

Dear Sirs,

Until recently, the legislative framework for franchise agreements had a number of unsatisfactory features, such as preemptive right of franchisee to execute agreement for the new term, impossibility to provide for certain limitations under the agreement etc. As a result, many companies would rather prefer entering distributorship, license or partnership agreements instead of granting a franchise.

On 22 July 2011 provisions of Part II of the Civil Code of the Russian Federation were amended in order to improve the position of franchisers and promote the development of franchising business in Russia. The provisions on franchise agreements were also brought in compliance with the antimonopoly laws. These amendments were introduced by the Federal Law dated 18 July 2011 No.216-FZ (hereinafter the "Law").

The Law provides for the following main amendments:

First, the provisions on limitation of rights of parties under franchise agreements are brought into compliance with the antimonopoly legislation and will now allow:

- **Fixed resale prices:** agreements on fixed resale prices (or fixed prices of franchisee's works and services) became valid in Russia;
- **Non- compete clauses:**
  - now it is valid to prohibit franchisee to obtain similar rights from franchisor's competitors or potential competitors pursuant to other franchise agreements;
  - a franchisee may also be imposed with the obligation not to sell any similar goods, works or services using trademarks or commercial designations of third parties (competitors); and
- **Territory limitation:** the Law clarified that it is legal to impose a franchisee with an obligation to sell goods, perform works or provide services within certain territory only.

Please note that the above limitations, as well as other limitations set forth in the Civil Code may be held null and void at the request of the antimonopoly authority, provided that such limitations are in conflict the competition law owing to economic status of the parties or the respective market.

Second, previous legislation provided for a preemptive right of a franchisee to enter into franchise agreements for the new period, which was disadvantageous for a franchiser. The amendments improve franchisor's status:

- duration of the preemptive right is limited to one year (previously - three years);
- according to the amended Art.1035 of the Civil Code, preemptive right should apply if only a new franchise agreement is executed with respect to the same rights and on the same terms and conditions (previously the preemptive right was applicable with respect to any new "similar contracts");

- the Law repeals the rule that new franchise agreement with the same franchisee must be no less beneficial for the franchisee than the previous one.

The amendments also clarify the consequences of breach of the preemptive right: a franchisee will be entitled to take legal action and claim for the assignment of respective franchise agreement to him and/or compensation of inflicted damages.

Finally, the Law introduces new provisions on termination of franchise agreements:

- It became easier to terminate franchise agreement that specifies compensation for its termination– either party will be able to pay the compensation and terminate such contract without recourse to court subject to 30 days' prior notice;
- franchisor is entitled to terminate franchise agreement at any time without recourse to court, if its franchisee fails to meet franchisor's request to cure the breach of the agreement (as indicated below) within reasonable period, or if franchisee repeats one of the following breaches within a period of one year:
  - breaches provisions on quality of goods, works or services;
  - commits gross violation of instructions given by the franchisor with respect to pattern, methods and conditions of use of the set of rights granted by the franchisor; or
  - fails to duly pay a franchise fee.

The final text of the Law does not comprise the initially suggested amendments regarding the subject matter of the franchise agreements, requirement regarding franchise agreements' state registration with RUPTO and conditions of joint liability of franchisee and franchisor; therefore, the Law will not remove certain serious disadvantages of the regulatory framework of franchise agreements.

The Law will become effective after 90 days as from the date of its official publication (i.e. **on 20 October 2011**) and will not apply to agreements executed prior to this date, as the Law has no reverse effect. If your company is currently negotiating a franchising agreement, you might be interested to sign and file it for the state registration no earlier than on 20 October 2011 in order to take advantage of the above described Law.

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We hope the above information might be helpful to you.

For further information on Intellectual Property practice of ALRUD Law Firm please visit our [Web-site](#),

or contact the Head of Intellectual Property practice, **Partner Irina Anyukhina** [ianyukhina@alrud.ru](mailto:ianyukhina@alrud.ru)

Kind regards,

**ALRUD Law Firm**

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