
THE FRANCHISE LAW REVIEW

SECOND EDITION

EDITOR
MARK ABELL

LAW BUSINESS RESEARCH

THE FRANCHISE LAW REVIEW

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EDITOR'S PREFACE

Since the publication of the first edition of *The Franchise Law Review*, there have been some significant economic and geopolitical developments that have had a significant impact on world trade. The apparently inexorable march towards the globalisation of commerce, however, has again continued unabated despite, or perhaps even because of, these changes.

Despite the slow emergence of a few economic bright spots, the economy of what was once called the 'developed' world continues on the most part to struggle, while even Brazil – one of the much-vaunted BRICS nations – has fallen into recession. As a consequence, businesses are often presented with little choice but to look to more vibrant markets in Asia, the Middle East and Africa for their future growth.

At the same time South–South trade is on the increase, perhaps at the expense of its North–South counterpart. All of this, coupled with the unstable wider geopolitical landscape, presents business with only one near certainty: there will be continued deleveraging of businesses in the coming years and, thus, growing barriers to international growth for many of them. All but the most substantial and well-structured of such businesses may find themselves facing not only significant difficulties due to their reduced access to funding to invest in their foreign ventures, but also challenges arising from their lack of managerial experience and bandwidth.

Franchising, in its various forms, continues to present businesses with one way of achieving profitable and successful international growth without the need for either substantial capital investment or a broad managerial infrastructure. In sectors as diverse as food and beverages, retail, hospitality, education, health care and financial services, it continues to be a popular catalyst for international commerce and makes a strong and effective contribution to world trade. We are even seeing governments turning to it as an effective strategy for the future of the welfare state as social franchising gains still more traction as a way of achieving key social objectives.

Given the positive role that franchising can make in the world economy it is important that legal practitioners have an appropriate understanding of how it is

regulated around the globe. This book provides an introduction to the basic elements of international franchising and an overview of the way that it is regulated in 32 jurisdictions.

As will be apparent from the chapters of this book, there continues to be no homogenous approach to the regulation of franchising around the world. Some countries specifically regulate particular aspects of the franchising relationship. Of these, a number try to ensure an appropriate level of pre-contractual hygiene, while others focus instead on imposing mandatory terms upon the franchise relationship. Some do both. In certain countries there is a requirement to register certain documents in a public register. Others restrict the manner in which third parties can be involved in helping franchisors to meet potential franchisees. No two countries regulate franchising in the same way. Even those countries that have a well-developed regulatory environment seem unable to resist the temptation to continually develop and change their approaches to regulation – as is well illustrated by the new changes in the Australian regulations.

Many countries do not have franchise-specific regulation, but nevertheless strictly regulate certain aspects of the franchise relationship through the complex interplay of more general legal concepts such as antitrust law, intellectual property rights and the doctrine of good faith. This heterogeneous approach to the regulation of franchising presents yet another barrier to its use as a catalyst for international growth.

This book certainly does not present readers with a full answer to all the questions they may have about franchising in all the countries covered – that would require far more pages than it is possible to include in this one volume. It does, however, try to provide the reader with a high-level understanding of the challenges involved in international franchising in the first section and then, in the second section, explain how these basic themes are reflected in the regulatory environment within each of the countries covered.

I should extend my thanks to all of those who have helped with the preparation of this book, in particular Graeme Payne, Victoria Hobbs, Caroline Flambard and Melissa Murray, who have invested a great deal of time and effort in making it a work of which all those involved can be proud.

It is hoped that this publication will prove to be a useful and often-consulted guide to all those involved in international franchising, but needless to say it is not a substitute for taking expert advice from practitioners qualified in the relevant jurisdiction.

Mark Abell

Bird & Bird LLP

London

February 2015

Chapter 44

UKRAINE

Volodymyr Yakubovskyy and Graeme Payne¹

I INTRODUCTION

Franchising is in the process of development in Ukraine. It is a relatively new notion for the Ukrainian business community as it appeared only after the collapse of the Soviet Union in the early 1990s and it had no legal framework for the following decade until the Civil Code and the Commercial Code were adopted in 2003. Moreover, even though the Civil Code and the Commercial Code established a necessary platform, for another decade franchising regulation still lacked several important elements to function properly. Ukrainian law still has a rather limited framework and the case law does not yet fully compensate for the missing components. Self-regulated non-governmental associations try to fill the void, particularly given that there has been no special governmental agency to regulate the offer and sale of franchises in Ukraine.

Despite the gaps and inconsistencies of the Ukrainian legal system, international and local franchise businesses have managed to find enforceable franchising structures or employed alternative arrangements to develop their business in Ukraine. For quite some time now, many international brands have successfully operated their franchise businesses, including, among others, McDonald's, Papa John's, KFC and InterContinental, along with a variety of local franchises in food, retail, services and other industries. The market continues to grow. The Ukrainian Franchise Association publicised information that more than 2,300 franchising companies are now members of the Association.

The recent necessary changes in applicable laws and the new Ukrainian government's general trend of reform towards a competitive and market-based economy give hope for further, even extensive, development of the franchising industry in Ukraine.

¹ Volodymyr Yakubovskyy is a partner at Nobles and Graeme Payne is a partner at Bird & Bird.

II MARKET ENTRY

i Forms of business entities

A foreign business would usually incorporate in Ukraine to operate a substantial business in the country. A foreign franchisor, however, may choose not to do so if it only licenses its franchise to franchisees in Ukraine.

The typical franchisor would incorporate as a limited liability company (LLC), like most businesses in Ukraine. There are other forms of business entity available, such as a private enterprise or a joint-stock company. However, those other corporate forms are either under-regulated or over-regulated, while the LLC strikes a proper balance. A single-person franchisor may also register as an individual entrepreneur.

ii Requirements

The Civil Code, the Commercial Code, the Law on Companies, the Law on Joint-Stock Companies and the Law on State Registration of Legal Entities and Individual Entrepreneurs govern the formation of business entities. In connection with each other, these laws set a number of requirements for forming and maintaining a business entity.

The first step in establishing a legally formed entity in Ukraine is to file a registration form, founding resolution, statutory documents, statement of beneficial ownership and confirmation of fee payment, and to apply for registration of the company with the State Registration Service of Ukraine.

Ukrainian law envisages some capital formation and maintenance rules for companies. In particular, a joint-stock company must have a minimum capital of not less than 1,522,500 hryvnas at its formation. There are also restrictive rules regarding consideration paid for the issue of shares of joint-stock companies. There is no minimum capital requirement for registration of an LLC and capital formation rules are generally less restrictive for LLCs.

A company must have a distinctive name that also contains an indication of its corporate form. Each business entity must have an office located in Ukraine. A company must have at least one responsible director, who must be a natural person.

Business entities must all be registered with tax authorities and social funds. They are required to keep accounting records and file returns on a monthly, quarterly and annual basis.

iii Restrictions

Foreign business and foreign investment are generally subject to the national regime in Ukraine, which basically implies the same rights and possibilities as apply to local residents. Moreover, foreign investors have certain statutory guarantees under Ukrainian law and bilateral or multilateral treaties that protect their investment, such as, for instance, a guarantee of profit repatriation and compensation of losses, a guarantee against nationalisation and a guarantee against changes in the law. In practice, however, because of strict currency control regulations, some difficulties do arise with the repatriation of investment and profits.

Furthermore, certain limitations and restrictions do naturally apply to foreign businesses and foreign investment and these are mostly related to national security

and strategic interests in certain important industries (e.g., financial services, railway, mining, agriculture, publishing and media). Since franchising is usually not related to the above-mentioned strategic industries, it typically does not raise any purely foreign investment restriction issues.

iv Real estate

The Ukrainian real estate market is rather structured and developed. Commercial real estate is rapidly expanding, and this especially true for metropolitan areas. However, the development level still remains much lower than the usual level or trading area per capita found in Europe or the United States.

Real estate is normally leased or, less often, bought for franchising purposes. From a procedural point of view, real property sale and purchase transactions must be certified with a notary and registered with the relevant state register. Long-term lease agreements of three years and longer are also subject to notarisation. This implies additional costs, but it also provides for better certainty and protection. To avoid notarisation costs, the lease agreements are often concluded for two years and 11 months with a pre-emptive right to renew the lease.

Lease agreements must contain certain mandatory provisions (e.g., lease object description, its value with indexation, rent with indexation, lease term and renovations), but, in general, the parties are largely free to determine specific terms and conditions.

III INTELLECTUAL PROPERTY

i Trademark protection

Ukraine has a number of laws that regulate protection of intellectual property. In addition, the state is a member of international organisations and international agreements (e.g., World Intellectual Property Organization, the Berne Convention and the Paris Convention).

As for trademarks, they are subject to the territorial principle of protection and must be registered to enjoy protection. To safeguard a trademark in Ukraine, the foreign franchisor should either register the trademark in Ukraine directly with the Ukrainian patent office or apply for international registration to the WIPO through the Madrid System. The trademark registration is normally valid for 10 years and may then be further extended.

Some trademarks may be qualified as well-known brands, which implies a stronger protection for the trademark holder. For this, a trademark must meet certain stringent criteria of identity and public awareness. To formalise such protection, the trademark holder must file an application with the State Intellectual Property Service of Ukraine, supporting it with substantive evidence; or obtain a court judgment in respect of a trademark dispute.

ii Know-how protection

Know-how is a novel and rather problematic notion for the Ukrainian legal system. Ukrainian law defines know-how as information obtained through experience and tests and that is:

- a* not public or easily accessible;
- b* substantive (i.e., important and useful for producing goods and rendering services); and
- c* defined (i.e., it is properly described in writing in sufficient detail such that it is possible to verify if it meets the criteria of being non-public and substantive).

In court practice, know-how is further defined as technical knowledge, experience, production secrets and information necessary for solving tasks of a technical or other nature. Know-how is understood to be the result of technical creation, technical or other information, necessary for the production of certain products, or a technical decision, performed as an invention, which is not duly patented. Know-how is often associated to commercial and trade secrets, and is therefore similarly protected. There are no formal filings required to receive legal protection. However, some franchisors also employ patent filings to protect some aspects of their franchise other than trademarks.

iii Data protection

Ukraine has rules governing the collection, use, processing and transfer of personal data. Pursuant to the changes in the personal data protection laws of Ukraine, there is no longer a requirement to register personal databases. According to the new rules effective as of the beginning of 2014, the processor of personal data is obliged to notify the Ukrainian Parliament Commissioner for Human Rights only if such processing refers to information related to a particular area of risk (e.g., data on race, political views, health status, sex life, biometric data or movement tracking). In any case, the data controller must ensure an adequate level of protection of personal data it uses and processes.

A company is normally required to obtain consent from an individual to collect and process his or her personal data, with some statutory exemptions. In particular, a company is not required to obtain a consent when it collects and uses basic personal information necessary for a transaction with a consumer or when the law specifically requires such a company to collect and retain some personal information (e.g., for the purpose of employment).

When individual consent is required, it must be obtained in either written or electronic form that shows it has been explicitly granted. The company must then retain this confirmation document (information) during the whole time of processing.

IV FRANCHISE LAW

i Legislation

The Civil and Commercial Codes of Ukraine provide specific regulation of the ongoing relationship between franchisor and franchisee. In particular, these laws set forth some default ongoing franchisor obligations, which may be varied in the franchise contract. Namely, the franchisor is obliged to control the quality of goods produced by the franchisee and to regularly provide technical and consultancy support and training for the franchisee's personnel.

Competition law has to be taken into consideration and may substantially affect the franchise relationship. Specifically, Ukrainian competition law prohibits concerted

actions that impose prices or other hard-core restrictions such as limitation of production or technical development, territorial markets and supplier allocation, and tying. The franchise agreement requires careful consideration in this regard, and further relations between the franchisor and franchisee must be constantly controlled for compliance.

When providing payments to a foreign franchisor in foreign currency, currency control laws must be under constant consideration.

ii Definition of a franchise

Ukrainian law does not use the term 'franchise'; instead it provides a definition for a 'commercial concession agreement', which is the equivalent of a franchise agreement in Ukraine. It may be logically inferred that a franchise is a legal relationship based on an agreement under which one party (title-holder) undertakes an obligation to grant for remuneration to the other party (user) the right to use a set of rights of the title-holder with the purpose of production or sale of certain goods and services. Pursuant to further provisions of Ukrainian law, the franchise agreement implies the use of a title-holder's rights, business reputation and commercial experience in the agreed scope, with or without reference to the territory and to particular areas of commercial activities.

iii Pre-contractual disclosure

Ukrainian law does not require formal pre-contractual disclosure in a franchise transaction. The parties decide on the information to present to each other and are not obliged to follow any particular procedure.

A franchisor does have to provide a copy of the technical and commercial documentation and other information necessary for performance of the franchisee's rights under the commercial concession agreement. However, this obligation only arises after the contract has been concluded.

iv Registration

Registration of franchise agreements is required pursuant to the Civil Code and the Commercial Code. Recently, the Ministry of Justice introduced a new Procedure on State Registration of Commercial Concession Agreements (the Procedure), which finally settled issues on registration of franchise agreements in Ukraine. The Procedure is scheduled to enter into force from 21 April 2015.

According to the new Procedure, all franchise (sub-franchise) agreements, amendments to franchise agreements and termination agreements, or information on cancellation or invalidity of such agreements have to be registered in the United State Register of Legal Entities and Individual Entrepreneurs of Ukraine (the United State Register) by the title-holder or the user (for sub-franchise agreements). The application along with necessary documents can be submitted either directly to state registrars or electronically, through the registration portal. After each such registration the state registrar issues an extract in respect of the registration that serves as a proof of registration and is necessary to seek protection under the law. The following information is entered in the United State Register and is reflected in the extract:

- a* date of execution and number (if any) of the franchise agreement;
- b* parties to the agreement;

- c* information on legal entities or individual entrepreneurs registered in Ukraine;
- d* information on non-resident legal entities or individual entrepreneurs;
- e* subject of the franchise (sub-franchise) agreement;
- f* validity term of the document confirming the right of the title-holder on intellectual property rights;
- g* validity term of the franchise (sub-franchise) agreement;
- h* assigned territory or business area for usage of the rights subject to the franchise agreement (if any);
- i* right of the user to conclude sub-franchise agreements;
- j* information on restrictions vested to the user under the franchise agreement; and
- k* non-compete restrictions and other obligations of the user.

Moreover, the above-mentioned information shall also be publicly available through the registration portal of the United State Register.

v **Mandatory clauses**

In general, provisions in franchise contracts should not contradict the statutory provisions of Ukrainian civil and commercial law. Even though some deviation from statutory provisions is generally allowed according to the principle of freedom of contract, this should not be a substantial deviation. Otherwise, there is a risk that the court would render a deviating contractual clause unenforceable and choose to apply a statutory provision instead.

vi **Termination of the franchise agreement**

If a franchise contract is conducted for an indefinite period, both parties are entitled to its unilateral termination upon a six-month notice unless the contract envisages a longer notice period.

If a franchise contract is conducted for a defined period, termination is only possible upon mutual consent of the parties or on the basis of a court decision. Court ability to terminate the franchise relationship is limited to the general restrictions available in the laws on contract termination. In particular, the court may terminate the franchise contract if the franchisor proves a substantial breach on the part of the franchisee. In some limited circumstances, the franchisor may also claim a substantial change due to unforeseen and irremediable circumstances.

The franchise contract also terminates under operation of law in the following cases: when a franchisor loses its title to the trademark, without substitution; or in the case of the bankruptcy (insolvency) of the franchisor.

The termination of franchise relationships is subject to state registration, as mentioned above.

vii **Guarantees and protection**

Guarantees are often necessary to protect the foreign franchisor against the lack of adequate creditor protection rules in Ukraine. Foreign franchisors usually request a surety from beneficial owners or affiliated business entities or, less often, a bank guarantee to secure financial obligations. It should be taken into account, however, that Ukrainian currency

regulations may have specific regulatory requirements for the outbound payment under the surety agreement by an individual resident or a Ukrainian legal entity (other than a bank) in foreign currency, which may turn out to be rather problematic.

V TAX

i Franchisor tax liabilities

A Ukrainian franchisor is subject to corporate profit tax. The general corporate profit rate is currently 18 per cent. There are some simple taxation systems available for small and medium-sized businesses that do not have a substantial turnover.

For tax purposes, franchise fees shall fall within the definition of royalties under Ukrainian tax law. As a general rule, Ukraine charges a 15 per cent withholding tax (WHT) on outbound royalty payments. WHT is usually withheld and then paid to the tax authorities by a local franchisee. Where there is a double tax treaty between Ukraine and the country in which the franchisor is domiciled for tax purposes, the applicable WHT may be lower (e.g., 10 per cent, 5 per cent or even zero per cent). Such treaties have priority over Ukrainian domestic legislation. The franchisor must, however, provide certificated confirmation of its place of residence.

Another important tax issue relates to the deduction of outbound royalty payments. The tax deduction of franchise fees paid offshore from Ukraine is subject to limitation. A Ukrainian business entity paying such fees (a franchisee) can deduct only a certain amount for tax purposes: in any given year this cannot exceed 4 per cent of revenues obtained in the previous fiscal year.

Generally, royalties are not subject to VAT. Normally, however, goods and services are subject to VAT at the 20 per cent rate in Ukraine.

Foreign franchisors must be careful not to create a permanent establishment on the territory of Ukraine, as a permanent establishment would be subject to general corporate taxes in Ukraine.

ii Franchisee tax liabilities

Ukraine tax law limits deductibility of royalty payments made by Ukraine-resident companies to non-residents to an amount not exceeding 4 per cent of income (revenues) received from the sale of products (goods, works and services) during the year that precedes the reporting year (see Section 140.1.2. of the Tax Code of Ukraine). Payment of royalties exceeding 4 per cent of the previous year's turnover would just add to the Ukrainian franchisee's tax burden.

The Tax Code of Ukraine provides for further specific restrictions on the deductibility of royalty payments in addition to the above-mentioned turnover limitation. In particular, royalty payments made to non-residents will not be deductible at all where:

- a* a non-resident receiving such payments has offshore status;
- b* a non-resident receiving such payments is not a beneficiary of the royalty payments (except in cases where the beneficiary has granted the right to receive the payments to the said non-resident);
- c* royalties are paid in respect of intellectual property that initially belonged to a Ukrainian resident (i.e., if the rights to such intellectual property were first

- owned by a Ukrainian resident, then transferred to a non-resident and then licensed to a Ukrainian resident); or
- d* a non-resident receiving royalty payments is not subject to taxation in respect of such royalties in its country of residency.

If the franchisee is a company it will pay corporate profit tax unless it opts in to the simplified taxation regime. Otherwise, personal income tax will be payable. In addition, VAT is likely to apply as a franchise business is always presumed to involve a trading business. Alternatively, in certain cases for small and medium-sized businesses, the franchisee may choose to pay a 'unified' tax, which can substitute for corporate profit tax and VAT.

Transfer pricing may also be a factor if the rate of corporation tax in the franchisor's home jurisdiction is more than 5 per cent lower than the Ukrainian rate and the value of all transactions between a foreign franchisor and a Ukrainian franchisee equals or exceeds 50 million hryvnas per year.

Ukrainian tax legislation undergoes frequent changes, even following its substantial revision and codification in 2011. Moreover, the new government intends further reform of the tax system to facilitate easy tax administration.

V IMPACT OF GENERAL LAW

i Competition law

The franchisor should bear in mind aspects of competition law that prohibit the imposition of certain vertical restraints on the franchisee in the franchise agreement. In particular, the franchisor should be careful with restrictions imposed on the franchisor that may affect competition. In practice, competition is considered to be substantially restricted when the undertakings involved approach a dominant position, separately or collectively. The imposition of such restrictions on the franchisee may also fall under certain market-based exemptions and the block exemption for intellectual property rights transfer. If none of these exemptions applies, the provisions may still be cleared by an approval from the Anti-Monopoly Committee of Ukraine (AMC).

The Law on Protection Against Unfair Competition is also relevant to the typical franchisor. As mentioned above, a franchisor may be held accountable for any deceptive or misleading statements about its franchise to potential franchisees. Besides that, on the other hand, the law provides certain protection to the franchisor against dishonest franchisees or third-party competitors in relation to passing off, infringement of trademarks and other intellectual property, trade libel, unlawful collection, misappropriation and unauthorised disclosure of trade secrets.

To enforce the provisions of unfair competition laws, the franchisor may file a lawsuit directly with the court and argue under general competition principles on the basis of the evidence it has collected. Alternatively, the franchisor may file a complaint with the AMC, or its local division, which would take up some of the burden of collecting evidence against a breaching party. As a result of its investigation, the AMC may order the cessation of any violation and impose a substantial fine. Moreover, once the violation is confirmed, the franchisor may then, on the basis of that established fact, apply to the

court for damages. There are, however, drawbacks to the AMC investigation process for the franchisor. First, because of bureaucracy, it takes an overly long time for the AMC to conclude the process. Second, the franchisor has no access to the information collected by the AMC during its investigation proceedings and, therefore, the franchisor has little influence on the course of such an investigation.

iii Product liability

A franchisor bears subsidiary liability with franchisees for consumers' claims in relation to the quality of products manufactured by the franchisor and further resold by the franchisee (i.e., a consumer is entitled to bring a claim against the franchisor only after the franchisee has been found unable to satisfy such a claim in full).

At the same time, if the franchisee manufactures the products under the technology and the standards granted under the franchise agreement, the franchisor and the franchisee shall be jointly liable. Please note, however, that currently there is no case law addressing the issue of product liability under the relevant provisions of Ukrainian law. Furthermore, in general, product liability cases are not often tried in Ukrainian courts.

Ukraine has recently updated its law on product liability. The new law defines that consumers are entitled to bring claims in respect of the following:

- a* against an actual producer and any person that is the brand holder of a product (i.e., this can actually be the franchisor or its related companies);
- b* against any importer of a product for sale, hire, leasing or any form of distribution as a producer (i.e., usually the franchisee or its related companies);
- c* where a producer cannot be identified, each supplier (i.e., the franchisee or its related companies) shall be liable as a producer unless they inform an injured person of a producer or an importer within 30 days. Moreover, under the new law if several persons are liable for damages (e.g, a producer and an importer, in the case of imported products), an injured person is entitled to address its claims either to all liable persons jointly or to one of them separately.

At present, there is no comprehensive case law or official interpretation of the new product liability law. It is difficult to predict how most of its provisions will apply in practice. It is especially unclear how new rules will correlate with existing civil and consumer protection law.

Under Ukrainian conflict-of-laws rules, Ukrainian consumer protection laws apply mandatorily if the consumer claims derive from products sold in Ukraine. However, there is an exception if the goods are not produced in Ukraine (and merely available on its territory). In this case, a claimant has a right to choose the law of the country of manufacture to be applied as well.

iii Dispute resolution

Most disputes concerning franchising matters are heard by the courts of either civil or commercial jurisdiction (depending on the parties), including contractual and non-contractual matters. Whenever a public act or failure to act is challenged, such a case is resolved by the courts of administrative jurisdiction. For instance, the franchisor or franchisee would have to file a suit with an administrative court to challenge a refusal

of the state registrar to register a franchising contract. The criminal proceedings in public prosecutions are overseen by the courts of criminal justice. In relation to franchise relations, a criminal prosecution may be initiated for intellectual property infringement.

Besides the system of state courts, parties can choose to submit their dispute to an arbitration tribunal. Although binding on the parties, decisions of arbitration tribunals can be appealed to the courts.

Foreign courts may also be used as an alternative. To enforce the decision of a foreign court in Ukraine, however, the courts of both jurisdictions should have established mutual recognition of judgments. A significant disadvantage is the burdensome and time-consuming notification process under the Hague Service Convention.

Dispute resolution in international arbitration tribunals is allowed and enforceable in Ukraine. Ukraine is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Ukrainian courts respect and frequently enforce arbitral awards. There is an established international tribunal at the Ukrainian Chamber of Commerce.

The major advantage of international tribunals is that the case is heard by either a sole professional international practitioner or a bench of such arbiters selected in the manner agreed by the parties. This provides greater certainty of a fair and just award being made in the case. The Ukrainian courts may, however, refuse to enforce an arbitration award on the grounds set forth by the New York Convention. The most common grounds for such a refusal is that of public policy. The other disadvantage is that injunctions in support of arbitration procedures are not currently practicable in the Ukrainian courts.

VII CURRENT DEVELOPMENTS

The major development, as mentioned above, is that the Ministry of Justice of Ukraine has finally approved the Procedure on State Registration of Commercial Concession Agreements, which becomes effective on 21 April 2015.

The franchise agreement registration requirement has been one of the most controversial issues of franchise law in Ukraine. With the adoption of the Commercial and Civil Codes in 2003, Ukrainian private law introduced a registration requirement for franchise agreements. The problem has been that, until recently, Ukrainian public law has not envisaged any procedure for registrars to perform such a registration. For this reason, the state registrars in Ukraine refused to perform registration of franchise agreements altogether. This posed a serious risk to the enforceability of such agreements in the Ukrainian courts and there was no completely safe means by which to comply with the registration requirement under Ukrainian law.

The new rules should settle this long-standing controversy and ensure that the parties may actually use the direct franchise structure that is enforceable in the Ukrainian courts.

Appendix 1

ABOUT THE AUTHORS

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Nobles

Volodymyr Yakubovskyy is a partner at Nobles. He has a trusted reputation for representing major international corporations and leading national market participants in various transactional, investment and commercial matters. He regularly advises companies on business projects with a particular focus on corporate, labour, distribution, franchising and intellectual property issues. Mr Yakubovskyy's areas of expertise include such industries as retail, e-commerce, agriculture, media, pharmaceuticals, regulated industries and financial institutions.

Mr Yakubovskyy has an LLM in corporate and commercial law from the University of Cambridge (2010), an LLM in American and international business law from Boston University (2009) and degrees in law and international law from Lviv University (2005)

Mr Yakubovskyy speaks Ukrainian, Russian, English and German.

GRAEME PAYNE

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Graeme Payne is a partner in Bird & Bird's global franchising, licensing and multi-channel strategies team. He works closely with businesses to determine and develop the most commercially appropriate expansion models and routes to market.

Mr Payne's practice focuses on the retail, leisure, food and beverage, services and health-care sectors. He is retained as counsel by a number of leading and up-and-coming brands in these sectors. He has particular expertise in advising businesses on the use of franchising as a tool for strategic growth and expansion.

In addition to advising on appropriate multi-channel expansion strategies, he advises on intellectual property ownership, protection and exploitation structures, technology transfer licensing and general commercial contracts including agency,

distribution, wholesale, supply, confidentiality and know-how agreements together with domestic and international terms and conditions of sale.

Mr Payne's clients range from individual entrepreneurs, early-stage ventures and SMEs to multinationals. He has particular experience in assisting businesses expand into new markets including India, the Middle East, the Far East, South East Asia, Russia and South America.

He has written numerous articles for *Franchise World*, and has spoken at a number of national and international franchise and retail seminars, and British Franchise Association conferences and workshops.

Mr Payne has contributed to a number of publications including 'Alternative Corporate Re-engineering: Building Businesses through Third-Party Relationships and Expansion into New Markets' (*European Lawyer*, 2011) and *International Business Transactions: Standard Forms and Documents (Franchising)* (Wolters Kluwer).

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