

Franchise Agreement and Legal Requirements

Description

By DMLF Team

<https://youtu.be/X4vN1vbC7LU>

In Ethiopia franchise agreement is governed by Commercial Registration and Business Licensing Proclamation (here in after CRBLP), investment law, IPRs protection laws, civil code etc.

'Franchise agreement' is defined under the Commercial Registration and Business Licensing Proclamation No. 980/2016 and its amendment No. 1150/19. Accordingly, 'franchise agreement' is defined as: an agreement concluded for consideration between the franchiser and the franchisee in order to undertake business activities by using the trade name of the known product or service in order to share the nature and experience of the work under the leadership of the owner of the products and the service that have got recognition.

The other notable aspect of the definition relates to the franchise parties' joint obligation to engage in a 'business activity' in order to constitute franchise business relationship by and between them. Reading of art 2(2) and (3) of the CRBLP along with art 5 of the Commercial Code 1960 provide clarification on who should be regarded as a 'business-person' or 'trader'. It also furnishes exhaustive list of activities that are regarded as business (or commercial) activities. As a result, franchise parties are necessarily required to undertake business activities as defined under both the CRBLP and the Commercial Code 1960, as well as shall carry on such business activities professionally and for gain. Strangely enough, the other noteworthy element under the definition pertains to the exclusive association of 'trade name' with franchise agreements. Accordingly, a franchise agreement is concluded between franchise parties to undertake a business activity by using the 'trade name' of the known product or service of franchisors. The definition utterly excludes the independent association of other types of IPRs such as trademark, service mark, trade secret copyright and related rights, patent, etc. in franchise business relationships.

The other mentionable issue on the definition relates to the generic leadership authority that the CRBLP grants to franchisors over the franchise business. Pursuant to art 2 (33) of the CRBLP, the franchise business relationship shall proceed under the leadership of the owner of the products and the service that have got recognition, i.e., the franchisor.

The last point relates to the phrases 'the known product or service . . . that have got recognition' included under the definition. Accordingly, the franchised products and/or services shall be well-known and well-recognized.

Note that, since franchise agreement is a contract, requirements for validity of a contract specified under the civil code of Ethiopia for general contract law applies for franchise agreement.

Registration Requirements

The CRBLP and its subsidiary legislations require franchise agreements to be registered at the central commercial register, which is established and administered by Ministry of Trade and Industry. The regional organs administering commercial activities and the EIC may also undertake commercial registration as delegated by MoTI while they are duty bound to transfer the data to the central database, Commercial registration of franchise agreements accord legal personality to franchise businesses. Failure to register a franchise agreement at the commercial register would make it void. Therefore, from the very beginning, the existence of franchise agreements absolutely depends on its registration at the commercial register.

The CRBLP and its subsidiary legislations require registration to be conducted after franchise agreements are **signed, notarized and authenticated**. In this context, registration of franchise agreements is post-facto in terms of protecting prospective franchisees. Contextual reading of the CRBLP and its subsidiary legislations demonstrates that the laws aspire to achieve other goals through the registration requirement, instead of protecting prospective franchisees. Among others, these laws' registration requirement aims at proper collection of income taxes from the franchise business, assessment of franchise agreements' impact on trade competition and consumer protection, and ensuring compliance to the investment law of the country.

Commercial Registration, Licensing and Post-Licensing Inspection Directive No. 935/2022 do not explicitly and exclusively give the responsibility to register franchise agreements to franchisors or franchisees or franchise managers. Examination of the Directive implies that application for commercial registration of **franchise agreements cannot be made in the absence of a designated franchise manager by the franchise parties and the attachment of the former's original and copies of valid identification card or passport.**

"Application for special certificate of commercial registration of franchising shall be submitted by attaching the following documents with the application form: a notarized franchising contract and authenticated original and copy of the same; a notarized registration certificate of the franchiser; photocopy of the valid trade license of the franchisee; two passport size photographs taken within six months time, which shows clear identity of the franchising manager; original and necessary copies of valid identification card or valid passport of the franchising manager; where the application is submitted by an attorney; original and copy of power of attorney, original and necessary photocopies of valid identification card or passport of the principal and the attorney."

It appears that the law particularly required attachment of original and necessary photocopies of valid identification card or passport of the franchise manager as he or she is the one who presents himself or herself in front of the register office.

The other notable issue relates to the effect of registration. Registration accords 'special certificate of commercial registration of franchising' to the franchise business. Commercial registration of a franchise agreement creates independent legal personality to the franchise business apart from the preceding legal status of the franchise parties.

Most importantly, the register office is given the power to refuse registration of a trade name 'where the trade name requested for registration is renowned in Ethiopia or around the world even though it is not registered in Ethiopia and no written permission issued to use the name'. Along the same lines, art. 57(2) of the Directive unequivocally extend legal protection to national and international renowned

trade names that are not registered at the commercial register. Accordingly, in the event when such renowned trade names have been erroneously registered and up on verification of same fact, the businessperson who registered and is unjustly using such a trade name will be required to change the name within one month time, the failure of which entails cancellation of the commercial trade name from the register.

Conclusion

Ethiopia does not have detailed rules regulating franchises. A franchise must be registered in accordance with the procedures set out under the Commercial Registration and Licensing Proclamation and the Commercial Registration and Licensing Regulation. In addition, the Commercial Registration and Licensing Proclamation impose certain obligations on the franchisee. A franchisee must function to the same standards as the franchiser. Clients must obtain the same product and services from the franchisee as they would from the franchisor. Compensation for termination of franchise agreements is governed by the provisions of general contract law.

For any related legal inquiries, you may contact us at info@dmethiolawyers.com

Category

1. Latest Posts

Date Created

January 4, 2025

Author

dmethiol_admin

Dagnachew & Mahlet Law Firm LLP