

## Foreign Experience in Using Franchising and its Significance in the Economy of Uzbekistan

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**Annotation:** The primary goal of this article is to emphasize the importance of franchising legislation in private international law. The author identified the elements and basic rights and obligations of the parties under the complex entrepreneurial license (franchise) agreement. The article also reveals the essence and significance of the legal regulation of franchising in the Republic of Uzbekistan in the legal order of the modern market type, as well as analyzes the reasons of the low activity of local entrepreneurs in terms of concluding this type of agreement. Proposed ways to eliminate these causes and improve the current situation.

**Keywords:** Franchising, international, franchisor (complex licensor), franchisee (complex licensee) intensive processes, entrepreneurial license, risk diversification, private international law, civil law contract, lexmercatoria.

### Introduction

From the point of view of private law, international franchising relations arise on the basis of an appropriate civil law contract – an international franchising contract.

A franchise agreement is international if it is connected with the legal order of two or more states, when the parties to the agreement – the franchisor and the franchisee – have their main places of business (commercial enterprises) in the territories of different states and in other cases there is a foreign element in this agreement. A franchising agreement, including an international one, is a type of commercial transaction, since its participants are persons engaged in entrepreneurial activities.

### Main part

Until now, there is no unified international legal regulation of the franchising agreement, as well as its unified definition. The main sources of legal regulation of a franchise agreement, including international commercial agreements, are national law and sources of the so-called lexmercatoria. National law may be applicable to an international franchising agreement by virtue of the autonomy of the will of the parties or by virtue of the operation of the law applicable in the absence of an agreement of the parties on the applicable law. In the legislation of foreign countries, the issue of the legal regulation of the franchising agreement and franchising relations in general is resolved in different ways. Therefore, it is necessary to consider what features the regulation of this agreement has in foreign countries, including those with a different legal system.

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For instance, in the United States of America, franchise laws have been developed at both the federal and state levels.

However, in general, they are devoted not to contractual, but to pre-contractual relations in franchising. Franchising relations are directly regulated by the norms of contractual and obligations law. Franchising is defined in the “Disclosure Requirements and Prohibitions Concerning Franchising” approved by the US Federal Trade Commission Regulation of 1978. Moreover, in the regulation of franchising relations in the United States, a significant part remains behind judicial precedents [6].

English law lacks both special provisions on the franchise agreement and rules on pre-contractual relations in franchising. Franchising was defined in the Financial Services Act 1986. The legal regulation of franchising contractual relations is built in accordance with the laws that regulate certain types of commercial activities, as well as laws on commercial activities in general (Fair Trading Act 1973, Restrictive Trade Practices Act 1976, Supply of Goods and Services Act 1982, etc.) [6].

In general, the legal regulation of a franchise agreement in the UK is built in accordance with the general rules of contractual and obligation law, as well as judicial precedents.

In France, the definition of a franchise agreement was given in the French Law dated December 31, 1989 No.89-1008 “On the development of commercial and artisanal enterprises and the improvement of their economic, legal and social environment”. Civil law relations arising from franchise agreements are governed by the rules of the French Civil Code dated 1804 and the French Commercial Code dated 1807. French commercial law contains rules regarding the pre-contractual disclosure of information about the franchisor, which are formulated in Art. L.330-3 of the French Commercial Code [7].

In Germany, there are also no provisions regarding the franchise agreement itself, as well as provisions on pre-contractual relations for franchising.

The relations between the franchisor and the franchisee are subject to the rules on the general conditions of transactions of the German Civil Code dated 1896 and the German Commercial Code dated 1897, as well as laws on competition, on consumers, on intellectual property, etc. [6]

As for the legal regulation of franchising in European countries, it is necessary to refer to the so-called “supranational” law of the European Union. It should be emphasized that at present there are no special regulations on the franchise agreement at the EU level. The legal regulation of these relations is carried out within the framework of regulations aimed at ensuring the implementation of freedom of movement of goods and services, as well as freedom of competition, regardless of national borders, that is, it mainly concerns competitive, and not civil law. [8]

In some countries, for example, Italy, Spain, Brazil, Australia, there is a special legislation on franchising. The franchise agreement is subject to special legal regulation in the law of some post-Soviet states, in particular Kazakhstan and Belarus.

Thus, at present, the international regulation of franchising is represented by means of non-state regulation, none of which gives a complete picture of the legal regulation of this type of civil law contract at the international level. It seems to us that at present the need for a unified international legal regulation of the franchise agreement and its unified international legal definition is already ripe.

In view of the foregoing, it is proposed to understand the international franchising agreement as an agreement under which the franchisor grants the franchisee, which has its main place of business in a foreign state, for a fee for a period or without specifying a period, the right to use in the franchisee's business activities a set of exclusive rights, including the right to a trademark, service mark, rights to other objects of exclusive rights provided for by the agreement, including the right to know-how, as well as to provide services related to the introduction of the franchisee into the scope of the franchisor's business activities and support of the franchisee's activities in the process of its implementation.

The international franchising agreement is consensual, reimbursable, bilaterally binding. Its subject is the transfer by the franchisor of a complex of exclusive rights, as well as the provision of services for introducing the franchisee into the scope of the franchisor and accompanying his activities in order to implement it in the way the franchisor does.

One of the important issues related to the conclusion of an international franchising agreement is the issue of pre-contractual disclosure of information about the franchisor. It will allow the franchisee to decide before entering into a contractual relationship whether it is worth concluding a franchise agreement or refusing to conclude it. A similar obligation of the franchisor is prescribed in the legislative acts of a number of foreign countries (USA, France), as well as in international documents. In particular, the UNIDROIT Model Law on Information Disclosure dated 2002 is generally devoted to the disclosure of information by the franchisor before concluding an agreement with a potential franchisee[9].

In accordance with Article 3 of the Model Law, the franchisor must provide each potential franchisee with a document on disclosure of information, to which a draft franchise agreement must be attached at least 14 days before the first of the following events: 1) signing of the franchise agreement, with the exception of the confidentiality agreement information already provided or information to be provided by the franchisor in the future; 2) payment of any payments to the franchisor or an affiliate of the franchisor in connection with the acquisition of a franchise, provided that such payments are non-refundable, with the exception of security payments issued in connection with the conclusion of a confidentiality agreement.

Also, a comprehensive list of information that must be provided by the franchisor as part of the disclosure of information is provided: data about the franchisor, its trademark and trade name, addresses, information about business experience, information about the management of the franchisor, information about criminal convictions and civil actions, information related to fraud and provision of false information, bankruptcy proceedings, information about other franchisees, information about intellectual property, etc.

In addition to this information, information related directly to the franchise relationship itself (prolongation of the contract, description of training programs, description of the exclusive rights provided and their territory, conditions for unilateral termination of the contract and the consequences of such termination, franchisee restrictions, non-competition clauses, information about franchise payments, conditions for transferring rights under the contract, provisions on jurisdiction disputes, applicable law and dispute resolution procedures) must be included in the disclosure document or disclosed in the franchise agreement itself.

The obligation to disclose information at the pre-contractual stage is provided for by the Model Rules. In general terms, this rule is provided for by Art. IV.E.-2:101 "Obligation to disclose information at the pre-contractual stage". According to this article, a party participating in the

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negotiations to conclude a contract governed by the rules of this part is obliged, within a reasonable time before the conclusion of the contract and to the extent required by good business practice, to provide the other party with the information necessary for it to make an informed decision on whether or not to conclude contract of the appropriate type on the proposed terms.

These provisions are specified in the article “Pre-contractual information” of the Model Rules in relation to the franchising agreement, according to which the franchisor is obliged to provide the franchisee with reliable and up-to-date information, in particular, about: a) the franchisor's company and experience; b) relevant intellectual property rights; c) the characteristics of the relevant know-how; d) market sector and environment; e) a special way of doing business and its implementation; f) the structure and size of the franchise network; g) fees, royalties or other periodic payments; h) terms of the contract. Thus, the list of information provided is not closed and, obviously, at the initiative of the parties, other information can be attributed to it. Compared with the Model Law, the list of principles of European private law does not look so significant[9].

In a general sense, franchising is such a business organization in which a company (franchisor) transfers to an independent person or company (franchisee) the right to sell the product and services of this company. The franchisee undertakes to sell this product or service in accordance with predetermined laws and business rules that the franchisor establishes. In exchange for enforcing all of these rules, the franchisee is allowed to use the company's name, reputation, product and services, marketing technology, expertise, and support mechanisms.

Franchising fees are typically paid by the user in the form of a fixed initial fee, a license fee, and subsequent royalties or otherwise, such as through the purchase of equipment and materials from the franchisor.

Franchise relationships can be profitable for both parties. The franchisee is interested in maximum sales at minimum cost. The franchisee must follow the franchise business rules and participate in advertising and marketing campaigns conducted by the franchisor. The franchisor is working hard to stay ahead of the competition, which would be very difficult for a single franchisee to do. The franchisor provides the necessary support so that the franchisee can devote full attention to their daily operations.

International regulation of franchising relations is represented by the “Recommendations of the World Intellectual Property Organization”, ethical and moral codes developed by the International Franchising Association, and some regional acts. Within the framework of international organizations, work is underway to unify the norms for franchising.

In addition, this organization conducted a comprehensive and in-depth analysis of the development of franchising in the world and in individual countries. Guide to International Master Franchise Arrangements, 1998 and Model Franchise Disclosure Law, 2002 were developed by experts from the International Institute for the Unification of Private Law in Rome 2002.

The International Chamber of Commerce has developed the Model International Franchising Contract (The ICC Model International Franchising Contract). In addition to the laws and regulations of contract law and intellectual property rights, franchising relationships may also be governed by legal regulations.

The Republic of Uzbekistan is a rapidly developing market, relatively new, and therefore, presents unique opportunities for entrepreneurs. Since 2016, significant changes have been taking place in the legislative regulation of the Republic of Uzbekistan, especially with regard to tax, customs and

investment activities. However, it should be noted that changes in the legal regulation of franchising are characterized by extreme slowness, while national entrepreneurs are showing increasing interest in using the franchising business model.

In the first years of Independence, the market of Uzbekistan was represented by a few franchising giants (for example, Coca-Cola and Nestle were among the first in the Republic), which were supported, as a rule, by government decisions. Active penetration of franchising has been taking place since 2015 and mainly in the field of catering, retail and hotel business.

Regarding the hotel business, the state actively stimulates the acquisition of world-class hotel franchises by national entrepreneurs. For example according to the Resolution of the President of the Republic of Uzbekistan No.RP-4095 dated 05.01.2019 "On measures for the accelerated development of the tourism industry", a franchisor-owner of a hotel transfers a system of hotel services as the subject of a franchise agreement. Thus, franchising has increasingly come to be seen as an opportunity to strengthen investment activity, provided that investment activity is not only related to financing.[1].

Franchising relations between Uzbek and foreign companies are governed by the rules of private international law. The basis for the legal regulation of a franchising agreement in the Republic of Uzbekistan is Chapter 50 of the Civil Code called "Complex Entrepreneurial License", which establishes contractual relations: the concept, subject, procedure for concluding, executing and terminating an agreement, the possibility of establishing restrictive conditions, liability for failure to fulfill obligations parties [2].

The legal definition of a complex entrepreneurial license agreement implies that one party undertakes to provide the other party with a set of exclusive rights for a fee, including the right to use the licensor's trade name and protected commercial information, as well as other objects of exclusive rights provided for in the agreement, in the licensee's business activities. The use of goodwill and commercial experience of the licensor is envisaged.

First, when concluding a franchise agreement, the licensee undertakes to comply with the exact correspondence of the quality of its activities to the quality of similar goods, services or works produced, provided or performed directly by the licensor.

But for non-compliance with obligations, both parties are responsible to each other. At the same time, the licensee is an independent legal entity, which, although it uses the set of exclusive rights established in the contract, transferred to it by the licensor, nevertheless, acts autonomously. In this case, only the licensee should be responsible for the quality requirements before the third party.

Secondly, the license complex does not have the right to use a commercial designation, while the company name is present in the complex. The licensee is an independent legal entity and has its own legal name, it cannot operate under a foreign name. In this case, it is necessary to use the commercial designation of the licensor.

Thirdly, the rule that the termination of the complex entrepreneurial license agreement terminates the complex entrepreneurial sublicense agreement. With this approach of the legislator, from our point of view, the possibility of a sublicensee to acquire the rights of a licensee is not taken into account in the case when the complex entrepreneurial license agreement is terminated at the initiative of the latter.

Fourthly, the Republic provides for mandatory state registration of a complex entrepreneurial license agreement. The registration process itself is regulated by the Resolution of the Cabinet of Ministers

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of the Republic of Uzbekistan dated 04.11.2010 “On approval of the Regulation on the procedure for state registration of complex entrepreneurial license agreements (franchising)” [4].

The contract is registered by the body that carried out the state registration of a legal entity or an individual entrepreneur acting under the contract as a licensor.

In addition to these legal acts, relations regarding franchising are also regulated by such acts in the field of intellectual property as the Laws of the Republic of Uzbekistan “On Trademarks, Service Marks and Names of Place of Origin of Goods”, “On Copyright and Related Rights”, “On Inventions, utility models and industrial designs”, etc.

## Conclusion

The bulk of franchising brands in Uzbekistan are foreign brands, and only a few local enterprises create their own franchise models. Currently, among the local franchisees can be distinguished: the retailer korzinka.uz, which owns an extensive network of supermarkets throughout the country; fast food chain in the friedchickenformatLesAiles; pizzeria ChoparPizza; Breadly bakery (its franchises are represented in Russia and Kazakhstan). Such a low level of development of the franchise network in the Republic can be explained by the low awareness of national entrepreneurs about the possibilities of franchising.

The most common types of franchising in Uzbekistan are trade and service. In terms of their level of influence on the economy, these are micro and small businesses. As a rule, it is these two species that begin to actively develop in the new economic environment. They are somewhat simpler, easier and more understandable for perception.

Companies planning to develop a franchise can expect more demand. For clarity, I will list specific types: food and non-food retail, restaurants, cafes, fast foods, bakeries, beauty salons, real estate agencies, dry cleaners, schools, kindergartens, fitness centers, car washes and so on.

Also, the manufacturing and agricultural sectors have always been in demand, since they already belong to the category of medium and large businesses. However, their creation requires significant resources, and the purchase will not be a cheap investment. But they can provide both parties with high profitability for years to come.

In general, we can say that franchising is a real tool for systematization, improvement and development. With a properly designed franchise, both parties get many times more benefits from collaboration than if they run their own business. Thus, the first party, the franchisor, can quickly gain market share without significant investment, increase revenues, and also expand into remote territories.

Franchisee will have the opportunity to choose a new niche, save resources, support from an experienced partner, access to innovation and new technologies, risk diversification, and much more.

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