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FRANCHISING AGREEMENT AS A LAW INSTITUTE

Sharipov Asror Safar ugli
Sharaf Rashidov Law School Level 2 student

Annotation: This article is a comprehensive entrepreneurship in the legislation of the Republic of Uzbekistan dedicated to the problems of regulating the license agreement (franchising) is a comprehensive business license under the law of Uzbekistan the legal essence of the contract and the difference from some other contracts is revealed.

Keywords: Comprehensive business license agreement, franchising,"commercial concession", complex licensee, complex licensee, franchise,franzeiser, business entities, exclusive rights, trademark.

Introduction

Ensuring business success for newly established businesses the most basic task. The development of globalization and competition today in the conditions of consumer in the best quality, corresponding to world standards has the right to choose a product. This, in turn, is a product (service)from entrepreneurs requires more cost and enthusiasm to improve its quality and advertise it makes. Entrepreneurship to those who want to test their strength in the business world it is advisable to choose safe structures for its activities.

One of these is franchising as an effective form of doing business the market economy is used in all developed countries, while the participants are acquires a number of advantages. For example, for beginner entrepreneurs, such a form allows you to open their own business on the basis of a stable and profitable business. in turn, well-known companies thus take their positions in the market expand and strengthen. Franchisin has a number of advantages, which on earth, we are really talking about the useful aspects of this tool, because they are convenient for various participants in the process.for the franchisor (franchisee) – this is a new market without large investments penetration. And for the franchisee (franchisee), it is the franchisee's with the help of risk, the risk of failure and defeat was low means dealing with a new type of activity. Franchisor's help learning specific skills, methods, as well as providing support and staffing consists of teaching. Business license agreement (franchising agreement) in economics also plays a very important role:

- First of all, it is to beginners who are not known to many marking a well-known company for the use of an entrepreneur ,a trademark (sometimes, especially in non-legal literature, which together is called "Brand"), large to be able to use the skills and abilities of the licensee allows;
- Secondly, the main thing is more recognizable and with the expansion of the licensor network will be able to become famous, as well as additional falling will have income.

According to this contract model, in terms of mixed contracts, including,cafes and coffee shops (for example, McDonald's) on the elements of the trade privilege,KFC, Black Star Burger, Baskin Robbins), finance (TBC bank, Tenge Bank, Alif Capital) fashion stores (Emporio Armani, LC Waikiki, FLO), hotels (Hilton, Ritz-Carlton), cars (Hyundai Auto Kazakhstan, Honda, Kia,drinks (Coca-Cola, RC Cola) and other companies franchise agreement by having entered our country.

Franchising-complex entrepreneurship in the legislation of the Republic of Uzbekistan known as the license agreement. Comprehensive business license under a contract (franchising agreement), one party (licensee) is assigned to the other party (licensee) for a fee on behalf of the licensee's firm as well as protected commerce from the information, as well as the entry into the exclusive rights provided for by the contract from other objects (trademarks, service marks and inventions and others) include the right of the licensee to use it in entrepreneurial activities the

obligation to issue a complex of exclusive rights (license complex)that will receive a contract that takes.

It follows that the contract is bilateral, with one the party is a complex licensee (franchisor) while the other party is a complex is a licensee (franchise), and both parties agree to this contractual relationship business entity to enter i.e., commercial organizations and entrepreneurship citizens registered as subjects are required to be. County according to the loading time of obligations to the parties, the concessionaire is, in the contract, the terms are considered concluded from the moment of agreement.

Also, according to the U.S. Federal Trade Commission (FTC rule, the franchise agreement must include three elements:

1) use of the franchisor's trademark on the franchisor franchise gives the right;
2) the franchisor franchise supervises or supervises the methods of work and he has the right to help him;
3) the franchise pays the franchisor a fee of at least US $ 615.[1]

The contract of a comprehensive business license is concluded in simple written for and it cannot be notarized. Because the parties to the contract are engaged in entrepreneurial activity are subjects, each with a seal and stamp confirming the contract will be available.State registration of the legislative franchise agreement requires. In particular, franchising, as defined in Article 863 of the FK the contract must be concluded in writing, and it is licensed in accordance with the contract (franchisor) to list a legal entity or individual entrepreneur who acts as it must be registered by the receiving authority. Failure to comply with this rule causes the contract to not be considered valid.

A.A.Ivanov believes that the state registration of the contract the necessity is associated with the subject of the contract. Because the self-relevant absolute as long as the rights are granted on the basis of a comprehensive business license, the entrepreneur, in his it limits its right in this regard. Such restrictions, however, are made public should be done. [2] in addition, it should be noted that the absolute the transfer of rights to other persons by the rightful owner of his or her rights to this the rights to use, dispose of rights by territory or limits on other powers.

A.U.To ' raev believes which of the parties to the Registration Authority the issue of application is clearly defined in the law, which states that the licensee will be charged. [3] but this opinion cannot be fully agreed with.Because the registration of a comprehensive business license agreement registration of the contract in Article 863 of the FK, which establishes the specific rules the rule on the application of exactly the licensee to the transfer authority anmagan. But from the content of this norm register the contract it is advisable for the licensee to apply to the state body for the transfer it is not difficult to realize that it will be. This condition manifests itself in:

first, the licensee belongs to himself as the holder of exclusive rights only he is entitled to determine the legal fate of rights;

secondly, from the registration of the licentiate contract to the licensee it has a relatively number of amenities. For example, its territorial in relation to the licensee proximity and prior relationship with registration authorities availability.

The law establishes to whom the registration of the contract is imposed by the parties does not limit its designation according to the agreement. Rather, by mutual agreement, the licensee or any third party asks to register the contract state body may refer to Expansion of the franchise form of entrepreneurship, registration of contracts for improving the procedure for obtaining and for the activities of business entities 4 of 2010 of the Cabinet of Ministers in order to form favorable conditions-by Resolution No. 244 of November “comprehensive business license (franchising) adoption of the regulation”on the procedure for state registration of contracts made.

The statute provides for contracts on franchising, significant changes to them, and making additions, as well as revoking the validity of the state it is established that it must be registered.The

charter (II.4.- item) as specified, if the licensee is in a foreign state if registered as a legal entity or individual entrepreneur,agreement on franchising (important amendments, additions and cancellation) of the state registration of the licensee under the contract state registration of a legal entity or individual entrepreneur who acts as conducted by the Registration Authority of the Republic of Uzbekistan is done.

Comprehensive business license in most foreign countries it is required to conclude a contract(franchising)in writing, but in the United States (some in the states) can also be formed in oral form. As stated above,In Uzbekistan, only a written form is allowed, and the right must be registered.In addition, franchise in the legislation of many countries the procedure for compulsory registration of the contract (commercial concession) is provided for caught. It Is Switzerland, France, Spain, China, Korea, Mexico, Brazil, It is accepted in some states of the United States.

U.S. federal law from state registration of a franchise agreement although it does not require transfer, fourteen states register a franchise offer requires transfer. If the request to register the offer of the franchise registration authorities if sold without compliance:

1) to bring a lawsuit to the court with a request to stop further violations;
2) to claim damages and reimbursement on behalf of the affected franchisees;
3) fine.In exceptional cases, this offense is the cause of criminal liability (criminal punishment) may be.[4]

German law from the state registration of the franchise agreement does not require transfer. But from the registration of the right to the trademark transfer is necessary.[5]

In relation to comprehensive business license agreements in Uzbekistan one of the reasons for the low structure is to say the complexity of the registration procedure can. This procedure carried out by the Legislature should be simplified.Likewise, 1028 of the Civil Code of the Russian Federation- the article also establishes such a requirement for the form of the structure of the contract.In addition, the franchise agreement provides for the issuance of additional licenses may be held, in which the licensee shall, on the basis of the prescribed rules, give to other persons it is envisaged that it will issue an additional license for the use of exclusive rights being, in Russian law it is referred to as a” sub-concession".[6] its essence that is, with the termination of the franchise agreement, or finding it invalid additional licenses also have to be revoked along with major contracts marked. Also, in the Russian law norm, from the sub-concession i.e., the second the franchise for damage to the Franchisor from level users is also it is firmly established that it is liable in a subsidy manner.

Russian scientist Levushkin believes that franchising business in modern business a model in which one party (franchisor) is entitled to the other party (franchise in return, it gives the right to work on its own behalf and thus market the sale expands. To put it more simply, this is a brand “rental”. Big company the right to sell or service a product under its brand to an entrepreneur gives.[7]

The treaty was regulated by different names in different states, as a "comprehensive business license agreement" in the legislation of our state,In the legislation of the Russian Federation "commercial concession" i.e., " commercial law, the term "franchise" is also enshrined in the English legal system as “franchise agreement”. But the integrated business license strict definition of the concept of treaty (franchising) USA, Moldova and Romania, Available in UK law. Russian Federation In Russia The Civil Code also gives the concept of” commercial privilege". But their the content and essence may differ to some extent in all states.

Russian scientist Lukashova noted that in judicial practice, decision-making in making Russian courts both from the concept of” commercial privilege " and " franchise” equally uses its concept. So legally entrenched the absence of a model is due to the fact that franchise relations in the Russian Federation does not prevent its development.[8] Part 3 of Article 862 of the Civil Code

of the Republic of Uzbekistan in accordance with the agreement of the comprehensive business license, only commercial only citizens registered as organizations and entrepreneurs to be parties can.

At the same time, to engage in complex licensure business activities to have the right, in a word, a subject of entrepreneurial activity must be calculated. In this case, a contract with a comprehensive licensee business activity it is not required to be engaged before drawing up, the important thing is the contract at the time of its formation, it was listed as a subject of entrepreneurial activity it is necessary to have.[9]

The complex licensee has acquired the right to exercise exclusive rights being a person, he is also with entrepreneurial activity at the time of the conclusion of the contract must have the right to engage.

Although the Civil Code is a complex of non-profit organizations and the state firm that business licenses can be the subjects of the contract although not prohibited, Part 3 of Article 862 of the Civil Code (complex only commercial organizations and entrepreneurs under the entrepreneurial license agreement only citizens who are registered as parties can) from the content non-profit organizations and the state cannot be the objects of this agreement,it can be concluded that.

Also in Article 1027 of the Civil Code of the Russian Federation only commercial organizations and individuals under the commercial privilege agreement it is established that entrepreneurs can be its parties.

Also, the Civil Code of the Republic of Belarus is also commercial organizations and individual entrepreneurs to be parties to the contract argues that it is possible (paragraph 3 of Article 910 of the Civil Code of the Republic of Belarus). But in the legislation of Kazakhstan, a different approach has its own reflected. Full for entrepreneurial activity of the Republic of Kazakhstan franchising in Section 3 of the licensing (franchising) Act the subjects of their relationship are defined as individuals and legal entities.Probably, the Kazakh legislature is represented by an individual alone provides for an individual entrepreneur, but there is no such instruction in the law. As for legal entities, in the legislation of Kazakhstan, which legal entities (commercial or non-profit) it has not been established that there may be contractual entities, the law the Issuer has defined a general concept in which our opinion fits.Physical and in the law of the Republic of Moldova “on franchising" it is also noted that legal entities may be parties to the franchise agreement was.

The experience of franchise regulation in Germany is also interesting. Individual there are many “small franchises”that work on the basis. Franchisees subsequently, in the form of a limited liability company, the management company granting franchises to individuals who have the right to establish can. At the same time, before the franchisor granted the franchise, it about his past, education, financial situation from the franchise requires information, as well as a certificate of non-conviction.

For example, in China, special requirements are not for the franchise, but for the franchisor is put. 7 of the “commercial franchise administrative regulation”in China- under the clause, the franchisor allows at least two subsidiaries or subsidiaries to,as well as having at least one year of experience in running a franchise business must.6to the guilty person in the amount of 100 thousand yuan if these requirements are violated pays a large fine, the franchise contract is forcibly terminated all amounts received by the franchisor will be charged from it.For parties as in Germany or China in the legislation of Uzbekistan there are no separate special criteria. In our opinion, it is clear to the parties the established criteria must be combined in the legislation, since each specific relationships are provided for more clearly in the legislation and their participants if adapted, it will prevent conflicts from arising in this regard later.

Russian scientists amendments to the Civil Code of the Russian Federation to include, to expand the scope of the subjects involved in the contract, thus including with NGOs and social entrepreneurship it is also proposed to include engaged individuals. Such changes due, for example, to provide educational services to universities and other individuals with the provision of educational services in accordance with the standards entitled will be provided.[10] in our opinion, such changes to our legislation are also if introduced, that is, the subjects of this contract are expanded, then in our country this the conclusion of contracts becomes more popular and is also positive for economic indicators affects.

Licensee of the subject of the complex entrepreneurial license agreement constitutes a complex of exclusive rights granted to the licensee by. This rights may refer to:

Name of the firm
Watchful commercial information
Brand name, service mark
Inventions

Includes the right of the lisesiat to use in entrepreneurial activities another complex of exclusive rights that you will receive.

All or more of these rights under the agreement or one can be issued to the licensee for use in the implementation activities.The licensee is required to require the licensee to grant them all (from the contract except where it is clearly stated which rights are granted) are not entitled.If in the contract of a comprehensive business license of the licensee in the Enterprise License Agreement only one exclusive right to use in its activities, for example, if the name of the firm is given also, this treaty, regardless of whether the absolute rights are not given complex the complex is recognized as an entrepreneurial license.

Licensee of the "complex of absolute rights", which is considered the subject of th contract performance reputation and know-how can also be included. After all, the reputation of workmanship and know-how can also be a subject of contract as an object of absolute law.In this regard, the contract of the comprehensive business license is intellectual property rights regulations apply (Part 5 of Article 862 of the FK).

Also in the legal literature complex entrepreneurship license Scientific on the fact that the term of the contract is an important condition there is debate. Some authors consider the term of the contract to be the term of this contract mark as an important condition.[11] it is somewhat difficult to join the stated conclusion,because Article 871 of the Civil Code specifies the period for the use of the set of exclusive rights of the contract of the integrated business license or there is a rule about the structure without marking. Therefore, this condition is important there is no reason to classify as. A. A. Eremin, the commercial of the owner of the rights in order to protect the secret, at least three years of the contract suggests marking.[12]

Copyright holder i.e. licensee's obligations are civil provided for in Article 866 of the code. Section 1 (1) of Article 1 the licensee's submission of technical and commercial documents to the licensee as well as the licensee is issued to himself under the contract of the complex entrepreneurial license to provide other information necessary for the exercise of rights,also with the implementation of these rights to the licensee and its employees it is a duty to provide guidance on related issues. Complex to the copyright holder (licensee)under the business license agreement entrepreneurship to the user(licentiate)of the set of exclusive rights to which it belongs state registration of the right to use in its activities maintenance is assigned to the copyright holder(licensor).Providing constant technical and advisory support to the user(licentiate), that is including providing assistance in training and professional development of personnel copyright under the contract can be assigned to the owner(licensor is an obligation. The user who is just starting his career(licentiar) from his interests for modern technical and information bases such

assistance is of great importance in obtaining, attracting highly qualified personnel to work has. According to Sergeev, licentiar is initially known in entrepreneurial activity from the means of individualization of the licentiate, who wanted to achieve one result using and practicing his own experience, the complex launches the system of legal relations of entrepreneurship. Author as noted, in the user contract, such an obligation of the licensee it must require that it is intended. Voluntary commitment to help the feature puts the user(licentiate)at a much more disadvantage.[13]

Also, according to Russian professor Popova, the law obligation of the owner(licensor)to control the quality of goods (works, services) also expressed in a dispositive form. Under this obligation in legal theory there are several positions. Some scholars believe that quality control it is appropriate to classify the obligation as a dispositive rule because in most users(licensees), control by the licensee is almost seems impossible.[14]

Also, the French scientist R.Baldy believes that entrepreneurial activity (commodities, works, services) the final recipients of the results are consumers, whose in order to ensure proper protection of the rights of quality control in the contract mandatory designation is considered as a mandatory obligation. But in this case not only does the consumer's interests play an important role, but also the licensee's interests are of particular importance. Thus, entrepreneurial activity quality of results to the business reputation of the copyright holder(licensee the effect is also a discrepancy between the quality of the licensee and the licensee in the event that they are liable to the subsidy and the manufacturer of the individual product it is also very important to be jointly responsible for the requirements for lycenization as important.[15]

It should be noted that the obligations of the owner of rights(licensee)abroad ease of maintenance and quality control are also structured in a dispositive way. For example, Article 910.3 of the Civil Code of the Republic of Belarus and Russia Article 1031 of the Civil Code of the federation provides for these things caught. According to the law of the Republic of Kazakhstan “on franchising”,quality control is not classified as a licensee's obligation, but cited as licensee's rights.

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