

GETTING THE
DEAL THROUGH 

Franchise 2016

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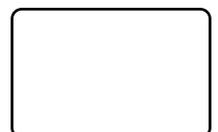


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Overview

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

Chapter 54 of the Russian Civil Code is dedicated to franchising. According to that law the parties to a franchising contract may be any commercial entity (limited liability company, joint stock company, etc) or individual entrepreneurs. Most commonly, the parties are limited liability companies. In certain instances, joint stock companies are used in complex franchising transactions (such as joint venture franchises).

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

Chapter 54 of the Russian Civil Code contains 14 sections specifically dealing with franchising, however, other sections of the Russian Civil Code also relate to franchising in that they regulate the formation of legal persons and individual entrepreneurs and the general principles of conduct of their business. There are also regulations issued by various government bodies regulating individual aspects of IP licensing and franchising.

The formation of business entities as such is regulated by the Law on State Registration of Legal Persons and Individual Entrepreneurs as well as special laws on limited liability companies and joint stock companies. Once a legal person has been formed it has to be registered with the Federal Tax Service. The information on such registrations is openly accessible via the internet.

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

Any association of persons may form a business entity. The business entity must have articles of association, decision of founders and other documents, and apply to the local tax authority subordinated to the Federal Tax Service by paying the state fee. A bank account has to be opened by the business entity as well. In addition, registration has to be secured with the Federal State Statistics Service and with social funds.

The Federal Tax Service manages the Unified Register of Legal Entities. This Register covers the whole of Russia and through it any person may collect basic information on any business entity. A similar register exists for individual entrepreneurs who are under the same regulations as business entities.

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

There are no restrictions on foreign entities from being either a franchisor or a franchisee. However, their business should comply with all relevant laws and regulations governing contracts, performance of obligations and general conduct of business.

Certain areas of investments are of strategic importance to the Russian government for the purposes of state defence and security. Hence, a special licence or permission has to be obtained before investing and transacting in certain industries (such as the cryptographic, armaments and aerospace industries) that are regarded as strategic by virtue of law.

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

VAT

As a general rule, the sale of IP rights under the franchise agreement between a foreign franchisor and a Russian franchisee is subject to VAT in Russia. Hence, the final price of the contracted IP rights granted under the franchise agreement should include the corresponding VAT, which is 18 per cent of the contract price. In this case, the Russian franchisee, acting as a tax agent, withholds VAT from the amounts (franchise fees) paid out to the foreign franchisor under the contract.

The Russian Tax Code contains the list of IP rights the sale of which on the territory of the Russian Federation is not subject to VAT. The list includes assignments and licences of patents, trade secrets (know-how), computer programs, databases and mask works. According to the local court practice, these exceptions may be also applicable to franchise agreements if such franchise agreements separately stipulate the prices (franchise fees) related to non-taxable franchised IP rights.

Corporate income tax (CIT)

According to the Russian Tax Code the remuneration of the franchisor is subject to CIT in Russia. Hence, as a general rule, the Russian franchisee, acting as a tax agent, withholds CIT (which is 20 per cent) of the franchisor's compensation under the contract.

Taxation may be different if the franchise agreement is subject to a double taxation treaty. Currently, the Russian Federation has such treaties with 79 countries, including Germany, France, Italy and the United States. If the franchisor shows that it is a resident of a state with which Russia has a double taxation treaty by providing duly certified confirmatory documentation, CIT may be withheld at a lower rate or may not be withheld at all, depending on the terms of the relevant treaty.

Transfer pricing

According to the local pricing rules, the price specified in a contract between affiliated persons must comply with the market price related to corresponding contracted goods and services. Therefore, if the franchisor and the franchisee are affiliated persons and the contract price specified in the underlying franchise agreement does not comply with the market price applied in similar transactions there is a risk that additional taxation (with penalties and fines) will be levied.

The above-mentioned transfer pricing rules may also be applicable to the franchise agreements between non-affiliated parties if the contracts are made through the range of contracts concluded with non-affiliated persons that are used only for the purposes of resale of the contracted goods or services between affiliated persons; or if one of the parties to the agreements is a resident of an offshore jurisdiction as set out in the 2007 Ministry of Finance List. The List includes Andorra, Anguilla, Bahrain, Belize, the British Virgin Islands, China (Hong Kong and Macao), Gibraltar, Grenada, the Isle of Man, Liberia, Liechtenstein, the Maldives, the Marshall Islands, Monaco, Panama, San Marino, the Seychelles, the United Arab Emirates and other jurisdictions.

6 Are there any relevant labour and employment considerations for typical franchisors? What is the risk that a franchisee or employees of a franchisee could be deemed employees of the franchisor? What can be done to reduce this risk?

The franchisor and the franchisee are separate legal entities, therefore they have their own labour and employment obligations. The franchisor and the franchisee operate on the basis of a franchise agreement primarily governed by the civil law. Labour and employment relations of the entities operating in Russia are regulated by the Russian Labour Code.

According to the Labour Code, employment relations between the employer and the employee may arise only under a labour agreement. The law also reads that the conclusion of civil law agreements that de facto govern the relations between employer and employee, are not allowed (article 15 of the Labour Code). Hence, there is no risk or likelihood that the franchisee or the employees of the franchisee will be held as the employees of the franchisor.

7 How are trademarks and know-how protected?

Trademarks are protected on the basis of the trademark law which is a part of the Russian Civil Code. A trademark will be protected on the national basis after it has been registered with the Federal Service for Intellectual Property (Rospatent). Russia is a signatory to the Madrid Agreement as well as the Madrid Protocol, therefore an international trademark registration (designating Russia) will also be protected.

The duration of the national trademark registration procedure is approximately one year. The examination procedure includes formal and substantive examination. When the trademark is registered it is entered into the Trademark Register and will be valid for 10 years. Trademark registration may be renewed for another 10 years an unlimited number of times.

Know-how should not be registered, nevertheless, it must be properly documented to comply with certain legal requirements stipulated in the Russian Civil Code (Chapter 75) and the Law on Trade Secrets. Know-how will be protected for as long as it is kept secret by its holder.

Infringement of trademarks and know-how may entail administrative, civil and criminal liability.

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

The Russian Civil Code as well as the Russian Land Code primarily govern the real estate issues and relevant transactions. Transactions, including ownership, acquisitions, leases and security interests, related to real estate are subject to registration with the Unified State Register of Rights to Real Estate and Transactions (the Register). Details about valid real estate owners, their rights, titles and interests are kept in the Register and are viewable by the public. Non-Russian individuals and legal entities are restricted from acquiring certain types of real estate in certain instances. Domestic individuals and legal entities have more freedom to operate in the Russian real estate market.

Laws and agencies that regulate the offer and sale of franchises

9 What is the legal definition of a franchise?

Franchise is defined in Russian law as a 'commercial concession'. According to article 1027 of the Russian Civil Code, under the contract of commercial concession one party (the rights holder) shall undertake to grant to the other party (the user), for remuneration and for a definite or indefinite term, the right to use in the business of the user a set of exclusive rights owned by the rights holder, including the trademark rights, the service mark rights, and also other intellectual property rights, such as the trade name rights and trade secret (know-how) rights.

The key element of the franchise agreement is a registered trademark. In the absence of the registered trademark the contract may not be regarded or interpreted as a franchise. Other elements, including but not limited to trade names, copyrights, patents and trade secrets (know-how), may be included into the scope of such contract in addition to the registered trademark. The law gives only examples of such elements, therefore the list of franchiseable subject matters is not limited, which means that any other IP subject matter (such as software or databases) may be included in the scope of the franchise agreement aside from the registered trademark and referenced elements.

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

Franchise agreements are mainly regulated by Chapter 54 of the Russian Civil Code. Pursuant to article 1028 of the Russian Civil Code, franchise agreements shall be made in writing and be registered with Rospatent. No other government agencies are involved in the franchising relations between the parties nowadays. A franchising contract that is not registered with Rospatent will be deemed null and void.

11 Describe the relevant requirements of these laws and agencies.

Remuneration to the franchisor shall be paid as a lump sum, or in the form of periodic payments, percentage of the proceeds, or in other forms as may be agreed by the parties and stated in the contract. The franchisor shall pass on to the franchisee any technical and commercial documents, and other information required for the franchisee, so that it could do the franchising business in good order.

The franchisor shall ensure the state registration of the franchise agreement (or, the contract may provide that the franchisee shall ensure such registration). Depending on the agreed terms, the franchisor or the franchisee has to file the application for registration of the executed franchise agreement with Rospatent, submit necessary documents and pay the state fee. There is no statutory period within which the contract must be filed for registration. The statutory term of registration of a franchise agreement is two months.

The franchisor shall provide constant technical and consultative advice to the franchisee, including assistance in training and improving qualifications of the franchisee's employees. The franchisor shall supervise the quality of goods or services of the franchisee. In its turn, the franchisee has to ensure quality of franchised goods or services, which should be of the same quality as those manufactured, provided or sold by the franchisor. The franchisee should also make it clear to consumers that it uses the trademark and other intellectual property by virtue of the franchise agreement.

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

There are no exemptions or exclusions from the Russian franchise laws and regulations. The registration requirement applies to every franchising transaction, whether governed by Russian or any other foreign law, if it is oriented towards the Russian market.

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

The franchisor and the franchisee shall be legal persons or individual entrepreneurs (ie, business entities). The franchisor must be the registered and valid trademark or IP owner. There are no other requirements that would limit the ability of the franchisor to conclude a contract with a potential franchisee.

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?

In general, the contracting parties are free to organise the franchising business. It is presumed that a franchisor acts at its own risk and in good faith when choosing a prospective franchisee and in drafting the contract with the latter. The same applies to the franchisee.

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

Russian law does not require pre-contractual disclosure. Nor does Russian law require continuous or updated disclosure. The law simply states that the franchisor shall provide technical and commercial documentation and any other information necessary for the franchisee and its employees to be able to use the franchised trademark and other intellectual property in its business. When, what and how - may all be contractually agreed by the parties, although there is a general civil law principle of good faith.

16 In the case of a sub-franchising structure, who must make pre-sale 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?

The ability of the franchisee to conclude sub-franchising contracts shall be provided in the main (franchise) agreement, which shall also stipulate the terms on which the franchisee can proceed with such contracts. Otherwise, separate franchisor's consent for the execution of any further sub-franchising contracts may be obtained and submitted to Rospatent (in the course of the registration of subfranchising contracts).

Pre-sale disclosures, or contractual disclosures, although not mandatory by law, can be made on the terms defined by the contracting parties. A separate agreement on that issue may be also concluded by the parties.

17 What information must the disclosure document contain?

The pre-contractual disclosure documentation, if given to the franchisee on an optional basis, shall be sufficient for the latter to understand the franchisor's business. The contractual disclosure (information and documentation) underlying the franchise agreement (see question 15) shall be sufficient for the franchisee to exercise its rights and obligations under the contract. The civil law principle of good faith must be complied with.

18 Is there any obligation for continuing disclosure?

The franchisor must render ongoing technical and consultative assistance to the franchisee, unless the contract provides for the contrary. Hence, unless otherwise specified in the franchise agreement, the franchisor shall be obliged to disclose certain aspects to the franchisee on a continuous basis, as may be set forth by the contract.

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

Government agencies are not responsible for checking the compliance with the disclosures, and pre-contractual disclosures are optional. Any existing contractual disclosures may be enforced through the agency of competent courts.

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?

Franchisees may generally file lawsuits for breaches of contract. They may basically seek different reliefs or legal remedies in court if they find that some information or assistance is withheld by the franchisor, or not provided in due course. Damages may be real or circumstantial and must be documentarily proved in court to be awarded or reimbursed. If franchisees are able to show that the failure to communicate or grant necessary information or assistance by franchisors is a material contractual breach, they may have an option to rescind franchise agreements judicially.

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?

Contractual disclosure provisions shall be included in the franchise and sub-franchise agreements (as applicable). Hence, attribution of liability shall be based on the provisions of both contracts. Theoretically, liability may be joint or several in this case. Practically, there have been no judgments yet on this issue.

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?

In general, the offering and selling of franchises is regulated by the civil law principles in the same way as other commercial deals are usually regulated. In other words, the basic principles of good faith, fair dealing and reasonable action will always apply. The offering and selling of franchises may also be regulated (and affected) by the local laws on intellectual property

and information technology, advertising, competition, consumer protection and other laws, including on tax and real estate.

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 pre-sale disclosure that might apply to such transactions?

There are no specific requirements that have to be complied with by the franchisors or the franchisees when making disclosures. Pre-sale disclosures as well as contractual disclosures remain a matter for negotiation between the parties and are always subject to contract. International practice may be taken into account in this regard.

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?

If the franchisor engages in fraudulent or deceptive practices it may be sued in court. If the fraudulent or deceptive practices are proved in court by the franchisee the franchise agreement may be deemed invalid. As a result, the franchisee may 'restore' its rights and obtain an award of damages. There are no franchise-specific rules in case of this particular transgression.

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 relations between the franchisor and the franchisee under the effective (registered) franchise contract are basically regulated by the Russian Civil Code.

26 Do other laws affect the franchise relationship?

The franchise relationship may be affected by the local laws on intellectual property and information technology, advertising, competition, consumer protection and other laws, including on tax and real estate.

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

The Russian Franchise Association (RFA) is a non-profit-making organisation that helps its members to promote franchising business in Russia. Although the RFA does not have any regulatory power, it may give certain practical recommendations and tips regarding carrying on franchising business on the Russian market. There are currently over 300 members of RFA. More information about RFA can be found at www.raf.ru (in Russian).

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?

The franchisor may terminate a franchise relationship at any time if the franchise agreement has been concluded without specifying a definite term. Six months' prior notice is required in this case, unless the contract indicates a different term for advance notification. If the contract provides for a specific period of validity, the parties shall be guided by the terms of the franchise agreement.

Either of the parties to the franchise agreement concluded for a term or without indication of the term may repeal the agreement by providing 30 days' advance notice to the other party. This option is only available if the contract provides for financial compensation for early release.

The franchisor may also terminate the franchise agreement if the franchisee produces goods of inferior quality or the quality of its services does not correspond to what is set forth in the contract. The franchisor may repeal the franchise agreement if the franchisee does not follow its instructions aimed at compliance with the terms of the contract. Finally, the franchisor may cancel the franchise agreement if the franchisee does not pay the contractual compensation as provided by the contract.

Early termination or amendment of the franchise agreement has to be registered with Rospatent.

If the right to a franchised trademark or trade name is lost for whatever reason the franchise agreement terminates accordingly. If the franchisor or the franchisee becomes insolvent (bankrupt) the franchise agreement is also terminated.

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

As set out in question 28, either party may terminate a contract of finite or indefinite duration with 30 days' notice if the franchise agreement provides for financial compensation for such release. Other conditions for terminating the contract by the franchisee may be also included in the franchise agreement (eg, the franchisor does not share the contracted information and documents with the franchisee without which performance of obligations in a proper manner is not possible).

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

The franchisor may refuse to renew the franchise agreement with the franchisee if its performance has not been in compliance with the terms of the contract. The franchisor may also refuse to extend the term of the franchise agreement at any time and without explanation. In this case, however, the franchisor should not conclude a franchise agreement on the same terms with another person for one year. Otherwise, the former franchisee may demand that the new franchise agreement be transferred in its favour along with the reimbursement of damages or simply claim for the payment of damages. Generally, the franchisee that has been duly performing its obligations under the franchise agreement has a pre-emptive right to renew the expired contract.

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

The franchisee may be allowed or prohibited by the franchisor from transferring its franchise to a third party. The franchisor may restrict transfers by the franchisee of ownership interests in a franchisee's entity to a third party if the franchisor has acquired corporate control over the franchisee's business.

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

The Russian Civil Code sets forth that payments under the franchise agreement can be made in any manner, including as lump sums or periodical payments or otherwise, as the parties negotiate. The parties may agree on the amount of franchise fees in any applicable manner, however, such fees should be based on the appropriate market value of the franchised intellectual property in question. Should the franchise fees be obviously below or above the market figures or specifically deviate by more than 20 per cent from the corresponding market prices, the local tax authority may correct the contractual payments.

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

There is no mandatory limitation on the amounts of interest to be paid on overdue payments. In practice, the parties usually provide that a set fraction of the figure of overdue payment should be included in the contract. If the interest charged is too high, the courts may moderate it. In addition to damages and contractual default interests, late payment percentages under franchise agreements may be also recoverable.

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

The franchisee is not restricted by law from making payments of franchise fees to the foreign franchisor. The only requirement is that the franchisee should have an appropriate currency account with the Russian bank to transfer moneys in a foreign currency. As has been mentioned above, the franchise agreement must be registered with Rospatent. Without that registration the competent bank will not execute a 'deal passport', without which moneys cannot be wired. A deal passport is required in cross-border franchising transactions amounting to or exceeding US\$50,000.

35 Are confidentiality covenants in franchise agreements enforceable?

The confidentiality covenants in franchise agreements are generally enforceable. By operation of law, franchisees are obliged to keep the franchised trade secrets (know-how) or other confidential commercial information in confidence. The information will be regarded as confidential if the corresponding legal data protection requirements are duly observed. The breach of confidentiality or disclosure of confidential information must be proved to seek an award of damages in court.

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?

There is a specific legal provision in the Russian Civil Code to the effect that the parties, while exercising their rights and performing their duties, should act in good faith. There is also a general civil law principle that the actions of private persons and legal entities are not allowed if they are carried out with the sole purpose of causing damages to other persons. Neither abuse of rights, nor unfair competition are allowed.

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

There is no law that would treat the franchisee as a consumer. The Law on Protection of Consumers' Rights covers the rights of individual consumers acting as physical persons (not business entities).

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

Any document that may fall in the hands of a government agency shall be worded in Russian. If the document is in a foreign language, a translation into Russian can be made and attested by a notary public or certified translator when necessary. Since the franchise agreement is subject to state registration it should be in Russian. In practice, bilingual versions are filed for registration with Rospatent. Otherwise, franchise agreements are originally signed in applicable foreign languages and supported by certified Russian translations that are submitted to Rospatent. Disclosure documents should be accompanied by the corresponding Russian translations to make them clear to the franchisees.

39 What restrictions are there on provisions in franchise contracts?

The franchise agreement may contain different restrictions on the parties. The franchisor may be obliged not to sell the same franchises to other persons on the territory assigned to the franchisee or it may be obliged to refrain from carrying out similar activities (ie, activities related to the use of the franchised system and IP rights) on the franchised territory. The franchise agreement may impose a non-compete covenant on the franchisee that may be extended to the franchised territory and IP rights. The franchise agreement may also impose an obligation on the franchisee to refuse to enter into similar agreements with competitors of the franchisor. The franchisee may be obliged to sell goods or provide services at the prices fixed by the franchisor and refrain from selling similar goods or providing similar services from competitors of the franchisor. The franchisee may be also obliged to sell goods exclusively within certain contracted territory. The franchisee may be obliged to get approval for the location as well as the interior or exterior of the contracted commercial premises for implementing franchising business. The restrictions incorporated in the franchise agreement may be deemed invalid by the anti-monopoly body or other interested person if they are found to contravene the anti-monopoly laws subject to the relevant market condition and the economic status of the parties.

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

Competition is regulated by the Law on Protection of Competition. It prevents monopolistic (anti-competitive) activities, including cartels and prohibits abuse of dominance as well as unfair competition. The law basically admits vertical agreements, including franchise contracts. The provisions of the law may be applied to franchise agreements concluded between domestic and foreign persons and to their actions if they affect competition on the Russian territory. Currently, standard contractual restrictions and covenants on the parties (see question 39) that are provided in franchise

Update and trends

In April 2014, a group of officials submitted a draft law 'On franchising' No. 50385-6 to the Russian parliament (<http://asozd2.duma.gov.ru/main.nsf/%28Spravka%29?OpenAgent&RN=503845-6&02>). When explaining the reasons for the cited bill, the officials mentioned that the franchising field is constantly developing in Russia and the current laws need to be adapted to the reality of modern business. This draft law offers new definitions of franchising and international franchising, describes the rights and obligations of franchisors and franchisees, and identifies the information subject to disclosure. Although the bill contains certain gaps, which have yet to be discussed and filled in, there are valid reasons to believe that it will eventually turn into law. And, once this happens, the local franchising rules will be fully in line with international franchising practice.

The modern Russian Civil Code was drafted in 1992 and has subsequently been amended a number of times. The latest amendments came into force on 1 January 2015. As time goes on, discussions devoted to further improvements, including with regard to the franchising sector, will continue.

agreements and made in line with the Russian Civil Code, are acceptable from the antitrust perspective, and there is no case to date when the franchise agreement has been challenged as running afoul of the relevant competition laws.

The law prohibits unfair competition, including dissemination of false information that may damage the operating business entity. It prohibits marketing of goods if intellectual property subject matters are unlawfully or illegally used. It also prohibits unfair competition in cases when other persons acquire and use intellectual property rights in bad faith.

Competition-related cases, even those related to unfair competition, are examined and enforced by the Federal Antimonopoly Service (FAS) or its territorial divisions. The FAS (or responsible divisions) issues ordinances to persons violating the competition laws ordering them to stop infringements and to pay severe administrative fines in favour of the state.

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

The Russian court system has two branches of courts: commercial and common. Commercial courts examine cases involving legal entities and individual entrepreneurs engaged in economic activities on the market. Common courts consider cases where at least one of the parties is a private (physical) person. It follows from the above that the bulk of franchising as well as IP-related cases will be considered by commercial courts. To initiate an action and start litigation in the course of civil procedure a statement of claims has to be filed with the competent court and supported by the evidence of breach of the contract or infringement.

The structure of both branches of courts is similar. The commercial courts include four instances: the courts of first instance, the appellate courts, the cassation courts and the Supreme Court. There is also a

specialised IP Court (located in Moscow) operating within the framework of commercial courts as the court of first instance and cassation court (depending on the subject matter of a dispute). Franchising and IP-related disputes as well as certain unfair competition conflicts may fall under the jurisdiction of the IP Court at the cassation stage.

There are various types of dispute resolution procedures available and relevant to franchising. Instead of resorting to litigation in local courts (as described above), the parties can contractually agree on the arbitration of the franchising dispute. Arbitration may be conducted in any jurisdiction and by any forum chosen by the parties. If there is no arbitration clause in the contract, the contract may not be submitted to arbitration. Mediation is also available as an alternative method of resolution of a franchising dispute.

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

Arbitrators' vast experience in dealing with cross-border transactions, including in the franchising sphere, can be one of the principal advantages, especially when the underlying contract is governed by a foreign law. The parties are free to choose the panel of experienced professional arbitrators who will be in charge of settling the franchising dispute. Another advantage would be the timing factor, as it may take longer for a franchising dispute to be considered by all local court instances and enforced by the Supreme Court due to the right of appeal belonging to the losing party. Confidentiality may be the third advantage of arbitration.

The disadvantage of arbitration may be the additional requirement of recognising and enforcing the arbitral award. Russian law provides certain formal requirements for recognition and enforcement of arbitral awards. If these requirements are not observed, the Russian courts shall refuse to recognise and enforce arbitral awards. At the same time, the Russian courts may recognise and enforce arbitral awards on the basis of the international principle of reciprocity and comity. The decisions of local courts do not need additional recognition and enforcement to be entered into force.

The monetary aspect must also be taken into account and weighed up before choosing the right forum for settlement of conflicts arising out of or in connection with franchise agreements.

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

According to the basic civil law principle, foreign legal entities as well as individual entrepreneurs are equal to domestic ones. The laws related to franchising do not provide any exceptions on this point. Therefore, there is no difference whatsoever in the treatment of domestic and foreign parties, specifically franchisors, by the Russian courts and government agencies. The Russian IP Court, for example, which started examination of disputes in July of 2013, has around 30 per cent of the cases with participation of foreign companies, and it is not possible to discern any bias with regard to them. According to the official statistics, the claims are satisfied in 70 per cent of cases.

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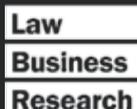
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