

ISSN 1563-0366
Индекс 75882; 25882

ӘЛ-ФАРАБИ атындағы ҚАЗАҚ ҰЛТТЫҚ УНИВЕРСИТЕТІ

ҚазҰУ ХАБАРШЫСЫ

Заң сериясы

КАЗАХСКИЙ НАЦИОНАЛЬНЫЙ УНИВЕРСИТЕТ имени АЛЬ-ФАРАБИ

ВЕСТНИК КазНУ

Серия юридическая

AL-FARABI KAZAKH NATIONAL UNIVERSITY

KazNU BULLETIN

Law series

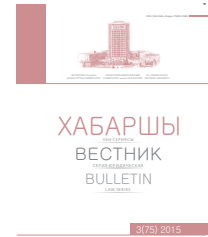
№3 (75)

Алматы
«Қазақ университеті»
2015



ХАБАРШЫ

ЗАҢ СЕРИЯСЫ № 3 (75)



25.11.1999 ж. Қазақстан Республикасының Мәдениет, ақпарат және қоғамдық келісім министрлігінде тіркелген

Куәлік №956-Ж.

Журнал жылына 4 рет жарыққа шығады

ЖАУАПТЫ ХАТШЫ

Ережепқызы Р., жауапты хатшы

(Қазақстан)

Телефон: +7727-377-33-36;

8-727-377-33-37 (ішкі н. 12-57)

E-mail: rose@mail.ru

РЕДАКЦИЯ АЛҚАСЫ:

Байдельдинов Д.Л., з.ғ.д., профессор

(бас редактор) (Қазақстан)

Кенжалиев З.Ж., з.ғ.д., профессор

(бас ред. орынбасары) (Қазақстан)

Сартаев С.С., з.ғ.д., академик (Қазақстан)

Тыныбеков С.Т., з.ғ.д., профессор (Қазақстан)

Ибраева А.С., з.ғ.д., профессор (Қазақстан)

Джансараева Р.Р., з.ғ.д., профессор (Қазақстан)

Усенинова Г.Р., з.ғ.д., профессор (Қазақстан)

Еркинбаева Л.К., з.ғ.д., профессор (Қазақстан)

Жатқанбаева А.Е., з.ғ.д. (Қазақстан)

Трунк А., профессор (Германия)

Монтекило С., профессор (БАӘ)

Бурхард Б., профессор (Германия)

Лисица В., профессор (Ресей)



ҚАЗАҚ
УНИВЕРСИТЕТІ
Б А С П А У Й І

Ғылыми басылымдар бөлімінің басшысы

Гульмира Шаққозова

Телефон: +77017242911

E-mail: Gulmira.Shakkozova@kaznu.kz

Редакторлары:

Гульмира Бекбердиева, Еркін Жайнақов

Компьютерде беттеген:

Айгүл Алдашева

Жазылу мен таратуды үйлестіруші

Мөлдір Өміртайқызы

Телефон: +7(727)377-34-11

E-mail: Moldir.Omirtaikyzy@kaznu.kz

ИБ №8886

Басуға 15.08.2015 жылы қол қойылды.

Пішімі 60x84 1/8. Көлемі 35 б.т. Офсетті қағаз. Сандық басылыс.

Тапсырыс №3514. Таралымы 500 дана. Бағасы келісімді.

Әл-Фараби атындағы Қазақ ұлттық университетінің

«Қазақ университеті» баспа үйі.

050040, Алматы қаласы, әл-Фараби даңғылы, 71.

«Қазақ университеті» баспа үйінің баспаханасында басылды.

© Әл-Фараби атындағы ҚазҰУ, 2015

Assil'bekova G.A.

**History and establishment
process of relations of contract
of package entrepreneurial
license**

The Treaty of the complex enterprise license (franchise) as a civil law contract for services has its place and role in the system of civil legal agreements of the Republic of Kazakhstan. This paper reviewed the order and conditions of implementation, the place and importance in State regulation, the legal function and improving the functions of the integrated business-entrepreneurial license (franchise) since its inception, provides recommendations to improve the Act of governing laws regulating the relations of the complex enterprise license (franchise).

Key words: Franchising, contract, package entrepreneurial license, obligations.

Асильбекова Г.А.

**Кешенді кәсіпкерлік
қатынастарының тарихы және
қалыптасу кезеңдері**

Қазақстан Республикасы азаматтық құқықтық шарттар жүйесінде кешенді кәсіпкерлік лицензия (франчайзинг) шарты қызмет көрсетуші азаматтық құқықтық шарт ретінде өзіндік рөлі мен орны бар. Жұмыста кешенді кәсіпкерлік лицензия (франчайзинг) шартының пайда болу кезеңдерінен бастап, оларды жүргізудің тәртібі мен шарттары, оның мемлекеттік реттеуде алатын орны мен маңыздылығы, құқықтық қызметі және олардың қызметін жетілдіру мәселелері қарастырылды, кешенді кәсіпкерлік лицензия (франчайзинг) қатынастарын жүргізуді реттейтін қолданыстағы заңдарды жетілдіруге бағытталған ұсыныстар жасалынған.

Түйін сөздер: кешенді кәсіпкерлік шарты, келісім шарт, кәсіпкерлік лицензия, міндеттеме.

Асильбекова Г.А.

**История и становление
отношений комплексного
предпринимательства**

Договор комплексной предпринимательской лицензии (франчайзинга) в качестве гражданского правового договора на оказание услуг имеет свое место и роль в системе гражданских правовых договоров Республики Казахстан. В данной работе рассмотрены порядок и условия реализации, место и значение в государственном регулировании, правовая функция и вопросы совершенствования функций договора комплексной предпринимательской лицензии (франчайзинга) с момента его возникновения, представлены рекомендации, направленные на совершенствование действующих законов, регулирующих отношения комплексной предпринимательской лицензии (франчайзинга).

Ключевые слова: франчайзинг, контракт, предпринимательская лицензия, обязательства.

**HISTORY AND
ESTABLISHMENT
PROCESS OF RELATIONS
OF CONTRACT
OF PACKAGE
ENTREPRENEURIAL
LICENSE**

Franchising is the form of long-term business relations, several advantages offered by the franchising relations to its participants are as follows:

1. It offers and provides the beginning entrepreneur with opportunities to arrange own business activities through the use of profitable even-keeled business;

2. It's the way of expansion and strengthening the activities of the famous company in the market;

3. It is the beneficial method of the Government in supporting the entrepreneurship [1].

Under the franchise agreement, we understand the relationship of agreement, giving license to use the methods of business, and the realization of separate licensor's business transactions on behalf of the licensor. Typically, a franchising agreement with the licensor makes it possible to closely monitor business activity during the term of the license [2].

Franchise agreements are used in various fields. Issuance of licenses by owners of trademarks and patents, intellectual property, and other objects to others is often used abroad. That is, franchising is one of the most popular international legal institutions.

On the whole franchise is considered a system of simple relations in the form of the right to use a trademark and the name of one company by another company on the basis of certain conditions. In practice, franchisees pay a fee for the use of technique and concepts of doing business in the market, for the use of advice and advertising. Franchise entails enterprise relationship under the terms of the contract between the franchisor and business-operator. Under the contract, the franchisor shall use or recommend the area for the introduction of know-how and training. In turn, the franchisor monitors and controls the correct use of brand and technology by the franchisee. In addition, the operator will invest this funds to share of the enterprise capital [3].

On V.V. Dovgan's concept, «Method to win the market on the basis of bring in goods and services to consumer, business development, cooperation of activities and material and financial resources of various enterprises». On U.M. Osipov and E.E. Smirnova' concept, «Franchise is repeated instructions of right of sale or production of goods and services to the private or

legal person based on the technology or the brand of company, providing commercial, technical and organization alasi stance to the franchisee for their production and marketing» [4]. A.V. Busygin has given this wording: «Franchise is a wide spread in the world for more friendly relations and business cooperation. The following value of the franchise is removing brand goods to a specific market, this brand is issued by a large and reputable company with a small independent concern (in most cases built for this purpose) and bringing it to the consumer, along with the granting of rights to perform the sections. This can be brief ly described as «work under the license».

According to another concept of the Franchise Association of Kazakhstan, it is said:

«Franchise is a system of advancement of technologies, products and services to market for a long time on the basis of close cooperation between legally and financially independent parties of the franchisor and the franchisee. In this case, the franchisee is responsible and the owner of the rights of business according to the concept of the franchisor. On the basis of such right franchisee, using technologies and methods of doing business, know-how of franchisor's brand or product, agrees to pay a certain percentage of profit. In term of the agreement established between the two parties, the franchisor helps constantly on technical issues and business». The opinion of scholars on the formulation of the franchises not uniform but is comprehensive. So, K. Fulopand the Law of the Republic of Kazakhstan «About the complex entrepreneurial license(franchising)» is considered that franchising is a special way of doing business and licensing relationships.

If there are conditions of business, it should be documented in writing form. Terms of complex entrepreneurial license(franchising) are fixed in the form of time-based and demand conditions. Contract with the term is used before expiration. Contract with out specifying the period may suspend during the implementation of full scope of the rights of the licensee.

For the duration of a comprehends ive business agreement:

- Refreshing-there is the opportunity to up date the contract in accordance with market changes, 1-3 years;
- Standart -contract duration of 5 years;
- Fixed-term-contract duration of 3 years;
- Of long duration-contract duration of 10 years.

One of the requirements for the written agreement is necessary to consider the provisions of Article 15 of the Law» About the languages of the

Republic of Kazakhstan», adopted July 11, 1997. According to the rule, it expounded on the state and Russian languages, if necessary, translations into other languages of all written agreements of private and legal parties of the Republic of Kazakhstan are added. Written agreement of private and foreign legal entities are set out in a language that is convenient for the state and the party [5]. Forms, methods and terms of payment under the terms of complex entrepreneurial license (franchising) are determined by the agreements of the parties.

In civilly a definition of right subjects is among the important issues. This is civil relation and special conception showing feature, freedom of the parties participating in civil relations, personality of persons participating in civil circulation. Participants of contract of complex entrepreneurial license:

- Parties of the agreement and third parties are considered parties of contract of complex entrepreneurial license;
- Comprehensive licensor and integrated licensee are considered parties of contract of complex entrepreneurial license;

211sd1se1 – Licensed broker, entrepreneur, banks, insurance companies and similar organization sire third parties under the contract of the parties.

Legal status of a licensed broker can be determined by the following features. Licensed broker acting on his own behalf and with its own risk, on behalf of and with the risk of the licensor, the licensee or similar subjects of franchise relationship. Licensed broker emuneration is paid either 1 times, or in the form of periodic payments, or in the form specified in a complex business license. If the share is not defined by the law, the rules of the Civil Code of the Republic of Kazakhstan are adapted to the broker.

The process of developing of franchise system consists of the following five steps:

1. Determinate sides participating in the development stage of franchising concept, establish their duties;
2. Identify the participants at the development stage of franchising concept, establish rules and conditions;
3. Mastermind the methodical instructions;
4. Make up a plan to expand the system at the development stage of franchising program;
5. Implementation and control of this program

According to the Association of franchising in Kazakhstan, our country has 450 franchise systems and over 3,000 franchise companies.

The aim of franchising is to spread the consumer goods (own goods, works and services) and to distribute the means of production.

On this basis it is possible to distinguish between types of franchising.

1. Franchising – licensor grants to licensee the workplace and the license complex with capabilities of private businessman;

2. The enterprise franchising – licensor grants to licensee the enterprise with license complex;

3. The conversion franchising – defines the conditions of sides on the basis of restructuring of structural units of the private enterprises;

4. The increased franchising – the licensee is building several companies;

5. The manufacturing franchising – a comprehensive licensor gives the right to the licensee with licensor's consent to use raw materials, technologies and equipment for distribution of its trademark, to carry out a production and sale of goods and services;

6. The trade franchising – comprehensive licensor gives the right to the licensee to use the marketing technologies, given by the comprehensive licensor and specified in the contract, and to sell goods, works and services on their trademark.

For example, focus on the development stages of franchising in Kazakhstan:

The first period. Companies that have appeared in the period of 1994-1999s: «Coca Cola», «Rahat Palace» in 1994, «Adidas» in 1995, «Seymar» in 1996, «KODAK» in 1997, «Doca», «Ankara», «Ramstore» in 1999.

Key Features:

1. Lack of regulatory framework, establishing a franchise

2. Lack of competition in the market

3. Exit to the Kazakhstan market in order to expand the sphere of influence of private foreign companies

4. Beginning of the formation of industrial and service franchising

The second period. Companies that have appeared during the period of 2000-2004s:

«Baskin Robbins» in 2000, Franchise Association of Kazakhstan, the Law of the Republic of Kazakhstan «About complex business license (franchising)», «II Patio», «Sushi Planet», «World Class» in 2002, «Business Consult», «Scot Holland Estates», «Pyaterochka», «Max Mara», «Sela», «Three Fat Men» in 2004.

Key Features:

1. The law about franchising was passed

2. The competition associated with market entry of large foreign firms franchisee took shaped

3. A Franchise Association of Kazakhstan was created

4. Franchising in the direction of the development and using of USAID business

The third period. Company, existing since 2005:

«English First», «Alma-TV», «Tiffany Marble» in 2005, «Romat», «Umex Realty» in 2006, «Finn Flare» in 2007, «Aquatoria of Luxury Life» in 2008.

Key Features:

1. The active using of the law on intellectual property and franchising

2. The exhibition of franchising was organized

3. Small Business Development Fund has developed a lending program of franchising

4. Competition is developing rapidly

5. The media and social franchising has been appeared

The openness of the country and the expansion of international integration exert their influence on the development of this type of business in Kazakhstan. However, most entrepreneurs believe that they are free from paying taxes. In our country, in general, the amount of taxes is not higher than in other countries. In my opinion, low prevalence and the small credibility to franchising affect on its rapid development. Now in our country 80% of trade is franchising. This is not a professional franchise.

In the US a franchise business works out 30 trillion dollars. This was reported on «Franchising in Kazakhstan» the 2^d International Forum held in Almaty by the US Embassy in Kazakhstan. «For the state a franchise is economic growth. Franchise companies will contribute to the economic growth of the country. So, thanks to the franchise, 11 million workplaces were opened in the United States,

\$ 2.8 billion are used to paying out salaries for employees. Also the opening of new workplaces will be increased by 10-15% due to franchising. In recent years, the franchise business is growing rapidly every year. This is the highest growth in all fields of the country, «said the US ambassador. According to him, the franchise will play an important role in Kazakhstan. Thus, franchising was founded in 1973 in Egypt. 4 years later, the Egyptian investors began to build new plants for the development of the restaurant business and in direction of the preparation of food (potatoes, etc.). And after that, in order to glorify his kitchen in the world, they adopted the best practices of Western countries and rapidly developed this business.

Coca-Cola, Baskin Robbins, MacDonald's, World Class are the world famous franchisors. These companies have become known to the world with the help of franchising. According to the international press, the annual turnover of the

franchise in the world is \$ 2 trillion US dollars. A franchising powers volume has reached 2 million.

Franchising is widespread in Western countries. Because entrepreneurs consider it as a guarantee of success of any business initiative. To what extent is the trend of the business developed in Kazakhstan? For the first time the term «franchise agreement» was used in the Civil Code in 1999. In 2002, a special law on franchising was passed. Now in Central Asia Kazakhstan has begun his career in the field of franchising. It is proved that every year in our country, a number of franchise systems is growing.

According to the statistics agency, today in Kazakhstan foreign franchise systems can be classified in several fields of business development. These are: retail trade (60%), services (30%), catering (3%), production sphere (7%), and among consumer goods is an active sale of clothing and shoes of famous foreign brands.

In our country such franchise systems as Coca-Cola, Baskin Robbins, World Class, British Airways, «Perekrestok» are successfully developed. Hotel business began in 1994. It must be said about the «Rahat Palace» and «Ankara» as part of the international hotels of Hyatt Regency franchise brand. Now they are part of the 'Intercontinental' famous hotels. In the restaurant business, you can

give the example of a 'Rosinter' Russian company, took his place in the Kazakhstan market. This company in our country is known for its brands «El Patio», «Sushi Planet», «American Bar and Grill», «Moka – Loka», etc.

Looking at the global statistics, we conclude that upon expiry of 5 years among independently discovered 100 companies only 10 have continued their work. For over 5 years 90% of enterprises, being contractors, have being remained in the market.

Summing up about consideration of civil legal relations, comparing working in our country franchising companies with economic entities in other businesses, I must say that they have significant features and benefits. According to this, we believe that under present conditions it is possible to quickly solve problems associated with this system of business, develop small and medium-sized businesses and achieve positive results.

According to the Message of the President of the Republic of Kazakhstan in 2008, within the program to support domestic producers, the number of workplaces is expanding in our country due to the law about the conditions of the franchise agreement and an increase in the number of domestic franchisors, able to compete in the local and international market.

References

- 1 The Civil Code of the Republic of Kazakhstan, 1994.
- 2 Law of the Republic of Kazakhstan «About complex business license (franchising)». Sovereign Kazakhstan, 04.07.2002.
- 3 Braginsky M.I. Civil law: the textbook. Obligations right: Lectures. -M:BEK. 1997. -Part 2–p.604.
- 4 Manap A.S. Opportunities and conditions for the development of franchising in Kazakhstan/ Copies collection of the international scientific-practical conference «The competitiveness of the national economy in terms of globalization: problems and ways to improve it,» Almaty, University of International Business, 2004 year, p.254-256, 0.25b. n. 5. The Law «About the languages of the Republic of Kazakhstan» 11.06.1997 year.

