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ЮРИСТ АХБОРОТНОМАСИ ВЕСТНИК ЮРИСТА LAWYER HERALD

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THE PROCEDURE FOR REGULATING A FRANCHISE AGREEMENT (COMPLEX BUSINESS LICENSE) IN THE USA AND OTHER COUNTRIES

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ANNOTATION

This article explores the legal regulation of the complex business license agreement in the United States and other countries. The paper discusses the regulations and legislation governing this type of contract. In particular, the role and importance of a franchise in the field of entrepreneurship is considered. The study also contains a comparative analysis of the complex business license agreement and its positive aspects, for a deeper understanding of the legal regulation of this topic.

Keywords: regulatory framework, FTC, franchise, business, directive, licenses, legal aspects, termination.

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АҚШ ВА БОШҚА МАМЛАКАТЛАРДА ФРАНЧАЙЗИНГ ШАРТНОМАСИНИ (КОМПЛЕКС БИЗНЕС ЛИЦЕНЗИЯСИ) ТАРТИБГА СОЛИШ ТАРТИБИ

АННОТАЦИЯ

Ушбу мақола АҚШ ва бошқа мамлакатларда комплекс тадбиркорлик лицензияси шартномасининг норматив-ҳуқуқий регуляциясини ўрганади. Мақолада шартнома регуляцияси тўғрисидаги норматив ҳужжатлар ва қонунчиликни кўриб чиқамиз. Хусусан, тадбиркорлик соҳасидаги франчайзингнинг аҳамияти ва роли ўрганилади. Мақола комплекс тадбиркорлик лицензияси шартномасининг солиштирувчи таҳлилини ва унинг ижобий жиҳатларини, бу мавзунинг ҳуқуқий регуляциясини янада чуқурроқ тушунишни ўз ичига олади.

Калит сўзлар: меъёрий-ҳуқуқий база, FTC, франчайзинг, бизнес, директив, лицензиялар, ҳуқуқий жиҳатлар, тугатиш.

ПОРЯДОК РЕГУЛИРОВАНИЯ ДОГОВОРА ФРАНШИЗЫ (КОМПЛЕКСНОЙ ПРЕДПРИНИМАТЕЛЬСКОЙ ЛИЦЕНЗИИ) В США И ДРУГИХ СТРАНАХ

АННОТАЦИЯ

В данной статье исследуется нормативно-правовое регулирование договора комплексной предпринимательской лицензии в США и других странах. В работе рассматриваются нормативные акты и законодательство, регулирующие этот тип договора. В частности, рассматривается роль и значение франшизы в сфере предпринимательства. Исследование также содержит сравнительный анализ договора комплексной предпринимательской лицензии и его положительные аспекты, для более глубокого понимания правового регулирования этой темы.

Ключевые слова: нормативно-правовая база, FTC, франшиза, бизнес, директива, лицензии, правовые аспекты, прекращение действия.

Franchising in the US is subject to both federal and state laws.

At the federal level, the main regulator is the Federal Trade Commission (Federal Trade Commission, FTC), which regulates through the Franchise Rule (Franchise rule) [1]. Under this Rule, franchisors are required to provide prospective franchisees with a detailed disclosure document known as Franchise Disclosures. Disclosure Document, FDD) 14 days prior to the signing of the franchise agreement or payment to the franchisor [2].

The FDD includes information about the franchisor's business, including company history, financial information, management information, information about current and former franchises, and general information about the franchise agreement. At the state level, there may be additional laws and regulations governing franchising. Some states, such as California, have additional disclosure and franchise registration requirements.

As for fees and charges, these may vary depending on the specific franchise agreement and may include an initial franchise fee (often thousands or even hundreds of thousands of dollars) as well as monthly royalties, usually as a percentage of total turnover. It is important that this information be clearly described in the FDD.

The duration of a franchise agreement also varies and can range from a few years to several decades. Franchise agreements usually contain terms on the possibility of renewal after expiration.

Individual states have their own franchise laws, which are sometimes even stricter than the federal rule. For example, states such as California and New York have fairly strict laws that require additional disclosure and registration.

To obtain a franchise in the USA, follow these steps:

Research: Research the various franchises available to determine which type of business suits you best. Consider your skills, interests and financial capabilities.

Examining the FDD: Carefully study the FDD of each potential franchisor. This can help you understand how the business works and allow you to assess its stability and potential profitability.

Professional Consultation: Consult a professional franchise consultant, attorney or accountant who can help you analyze the FDD and other aspects of the deal.

Signing a Franchise Agreement: If you choose to proceed, you will sign a franchise agreement with the franchisor. This document describes your mutual obligations.

Starting a Business: Finally, you will start your business following the system and standards

set by the franchisor.

There is no specific legislation in the UK that regulates a franchise. Franchising is governed by general corporate, commercial and contract laws, as well as specific laws such as the Unfair Trading Practices Act of 2008 (Unfair Trading Regulations 2008) and the Consumer Protection Act 2015 (Consumer Protection Act 2015).

The main regulator of franchising standards is the British Franchise Association (British Franchise Association, BFA) [3]. While participation in the BFA is optional, many major franchises are members and follow their code of ethics.

Distinctive legal features of franchising in the UK include:

No Mandatory Disclosure: Unlike many other jurisdictions, there is no mandatory disclosure requirement for a franchisor in the UK. However, the BFA code of ethics requires its members to provide complete and accurate information to potential franchisees.

Fraud protection: Fraudulent and consumer protection laws may apply to certain aspects of a franchise agreement, including marketing and advertising.

General contract law: Because there is no specific franchise law, the main legal basis for franchise agreements is based on general contract law.

In Japan, franchising is regulated by several sources of law.

The Anti-Monopoly Law (Law to Prohibit Private Monopolies and Ensure Fair Trade) and the Law on Measures against Unfair Competition both play an important role in regulating franchise activities in Japan.

Franchise Guidelines in 2002 [4], which set out the requirements for fair trade practices in relation to franchising relationships.

The main distinguishing features of the legal regulation of the franchise in Japan include:

Disclosure: JFTC guidelines require franchisors to provide prospective franchisees with information about the terms of the agreement, the company's financial condition, and other material information prior to entering into an agreement.

Fair Trading Practices: The guidelines set out standards of conduct for franchisors, including obligations to ensure fairness and transparency in all aspects of the franchisor and franchise relationship.

Antitrust Protection: The Antitrust Law governs anticompetitive behavior and monopoly practices that may arise in the context of franchising relationships.

It is also worth noting that although Japan has certain rules and regulations governing franchises, these rules may be less stringent than in some other jurisdictions such as the United States. As always, when considering entering into a franchise agreement in Japan, it is advisable to consult a legal advisor.

Requirements for registration of franchise agreements in certain jurisdictions are usually determined by the domestic laws and policies of each country. In general, registering franchise agreements can be helpful in promoting transparency and protecting the rights of the parties, but it can also increase the administrative burden on businesses.

In the UK, US and Japan, franchise agreements are generally governed by general contract law and other applicable laws such as antitrust laws. This can provide sufficient protection and regulation without the need for special registration of franchise agreements.

Here are some factors that may explain the lack of registration requirements:

1. Efficiency of business processes: Special registration can increase the administrative burden on businesses, which can be an obstacle to franchise development. Simplifying the process allows businesses to get up and running faster.

2. Regulation through general contract law and other laws: Laws governing commercial contracts and antitrust laws may provide a sufficient framework for regulating franchise relationships.

3. Lack of Historical Precedents Requiring Registration: In some countries there may not be a historical basis for registration of franchise agreements, especially if there have been no significant problems or disputes related to the franchise.

4. Role of Franchise Associations: In some jurisdictions, such as the UK and the US, franchise

associations can play an important role in maintaining industry standards and guidelines, which can reduce the need for formal registration.

It is important to note that while these countries may not require specific registration of franchise agreements, companies are still required to comply with all applicable laws and regulations, including disclosure and fair trade practices requirements.

Comprehensive business license in the European Union

In the European Union, the licensing process varies by industry and country, but there are some general principles and regulations that govern the process.

It is important to note that the licensing process in the EU is based on the principle of free enterprise, which is guaranteed by the Treaty on the Functioning of the European Union (TFEU) [5]. In accordance with this principle, an entrepreneur has the right to carry out his activities in any EU Member State without unreasonable restrictions.

EU directives and regulations: At the EU level, there are various directives and regulations that establish general requirements and procedures for licensing in certain industries. For example, in the field of financial services, there is MiFID II (Markets in Financial Instruments Directive) [6], which establishes licensing requirements for financial companies. In the field of telecommunications, there is a framework directive 2002/21/EC, which establishes the requirements for licensing telecommunications companies.

National legislation: Despite the existence of EU directives and regulations, the licensing process is largely regulated at the national level. Each EU Member State has its own laws and regulations that set out the requirements and procedures for granting licenses. This may include requirements for applicants, application procedures, verification that the applicant complies with all requirements and conditions, and procedures for monitoring compliance with the terms of the license.

Licensing mechanism: Typically, the licensing process includes the following steps:

Applying: An entrepreneur or company applies for a license from the relevant national regulator or EU body.

Evaluation of the application: The Regulator evaluates the application for compliance with the requirements of the current legislation and the terms of the license.

Issuance of a license: If the application meets all the requirements, the regulator issues a license. In some cases, the regulator may propose to change the terms of the license or suggest conditions that the applicant must comply with.

Control and supervision: After the license is issued, the regulator monitors compliance with the terms of the license. This may include regular reviews or audits.

It is important to note that licensing conditions and procedures can vary significantly by industry and country, so each case needs to be examined on a case-by-case basis.

EU directives related to licensing in industries

Telecommunications Directive (2002/21/EC) [7]: Examining this directive and its impact on the licensing process in the telecommunications industry. Consider how the requirements of this directive affect the issuance and use of complex business licenses in this area.

Financial Services Directive (MiFID II - 2014/65/EU) [8]: An analysis of this directive and its licensing and regulatory requirements for financial services. Examine the impact of these requirements on the granting and use of integrated business licenses in the financial services sector.

Other sectoral directives: Conducting studies on other sectors where complex business licenses apply and analyzing relevant EU directives.

General regulations and principles of licensing in the EU

EU Licensing Regulation: A study of the main EU regulation that establishes the general principles and requirements for the licensing process within the EU. Analysis of how these principles and requirements are applied in the context of integrated business licenses.

The EU right to free enterprise: A study of the principles of free enterprise in the EU and their impact on licensing. This may include an analysis of issues such as freedom to establish and freedom to provide services in the context of licensing [9].

EU Core Principles: Study how core EU principles such as the principles of proportionality, non-discrimination and fair competition are applied in the context of licensing and how they can affect the granting and use of CBCs.

Security requirements may vary by industry and may include the following:

Security systems: These may include physical security requirements for the licensee's offices and facilities, as well as information security requirements. In the case of information security, companies may be required to have data protection and network security systems in place to protect against cyberattacks.

Data processing procedures: Licensees may be required to comply with certain rules and standards when processing personal data of customers and their own employees, in accordance with the EU General Data Protection Regulation (GDPR).

Reporting and Control Procedures: Licensees may be required to submit regular reports on their security activities, as well as undergo regulatory audits.

Staff Qualification Requirements

Personnel qualification requirements may include the following:

Professional Training: Licensees may be required to prove that their employees have the appropriate education and training to perform their duties.

Work experience: In some cases, the licensee's employees must have a certain amount of work experience in their field.

Continuing Education: In some industries, there may be a requirement for continuous employee training to keep them up to date with the latest developments in their field.

Other requirements for licensees

Other requirements for licensees may include the following:

Corporate Governance Requirements: Some regulators may impose requirements on the licensee's governance structure and decision-making procedures.

Social Responsibility Requirements: In some cases, there may be a requirement that licensees comply with certain social responsibility standards, for example, in relation to the environment or corporate ethics.

Insurance requirements: Some industries may require certain types of insurance, such as professional liability insurance.

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