

Franchise

Contributing editor
Philip F Zeidman



2019

GETTING THE
DEAL THROUGH

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Contributing editor
Philip F Zeidman
DLA Piper LLP (US)

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This article was first published in July 2018
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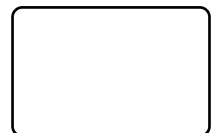


Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3780 4147
Fax: +44 20 7229 6910

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No photocopying without a CLA licence.
First published 2007
Thirteenth edition
ISBN 978-1-78915-025-4

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

The president of the company just left a message for you...	5	Korea	89
Philip F Zeidman DLA Piper LLP (US)		Sun Chang and Terry Kim Lee & Ko	
Franchise M&A	7	Malaysia	96
Edward (Ned) Levitt Dickinson Wright LLP		Jin Nee Wong Wong Jin Nee & Teo	
Australia	10	Mexico	103
Alicia Hill and Raynia Theodore MST Lawyers		Jorge Mondragón González Calvillo SC	
Brazil	19	Netherlands	110
Paulo Shiguero Yamaguchi and Marco Mello Cunha Tess Advogados		Tessa de Mönnink De Grave De Mönnink Spliet Advocaten	
Canada	24	New Zealand	117
Bruno Floriani, Marissa Carnevale and Tanya Nakhoul Lapointe Rosenstein Marchand Melançon LLP		Stewart Germann Stewart Germann Law Office	
Chile	32	Norway	122
Cristóbal Porzio Porzio Rios Garcia		Kjetil Vågen and Eline Thorsrud Advokatfirmaet CLP DA	
China	37	Poland	128
Claudio d'Agostino DLA Piper UK LLP (Shanghai) Reking Chen DLA Piper UK LLP (Beijing)		Magdalena Kowalczyk-Szymańska and Olga Szejnert-Roszak SWKS Szejnert, Winnicka, Kowalczyk, Sosnowska	
Denmark	45	Russia	134
Mikkel Friis Rossa and Dan Bjerg Geary Bech-Bruun		Vladimir Biriulin and Sergey Medvedev Gorodissky & Partners	
Finland	50	Switzerland	139
Patrick Lindgren Advocare Law Office		Mario Strebel, Christophe Rapin and Renato Bucher Meyerlustenberger Lachenal	
France	56	Thailand	146
Emmanuel Schulte Bersay & Associés		Pattama Jarupunphol and Phatuthip Jaismut DLA Piper (Thailand) Limited	
Germany	63	Turkey	152
Karsten Metzloff and Tom Billing Noerr LLP		Hikmet Koyuncuoğlu Koyuncuoğlu & Köksal Law Firm	
India	70	Ukraine	158
Sharanya G Ranga and Aditi Rani Advaya Legal		Anna Tsirat Jurvneshservice	
Indonesia	76	United Kingdom	163
Norma Mutalib, Richard Cornwallis and Reagan Roy Teguh Makarim & Taira S		Damian Humphrey and John Chambers Ashtons Legal	
Japan	83	United States	169
Etsuko Hara Anderson Mōri & Tomotsune		Richard Greenstein and Philip F Zeidman DLA Piper LLP (US)	

Preface

Franchise 2019

Thirteenth edition

Getting the Deal Through is delighted to publish the thirteenth edition of *Franchise*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on the Netherlands, Poland and Ukraine.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Philip F Zeidman of DLA Piper LLP (US), for his continued assistance with this volume.

GETTING THE 
DEAL THROUGH 

London
July 2018

Ukraine

Anna Tsirat

Jurvneshservice

Overview

1 What forms of business entities are relevant to the typical franchisor?

Ukrainian law states that any enterprise set up with the purpose of gaining profit may be created in the form of a business (a limited liability company, a joint stock company, an additional liability company or a commandite) or a unitary enterprise, such as a private one or subsidiary, where a natural or a legal person is the sole founder. For franchisors, the most typical forms are limited liability and joint stock companies.

Limited liability and joint stock companies may be set up by one natural or legal person, if such legal person is set up by more than two persons.

There are public and private joint stock companies. The difference is that shares of a private joint stock company are subscribed between its shareholders only, and are not allowed for public offering. The minimum capital fund of a joint stock company is US\$179,000.

A franchisor may set up a private company or subsidiary for which are no limits with regard to statutory funds and, correspondingly, the parent company may decide independently on its amount.

2 What laws and agencies govern the formation of business entities?

The main laws for formation of business entities are:

- the Civil Code of Ukraine;
- the Law On Business Entities;
- the Law On Companies with Limited and Additional Liability;
- the Law On Joint Stock Companies;
- the Law On State Registration of Legal Persons, Natural Persons-Entrepreneurs and Civil Units;
- the Law On Electronic Documents and Electronic Document Flow; and
- the Law On Electronic Digital Signature.

State administrations, as bodies of executive power, and notaries that perform the function of a state registrar, record state registration of business entities at the Unified State Register of Legal Persons, Natural Persons-Entrepreneurs and Civil Units that is held by the Ministry of Justice of Ukraine.

3 Provide an overview of the requirements for forming and maintaining a business entity.

If registration documents are submitted as hard copies, that must take place at the state register of the city that will be treated as headquarters of the company. In the case of electronic submission, the company can be registered in any state register.

To form a company, the following documents must be submitted:

- an application in a prescribed form, in the Ukrainian language and signed by an applicant. If submitted by post, the applicant's signature should be certified by a notary;
- a statement of registration as a payer of VAT and corporate income tax, or a chosen taxation regime (general or simplified);
- the decision of the owner or owners to create the enterprise in original or notarial form;
- the statute of the company, duly signed by shareholders; and

- an extract from court or another registry confirming registration of a foreign shareholder. This document should be apostilled and translated into the Ukrainian language.

The registration of a company is completed in 24 hours and is confirmed with an extract. The registered entity should confirm its founding data to the registrar by January of every year. Any changes in entity name, location or shareholders' corresponding documents should be filed with the registrar within reasonable time.

4 What restrictions apply to foreign business entities and foreign investment?

Ukrainian law governs the national regime of treatment for foreign, natural and legal persons in their activities on the territory of Ukraine.

5 Briefly describe the aspects of the tax system relevant to franchisors. How are foreign businesses and individuals taxed?

Ukrainian tax legislation is built on the principle of non-discrimination and equal terms of taxation for any business entity, including foreign ones. Foreign investors in the sphere of taxation come under the auspices of the national regime. All taxes to be paid in Ukraine, either by local or foreign businesses and individuals, are listed in the Tax Code of Ukraine. Taxes are levied at the national level (including corporate income tax, VAT, customs and excise duties, environmental tax and land tax) and local level (including tax on real estate other than land). Taxes are administered by the State Tax Service.

The basic corporate income tax rate is 18 per cent. Foreign business, depending on the type of income out of activities in Ukraine, pays income tax at the rates of zero per cent, 4 per cent, 6 per cent, 12 per cent, 15 per cent and 20 per cent.

Income received as interest, discount income, dividends, royalty, engineering fee, rent under operative lease, income from sale of real estate located in Ukraine, securities, derivatives, from joint activities, cultural, educational, religious, sport and entertainment activities are taxed at 15 per cent for the account of payment made if otherwise stipulated by the international treaty on avoidance of double taxation concluded by Ukraine (the double tax treaties). Ukraine has concluded a number of double tax treaties with different countries, such as: Austria, Belgium, Bulgaria, Canada, China, Cyprus, Greece, the Czech Republic, Denmark, Egypt, India, Indonesia, Iran, Italy, Germany, Hungary, France, Finland, Lebanon, Macedonia, Malaysia, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Switzerland, Sweden, Turkey, the United Kingdom, the United States and Vietnam. To receive benefits under the double tax treaty, the lessee, when transmitting rental payment, must prove that the lessor does not have a residence in Ukraine and that it has a permanent residence in the foreign country in question, according to the terms of corresponding double tax treaty. A certificate of residency issued by the Ministry of Finance (or another authorised body referred to in the appropriate double tax treaty) will be treated as the necessary evidence.

The Tax Code (article 103.3) provides that provisions of the double tax treaty may be applied only if the franchisor is a beneficial recipient of made payments. Though each double tax treaty has some peculiarities as to payment of withholding tax on accrued interest, usually it is not higher than 10 per cent.

Income from freight is taxed at 6 per cent. Income of insurance companies, depending on the type of activity, is taxed at zero per cent, 4 per cent and 12 per cent.

Ukrainian companies that pay in favour of foreign business payments for production and circulation of advertisement simultaneously pay tax at the rate of 20 per cent for their own account.

The basic rate for VAT is 20 per cent. VAT for supply of medicines is 7 per cent.

The income tax for individuals, including foreigners, is 18 per cent.

6 Are there any relevant labour and employment considerations for typical franchisors?

There is no risk that a franchisee may be deemed an employee of the franchisor, or that employees of a franchisee will be deemed employees of the franchisor.

As under Ukrainian law a franchisee is liable to follow franchisor's instructions as to nature, conditions and means of intellectual property rights usage, the franchisor may influence such matters as opening hours of the business, the employees' employment conditions or the franchisee's ability to conduct other businesses.

7 How are trademarks and know-how protected?

As a party to all corresponding international treaties regarding trademarks (the Paris Convention, the Madrid Protocol), Ukraine has developed laws for trademark protection, and so that any infringement may be stopped in court.

Pursuant to the Ukrainian Law on Protection of Rights for Marks On Goods and Service, a trademark should be registered through the Ukrainian Patent Office. A foreign franchisor should only act through a patent attorney. The protection period for a registered trademark is 10 years from the date of registration, with the possibility of renewal. The owner of a trademark should use it fairly.

Ukrainian law does not define know-how but does define commercial secrecy, which could be treated as analogous to know-how. As an object of intellectual property rights, commercial secrecy is regulated and protected quite poorly.

8 What are the relevant aspects of the real estate market and real estate law?

One of the real estate restrictions is that foreigners are forbidden to own agricultural land. Another restriction is that a foreigner who owns real estate in Ukraine is forbidden to conclude direct rental agreements. A rental agreement should be made with the participation of a local entrepreneur, a natural or legal person, who will manage the rent and pay real estate tax. Other aspects, such as purchase, sale or rent, have an equal regime for domestic and foreign franchisors.

Laws and agencies that regulate the offer and sale of franchises

9 What is the legal definition of a franchise?

A franchise is defined as a commercial concession under which the franchisor gives to the franchisee the right to use certain aspects (trade-mark, industrial sample, commercial secrecy, etc) for the manufacture or sale of certain products or services.

10 Which laws and government agencies regulate the offer and sale of franchises?

Ukrainian law does not provide any rule for the offer of franchises. The Civil and Commercial Codes of Ukraine regulate the execution and performance of commercial concession agreements only.

11 Describe the relevant requirements of these laws and agencies.

A commercial concession (franchise) agreement should be given in written format (otherwise it will be declared void) and signed by duly authorised persons. Parties to the franchise agreement shall be entrepreneurs.

12 What are the exemptions and exclusions from any franchise laws and regulations?

There are no exemptions and exclusions.

13 Does any law or regulation create a requirement that must be met before a franchisor may offer franchises?

Before the offer of a franchise, there is no requirement for a franchisor have been in business for a minimum period; or to have operated a minimum number of company-owned units for any period; or for the franchisor company to have been operating in Ukraine via its own outlets for a minimum period of time.

14 Are there any laws, regulations or government policies that restrict the manner in which a franchisor recruits franchisees or selects its or its franchisees' suppliers?

There are no laws, regulations or government policies that restrict the manner in which a franchisor recruits franchisees, selects them or its franchisees' suppliers, decides on the number of franchises or franchisees, or their characteristics, or the locations of the franchised outlets, or the distances between outlets. The franchisor defines independently the local content of goods and services purchased by franchisors or franchisees; the effect of the entry of a franchised network upon local companies; and the yearly growth of the franchised network.

15 What is the compliance procedure for making pre-contractual disclosure in your country? How often must the disclosures be updated?

There is no clearly defined compliance procedure for making pre-contractual disclosure in a franchise. At the same time, for any contract to be valid the basic rules (article 203 of the Civil Code) are that a party's will shall be free and correspond to its inner will to conclude a contract, and that the contract shall be directed towards the achievement of the legal results provided by it. These rules mean that a franchisee should be acquainted with the purchased franchise, otherwise he or she could state that the contract was entered into in error with regard to the circumstances that have essential meaning. This regards misunderstanding as to the nature of the contract, rights' and liabilities of the parties, and such characteristics and nature of a franchise that decrease its value or possibility to use. If the franchisee has made such a mistake owing to negligence, he or she should reimburse the franchisor. If the franchisor contributed to the franchisee's mistake, it should fully compensate the franchisee. In any case, the franchise contract shall be declared void (article 229 of the Civil Code).

If franchisor deceived the franchisee intentionally as to circumstances that have essential meaning, it should reimburse the franchisee for double the amount of all damages, including moral ones. The franchise contract will also be declared void (article 230 of the Civil Code).

The Civil Code (article 641) contains corresponding general provisions as to an offer to conclude an agreement. The offer should contain essential terms of the agreement and express an offerer's intention to be bound in case of its acceptance. Advertising or proposals addressed to undefined persons are treated as invitation to make an offer if otherwise directly provided in the proposal.

Taking the above into account, the franchisor should disclose such information about the franchise that would allow the franchisee to understand any peculiarities of the franchise and the essential terms of the franchise contract. Such disclosure should be made before the franchise contract execution. We consider that seven days are enough for formation of due will for the franchisor. Besides this, the franchisor may require from franchisee written confirmation that he or she discussed the contract with specialists.

As a franchise consists of a set of intellectual property rights, the franchisor shall at least disclose the list of such rights and documents, confirming that they have been recorded in the franchisor's name in Ukraine.

16 In the case of a sub-franchising structure, who must make presale disclosures to sub-franchisees? If the sub-franchisor must provide disclosure, what must be disclosed concerning the franchisor and the contractual or other relationship between the franchisor and the sub-franchisor?

Though Ukrainian law does not provide it, we consider that such presale disclosures to sub-franchisees should be made by the sub-franchisor. The volume and content of disclosed information on the

franchisor and the contractual or other relationship between the franchisor and the sub-franchisor should be decided on each concrete situation, taking into account aspects stated in question 15.

17 What information must the disclosure document contain?

Ukrainian law has no precise list of information to be disclosed; however, the Model Franchise Disclosure Law of the International Institute for the Unification of Private Law may be used for guidance.

18 Is there any obligation for continuing disclosure?

As the Civil Code (articles 1128 and 1129) provides for consequences for the franchise contract in case of termination of any intellectual property right for any constituent of the franchise, the franchisor shall continue to disclose information about the status of its rights to constituents of the franchise.

19 How do the relevant government agencies enforce the disclosure requirements?

There is no appointed government agency that enforces disclosure requirements. However, the franchisee himself or herself may enforce them by applying to court with a claim to consider the franchise contract void or terminated if there are circumstances as described in questions 15, 16 or 18.

20 What actions can franchisees take to obtain relief for violations of disclosure requirements? What are the legal remedies for such violations? How are damages calculated? If the franchisee can cancel or rescind the franchise contract, is the franchisee also entitled to reimbursement or damages?

The franchisee may obtain relief in court. Such relief should be requested by following the general claim procedure, which can be quite lengthy because of foreign party involvement and the peculiarities of protection for intellectual property rights, and also because of the court system reform that has been pending since 2016. According to the claim procedure, all disputes concerning franchise contracts shall be considered by the Highest Court on Intellectual Property that was set up on 21 September 2017. This is irrespective of the fact that said Court is not functioning yet as not all 21 judges have been elected. Besides this, there are a lot of contraventions in the local procedural law as to appeal of its judgments.

Damages with regard to losses and gained profits (article 22 of the Civil Code) under the franchise contract may be calculated as under any other contract. Losses shall be proved using appropriate documents that confirm that they were borne by a claimant, while gained profit may be proved either on the basis of some expert estimations or in comparison to other periods of the claimant's business activities.

The infringer shall compensate damages in full and, in the case of a franchisor's fraud, for double the amount as provided by article 230 of the Civil Code.

21 In the case of sub-franchising, how is liability for disclosure violations shared between franchisor and sub-franchisor? Are individual officers, directors and employees of the franchisor or the sub-franchisor exposed to liability? If so, what liability?

As the law is silent as to the volume of disclosure in general, and as to the responsibility of the franchisor and sub-franchisor, we consider that liability for any concrete case will be decided in court. At the same time, it may be assumed that the court will be inclined to consider the franchisor and sub-franchisor to be jointly and severally responsible as the franchisor should control the terms of franchise usage by the sub-franchisor.

There are no special rules on liability of individual officers, directors and employees of the franchisor or the sub-franchisor. At the same time, the general rules of responsibility of executive staff are provided by the Law On Companies with Limited and Additional Liability. It states that members of executive bodies, namely, its directors, are severally responsible before the company for losses incurred because of their guilty actions or inaction.

22 In addition to any laws or government agencies that specifically regulate offering and selling franchises, what are the general principles of law that affect the offer and sale of franchises? What other regulations or government agencies or industry codes of conduct may affect the offer and sale of franchises?

Ukrainian law has no clear regulation of the parties' responsibility at offering stage. At the same time, there is a range of general norms that oblige the parties to deal with each other fairly. First of all, article 68 of the Constitution of Ukraine clearly states any person's responsibility to perform the Constitution and other laws, in a way that does not offend the rights, freedom and dignity of others.

The Civil Code (article 3) lists the general grounds of the civil legislation, including fairness, due care and reasonableness. This norm is further developed in article 509(3) of the Civil Code that provides that any liability shall be grounded in fairness, due care and reasonableness.

These general prescriptions affect the offer and sale of franchises and oblige the franchisor to deal with franchisee in such a way as to avoid violation of his or her rights.

23 Other than franchise-specific rules on what disclosures a franchisor should make to a potential franchisee or a franchisee should make to a sub-franchisee regarding predecessors, litigation, trademarks, fees, etc, are there any general rules on presale disclosure that might apply to such transactions?

A franchisor should make disclosures as to trademarks and the terms of their validity. Disclosure should also concern the essential terms of the franchise contract that include the list of all objects of intellectual property that are constituent of the franchise and their terms of validity, character of the franchise (single, exclusive, non-exclusive), territory, prohibition to compete and approval of units location.

24 What actions may franchisees take if a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises? How does this protection differ from the protection provided under franchise sales disclosure laws?

In the event of a franchisor's fraudulent or deceptive practices, a franchisee has right to apply to court with a claim to compensate its damages.

Legal restrictions on the terms of franchise contracts and the relationship between parties in a franchise relationship

25 Are there specific laws regulating the ongoing relationship between franchisor and franchisee after the franchise contract comes into effect?

The Civil and Commercial Codes regulate the ongoing relationship between franchisor and franchisee.

26 Do other laws affect the franchise relationship?

Corresponding Ukraine laws as to protection of intellectual property rights affect the franchise relationship; for example:

- the Law on the Protection of Rights to Marks for Goods and Services;
- the Law on Protection of Rights for Inventions and Utility Models; and
- the Law on Protection of Industrial Samples.

27 Do other government or trade association policies affect the franchise relationship?

No.

28 In what circumstances may a franchisor terminate a franchise relationship? What are the specific legal restrictions on a franchisor's ability to terminate a franchise relationship?

A franchisor may leave the agreement at any time, having informed the franchisee six months in advance if a more prolonged term is stipulated by the franchise agreement. Besides this, the franchisor may rescind the agreement if the franchisee is declared as insolvent or bankrupt.

29 In what circumstances may a franchisee terminate a franchise relationship?

A franchisee may leave the agreement at any time, having informed the franchisor six months in advance if a more prolonged term is stipulated by the franchise agreement.

If any changes are made to the franchisor's trademark, or if there is a declaration of a franchisor as being insolvent or bankrupt, the franchisee may terminate the agreement.

30 May a franchisor refuse to renew the franchise agreement with a franchisee? If yes, in what circumstances may a franchisor refuse to renew?

If a franchisee has performed according to the agreement, the franchisor has no right to refuse to renew the franchise agreement. Although the Civil Code provides for adoption of a special law regarding a franchisor's rights to refuse to renew, it has not been adopted yet, and correspondingly only provisions of the current Civil Code are valid.

31 May a franchisor restrict a franchisee's ability to transfer its franchise or restrict transfers of ownership interests in a franchisee entity?

Yes.

32 Are there laws or regulations affecting the nature, amount or payment of fees?

No. None of the Ukrainian laws may affect the nature, amount or payment of fees under franchise agreement. Parties decide these issues by themselves. At the same time, parties take into consideration issues of taxation of initial franchise fees and royalties paid by the franchisee in favour of the franchisor. The Tax Code of Ukraine treats royalties as franchisor's income on the territory of Ukraine that shall be taxed at 15 per cent that is deducted from the amount of to be paid in favour of the franchisor unless otherwise provided by international treaty for avoidance of double taxation. The list of countries with which Ukraine has concluded the treaty is given in question 5. Usually the treaty provides lower withholding tax to be paid on royalties. Initial franchise fees are not subject to withholding tax.

33 Are there restrictions on the amount of interest that can be charged on overdue payments?

The Law On Responsibility For Untimely Performance of Monetary Liabilities restricts the amount of interest that can be charged on overdue payments with double the discount rate of the National Bank of Ukraine, which is currently 17 per cent per annum.

34 Are there laws or regulations restricting a franchisee's ability to make payments to a foreign franchisor in the franchisor's domestic currency?

No.

35 Are confidentiality covenants in franchise agreements enforceable?

Yes.

36 Is there a general legal obligation on parties to deal with each other in good faith? If so, how does it affect franchise relationships?

As stated in question 22, there is a general rule within the civil legislation in Ukraine for the parties to deal with each other in good faith. For a franchise relationship, that means obligations of the franchisor regarding disclosure on the essential aspects of franchise that persuade the franchisee to enter the franchise agreement; providing assistance to the franchisee in conducting the franchise operation; and maintenance of the validity of the constituent franchise.

37 Does any law treat franchisees as consumers for the purposes of consumer protection or other legislation?

No.

Update and trends

Though a Bill on Franchising had its first hearing at the end of 2017, we consider that it has not become a law as, in fact, it repeats all the provisions of the Civil Code as to commercial concession agreements that are equivalent to those of franchise and introduces unfavourable provisions (like the recording of the franchise agreement at the Patent Office and Company House) that were removed from the Civil Code in 2015.

Currently, franchising has developed very slowly because of the poor investment climate in Ukraine, the low consumer purchase capacity and high inflation. Foreign franchisors do not come to the Ukrainian market because local franchisees are not able to pay franchise fees and royalties – the value of the local currency and consumer purchase capacity is very low.

38 Must disclosure documents and franchise agreements be in the language of your country?

There is no requirement to execute a franchise agreement in Ukrainian only. An international franchise agreement may be executed in any language. Further on, the franchisee should translate it into Ukrainian to make any necessary wire transfers in favour of the franchisor. The franchisee should submit the agreement into Ukrainian bank, which will require 'readable' text of the agreement.

39 What restrictions are there on provisions in franchise contracts?

Restrictive provisions are as follows:

- if a franchisee receives an exclusive franchise for a territory, the franchisor has no right to use or issue the same franchise to other persons on the same territory;
- the franchisee is not allowed to compete with a franchisor on the same territory;
- the franchisee is not allowed to receive comparative franchises from the franchisor's competitors; and
- the franchisee is obliged to agree with the franchisor unit location and its interiors.

Provisions on price fixing and the obligation to work with a certain category of customers located only on the territory are voidable.

The rest of franchise contract provisions, including duration, exclusive territories, restrictions on sources from whom a franchisee may purchase or lease goods or services, governing law and dispute resolution, may be freely negotiated by the parties.

40 Describe the aspects of competition law in your country that are relevant to the typical franchisor. How are they enforced?

The Law On Economic Concentration identifies the following as anti-competitive actions:

- fixing of prices or other terms of purchase or sales of goods;
- limitation of production or markets;
- separation of markets or sources of supply under the territorial principle, goods, volume of their sales or purchase, customers or other aspects; and
- conclusion of an agreement providing that other additional contracts will be concluded that are not connected with the agreement.

Anticompetitive actions are allowed for small and medium enterprises for joint purchase of goods if such actions do not limit competition and lead to competitiveness within these enterprises.

Anticompetitive actions are allowed within supply or usage of the goods if one participant restricts another as to usage of supplied goods, purchase or sale to other companies, purchase of goods or formation of prices for supplied goods. At the same time, if listed actions result in limitation of competition or allowance to the market of another participants, increase the prices or lead to a deficit in goods, such actions may be treated as anticompetitive.

Limitation of parties' rights and liabilities as to volume, term and territory of usage, activities, sphere of usage and minimum volume of production under agreements on intellectual property transfer are not treated as anticompetitive actions.

If parties to an agreement prove that their anticompetitive actions lead to improvement of production or purchase and sale of goods, development of small and medium enterprises, optimisation of export or import or development and application of unified technical standards for goods, such actions may be allowed by the Antimonopoly Committee of Ukraine.

Though the Law On Economic Concentration allows the Antimonopoly Committee to adopt typical requirements for anticompetitive actions, neither of such typical requirements were approved.

41 Describe the court system. What types of dispute resolution procedures are available relevant to franchising?

Nowadays Ukraine has common and commercial courts. As Ukrainian law provides that parties to the franchise agreement must be entrepreneurs, disputes between them in Ukraine are settled at the commercial court of Ukraine unless otherwise stipulated by the franchise agreement.

The choice of any law, including a foreign one as the case may be, to govern the franchise agreement will be upheld as a valid choice of law in and binding on any action in the courts of Ukraine and for enforcement in the courts of the Ukraine.

The Commercial Procedure Code of Ukraine (article 4) stipulates that a court of law (or arbitration tribunal) shall apply foreign law rules in accordance with the laws of Ukraine. The Civil Code of Ukraine (article 627) and Law No. 959-XII of Ukraine on Foreign Economic Activity of 16 April 1991 (article 6) allow the parties to a contract to make their own choice of governing law to determine their rights and obligations pursuant to the contract in question. A limitation on the use of foreign law may be imposed to protect public policy in Ukraine. However, there have been no known foreign commercial cases in which there has been recourse to the public policy exception by domestic courts. The choice of law by the parties only applies to obligations and does not affect the applicable law to the legal capacity of the parties and the form of the transaction.

Any judgment obtained in foreign courts with respect to a franchise agreement may be recognised or accepted for execution by the courts of Ukraine without retrial or examination of the merits of the case, under the principle of reciprocity. Recognition and enforcement of a foreign court judgment may be refused if:

- the foreign court judgment is not effective under the laws of the place of its issuance;
- a party against which it is issued was deprived of the possibility to participate in a court proceeding because of improper service on such party. The service is treated as duly made if summons are delivered through the Ministry of Justice of Ukraine as provided by the Convention of the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965;
- the judgment is issued in a case that belongs exclusively to the competence of a court or another body under the laws of Ukraine

(however, in general, the obligations under franchise agreement would not be under the exclusive jurisdiction of a court or another body under the laws of Ukraine);

- there is a judgment of a Ukrainian court regarding the same parties, subject matter and grounds for the claim and it has taken effect or there is pending case in the Ukrainian court between the same parties pertaining to the same subject matter and based on the same grounds, and that case was started earlier than the case in the foreign court;
- a deadline for compulsory enforcement provided by an international treaty and by the Civil Procedural Code of Ukraine is missed; or
- enforcement of the foreign court judgment threatens the interests of Ukraine.

Foreign arbitral awards can be recognised and accepted for execution by the courts of Ukraine. This is because Ukraine has been a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1960.

42 Describe the principal advantages and disadvantages of arbitration for foreign franchisors considering doing business in your jurisdiction.

The main advantage of arbitration is the finality of the issued award. There is a restrictive and exhaustive list of grounds for the arbitration award to be set aside. They include:

- incapacity of one of the parties to an arbitration clause;
- invalidity of the arbitration clause;
- non-participation of a party in the arbitration process because of non-notification of the arbitration process or arbitrator's appointment;
- the award is issued on the matters that are not covered by the arbitration clause;
- the arbitration tribunal or procedure does not correspond with the arbitration clause; or
- the award contradicts the public policy of Ukraine.

Ukraine has an International Commercial Arbitration Court at the Ukrainian Chamber of Commerce that recently stipulated in its Rules the possibility to hold a speedy arbitration procedure that provides for speedy correspondence of the parties (within 10 days of receipt of the appropriate procedural document), consideration by a single arbitrator on the basis of written materials and issuance of the award 20 days from consideration of the last written document.

43 In what respects, if at all, are foreign franchisors treated differently from domestic franchisors?

There are no circumstances in which foreign franchisors are treated differently from domestic franchisors.



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