

## Franchise Agreements in Uzbekistan: A Brief Overview

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### FRANCHISE AGREEMENTS IN UZBEKISTAN: A BRIEF OVERVIEW

This legal highlight overviews the rules and regulations applicable to franchise agreements. Until very recently, such type of agreements has not been particularly widespread in Uzbekistan and the relevant legislation, being patchy and unelaborate, has been operating in vacuum. Recent liberalization tendencies have paved the way for foreign entities to increase their effective presence within the country and made franchise agreements more appealing.

Being one of the few Uzbek law firms that have experience of arrangement and registration of franchise transactions, we bring together and review some of the main rules for franchising. A question – answer form of the review is offered to streamline the description.

#### 1. What is franchising and what specific laws and regulations apply?

Uzbek law defines franchising (or, as it is also called complex entrepreneurial licensing) as an arrangement, where one party (a franchisor) agrees to transfer to another party (a franchisee) a complex of exclusive (licensed) rights, including the rights to use the company name of the franchisor, his protected commercial information and other objects of exclusive rights (trademarks, service marks, inventions, etc.) in entrepreneurial activities of the franchisee, in consideration of payment.

Chapter 50 of the Uzbek Civil Code of August 29, 1996, provides for the primary legal framework. Other sources of relevant rules include:

Law on Trademarks, Service Marks and Places of Origin of August 30, 2001;

Law on Commercial Secrets of September 11, 2014;

Law on Corporate Names of September 18, 2006

Law on Competition of January 6, 2012;

Law on Advertisement of December 25, 1998.

Decree of the Cabinet of Ministers on the Regulations on the State Registration of Franchise Agreements No. 244 of November 4, 2010;

Regulations on Preparation, Submission and Approval of Applications for the Registration of Trademarks and Service Marks No. 1988 of July 29, 2009;

Regulations on the Registration of Agreements on Transfer (Licensing) of Intellectual Property

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## **2. Do these laws apply to foreign franchisors?**

The above laws and the rules explained below apply to both local and foreign franchisors without a substantial distinction. There are no requirements to register as a foreign franchisor.

## **3. What are the rules for formalization (execution and perfection) of franchise agreements?**

The agreement has to be made in writing. It must then be registered with the local Centre for Public Services (operating under the Ministry of Justice) ("LCPS") in the place where the franchisee is registered. Uzbek law does not provide for the term within which the agreement must be submitted for the registration, but the registrar must take a decision on registration or refusal to register within 3 business days.

If the franchise agreement provides for the transfer of objects of intellectual property registered in Uzbekistan (e.g. trademarks), either within the scope of the franchise agreement or under an ancillary licensing agreement, the relevant agreement has to be also registered with the Uzbek Agency for Intellectual Property ("UAPI").

It is to note that to proceed with the registration, the franchisee has to be legally entitled to engage in the activity that is going to be conducted under the franchise agreement (e.g. to be licensed as a pharmacy if pharmaceuticals are going to be retailed).

A failure to comply with the requirement on the registration with LCPS renders a franchise agreement invalid. If rights to a trademark (or another registerable object of intellectual property) that is registered in Uzbekistan are transferred under the agreement, a failure to register the agreement with UAPI may invalidate the whole agreement or its part governing such a transfer (in so far as other provisions are capable of surviving). If rights to a trademark (or another registerable object of intellectual property) that is not registered in Uzbekistan are transferred under the agreement, the registration with UAPI is not required, however, any provisions governing the transfer are deemed unenforceable in Uzbek courts.

All changes and amendments to the agreements are subject to the registration (with LCPS and UAPI in so far as the provisions on transfer of registered intellectual property rights are amended).

#### **4. What particular rules must be followed by franchisors and franchisees?**

A franchise agreement may be concluded for a fixed or unlimited term and may define a particular territory where licensed activities are to be conducted. The list of activities that may be conducted by a franchisee under a franchise agreement is not limited and such activities may, among other things, include sale of goods imported or produced by a franchisor, conduct of any trading activities, performance of works and services. It is up to a franchisor to define what scope of information and exclusive rights is transferred.

It is of importance that pursuant to basic rules for franchise agreements set out in the Civil Code, Uzbek law invalidates the provisions in accordance with which a franchisor is entitled to (i) determine the price at which goods or services are released by a franchisee as well as set any minimum or maximum prices and (ii) impose the requirement to sell goods only to a particular category of customers or to customers living/registered within a particular territory. These provisions are in some sense stricter than those of the Law on Competition, which takes a more flexible approach to semi-vertical restraints (only arrangements of dominant undertakings are prohibited and some exemptions apply). Moreover, the restriction (ii) seems to a certain degree clashing with the right of a franchisor to determine the territory where licensed activities are to be conducted. That is why cautious drafting should be made.

With that, exclusive arrangements are not prohibited i.e. a franchise agreement may provide that only one franchisee is appointed within the territory as well as that this franchisee may not enter into similar arrangements with franchisor's competitors.

Uzbek Law obliges a franchisor to provide a franchisee with all the necessary information, assistance and instructions required to carry out relevant activities. He is also required to supply constant support and to arrange necessary training for franchisee's employees. It is franchisor's responsibility to duly transfer to a franchisee all the intellectual property rights that are covered by the agreement. It is very important that under Uzbek law, a franchisor bears subsidiary's liability in case if relevant goods or services sold by a franchisee are of inadequate quality (i.e. a franchisor will have to satisfy the relevant claim if a franchisee is not able to do so). Further, a franchisor and a franchisee bear joint responsibility, where the relevant claims are of such a nature that a producer of goods should be liable rather than a seller. A franchisee, in turn, must, among other things, strictly comply with franchisor's instructions, reasonably inform his customers that he acts as a franchisee and to provide all ancillary services as if relevant goods or services were realized by the franchisor himself (subject to particular characteristics of the arrangement). The right of a franchisee to issue sublicenses is generally limited, albeit it is, nevertheless, desirable to cover this matter in the agreement. All sub-franchising arrangements are subject to the registration described above.

## **5. What rules for advertisement in the context of franchise agreements apply?**

No specific rules are set and no pre-approval from state agencies is needed in case of franchising. However, some other rules for advertisement must be complied with. For example, goods subject to certification may not be advertised before their certification; goods prohibited for sale in Uzbekistan may not be advertised; prescription-only pharmaceuticals may not be advertised, etc. A case-by-case approach should be followed with respect to each class of goods or services that are going to be offered.

## **6. What alternative arrangements may be made?**

Since some limitations apply to franchise agreements, as noted in Question 3, an alternative way to carry out franchise or similar dealings may be conclusion of several separate agreements providing for transfer of particular intellectual property rights. Thus, for example, a separate licensing agreement for a trademark and a separate agreement on transfer of commercial secrets may be entered into. Here, however, a trademark has to be pre-registered for the agreement to be effectively enforceable.

## **7. What tax consequences are there for a foreign franchisor?**

Generally, a franchisee will be required to withhold the profit tax from its royalty payments to a franchisor in so far as a foreign franchisor is involved. A standard rate of 20% will apply, if no double tax treaty is in place between Uzbekistan and a franchisor's country of residence. No VAT payments are to be made.

## **8. How to protect confidential information?**

Generally, any undisclosed information, embracing technical, scientific, production, managerial or commercial information, transferred under a franchise agreement enjoys statutory protection from unauthorized disclosure. A franchisee must take reasonable measures to protect such information from unauthorized access.

Certain ambiguity is, however, brought in by the Law on Commercial Secrets that requires the relevant written agreement to be concluded between undertakings for the regime of confidentiality being duly established. Therefore, though in practice, the information transferred under a franchise agreement is in any case likely to be protected by applicable regulations on franchising, it is desirable to include written provisions on confidentiality into the agreement. No further registration or arrangements are ne