

*Franchising in Belarus* is the 16th article in Wiley Rein's International Franchise Development Series. The International Franchise Development Series offers a broad overview of franchise regulation and the legal issues confronting franchisors seeking to expand into certain countries from the combined legal perspective of U.S. and local counsel.

## Franchising in Belarus

By Robert A. Smith, Andrew Usov, and Christine E. Connelly

With a population of approximately 9.5 million and a GDP estimated at approximately US \$54 billion, Belarus is attractive to investors and franchisors seeking to expand their businesses in a variety of economic sectors. Belarus was ranked 57<sup>th</sup> in the World Bank's 2015 Doing Business rankings, higher than Russia and the Ukraine. As compared to its neighboring countries, Belarus offers the following positive attributes:

- a cheap and well-educated labor force;
- a low level of corruption;
- a low competition in the market; and
- the possibility of a Russia-Kazakhstan-Belarus-Armenia Customs Union.

While the Belarusian franchising market is underdeveloped, it is increasing, with the greatest demand in retail and food services. The retail network in Belarus is growing annually with 12 large shopping centers, totaling more than 210,000 square meters, expected to open in 2015. The food service sector also is rapidly growing and there are more than 12,000 food service outlets in Belarus, including more than 7,500 bars, restaurants, and cafes. Minsk is the most attractive region for franchising in Belarus because of the high income and a well-developed infrastructure.

### Governing Law

Belarus is a civil law jurisdiction, and franchise-specific legislation is found in Chapter 53 of the Civil Code of the Republic of Belarus of December 7, 1998, No. 218-Z ("Civil Code"). Until February 2005, there was no specific legal regulation of franchising.

Instead, franchising regulation was only a matter of contract law. After the 2005 amendments to the Civil Code, franchising activities began to increase, but the number of valid franchise agreements still is not significant. Local franchisors are quite conservative and usually prefer to use "traditional" methods of business, but increasingly foreign franchisors are investing in business opportunities in Belarus.

In addition to the Civil Code, the following legal acts impact franchising in Belarus:

- the Law of the Republic of Belarus "On Trademarks and Service Marks" No. 2181-XII of February 5, 1993, as amended, which regulates the transfer of trademark rights under a franchise agreement;
- the Law of the Republic of Belarus "On Trade Secrets" of January 5, 2013 No. 19-Z which addresses know-how, one of the main elements of IP that should be transferred under the franchise agreement;
- the Resolution of the Council of Ministers of the Republic of Belarus "On the Registration of License Agreements, Agreements on the Assignment of Rights over Industrial Property Objects, Agreements on the Pledge of Property Rights certified by a Trademark or Service Mark Certificate and the Agreements of Complex Commercial License (Franchising)" of March 21, 2009 No. 346, as amended, setting the criteria for franchise agreement registration and delineating the documents that must be submitted to the National Center of Intellectual Property, the Belarusian Trademark Office (BTO) for the registration; and

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- Resolution of the State Committee on Science and Technology of the Republic of Belarus “On the Approval of the Instruction on the Order of Registration of License Agreements, Agreements on the Assignment of Rights over Industrial Property Objects, Agreements on the Pledge of Property Rights certified by a Trademark or Service Mark Certificate and the Agreements of Complex Commercial License (Franchising)” of April 5, 2009 No. 6, as amended, dealing with the specific aspects that BTO verifies in the process of franchise agreement registration.

### Specific Requirements

A franchise agreement must be in writing and be registered with the BTO. Additionally, the agreement (1) must provide for a franchise fee, which can be a single payment, fixed payments, or a calculation of payments; (2) contain a term that is either fixed or indefinite, and (3) may have territorial restrictions. By virtue of Article 910 of the Civil Code, only commercial organizations and individual entrepreneurs can be parties to a franchise agreement.

Under Belarusian law, a franchise agreement is a “complex commercial license” that differs from a license agreement since it licenses different types of intellectual property in a single agreement. Under a franchise agreement, a franchisor (the holder of the intellectual property rights) licenses a franchisee the right to use a trade name, undisclosed information (know-how), trademarks (service marks), as well as other intellectual property elements. In order for an agreement to be considered a franchise under Belarusian law, it must grant a license to use a trade name and the franchisor’s know-how.

In addition, a franchisor is secondarily liable for claims of discrepancy between the quality of goods sold under the franchise agreement by the franchisee and products sold by the franchisor directly. The franchisor and the franchisee also are jointly and severably liable for claims against the franchisee as the manufacturer of goods.

### Registration of Franchise Agreement

As noted above, a party to a franchise agreement must submit the agreement to the BTO for registration. As part of registration, the following documents must be submitted to the BTO:

- application;
- the agreement in triplicate;
- power of attorney (if the documents are submitted by a representative); and
- document confirming the payment of patent duty.

Documents must be submitted in Russian or Belarusian, or accompanied by the translation into one of the two languages. If all legal requirements are met, the registration typically will be completed within one month from the date of filing. ■

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