

FEATURES AND LEGAL REGULATION OF FRANCHISING IN THE REPUBLIC OF UZBEKISTAN





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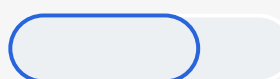
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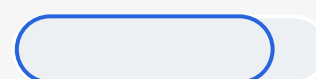
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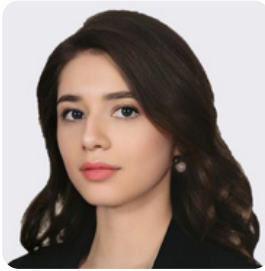
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INTRODUCTION

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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