

On complex entrepreneurial license (franchising)

Unofficial translation

The Law of the Republic of Kazakhstan dated 24 June 2002 No 330.

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This Law regulates the matters, related to the exercising of a complex entrepreneurial license (franchising), defines the content of a complex entrepreneurial license agreement and aimed to the development and the state support of franchising activity in the Republic of Kazakhstan.

Chapter 1. General provisions

Article 1. Basic definitions, used in this Law

The following basic definitions are used in this Law:

1) a complex of exclusive rights (license complex) –the rights to a number of objects of intellectual property (trade mark, firm name, service mark, patent, undisclosed information, including trade secret (know-how);

2) a complex entrepreneurial license (franchising) - an entrepreneurial activity, where a holder of a complex of exclusive rights assigns it for use on a remuneration basis to another person;

3) a complex licensor (franchisor) –a party to a complex entrepreneurial license contract, a holder of a complex of exclusive rights (license complex) assigning a complex of exclusive rights for use on remuneration basis to a complex licensee;

4) a complex licensee (franchisee) - a party to a contract for complex entrepreneurial license, an usufructuary of a complex of exclusive rights of a licensor, used this complex for entrepreneurial activity;

5) a license broker – a natural person or a legal entity, operating as an agent upon concluding and execution of a complex entrepreneurial license contract;

6) a potential complex licensee –a person, negotiating with a holder of a complex of exclusive rights in order to conclude a complex entrepreneurial license contract;

7) franchising activity –an entrepreneurial activity, related to the execution of a complex entrepreneurial license contract;

8) franchising relations –social relations, regulated by legal standards, between participants of the obligation, interconnected by rights and obligations under a complex entrepreneurial license contract.

Article 2. Legislation of the Republic of Kazakhstan on complex entrepreneurial license (franchising)

1. The legislation of the Republic of Kazakhstan on complex entrepreneurial license (franchising) is based on the Constitution of the Republic of Kazakhstan and consists of this Law and other laws and regulations of the Republic of Kazakhstan.

2. If, an international treaty ratified by the Republic of Kazakhstan establishes rules, other than those provided in this Law, the rules of an international treaty shall apply.

Article 3. Subjects of franchising relations

1. The subjects of franchising relations are individuals and legal entities.

2. The legislation of the Republic of Kazakhstan in the sphere of entrepreneurship shall be applied for the subjects of franchising relations – subjects of small entrepreneurship in the part not regulated by this Law.

Footnote. Article 3 as amended by the Law of the Republic of Kazakhstan dated 29.10.2015 No. 376-V (shall be enforced from 01.01.2016).

Chapter 2. State support of franchising relations

Article 4. Principles of the state support of franchising relations

The state support of franchising relations in the Republic of Kazakhstan shall be effected on the following principles:

- 1) the unity of principles and forms of state support of franchising relations;
- 2) coordinated interactions of state agencies in effectuation of the state support of franchising relations;
- 3) inadmissibility of unwarranted interference by state agencies and their officials in entrepreneurial activity of the subjects of franchising relations;
- 4) protection of competitiveness and restriction of monopolistic activity;
- 5) publicity in the development and application of the state support of franchising relations.

Footnote. Article 3 as amended by the Law of the Republic of Kazakhstan dated 29.10.2015 No. 376-V (shall be enforced from 01.01.2016).

Article 5. Activities on the state support of franchising relations

1. The basic activities on the state support of franchising relations in the Republic of Kazakhstan shall be:

1) is excluded by the Law of the Republic of Kazakhstan dated 03.07.2013 No. 124-V (shall be enforced upon expiry of ten calendar days after its first official publication);

2) development and improvement of laws and regulations on development and assistance of franchising relations;

3) granting benefits and warranties, stipulated by the legislation of the Republic of Kazakhstan to the subjects of franchising relations;

4) rendering consulting services on matters related to the performance of franchising activity;

5) registration and protection of a complex of exclusive rights in accordance with the legislation of the Republic of Kazakhstan;

6) control over the compliance to the legislation of the Republic of Kazakhstan on complex entrepreneurial license (franchising);

7) other activities, assisting to the development and distribution of a complex entrepreneurial license (franchising) in the Republic of Kazakhstan.

2. State agencies for the support of franchising relations and their functions shall be specified by the Government of the Republic of Kazakhstan.

Footnote. Article 5 as amended by the Law of the Republic of Kazakhstan, dated 03.07.2013 No 124-V (shall be enforced upon expiry of ten calendar days after its first official publication).

Article 6. Indemnities

Damages, caused to a subject of franchising relations in result of publication of acts, not complying with the legislation of the Republic of Kazakhstan, by state agencies, as well as in result of acts (failure to act) of officials of these agencies, shall be subject to indemnification in accordance with the civil legislation of the Republic of Kazakhstan.

Article 7. Guaranties in carrying out the state control

The control over franchising activity shall be carried out in the manner, established by the legislation of the Republic of Kazakhstan.

Article 8. Publicity in the state regulation of franchising relations

1. The subjects of franchising relations, in the manner, established by the legislation of the Republic of Kazakhstan, shall have the right to receive laws and regulations, judicial decisions and other acts, concerning the implementation of complex entrepreneurial license (franchising).

2. The state agencies and their officials, adopting laws and regulations on the state regulation of franchising relations, shall be obliged to publish them in periodic printed publication.

Article 9. Registration and protection of the complex of exclusive rights

1. The state performs the registration and protection of a complex of exclusive rights of a complex licensee, registered both in the territory of the Republic of Kazakhstan, and in the territory of other countries, unless the recognition of such registration by a foreign state is stipulated by an international treaty, the party to which is the Republic of Kazakhstan.

2. In case if an object of intellectual property is not registered in the Republic of Kazakhstan, the registration of the intellectual property right and its transfer under a complex entrepreneurial license contract shall be made by the parties' discretion.

3. The state agency shall control the compliance with a complex of exclusive rights, transferred by the licensor under a complex entrepreneurial license contract, as established by the legislative acts of the Republic of Kazakhstan.

Chapter 3. The contract and types of a complex entrepreneurial license (franchising)

Article 10. A complex entrepreneurial license contract

1. Under a complex entrepreneurial license contract one party shall be obliged to assign to another party (a complex licensee) a complex of exclusive rights (license complex) on a remuneration basis, including in particular, the right to use the firm name of a licensor and protected commercial information, as well as other objects of an exclusive rights (trade mark, service mark, patent etc.), stipulated by the contract, to be used in an entrepreneurial activity of the licensee.

2. The complex entrepreneurial license contract shall provide the use of a license complex, business reputation and commercial experience of the licensor in a certain volume (in particular, with establishing minimum or maximum volume of use), with specification or without specification of the territory of use applicable to a certain sphere of activity.

3. The complex entrepreneurial license contract may also provide:

1) transfer of information, constituting the official or commercial secret, regular assistance to the complex license throughout the period of validity of the complex entrepreneurial license contract;

2) measures of control over the compliance of requirements, related to the use of the complex of exclusive rights to a complex licensee on behalf of a complex licensor.

4. Restrictions on application of a complex entrepreneurial license contract in separate spheres of entrepreneurial activity shall be established by the legislative acts of the Republic of Kazakhstan.

Article 11. Period and form of a complex entrepreneurial license contract

A complex entrepreneurial license contract must be concluded in writing whether for a certain period or without limit in time.

Article 12. Participants of a complex entrepreneurial license contract

1. The participants of a complex entrepreneurial license contract shall be the parties to the contract and the third parties.

2. The parties to a complex entrepreneurial license contract shall be a complex licensor and a complex licensee.

3. The third parties under the agreement of the parties can be a license broker, an individual entrepreneur, banking, insurance and other organizations.

Article 13. License broker

1. A license broker can operate both in his own name and for own risk, and on behalf of a licensor, a licensee or other subjects of franchising relations.

2. A license broker shall be paid a fee in form of fixed single or periodical payments or in other form, stipulated by a complex entrepreneurial license contract.

3. A license broker to the extent not regulated by this Law shall be subject to the provisions of the Civil Code of the Republic of Kazakhstan.

Article 14. Rights of a complex licensor

A complex licensor shall have the right:

1) to control the quality of the goods (works, services) produced by a licensee under a complex entrepreneurial license contract;

2) preemptive purchase upon the alienation by the licensee of its enterprise (his share in the enterprise);

3) to act as a guarantor or a surety in respect of the licensee before the third parties;

4) to enter into other agreements with a complex licensee, in particular, to act in respect to him as a lessor;

5) to terminate unilaterally a complex entrepreneurial license contract and to collect from a complex licensee inflicted damages upon his failure to fulfill obligations, stipulated by subparagraph 5) of paragraph 2 of article 17 of this Law;

6) to exercise other right in accordance with the legislation of the Republic of Kazakhstan.

Article 15. Obligations of a complex licensor

A complex licensor shall be obliged:

1) to transfer to a licensee technical and commercial documentation and provide with other information, required to a licensee for exercising rights, assigned to him under a complex entrepreneurial license contract;

2) to conduct training and consultation of a licensee, on the issues, related to the exercising of these rights;

3) not to disclose confidential commercial information, received from a licensee.

Article 16. Rights of a complex licensee

A complex licensee shall have the right:

- 1) to enter into complex entrepreneurial license contracts with other persons, unless as otherwise provided by a complex entrepreneurial license contract;
- 2) to enter into other agreements with a complex licensor, stipulated by the civil legislation of the Republic of Kazakhstan;
- 3) to exercise other rights in accordance with the legislation of the Republic of Kazakhstan.

Article 17. Obligations of a complex licensee

1. Unless as otherwise provided by a complex entrepreneurial license contract, a complex licensee shall be obliged:

- 1) upon the implementation of a complex entrepreneurial license contract to use a license complex of a complex licensor in the manner, established in the contract;
- 2) to admit a licensor to own production territory, to provide him with all necessary documentation and to assist in receiving information, required for control over the appropriate use of the assigned exclusive rights;
- 3) to follow all instructions and orders of a licensor in respect of the character, methods and conditions of use of the exclusive rights transferred for use;
- 4) not to disclose trade secrets of a licensor and other confidential information obtained from him;
- 5) to inform buyers (customers) in the most obvious way for them that he uses a firm name, trade mark, service mark or other mean of individualization on the basis of a complex entrepreneurial license contract.

2. Upon the agreement between the parties to a complex entrepreneurial license contracts the complex licensee shall be obliged:

1) **excluded by the Law of the Republic of Kazakhstan dated 29.06.2020 No. 352-VI (shall come into force upon expiration of ten calendar days after the date of its first official publication);**

2) upon the expiry of the period of validity of a complex entrepreneurial license contract without a consent from a licensor in writing not to disclose an official and commercial secret, undisclosed information, including the trade secrets (know-how);

- 3) on timely basis to effect payments for use of the assigned complex of exclusive rights;
- 4) upon receipt from a complex licensor of the results of verification to take the necessary steps to remedy the deficiencies;

5) not to perform actions, aimed to the transfer of the complex of exclusive rights, assigned under a complex entrepreneurial license contract;

6) to ensure the compliance of the quality of the goods, performed works, rendered services, produced by him on the basis of a complex entrepreneurial license contract with the

quality of analogous goods, works and services, produced, performed or rendered immediately by a complex licensor.

Footnote. Article 17 as amended by the Law of the Republic of Kazakhstan dated 29.06.2020 No. 352-VI (shall come into force upon expiration of ten calendar days after the date of its first official publication).

Article 18. Protection of information, transferred prior to the conclusion of a complex entrepreneurial license contract

1. Prior to the conclusion of a complex entrepreneurial license contract a complex licensor shall transfer to a potential complex licensee the information about the complex of exclusive rights, transferred for use in case of the conclusion of a contract. Therewith a complex licensor shall be obliged to notify a potential complex licensor about confidential commercial character of the transferred information.

2. A potential complex licensee shall not have the right to disclose the information, transferred to him in accordance with paragraph 1 of this article, without consent of a complex licensor in writing. In case of disclosure of the specified information a complex licensee shall be obliged to indemnify damages, inflicted to the complex licensor, in accordance with the civil legislation of the Republic of Kazakhstan.

Article 19. Protection of information, transferred under a complex entrepreneurial license contract

1. Information, transferred under a complex entrepreneurial license contract, bearing confidential commercial character shall be protected by the legislation of the Republic of Kazakhstan, upon the compliance with the conditions, stipulated by the Civil Code of the Republic of Kazakhstan.

2. A complex licensor and a complex licensee shall be obliged to take joint measures to secure the confidentiality of information, specified in paragraph 1 of this article.

3. In case of disclosure of the specified information, a complex licensee shall be obliged to indemnify damages, inflicted to a complex licensor, in accordance with the civil legislation of the Republic of Kazakhstan.

4. The state agencies and their officials shall have the right to claim the access to confidential commercial information transferred under a complex entrepreneurial license contract, except for the information, required for execution of supervising, control, registration and other functions in accordance with the legislative acts of the Republic of Kazakhstan.

Article 20. Types of a complex entrepreneurial license (franchising)

The basic types of a complex entrepreneurial license (franchising) shall be:

1) a complex entrepreneurial license (franchising) – a work place, according to which a licensor shall create a work place and transfer it with a license complex to a licensee – an individual entrepreneur;

2) a complex entrepreneurial license (franchising) – an enterprise, where a licensor shall establish an enterprise and transfer it with a license complex to a licensee;

3) a conversion complex entrepreneurial license (franchising), where the parties shall conclude a contract on the basis of transformation of structural divisions into independent enterprises;

4) a multiply complex entrepreneurial license (franchising), on the basis of which a licensor establishes several enterprises;

5) a production complex entrepreneurial license (franchising), where a complex licensor transfers to a complex licensee the right to manufacture or to production and sale of goods (works, services) under his trade mark or other kind of individualization using the supplied raw materials, materials, technologies, and equipment;

6) a commodity complex entrepreneurial license (franchising), where a complex licensor transfers to a complex licensee the right to sale (realization) of goods (works, services) under his trade mark, or other kind of individualization using the technology of marketing, provided by a complex licensor or established under the agreement with him;

7) other types of complex entrepreneurial license (franchising), performed in accordance with the legislation of the Republic of Kazakhstan.

Article 21. Accounting and financial statement

Basic tenancy of accounting and financial statement by the subjects of franchising relations shall be performed in accordance with the legislation of the Republic of Kazakhstan concerning accounting and financial statement.

Chapter 4. Final provisions

Article 22. Control over the compliance with the legislation on complex entrepreneurial license (franchising)

The state agencies within the scope of their competence shall carry out the control over the compliance with the legislation on complex entrepreneurial license (franchising).

Footnote. Article 22 as amended by the Law of the Republic of Kazakhstan dated 03.07.2013 No. 124-V (shall be enforced upon expiry of ten calendar days after its first official publication).

Article 23. Responsibility for violation of the legislation on complex entrepreneurial license (franchising)

Persons, violated the legislation on complex entrepreneurial license (franchising), shall be liable in accordance with the legislative acts of the Republic of Kazakhstan.

Article 24. Settlement of disputes between the subjects of franchising relations

Disputes between the subjects of franchising relations shall be settled in accordance with the legislation of the Republic of Kazakhstan.

The President
of the Republic of Kazakhstan

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