

Specific Characteristics of Complex Business License (Franchising) Contract Regulation in Uzbekistan

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Abstract: the article analyzes the legal relations related to the franchise contract in Uzbekistan based on national legislation and the opinions of scientists who have researched this contract, and shows modern trends in this regard. The role of the franchising contract in the development of the market economy is highlighted, and based on these analyses, the views on the complex business license (franchising) are stated. Based on the analysis of the complex business license (franchising) issues in Uzbekistan, conclusions and recommendations were put forward.

Keywords: complex business license (franchising), contract, licensor, licensee, civil-legal relationship, civil-legal agreement, market, business, right to property.

The Civil Code of the Republic of Uzbekistan, which entered into force on January 1, 1997, is the first legal norm for franchising contracts in Uzbekistan. Chapter 50 of the Civil Code of the Republic of Uzbekistan (Articles 862-874) is devoted to the legal regulation of the complex business license agreement. In this chapter, the concepts related to the comprehensive business license agreement, i.e., the procedure for drawing up and formalizing it, the restrictive conditions of the agreement, the rights and obligations of the parties, the licensor's responsibility for the requirements imposed on the licensee, and the grounds for invalidity of the agreement are expressed.

In the system of legal norms related to the complex business license (franchising) contract in the Republic of Uzbekistan, the "Administrative regulation on the provision of public service on the state registration of complex business license (franchising) contracts" approved by the decision of the Cabinet of Ministers of the Republic of Uzbekistan No. 346 of June 24, 2022, has become important. This Regulation regulates the procedure for state registration of the contract in detail. Also, the procedure for state registration of the contract, which is abstractly expressed in Article 863 of the Civil Code of the Republic of Uzbekistan, is specified. In particular, Article 863 of the Civil Code of the Republic of Uzbekistan stipulates that "a complex business license agreement must be drawn up in writing and it must be registered by the body that registers a legal entity or individual entrepreneur acting as a licensor in accordance with the agreement." the issue of registration in the state body is not clearly defined. In contrast to the Civil Code of the Republic of Uzbekistan, paragraph 4 of the Regulation states that "if the licensor is registered in a foreign country as a legal entity or individual entrepreneur, the state registration of the franchise agreement (significant changes, additions, and cancellations) shall make the legal entity or individual entrepreneur acting as a licensee under the agreement to be carried out by the state registration body of the Republic of Uzbekistan"

In addition, if the complex business license (franchising) contract represents foreign trade operations (export-import of goods, works and services), franchising contract that includes absolute rights to intellectual property objects, it also takes into account the special procedure for their state registration.

The complex of exclusive rights provided under the contract may include company name, trademark, inventions, utility model, industrial design, trade secret, copyright, etc. Therefore, the complex business license agreement is legally regulated by other regulatory documents, in addition to the Civil Code of the Republic of Uzbekistan. In particular, the Law of the Republic of Uzbekistan "On Trademarks, Service Marks and Names of Place of Origin" adopted on August 30, 2001, the Law of the Republic of Uzbekistan "On Patent Law adopted by the Diplomatic Conference in Geneva on June 1, 2000" adopted on March 15, 2006, It is possible to refer to the Law of the Republic of Uzbekistan "On Addition to the Agreement", the Law of the Republic of Uzbekistan "On Copyright and Related Rights" dated July 20, 2006, etc. [1].

According to Article 862 of the Civil Code of the Republic of Uzbekistan: one party (the complex licensor) shall transfer to the other party (the complex licensee) the company name and protected commercial information of the licensor under the complex business license (franchise) contract in exchange for a fee, as well as other objects included in the absolute rights provided for in the contract (trademark, service mark and inventions, etc.) undertakes to grant a set of absolute rights (license set) that includes the right to use the licensee in business activities.

A complex business license agreement includes the license complex, the licensor's reputation in the field of work and experience in the commercial field in a certain volume (in particular, specifying the minimum and/or maximum use) to a certain field of activity (sale of goods received from the licensor or produced by the licensee, rendering of services, performance of works, trade implementation of activities, etc.) refers to use, with or without indicating the area of use.

It should be emphasized that the subject of the complex business license (franchise) contract is absolute with a complex nature, that is, several rights are transferred to the licensee by the licensor for a certain period of time. Such rights include rights to the company name and protected commercial information, as well as other objects included in the absolute rights provided for in the contract: trademarks, service marks, and inventions. In this case, these rights should be distinguished from license agreements for the use of intellectual property objects. Under the license agreement, the party (licensor) who has the exclusive right to the result of intellectual activity or the means of reflecting private signs grants permission to use the object of intellectual property belonging to the other party (licensee) (Part 1 of Article 1036 of the Civil Code). The franchising contract is the granting of a set of exclusive rights for use in business activities. Usually, if the license agreement allows for the use of one or one type of specific objects of intellectual property, the objects provided for use in franchising are complex, that is, they relate to several objects of intellectual property and the purpose of use is directed only to business activities. [2].

In the essence of this construction of the contract is the formalization of the permission to use the exclusive rights, which have specific aspects in the civil law, through the contract, which is considered a private legal instrument.

E.A. Kozina: emphasizes that franchising creates a wide range of opportunities for large firms to enter new markets and economic activity by giving an individual entrepreneur a complex of exclusive rights, as well as the results of intellectual activity, without attracting additional investments [3].

According to R. Baldi, the existence of different approaches to the evaluation and development of the franchise concept is due to the fact that its various forms are used in practice in different areas of entrepreneurship. [4].

However, it should be noted that there is a difference between the concept of franchising and complex business license (franchising) agreement. If franchising is a way of organizing a business, a complex business license (franchising) agreement is a civil-legal relationship. [5].

In the legal literature, the Civil Code of the Republic of Uzbekistan states that this contract is called "complex business license (franchising)" and has a special meaning:

Firstly, the naming of this contract in this way (complex business license (franchising)) comes from the essence of the relevant legal relationship.

Secondly, the term "franchising" in the name of the contract serves to correctly apply the name of the contract.

Thirdly, all the objects that one party (licensor) gives to the other party on the basis of the contract can be covered only by the phrase "complex business". [6].

In my opinion, the franchising contract in the Civil Code of the Republic of Uzbekistan can be referred to as a complex business license (franchise) contract as a reason for the transfer of a set of absolute rights by the licensor to the licensee.

In general, such designation fully complies with international law norms and practices. Although the franchising agreement is called differently in foreign countries, we can see that the approaches to expressing the concept do not differ. For example, in accordance with the Civil Code of the Russian Federation, in accordance with the commercial concession contract, the right holder, on the one hand, may or may not indicate the term to the user, to grant the user the comprehensive rights that belong to the right holder, and the user shall use the rights in accordance with the restrictions set forth in the contract and the law, and undertakes to pay the specified fee [7].

O.A. Orlova emphasizes that the commercial concession of the Russian Federation and the franchising agreement in foreign countries are fully compatible with each other in most respects. [8].

M.I. Kulagin believes that the main goal of operating on the basis of franchising for large manufacturers is to create a distribution system for their products [9].

V. V. Pilyaeva emphasizes that the commercial concession (franchising) contract reflects the relationship between big business and small business [10].

Indeed, agreeing with the opinion of the scholars who have studied the franchise contract, it should be noted that in most cases, large companies participate as licensors, and small business representatives participate as licensees.

An increase in the number of licensees operating on the basis of a complex business license (franchising) agreement indicates that the licensor is gaining a foothold in new territories and new markets. For example, let's analyze the advantages of a large company entering another country on the basis of franchising. There are more than a hundred administrative territorial units at the state level. Therefore, more than one hundred new licensees can be established. We know that all segments of the population try to buy products, use services and work of famous and reliable firms and companies as much as possible. Therefore, operating on the basis of a complex business license (franchising) contract is beneficial both for the residents of that area, as well as for business entities acting as licensors and licensees. If a well-known brand enters a new market through branches, the costs associated with setting up the branch and delivering its products to the wholesale and retail representatives who receive its products are also considerable. Also, if the branch suffers economic losses or is declared economically insolvent (bankrupt), this situation, in turn, will cause material damage to the licensor, and the main firm or company will be responsible for the branch's obligations to creditors.

The sources emphasize the need to pay attention to the period of validity of absolute rights when concluding a franchise contract [11].

According to the legislation of the Republic of Uzbekistan:

- The patent for the invention is valid for 20 years (can be extended up to 5 years);
- 20 years for selection achievements (25 years in some cases);
- Industrial model patent 10 years;
- Utility model patent 5 years;
- Trademark 10 years;
- Integrated circuits 10 years [12].

Therefore, the parties should also pay attention to the period of validity of intellectual property objects in the process of concluding a complex business license (franchise) contract.

The following can be recognized as special features of the franchise agreement:

- The possibility of participation of only business entities as parties to the contract;
- In accordance with the contract, the licensee may use the complex of licenses only in the specified area;
- Existence of restrictive conditions in the contract;
- The licensee's involvement of additional licensees may be specified in the contract as an obligation rather than a right.

In accordance with the franchise agreement, a complex of licenses is granted to the licensee. However, it should not be concluded that the franchise agreement is one of the license agreements. S.S. Hamroev draws attention to the naming of the franchise agreement in our legislation, and emphasizes that the license is an administrative document and cannot be issued by persons who do not have the appropriate authority [13].

Also, in accordance with the Law of the Republic of Uzbekistan "On Licensing Certain Types of Activities" adopted on May 25, 2000, it regulates relations related to the licensing of activities that require a license for their implementation in the Republic of Uzbekistan. According to this law, the requirements of the law do not apply to the complex business license agreement [14].

It can be concluded that the complex business license (franchising) contract is not a license contract. Therefore, the word "license" in the franchise agreement does not mean the authorization procedure by the state authorities.

In accordance with the CC of the Republic of Uzbekistan, when the comprehensive business license agreement is concluded without specifying the term, each of the parties has the right to refuse the indefinite complex business license agreement at any time.

- In most cases, the franchise agreement is concluded with a specified term, and then it is extended for an indefinite period. That is, at first it is tested whether this activity is promising or not, if it is promising in practice, it is extended according to the agreement of the parties.

In the theory of civil law, the following types of franchise are distinguished:

- Product franchising;
- Production franchise;
- Work franchise;
- Corporate franchise;
- Conversion franchise (terms changed);
- Regional franchise [15].

L.T. Ibadova indicates two types of franchise agreement according to the scope of rights provided:

- Dealership - that is, a small trader distributes the products of the main company or sells services on its behalf, based on the volume of the products and services provided, for a certain amount of funds;
- Corporate franchising – the user (licensee) fully participates in the economic activities of the main company, independently realizing the trademark, products and services [16].

Today, the fact that the franchise agreement is entering all sectors related to product production, service and performance of work, makes it possible to increase the types of franchise agreement. Therefore, it is not possible to provide a specific list of types of franchise agreements.

In general, the franchise contract is an independent type of contract, although different tariffs are given in the approach to its concept, but all of them have a general character, that is, there are no serious differences between the opinions of scientists when signing it. This situation can be attributed to the fact that the franchising contract is considered a new contract in most countries and has been used and developed in business activities since recent times.

It is known that the complex business license (franchising) contract has similarities with a number of contracts in terms of the content and subject matter of the contract. Such agreements include a license agreement and a trust management agreement.

According to S. Safoeva, a license agreement means that the owner of intellectual property rights (licensor) provides his property rights to the licensor for the purpose and order agreed in the contract, and the other party (licensee) pays the fees agreed in the contract. and a civil-legal agreement that determines the use of these rights for the purpose and in the manner provided for in the contract [17].

Complex business license (franchising) agreement and license agreement are similar in terms of subject matter, but differ in terms of subject and subject scope. Because, in accordance with the license agreement, only one object is provided, in the franchising agreement, a complex of exclusive rights is provided to the licensee. In addition, only business entities are the subject of the franchise agreement. Any individual or legal entity can be a party to the license agreement regarding intellectual property objects.

According to the property trust management agreement, the person who determines the trust property, i.e. the person who participates as the founder (settlor), is responsible for the benefit of one or more persons - the beneficiary, that is, the beneficiary - who has shown the property to the second party known as the trustee. submits for prospective management [18].

There are also different aspects of the comprehensive business license (franchising) agreement and the trust management agreement, which are as follows:

First, if only a complex of absolute rights is recognized as the subject of a complex business license, the list of assets that can be the subject of a trust management contract is wider and includes enterprises and other property complexes, separate objects belonging to real estate, securities, special rights and may consist of other property.

Secondly, natural persons can also be considered subjects of trust management of property. Only commercial organizations and citizens registered as entrepreneurs can participate in the complex business license (franchising) contract.

If we consider the participation of business entities established and operating in different countries as parties to the comprehensive business license (franchising) contract, there is a need for regulation on the basis of international legal norms.

In general, the improvement of the legal basis of the complex business license (franchising) contract and the research of its specific features play an important role in the development of

entrepreneurship and the introduction of new forms of business and the creation of new business structures.

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