark and agreements of complex entrepreneurial license (franchising)".

◀ SPECIAL REQUIREMENTS

The legislation does not establish the consequences of non-compliance with the requirements for registration of the franchise agreement with the patent authority. In this regard, it is debatable whether the lack of such registration may lead to the nullity of the franchise agreement on the basis of par. 1 of Art. 166 of the Civil Code.

In order to register a franchise agreement, it is necessary to submit to the patent authority:

- application for registration of the agreement;
- agreement in three copies (two copies are originals, one copy is a copy certified by the applicant),
- power of attorney (in case of acting through a representative);
- document confirming the payment of the patent fee.

The application for registration of the franchise agreement shall contain a consent to the processing of personal data by the patenting authority.



Thus, the conclusion of the franchise agreement in Belarus has its own specifics, which should be taken into account when drafting and registering it.

- It is important to comply with the requirements related to the range of entities that may be a party to the franchise agreement, the description of the subject matter of the agreement, the definition of the scope of use of the license complex, the amount and form of remuneration for such use. We note that the consequence of omitting any of the essential conditions of the franchise agreement is recognition of the agreement as uncompleted.
- Optional elements of the franchise agreement, included by the parties, also require special attention. Their detailed elaboration and clear regulation will allow not only to avoid disagreements between the parties, in particular, in matters of competition, but also to avoid such adverse consequences as the refusal to register the agreement by the patent authority.
- The essential point is to conduct a preliminary verification of the franchisor's ownership of the rights to the license complex being transferred and the franchisor's proper authority to transfer the license complex.

FEATURE AND LEGAL REGULATIONS OF FRANCHISING IN MONGOLIA



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DEFINITION

Franchise

- ▶ In general, a franchise is a method of distributing products or services involving a franchisor, who establishes the brand's trademark or trade name and a business system, and a franchisee, who pays a royalty and often an initial fee for the right to do business under the franchisor's name and system according to the definition by the International Franchise Association. Further, according to the Investopedia definition, a franchise is joint venture between a franchisor and a franchisee. The franchisor is the original business. It sells the right to use its name and idea. The franchisee buys this right to sell the franchisor's goods or services under an existing business model and trademark.

Although there is no express definition of franchise in the legal framework of Mongolia, a franchise agreement is incorporated in the Civil Code of Mongolia (2002) as one type of contracts. Under a franchise agreement, a franchisor grants to a franchisee license for the use of intangible assets such as firm name, trademark, service mark, product design, packaging, as well as a business management system, plan, communication, business types to obtain goods, products, works, and services. On the other hand, the franchisee operates in accordance with the system and cooperation program developed by the franchisor, and pays appropriate royalty, fee, or a certain percentage of the income.

Difference from other forms of commercial activity

Franchise differs from other forms of commercial activity in a sense that it provides an opportunity to operate an existing, successful business model that comes with a proven track record, a successful training program, solid supply chain, and expert technical support.

◀ TYPES OF INTELLECTUAL PROPERTY RIGHTS



Trademarks

(a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises);



Service marks

(a mark used to distinguish the services provided by one person or company from services provide by others);



Trade names

(the name given to a product by the company that produces it; a name that is taken and used by a company for business purposes (Oxford Dictionary));



Patents

(an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem);



Trade secrets

(IP rights on confidential information which may be sold or licensed, such as commercially valuable information that is known only to a limited group of persons and is subject to reasonable steps taken by the rightful holder of the information to keep it secret, including the use of confidentiality agreements for business partners and employees);



Confidential information or know-how

(totality of the documents, schemes, information, specifically knowledge that are used in order to create and promote a particular product); and



Copyrights

(a type of intellectual property that protects original works of authorship as soon as an author fixes the work in a tangible form of expression) and designs.

FRANCHISE AGREEMENT

As Mongolia is a free market economy country, freedom of contract applies to contractual relationship. Unless otherwise prohibited or restricted by the law, parties to a contract are free to conclude any kind of transactions. Key concern is whether such a transaction is lawful and valid.

According to the Civil Code of Mongolia, transactions are valid as long as key terms and conditions which vary for different types of contracts are expressly agreed upon and due formalization (i.e. to be in writing, notarized, registered, signed by a legally capable and authorized person, etc.) is carried out.



For franchising agreement, it is required to be made in writing. The following terms and conditions must be specified mandatorily, among other things:

- Subject of the agreement;
- Fees;
- Duration of the agreement;
- Procedure for termination/cancellation and extension of the agreement;
- Responsibilities of the parties;
- Program for implementation of the agreement.

Also, it is essential to conclude confidentiality agreement or include confidentiality clause, as well as to set territory limit.

Legal requirements for advertising franchises

- ▶ Aside from the agreement between the parties, advertising must be carried out in accordance with the Law of Mongolia on Advertising. Certain restrictions and prohibitions apply to any advertisements which are disseminated in the territory of Mongolia, including:
 - Any advertisement on licensed activities while the license is not obtained;
 - Any advertisement on prohibited products;
 - Any advertisement on products subject to non-tariff restrictions;
 - Any advertisement on products that are not accredited (where required);
 - Any advertisement that may lead to actions and activities that violate the laws of Mongolia;
 - Any advertisement on projects in advance of conducting environmental impact assessment (where required), or the project may not be implemented according to the assessment;
 - Any advertisement that may cause fear, violence, or immorality, as well as actions and activities that may harm human life, health or safety;
 - Any advertisement on products which are prohibited from being promoted/advertised.

- ▶ The following advertisements are deemed as illegal:
 - Advertisement on products comparing them with other products;
 - Advertisement that is contrary to the reputation, good name, and business reputation of others;
 - Advertisement that mislead consumers by omitting specific information, or taking advantage of their lack of knowledge, experience, or credulity;
 - Advertisement that mislead consumers about the following information:
 - o intended use, structure, component, manufactured date, method, features, instruction of use, duration, quality certificate, conformity mark, quality assurance, quantity, origin of the product;
 - o quantity, size, availability of the products, actual market demand and supply of the product;
 - o current price, additional payment terms and conditions;
 - o the right to use and administer intellectual property;
 - o warranty and lifetime of the product;
 - o prize, certificate, and other acknowledgements;
 - o assessments, feedbacks, and recommendations by consumers;
 - o results of research, analysis, and test results, as well as scientific terms and quotations from other works;
 - o address, purpose and type of business, expertise and skills.

- Advertisement that defames other products;
- Advertisement that defame state symbols, historical figures, national currency and religion of Mongolia and other countries;
- Advertisement in which the uniform and symbol of a special government servant in an irregular and abnormal manner;
- Advertisement in which works of art included in the register of national, historical and cultural values are defamed;
- Advertisement in which language, comparisons, and images that denigrate ethnicity, language, race, social origin, status, age, gender, professional education, religion, or opinion are used; and
- Advertisement in which humaneness, morality, and customs that Mongolian people prefer are violated.

ADVERTISING FRANCHISES, RESTCTIONS ON THE USE OF IP OBJECTS

Restrictions on the use of trademarks and other intellectual property objects



Before proceeding to the business activities, licensing agreement and other similar agreement under which relevant trademarks and intellectual property rights are granted need to be registered with the Intellectual Property Office of Mongolia to ensure the exercise of entitlements under the contract.

After due registration, franchisee is free to use the trademarks and other intellectual property objects without any restrictions, but in line with the agreement with the grantor.

FRANCHISE REGISTRATION AND LEGAL PROTECTION OF IP RIGHTS

Licensing agreements on inventions, utility models, product models, and trademarks that are subject to legal protection in Mongolia must be registered mandatorily. On the other hand, other agreements in regard to the use of intellectual properties may be registered voluntarily.

Licensee and licensor, or their authorized representatives are entitled to apply for the registration. For application, the following should be considered:

- ✓ An original or notarized copy of the licensing agreement is required.
- ✓ In the case of sub-licensing contract, the principal one is required.
- ✓ In the case of a contract concluded in a foreign language, its translation is required.

LIABILITIES OF PARTIES TO THE FRANCHISE AGREEMENT

Under general principles in the Civil Code, parties are liable for any damages and expenses incurred to the other party due to breach of contractual obligations and wrongful activities of the defaulting party.

Parties may agree to impose penalty (up to

50%

of the outstanding obligations) or undue loss (up to

0.5%

of the outstanding obligation for each day of delay) for breach of contractual obligations.

As specifically specified in franchise agreement section under the Civil Code,

- Parties are liable for implementation of contractual obligations and the accuracy information provided.
- In the case of any damage and expenses incurred to the Franchisor in regard to contractual obligations of the Franchisee, the Franchisee shall compensate for such damages and expenses.
- The Franchisor is not liable for any potential revenues the Franchisee may earn under the franchising contract.
- The Franchisor is not liable for any damages incurred to customers/clients due to wrongful activities of the Franchisee.

Additionally, Franchisor is entitled to prohibit the Franchisee from conducting competitive activities on a specific territory for a period of up to one year after expiration or early termination of the franchise agreement. However, such a prohibition must not cause substantial damage to the principal activities of the Franchisee. Otherwise, the Franchisor have to pay appropriate compensation.

◀ TERMINATION OF FRANCHISE AGREEMENT, RETURN OF PROPERTY USED IN THE FRANCHISE



Term (duration) of a franchise agreement is up to the parties' discretion in consideration of the market demand and sales market of the goods, works, or services.

If the contract is concluded for a period of more than 10 years and termination/cancellation condition is not specified therein, either party may terminate the contract after 10 years within one year from the termination notice sent to the other party. Thus, it is crucial to explicitly agree on the termination condition.

There is no specific restriction or prohibition on the return of property used in the franchise. Parties should agree upon such terms and conditions particularly in their contracts.

◀ ANALYSIS OF LEGISLATION AND JUDICIAL PRACTICE

Franchise regulation is briefly in covered in 6 articles of the Civil Code of Mongolia. Generally, parties are free to determine the terms and conditions of the agreement without breaching the legal restrictions or prohibitions.

As franchise relation is fairly new in Mongolia, a few cases have been settled by Mongolian courts usually in connection with withdrawal from the contract due to non-fulfillment of obligations, or return of property after termination of the contract.

TYPES OF INTELLECTUAL PROPERTY RIGHTS USED IN FRANCHISING AGREEMENTS IN RUSSIA



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◀ INTRODUCTION

- ▶ Franchising is a successful business model that allows companies to expand their market presence while maintaining control over the quality of the products or services they offer.

A commercial concession agreement, which is exactly what a franchise is called in Russian law, is an agreement under which a set of rights to intellectual property objects is transferred, which is the basis of such interaction between the franchisor and the franchisee. In Russia, the most common of them are trademarks, patents and copyrights, know-how.

**Let's move
on to each
of them.**

TRADEMARKS

A trademark is a unique mark or symbol that identifies and distinguishes the goods or services of one manufacturer from those of another.

The right to a trademark arises from the right holder from the moment of its registration by Rospatent. Valid for 10 years, while protection can be extended an unlimited number of times, also for 10 years. The right to a trademark is valid on the territory of the entire Russian Federation, and can be extended beyond its borders (according to the Madrid system).

In addition to the possibility to conclude a commercial concession agreement, registration of trademarks has a lot of advantages, such as: the right holder acquires the exclusive right to the designation on the territory of Russia (that is, no one will be able to use the registered logo); the right holder receives protection from unfair competition; after registering a trademark, the right holder acquires the tools to hold accountable those who violated his rights; trademarks are a separate tangible asset that can be put on the balance sheet of an organization. In addition, the right holder acquires the opportunity to use contractual institutions for the transfer of rights: license agreements, commercial concession agreements, and others.



Please note that trademarks are a key element of any franchise agreement. In other words, a commercial concession agreement cannot be considered as such if it does not include trademark rights.

In the context of franchising, the franchisor grants the franchisee the right to use its trademarks. This allows franchisees to enjoy brand recognition and reputation, which is one of the main reasons why franchising is so attractive as a business model.

- 📅 Please note that when registering an agreement with Rospatent, the Office pays special attention to trademarks. So separately attention is drawn to the territory of use of the trademark, the scope and purpose of use, the possibility of its transfer to third parties.

PATENTS



Patents, as a form of intellectual property, grant the exclusive right to invent or improve a product or process.

Patents can be for an invention (a technical solution in any field related to a product (in particular, a device, a substance, a strain of a microorganism, a plant or animal cell culture) or a method (the process of performing actions on a material object using material means), including including the use of the product or method for a specific purpose); utility model (technical solution related to the device); on an industrial design (decision of the appearance of the product).

If the franchisor owns patents that are important to its business, it may assign the rights to use those patents to its franchisees as part of a franchise agreement.



Please also note that the right to a patent arises only after state registration. Valid for a certain amount of time (depending on the type of patent) and requires maintenance. Therefore, before concluding a commercial concession agreement, it is quite important to check the validity of the patent, it must be relevant at the time of the conclusion of the agreement.

In addition, the legal nature of a patent implies that the “Owner” and the “Author” of a patent may be different persons. In order to minimize risks, before concluding an agreement, attention should be paid to the regulation of relations between these persons.

Copyrights protect original works of literature, art, music, software, and other forms of creativity.



In the context of franchising, copyright can refer to various elements: logos, packaging designs, promotional materials, documentation, software, and other materials that can be used to start a business.

One of the main advantages of franchising copyright is the ability to use ready-made and verified copyright objects. This allows the franchisee to save time and resources on developing their own copyright objects.

- ⚠ However, before franchising copyrights, you need to make sure that the franchisee will use these rights only as agreed between the parties.
- ⚠ It is also necessary to make sure that the franchisee will follow all the rules for using copyright objects in order to avoid possible sanctions from the copyright holder.

Know-how is information of any nature (industrial, technical, economic, organizational, and others) about the results of intellectual activity that has actual or potential commercial value due to their unknown to third parties, if third parties do not have free access to such information on a legal basis and the owner of such information takes reasonable measures to maintain its confidentiality, including by introducing a trade secret regime.

In Russian legislation, know-how is more often referred to as a secret of production, while the range of information that can be considered as such is not specifically limited. Know-how may include unique production methods, technologies, recipes, sales and marketing strategies, and other proprietary information, but which must not be publicly available.

Proper registration of a production secret on its own has a number of advantages for business: keeping information valuable for business secret from competitors, the possibility of holding violators accountable, obtaining grants and funding, and, finally, monetization of information by transferring valuable information, including through the conclusion of commercial concession agreements .

In the context of franchising, know-how is an extremely valuable element of the agreement. It allows the franchisee to quickly launch into a new market, bypassing many of the difficulties that he might face when trying to start a business from scratch.

Know-how transfer usually occurs at the beginning of the relationship between the franchisor and the franchisee and includes training, advice and the provision of specific materials such as operating manuals.

- ✓ Training can take place both at the place of the franchisor and at the location of the franchisee's business . This usually includes all aspects of running a business, from management to sales . In practice, this condition is one of the key when concluding a commercial concession agreement.

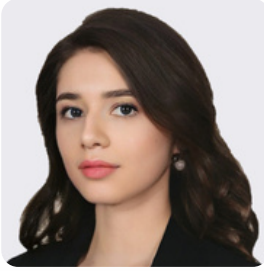
Note that consultations can be provided throughout the duration of the franchise agreement. The franchisor, as a carrier of information valuable to the business, can provide ongoing support in matters of management, marketing, personnel management and other aspects of the business.

The transfer of know-how can be done by providing an operating manual - documents that contain detailed instructions for running a business. They can include everything from management principles to customer service standards and marketing strategies.

Franchise agreements in Russia use different types of intellectual property rights. These rights are granted to the franchisee as part of the agreement and allow the franchisee to use the unique features of the franchisor's brand and business model.

Thus, the protection and management of intellectual property is an important component of the success of franchising. Franchisors must be mindful of their obligations to protect these rights in order to provide their brand with maximum protection and market exposure.

FEATURES AND LEGAL REGULATION OF FRANCHISING IN THE REPUBLIC OF UZBEKISTAN



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INTRODUCTION


- Franchising is a widespread and dynamically developing form of commercial cooperation in Uzbekistan. It provides unique local market opportunities for entrepreneurs and potential investors. In this article the main aspects of franchising in the context of Uzbek legislation will be considered, and key factors that must be considered before concluding a franchise agreement will be identified.
- Regulation of franchising is carried out with consideration to the provisions of the Civil Code of the Republic of Uzbekistan dated December 21, 1995 (hereinafter referred to as the "Civil Code"), including other legislative acts that establish the fundamental rules and conditions for the conclusion and execution of franchise agreements. The following regulations are some of the main ones:

- Law of the Republic of Uzbekistan "On Competition" No.319 dated January 6, 2012 (hereinafter referred to as the "Law on Competition");
- Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "On approval of the administrative regulation for the provision of public services for the state registration of franchise agreements (franchising)" No.346 dated June 24, 2022 (hereinafter referred to as the "Regulation on Franchising Agreements Registration");
- Rules on the Registration of agreements on the transfer of rights to an invention, utility model, industrial design, selection invention, trademark, service mark, and license agreements for their use, agreements on the transfer of rights to an integrated circuit topography, the transfer of all property rights and the transfer of property rights to the program for electronic calculating machines or database No.8-mx dated March 31, 2022 (approved by the Order of the Minister of Justice, registered on March 31, 2022, under No. 3359) (hereinafter referred to as the "Rules on registration of license agreements"); and
- other legislative acts.

KEY REQUIREMENTS FOR THE FRANCHISE AGREEMENT

-  Under the Civil Code, a franchise agreement is defined as a Comprehensive Business License Agreement (hereinafter referred to as the “Franchise Agreement”). Under the Franchise Agreement, one of the parties, acting as a complex licensor (hereinafter referred to as the “franchisor”), undertakes to provide the other party, acting as a complex licensee (hereinafter referred to as the “franchisee”), a certain set of exclusive rights, which includes the right to use the company name of the complex licensor, protected commercial information and other objects of exclusive rights, such as trademark, service mark, inventions, and others, as part of the franchisee's business activities, for the established remuneration.
-  One of the key aspects of the legal regulation of franchising in Uzbekistan is the protection of intellectual property. The franchisor must ensure proper protection of its intellectual property rights, such as brands, trademarks, patents, and other intellectual property. The franchisee, in turn, is obliged to comply with the terms of use of intellectual property and not violate the franchisor's rights.

The requirements and limitations for Franchise Agreements are mainly provided for by Chapter 50 of the Civil Code. It is important to note that, under Article 862 of the Civil Code, only commercial organizations and individual entrepreneurs can be parties to the Franchise Agreement. Moreover, the Franchise Agreement can be concluded by indicating the term or as an open-ended agreement.

-  Simultaneously, it should be noted that it is necessary to register the Franchise Agreement by the competent authority responsible for registering the legal entity or individual entrepreneur assuming the role of the franchisor. Failure to appropriately register the Franchise Agreement renders it null and void.

Upon conclusion of the Franchise Agreement, the franchisor is obliged to provide technical and commercial documentation and information necessary for the franchisee to exercise its rights under the Franchise Agreement. In addition, the franchisor is obliged to instruct the franchisee and its employees on any aspects of franchise activities.

KEY REQUIREMENTS FOR THE FRANCHISE AGREEMENT

It should be noted that per Article 5 of the Civil Code, if the parties' relations are not directly regulated by law or by the agreement, the rights, and obligations of the parties shall be determined based on the general principles and meaning of civil law and the requirements of good faith, reasonableness, and fairness.



Moreover, under Article 868 of the Civil Code, the Franchise Agreement may include the following restrictive conditions:

- the franchisor's obligation is not to enter into other similar franchise agreements for use in the territory assigned to the franchisee or to refrain from operating in that territory;
- the franchisee's obligation is not to compete with the franchisor in the territory where the Franchise Agreement is applied;
- the refusal of the franchisee to conclude other Franchise Agreements with the franchisor's competitors (or potential competitors);
- coordination with the franchisor of the location of commercial premises used to exercise the exclusive rights granted under the agreement, including their external and internal design.

It is important to note that restrictive conditions may be invalidated under claim of the antimonopoly authority or other interested parties if they contradict the Law on Competition, considering the relevant market's state and the parties' economic situation.

In addition, the Civil Code also indicates the invalidity of conditions in the Franchise Agreement that provide for the franchisor's right to determine the price of sale of goods to the franchisee or the price of works (services) performed or rendered by the franchisee, including the right to set an upper or lower limit of such prices.

REGISTRATION OF THE FRANCHISE AGREEMENT

As mentioned above, registration of the Franchise Agreement is mandatory under Uzbek law. Registration must be made in the state authority responsible for registering a legal entity or individual entrepreneur (hereinafter referred to as the "Registering Authority"), which acts as the franchisor. Exclusively if the franchisor is a foreign organization, the registration of the Franchise Agreement shall be conducted by the Registering Authority, which conducted the state registration of the franchisee.

The registration procedure of the Franchising Agreement is regulated by the Regulation on Franchising Agreements Registration. Under such regulation, the registration procedure requires submitting necessary documents to the Registering Authority at the place of the franchisee's registration. The registration must be completed within 3 (three) business days from the date of submission of all required documents to the Registration Authority.

It should also be noted that according to Section 4 of the Regulation on Franchising Agreements Registration, the relevant part of the Franchising Agreement containing exclusive rights to intellectual property (the licensing agreement) must also be registered with the Intellectual Property Department under the Ministry of Justice of the Republic of Uzbekistan (hereinafter referred to as the "Intellectual Property Department").

In case of violation of the abovementioned requirement, the respective part of the agreement may be declared invalid, provided that the remaining terms of the agreement may remain valid independently. Otherwise, the entire Franchising Agreement shall be deemed null and void.

If the object of intellectual property is not registered in the territory of the Republic of Uzbekistan, registration of rights to this object and its transfer under the Franchising Agreement is performed by agreement of the parties. In practice, in such cases, we recommend registering the transferred intellectual property object with the Intellectual Property Department and then concluding and registering the Franchise Agreement and the License Agreement.

TERMINATION OF THE FRANCHISE AGREEMENT

The Franchise Agreement may be terminated by agreement of the parties or by a court decision - in case of a material breach of the agreement by the other party or in case of a substantive change in the circumstances from which the parties proceeded when concluding this agreement. A change in circumstances is deemed substantive when it has undergone such substantial alterations that, if the parties could have foreseen it, the Franchise Agreement would not have been concluded by them at all or would have been concluded on significantly different terms and conditions.



Under Uzbek laws, a claim for termination of the Franchise Agreement may be brought by a party to the court only after receiving a refusal from the other party to the proposal to amend or terminate the agreement or failure to receive a response within the period specified in the proposal or agreement, and upon its absence - within 30 (thirty) calendar days.

In addition, the Franchise Agreement shall also be terminated if the right to the trade name is terminated in the Franchise Agreement without replacing it with a new trade name. The possibility of a unilateral waiver of its performance (in full or in part) may be provided in the agreement itself. In such cases, it is necessary to specify the conditions under which the party is exempt from specific terms and conditions of the Franchise Agreement.

If the franchisor's trade name changes, the Franchise Agreement remains in force under Article 873 of the Civil Code unless the franchisee requests such termination. In this case, the franchisee is entitled to a proportionate reduction of the remuneration paid to the franchisor.

- ⓘ It is important to note that the termination of the Franchise Agreement must also be registered by the Registering Authority. Upon liquidation of the franchisee or the franchisor, the Franchise Agreement must also be terminated and registered with the Registering Authority.
- ⓘ If the Franchise Agreement is terminated by agreement of the parties, the application for registration of the termination of the agreement must be accompanied by 3 (three) copies of the termination agreement signed by both parties. If the agreement is terminated by a court decision, its copy must be attached to the application for registration.

OTHER LEGAL REQUIREMENTS

The Franchise Agreement must be drawn up in Uzbek or Russian languages. In practice, in the context of cross-border transactions, bilingual versions of documents may be drawn up. If the Franchise Agreement is drawn up and executed in a foreign language (for example, in English), it is also necessary to provide its notarized and apostilled/legalized translation into Uzbek or Russian.

Under the Franchise Agreement, the franchisor bears additional responsibility for the requirements made by the franchisee regarding non-compliance with the quality of goods (works, services) offered by the franchisee under the Franchise Agreement. According to Article 869 of the Civil Code, the franchisor is jointly and severally liable with the franchisee for the requirements that arise for the franchisee as the producer of the franchisor's products.



In addition, if the transferred exclusive right has expired or such right has ceased for any other reason during the period of validity of the Franchise Agreement, the Franchise Agreement shall be in force without the provisions relating to the terminated right. In this case, unless otherwise provided by the agreement, the franchisee is entitled to a proportionate reduction of the remuneration paid to the franchisor.

CONCLUSION

Franchising in Uzbekistan is a significant tool of commercial cooperation regulated by law. Entrepreneurs planning to enter into a franchise relationship must be attentive to the requirements of the legislation and respect intellectual property rights. It is recommended to contact legal experts for consultation and drafting of a Franchise Agreement that meets the requirements of Uzbek legislation and protects the interests of the parties. Proper understanding and compliance with regulations are vital for successfully developing a franchise business in Uzbekistan.



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