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# Franchise Framework in Kazakhstan

## 1) Introduction

Franchising has been used as a route to the Kazakhstan market by overseas businesses since the 1990s when brands such as Coca-Cola, Adidas and InterContinental appeared on the market. Over the past years, the country's strong economic growth and rising household incomes have prompted other foreign franchisors to turn their sights on the country, quickly becoming a leading market in Central Asia. International brands such as Zara, Pizza Hut, Debenhams, Mothercare, H&M, KFC, CHARLES & KEITH, Ipekyol, Bobbi Brown and many others are currently represented in the market.

Foreign and domestic brands use franchising as a business system in nearly every industry that contains small and medium-sized businesses. However, as in other Central Asia markets, it is most common in the fast-food and casual dining, retail and leisure, and services sectors. Many foreign franchisors prefer to work based on subfranchising agreements with master franchisees in other countries rather than contracting directly with Kazakhstani partners. However, the number of direct franchises is growing.

A range of agencies and associations are interested in promoting franchising and foreign business in Kazakhstan. The Kazakhstan Franchise Association (KAZFRANCH) was created with the support of the US Agency for International Development as a non-governmental industry group to promote franchising by offering various services, including consultation, information, matchmaking programmes and other educational events. The Franchise Union of Kazakhstan provides education and referral services and general advice on franchise arrangements and practices. However, associations such as the Eurasian Franchise Association and Central Asian Franchising and Licensing Agency have also previously taken on similar roles.

The Kazakhstan government established the *Entrepreneurship Development Fund JSC* (EDF) in 1997 to support and promote small businesses in Kazakhstan, providing financial and non-financial support to small and medium-sized enterprises. The EDF also works alongside the state to improve financial resource management and the allocation of funding to small businesses<sup>[1]</sup>.

## 2) Market Entry

Franchising in Kazakhstan is regulated by specific franchise legislation and general commercial law that varies between sectors and according to the structure of the commercial relationship.

One of the essential steps for franchisors contemplating entering the Kazakhstan market is protecting their intellectual property – particularly any trademarks or know-how that will be licensed to and used by a local franchisee. Kazakhstan's intellectual property regime is relatively sophisticated, recognising that exclusivity arises in relation to various types of intellectual property. Kazakhstan is a member of many of the major international organisations – including the Singapore Treaty of the Law of Trademarks, the Trademark Law Treaty, the Treaty on Trademarks, Service Marks and Appellations of Origin of Goods of the Eurasian Economic Union, the Paris Convention, and the Madrid Agreement Concerning the International Registration of Marks – and trademarks, service marks, utility models and other industrial designs are generally capable of being registered.

In most areas of business, Kazakhstan law does not require any approvals and does not contain any restrictions for franchisors to enter the local market. Contrariwise, the law provides for the support and promotion of franchising in the country. Besides, Kazakh legislation is not overloaded with details, nuanced obligations, and restrictions in governing relationships between the parties to franchise agreements. In this regard, there are no specific restrictions or limitations to a foreign entity granting a license, franchise, master franchise, or development rights to a local entity.

In most cases, the laws do not restrict foreign franchisors from owning equity in a local business or owning real property. However, certain restrictions can be specified regarding owning equity, where business is associated with the area being

strategic for the state, such as telecom, communications and other issues relating to national security and public safety. In addition, there are some restrictions for foreign nationals and entities in terms of owning real estate in Kazakhstan.

Franchisors should also consider the geographical issues involved in entering the Kazakhstan market. Kazakhstan is a large country with a very low population density, with fewer than seven people per square kilometre<sup>[2]</sup>. Astana, Almaty, and Shymkent are the largest cities by population but account for a very small fraction of the country's total population. Franchisors should therefore undertake careful due diligence on the geographic reach of any potential local partner and consider how best to treat any possible exclusive arrangement.

Payments made between Kazakhstan residents (whether entities or individuals) must be made in the local currency, the Kazakh tenge. Under the Law on Currency Regulation and Control No. 167-VI dated 2 July 2018, payments made between residents and non-residents may generally be in any currency. However, certain transactions must be notified to or registered with the National Bank of the Republic of Kazakhstan (the Bank). A franchise agreement falls under currency regulation as an import (or export) of goods (and/or works, services) operation. Depending on the terms and payment obligations of the parties under a franchising agreement (e.g. obligation of a resident to pay more than US\$500,000), the Bank provides for registration or notification regime for the franchising agreement.

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## Key contacts



### Timur Berekmoinov

Partner, Head of Intellectual Property  
Department

 Almaty, Kazakhstan

 +7 701 731 2714

 [tberekmoinov@gratanet.com](mailto:tberekmoinov@gratanet.com)