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Preliminary Debate

Comparative Legal and Economic Analysis of Franchising Regarding European, Anglo-Saxon, and Mongolian Laws

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ABBREVIATIONS / GLOSSARY

AMA- The Antimonopoly Act

B2B- Business to Business

BER- Block Exemption Regulations

BFA- The British Franchise Association

CBCA- The Canada Business Corporations Act

CECC- Common European Civil Code

CMA- The Competition and Markets Authority

CRD- Consumer Rights Directive

DCFR-The Draft Common Frame of Reference

DGCL- US Delaware General Corporation Law

EPC- The European Patent Convention

EUIPO- The European Union Intellectual Property Office

FDD- Franchise Disclosure document

IP- Intellectual Property

NDA-Non-Disclosure Agreement

RPM- Resale practice maintenance

RRP- Recommended Retail Prices

RULLCA-The Revised Uniform Limited Liability Company Act

SDM- System Dynamic Model

SME- Small and Medium Enterprise

TFEU- Treaty on the Functioning of the European Union

UCPD- Unfair Commercial Practices Directive

UCTD- Unfair Contract Terms Directive

VBER- The Vertical Block Exemption Regulation

COMPARATIVE LEGAL AND ECONOMIC ANALYSIS OF FRANCHISING REGARDING EUROPEAN, ANGLO-SAXON, AND MONGOLIAN LAWS

Abstract

The origins of modern comparative law can be traced back to the civil law traditions of Europe in the late nineteenth and early twentieth centuries. The period was marked by significant legal reforms and a growing interest in comparing different legal systems to better understand their principles and applications. In this context, contract law emerged as a critical area of study. Consequently, commercial contracts, fundamental to the functioning of both domestic and international markets, were seen as the cornerstone of legal systems and have attracted considerable scholarly attention.

My research focuses on franchise contracts in comparative law, underscoring their pre-eminence and highlighting the necessity of understanding legal principles across different jurisdictions. It is aimed to suggest harmonizing and improving legal practices by drawing lessons from various traditions. Specifically, French and German law, as two primary representatives of the civil law pioneers, exhibit notable differences despite their shared roots. Furthermore, even within the common law tradition, there are meaningful variations between English and American law.[1]

Under the influence of the industrial revolutions in the Western world, the textile, metallurgical, and engine industries developed, and urbanization, innovation, and franchise eras with business formats began.[2] As a result, countries and international organizations made efforts to put intellectual property into economic circulation and built up a consecutive legal framework. Since 1950, the franchise platform has changed from a licensing system to a special type of agreement in contract law.

The former concept of franchising was often used to regulate competition and facilitate private investment through concession, however, as business landscapes changed gradually and globalization took hold, it became more contemporary. For instance, legal integration along with the expansion of commercial relations led to changes in the legal environment of transnational businesses such as franchises.

[1] E. Allan Farnsworth, Comparative contract law, *Oxford Handbooks Online,* 2012, 1-26 “See” in, https://edisciplinas.usp.br/pluginfile.php/5182946/mod_resource/content/1/COMPARADO%20-%20Farnsworth%20-%20Comparative_Contract_Law.pdf

[2] Nicholas F.R. Crafts, *The First Industrial Revolution: A Guided Tour for Growth Economists,* The American Economic Review, 1996, Volume 36, 197-201.

Nowadays, taking into account the characteristics of franchise businesses, there is a tendency to consider the regulatory environment as a topic of comparative commercial legal studies. In particular, the combination of the law and economic analysis involves studying the franchise regulatory arrangements, and market contrast in different social systems and how they impact commerce and industries. Hence, the significance of my research covers comprehensive issues of franchise including historical and theoretical grounds and international and comparative studies.

Consequently, the construction of the thesis consists of 6 chapters. Chapter 1 provides a literature review, and introduction of the study, Chapter 2 examines the development history and legal and economic concepts of franchising, and Chapters 3 and 4 compare legal policy and dispute resolution practice of franchise-developed countries. Chapter 5 deals with franchise-associated regulatory matters in Mongolia and the final chapter summarizes the entire thesis work and answers solutions to research questions.

Keywords: Theoretical and Comparative Study, Model law, Anglo-Saxon v. Continental; Mongolia v. EU and USA.

CHAPTER 1. INTRODUCTION

1.1. Literature Review

The literature review was conducted to obtain responses to the inquiries from academic sources and to address the research gap, I considered previous scientific texts, legislative enactments, case studies, and analytical reports mainly in the example of European and English laws. Scholarly documents and the writings cited in my research are classified as follows.

1.1.1. On Economic Study

Ronald Coase and Oliver Williamson's theories emphasized that franchisors would expand their brand with lower capital investment or operational costs and franchisees benefit from well-known brand recognition and business models. As supported by the Coase theorem (1960),[3] the basic principle of the franchise is the inventing of intellectual assets representing it in the market. According to self-regulating economies, property rights create an efficient competition and the nature of it is the control over how the transferred ownership is used. The reason of that, the franchisor is not only the constituent of the intellectual property rights structure but also a player in the market.

The formulation of the above theorem, as the economic fundament of the franchise model, demonstrates that intangibles can be capitalized and profit comes from them despite vertical restraints or issues of competition imbalance. Consequently, the franchise agreement is about the legal transfer of property rights into the market, and a franchisee is a lessee of know-how and trademarks under a contractual obligation. Also, training and supply logistics provided by the franchisor, and profit planning, are all together elements of franchising by Demuynck's definition (2019).[4]

Whereas Nash equilibrium (1950)[5] does prove the nature of the dominant strategy of franchising. The contract party's principle is to strictly adhere to the original format and standards from the moment the agreement is legally binding. In this way, both parties should win, and if there is a conflict, on the contrary, they will fail. Hence, franchise agreements contain mandatory provisions for the franchisor to assist in doing business during the contract period allocating the market properly, for calculating expected revenue and profit margin franchisees can have professional facilitation from the franchisor.

[3] Ronald. H. Coase, *The Problem of Social Cos*t, The Journal of Law and Economics, 1960, Volume 3, 1-44.
[4] Thomas Demuynck & others, *Bertrand Competition with asymmetric costs: A solution in pure strategies*, Theory, and Decision, 2019, Volume 87, 147-154.
[5] John. F. Nash, *Equilibrium points in-person games*, Proceedings of the National Academy of Science, 1950, Volume 36, 48-49.

The equilibrium provided an important focus for the study of compliance with the competition law, I quoted it for research while comparing commercial rules.

The agency theory of Ross (1973)[6] explains the relationship between principals and agents. In the franchise market, the contract relationship is an institutional dynamic. The challenge is to align the interests of both parties and mitigate the agency problems that may arise, such as the potential for shirking or moral hazard. Thus, theory examines how organizations conform to and are influenced by societal norms, rules, and values. Rubin (1978), [7] The institutional structure of a franchise is discussed in the context of a contractual relationship between two legal entities. A franchise agreement is a binding contract between the franchisor, or parent company, and the franchisee, a firm established in a specific location to market the product or service offered by the parent company. The agreement outlines the terms and conditions under which the franchisee operates, including the use of trademarks, business processes, and support provided by the franchisor. Organizational factors such as legal environments, and cultural expectations can shape the behavior of franchisors and franchisees. Combined with this theory, compliance with Meyer and Rowan's (1970)[8] institutional norms are essential for defining success in the franchise industry.

Williamson's (1981)[9] transaction cost economics explores how firms make decisions about whether to produce goods or services internally or to transact in the market. In the context of franchising, it can explain why some businesses choose to franchise rather than maintain centralized ownership. Franchising can be seen as a way to reduce transaction costs related to monitoring and coordinating operations. Also, Baumol (1986)[10] argues that understanding the costs associated with transactions such as information, and bargaining costs is key to understanding institutions. Transactions involving specific assets those that are tailored to particular exchanges are more likely to be managed within firms rather than through the market to diminish the risks of opportunism.

[6] Stephen Ross, *The economic theory of agency*, The American Economic Review, 1973, Volume 63, 134-139.
[7] Paul H Rubin, *The Theory of the Firm and the Structure of the Franchise Contract,* The Journal of Law and Economics, 1978, Volume 21, 223-233.
[8] John Meyer and Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony,* American Journal of Sociology, 1977, Volume 83, 340-363.
[9] Oliver E. Williamson, *The Economics of Organization: The Transaction Cost Approach,* American Journal of Sociology, 1981, Volume 87, 548-577.
[10] William J. Baumol, *Williamson's The Economic Institutions of Capitalism, The Rand Journal of Economics*, 1986, Volume 17, 279-286.

Brickley and Dark, (1987)[11] viewed when examining companies that both franchise some units and centrally operate others, several factors influence the decision to franchise or own a unit. The cost of monitoring store managers is particularly significant in this decision. High monitoring costs may lead companies to prefer franchising, as franchisees have a vested interest in the success of their units and therefore require less oversight compared to hired managers. The level of repeat business and the initial investment requirements per unit also play roles. Higher levels of repeat business may make franchising more attractive, as it ensures a steady income stream for franchisees. Conversely, units with high initial investment requirements might be more likely to be owned by the parent company to maintain control over significant capital expenditures.

Lafontaine (1992) Empirical research measures the performance of franchised versus company-owned units, typically finding that the franchised component performs better in terms of efficiency and profitability, due to the stronger incentives for franchisees to maximize their profits.[12] Franchisees are motivated to increase their profits because they have a direct financial stake in the success of their unit. The investment often leads to efforts in managing costs and improving service quality. While franchisees must fulfill the franchisor's guidelines and standards, they often have more autonomy in daily operations compared to managers of company-owned units.

According to Johanson and Vahlne (1977)[13] market entry or expansion strategies, the Uppsala Model, and the Born Global Theory are applied to understand how franchises enter new markets. Franchisors often choose between different entry modes and expansion strategies based on factors like market availability, risk tolerance, and transnational jurisdictions. The Uppsala Model describes the process of internationalization as a gradual and incremental approach. It emphasizes learning and adaptation through increased commitment to foreign markets over time. Indeed, contracts must be versatile and robust to manage the complexities of operating in multiple jurisdictions simultaneously.

Wernerfelt's (1984)[14] resource-based view suggests that a firm's competitive advantage is determined by its unique and valuable resources. Successful franchisors often possess intangible assets such as brand reputation, standardized business processes, and support systems. It helps to understand

[11] James A. Brickley, Frederick H. Dark, *The choice of organizational form the case of franchising,* Journal of Financial Economics, Volume 18, 1987, 401-420.
[12] Francine Lafontaine, *Agency Theory and Franchising: Some Empirical Results,* The Rand Journal of Economics, 1992, Volume 23, 263-283.
[13] Jan Johansen, Jahn Eric Vahlne, *The internationalization process of the firm: A model of knowledge development and increasing market commitments,* Journal of International Business Studies, 1977, Volume 8, 23-32.
[14] Birger Wernerfelt, *A Resource-Based View of the Firm,* Strategic Management Journal, 1984, Volume 5, 171-180.

why certain franchises thrive based on the resources they bring to the table. Moreover, Johanson & Mattsson's (1988)[15] network theory explores the relationships and interactions between entities within a network. Theory is applied to understand the connections between franchisors, franchisees, suppliers, and customers and views that network relationships impact the flow of information, resources, and support within the franchise system.

Along with the economic growth of the franchise, there are legal changes, which require prognoses and conclusions considering the interdependence of the relevant issues. For this reason, the data indicators of franchises and the factors affecting such business models were considered. Namely, Forester (1961)[16] by explaining the reasons for the growth and decline of industry and population in large cities by publishing the book "Dynamics of Industry". After that Meadows (1972)[17] defined the system dynamics model that simulates future predictions based on certain quantitative parameters revealing the correlation between the domestic and global growth of the franchise business, population, and geography. Also, Rosa and Maria (2009)[18] highlighted to creation of a time series or differential "System of Equations" using statistical information, conducting experiments and simulations, and determining the future state of franchising models. Consequently, my thesis remarked several justifications have been provided to explain why businesses choose to expand through franchising.

1.1.2. On Comparative Law Study

The thesis starts with examining past and present concepts and progressive stages of franchising including regulatory background. References related to the study of the legislative history of the franchise are viewed by the works of Gurnick (2021),[19] Bosshardt, and Lopus (2013),[20] Mack (2015),[21] Wahberg (1959),[22] Malmendier (2009),[23] Mattiacci, and Guerriero (2015).[24] The comparative legal research accounts for a variety of academic papers in the field of private law branch concerning

[15] Jan Johanson and Lars-Gunnar Mattsson, *Internationalization in Industrial Systems*, Strategies in Global Competition. New York: Croom Helm, 1988, 303-321.
[16] Jay Forester, *Industrial dynamics*, M.I.T Press, 1961, 18-64.
[17] Donella Meadows & others, The limits to growth, Universe books, 1972, 17-45.
[18] Rosa Mariz-Pérez, Teresa García-Alvarez, *A Systems Dynamics Model to Analyze the Influence of Financial Resources on The Percentage of Franchised Units*, International Business & Economics Research Journal, 2009, Volume 8, 53-60.
[19] David Gurnick, *The First Franchise*, Franchise Law Journal, 2021, Volume 40, 631-646.
[20] William Bosshardt, and Jane Lopus, *Business in the Middle Ages*, Social Education, 2013, Volume 77, 64-67.
[21] William Mack, Proxeny and Polis: Institutional Networks in the Ancient Greek World, Oxford, 2015, 22-89.
[22] Hans Wehberg, *Pacta Sunt Servanda*, The American Journal of International Law, 1959, Volume 53, 775-786.
[23] Ulrike Malmendier, *Law and the finance at the origin*, Journal of Economic Literature, 2009, Volume 47, 1076-1108.
[24] Giuseppe Dari-Mattiacci and Carmine Guerriero, *Law and Culture: A Theory of Comparative Variation in Bona Fide Purchase Rules*, Oxford Journal of Legal Studies, 2015, Volume 35, 543-574.

contract and commercial jurisprudence works of literature by Shelley and Morton (2000),[25] Terry and Huan (2013),[26] Adcock (2021),[27] and Sahan (2020).[28] Specifically, Florea and Galeş (2022),[29] Zeidman (1998),[30] Zimmermann and Whittaker (2000),[31] Hartkamp and Hesselink (2011),[32] and Kerkovic (2010)[33] reviewed the comparison of franchise agreement requirements and regulations.

Anderman (2007)[34] examined that contract law is the root of franchise legally binding relationships and principles of civil law are considered the theoretical basis of contract law too. The difference between a franchise and other agreements is that the parties can enter into an asymmetric. In this regard, Tajti's (2015)[35] a definition that the franchisee exploits industrial or intellectual property rights relating to trademarks, utility models, copyrights, know-how, or patents with contract consideration of strict terms. Hence, due to the feature of the franchise agreement and the requirements for the parties, if one of the parties has an advantage, it should not be considered as unbalanced or unequal rights. The study shows how the franchisor's privilege arises as a lessor of intellectual property. Asserting that the franchisor has a right to control the franchisee is inevitable due to intellectual property domination.

Krystyna and Maryna (2019)[36] have recommended the principle of pre-contractual liability such as fake and unqualified franchisors, and patent infringements in US, German, and French contract law.

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[25] Kevin Shelley, Susan Morton, *Control in Franchising and the Common Law*, Franchise Law Journal, 2000, Volume 19, 119-127.

[26] Andrew Terry and Joseph Huan, *Franchisor liability for franchisee conduct*, Monash University Law Review, 2013, volume 39, 388-410.

[27] Alan Adcock, & others, *An Overview of Franchising Law in Southeast Asia*, Franchise Law Journal, 2021, Volume 41, 247-267.

[28] Guvercin Sahan, *ICC Model International Franchising Contract as a Source of Lex Mercatoria*, Public and Private International Law Bulletin, 2020, Volume 40, 1403-1432.

[29] Dumitriţa Florea, Narcisa Galeş, *Franchise Contract in International Trade Law,* European Journal of Law and Public Administration, 2022, Volume 9, 12-22.

[30] Philip Zeidman, The UNIDROIT Guide to International Master Franchise Arrangements: An Introduction and a Perspective, 1998, 748-768.

[31] Reinhard Zimmermann and Simon Whittaker, Good Faith in European Contract Law, eds Cambridge: Cambridge University Press, 2000, 7-26.

[32] Arthur Hartkamp and Martijn Hesselink (eds), Towards a European Civil Code, Wolters Kluwer Law & Business, 2011, 110-125.

[33] Tamara Kerkovic, *The main Directions in Comparative Franchising regulations,* European Research Studies, 2010, Volume 13, 103-116.

[34] Steven Anderman, The Interface Between Intellectual Property Rights and Competition Policy, Cambridge: Cambridge University Press, 2007, 369-375.

[35] Tibor Tajti, *Franchise, and Contract Asymmetry: A Common Trans-Atlantic Agenda*. Loyola of Los Angeles International and Comparative Law Review, 2015, Volume 37, 245-273.

[36] Tsahik Kolinko, Krystyna Rezvorovych & Maryna Yunina, *Legal Characteristic of the Franchise Agreement in Germany*, Baltic Journal of Economic Studies, 2019, Volume 5, 96-100.

Mark Abell, (2019) [37] has noted franchise system implication and disclosure in nations. In this regard, the study directed to defining liability against violations of pecuniary and non-pecuniary damages caused before the conclusion of the franchise agreement. Hence, the comparative study highlights the practice of liability for breach of franchise law, even if it is not negotiated by agreement.

Brekoulakis, Lew, and Mistelis (2016),[38] Rowley (2004)[39] and Pressman (2012)[40] addressed comparative studies of dispute resolution. They compared franchise quarrels linked to tribunal and court lawsuits. For instance, the inquisitorial form is dominated by a direct examination based on court proceedings, on the contrary, an accusatorial form has anti-suit policies for the parties' satisfaction as emphasized by Andrews (2013).[41]

Finally, the legal regulation of the franchise agreement is examined together with the background of the Civil Code in Mongolia, and the need for further improvement is determined previously by Gramckow and Allen (2010).[42] Drawing inspiration from these studies, I examined comparative contract and franchise laws and other arrangements for recommending whether a separate franchise disclosure statute or updates to the Civil Code.

1.1.3. Research Gaps

Professional works of literature reviewed challenging issues integrated matters of franchising nevertheless there is still a need for comprehensive studies on the feasibility and impact of harmonizing franchise laws across different jurisdictions. Hence identifying research gaps in comparative franchise regulation involved the above literature and the existing legal frameworks and the following issues are unclear or require deep answers. It includes;

i. There is a lack of sources that systematically examine the historical progress of franchising, along with economic and legal arrangements, and the stages of original development in England, Europe, America, post-Socialist, and Asian perspectives. In the frame of the collected literature, a gap identified in the research, or an issue that should be further filtered, is to define the importance of the legal and economic theories for franchise grounds. For instance, antitrust laws are looked over for

[37] Mark Abell, The Regulation of Franchising Around the World, The Law Reviews Press, 2019, 34-133.
[38] Stavros Brekoulakis, Julian Lew, & Loukas Mistelis, The evolution and future of international arbitration, Kluwer Law, 2016, 321-330.
[39] J William Rowley QC (eds), Arbitration world. Jurisdictional comparison, Reference Press, 2004, 119-124.
[40] Arthur Pressman, Justin Klein, The strategy of Arbitration, ABA, 2012, 14-32.
[41] Andrews, N., *Arbitration & Mediation*, Intersentia, 2013, 89-94
[42] Heike Gramckow and Frances Allen, *Justice Sector Reform in Mongolia: Looking Back, Looking Forward*, Justice and Development working paper series, 2011, Volume 16, 3-16.

their impact on promoting competition and preventing monopolies and economic analysis of law examines how legal rules affect market transactions and failures. Efficient contract law reduces uncertainty and encourages trade by ensuring that parties adhere to their agreements. At the same time, the legal framework of franchising is heavily based on contract law, which governs the relationship between parties. Franchise agreements often include performance metrics and regular monitoring to align interests and reduce ethical risk and adverse selection. That is why the second chapter of the thesis focuses on researching franchise systems through certain theoretical grounds and tries to connect them to research questions.

ii. Current comparative studies referred to are usually in the form of an introduction list of the field laws in countries, and there is insufficient research on how franchise regulations are distinctive in different legal systems. For instance, the divergence between common law and German law regarding pre-contractual liability illustrates the broader differences in legal philosophies and approaches to contract formation. While common law prioritizes negotiation freedom and flexibility, German law seeks to balance this freedom with protections against negligent or harmful conduct during negotiations. This comparative insight is vital for franchise businesses operating in multiple jurisdictions, as it highlights the importance of understanding and navigating the nuanced obligations and liabilities that can arise during the pre-contractual phase. In my dissertation, sanctions against contract violations in countries are applied compared to Mongolian franchise regulation.

iii. Few specific monographs or academic articles related to the forum for resolving franchise disputes by court or arbitration have been published yet.[43] In other words, the paucity of comparative studies of franchise dispute resolution forums reflects the development of the procedural law field. Studying the characteristics of lawsuits resolved by courts and tribunals in the context of franchise disputes will contribute to future research in this field. Franchising dispute resolution is an area that has garnered attention, but several research gaps still exist. The inherent power imbalance between franchisors and franchisees often affects dispute resolution outcomes. There is a need for more studies on how these power dynamics impact the fairness and efficiency of dispute resolution processes. While franchising is global, the legal frameworks and dispute resolution mechanisms vary significantly across jurisdictions. Comparative studies could provide insights into the effectiveness of different approaches and identify best practices. Exploring these gaps could significantly contribute

[43] David A. Beyer & Scott P. Weber, *Lawsuits to Get into the Franchise System*, Franchise Law Journal, 2003, Volume 23, 221-223.

to improving the dispute resolution process in franchising, I conclude.

iv. Given the complexity and multifaceted nature of franchise agreements, studying them in depth involves a blend of contract law, intellectual property law, and commercial regulations. Until now, there are legal contents that consider the franchise agreement in the same sense as trade, distributor, patent, and license agreements, and therefore it is not only necessary to study the elements of the franchise agreement in depth but also the commercial law approach.

1.2. The Scope of the Study

The original form of franchising with an apprenticeship and patronage system was established in ancient Rome and Greece, nevertheless, it has evolved during the past times into standardized business operations and brand consistency. The scope of my study starts with a historical background when the earlier development of franchising from England to Europe and America is a fascinating journey that spans several centuries. Since the First Industrial Revolution, an increase in scientific discoveries laid the foundation for the current formation of the franchise. Supposing that the economics maxim preaches about satisfying unlimited needs with limited resources, on the contrary after franchises arose it has turned an opportunity to balance supply and demand by introducing inexhaustible intangible assets such as trademarks, business reputation, and experience into the market.

The Old-Fashioned meaning of the franchise is derived from the French language "Chartes de franchise" refers to a special license or privilege granted by the government to enterprises to jointly conduct business activities in the form of a transfer of rights.[44] The concept of franchising has chronicle roots, namely the 17th-century Canadian fur retail Hudson's Bay Company, which was operating as a trading franchise. However, it was not until the 19th century that formal franchise systems emerged.

While the franchise concept has an ancient genesis, its modern form began to take shape in the United States in the 19th and 20th centuries. The historical development of franchising in America reflects its adaptability and evolution over time. From its humble beginnings in the 19th century to the present, franchising has become a major force in the England and American business landscape, contributing to economic growth and providing entrepreneurial opportunities for individuals.[45]

As the first modern franchise, Isaac Singer and his partners developed a system to license individuals to sell and service their sewing machines. This marked an early example of granting

[44] William Killion, The history of franchising, ABA, 1984, Chapter 1, 5-26.
[45] David Gurnick, *The First Franchise*, Franchise Law Journal, 2021, Volume 40, 631-646.

particular rights in exchange for fees and royalties. After that, in the early 1960s, automobile manufacturers started using franchising to expand their distribution networks.[46] As a consequence, dealerships became a common form of franchising in the vehicle industry. Later, modern fast-food franchises were established.

The franchise model expanded beyond food and beverage to encompass a wide range of industries, including retail, services, education, and healthcare. After a while, technological advancements and globalization have influenced how franchises operate and enlarge. Regarding digital tools, e-commerce has been playing significant roles in marketing and communication within the franchise industry. Thereupon, modern franchises increasingly focus on sustainability, social responsibility, and meeting changing consumer preferences during the fourth industrial revolution.[47]

Due to the influence of Western Society and economic headway, franchising began to be established in post-socialist countries which transitioned from centrally planned economies to market-oriented systems.[48] It means, that in the latter half of the 20th and into the 21st centuries, franchising became a global platform. Thus, it continues to evolve with innovations, changes in consumer behavior, and adaptations to market trends.

During this period, franchise organizations such as the International Franchise Association were established to provide support, advocacy, and networking opportunities for franchisors and franchisees. In response to some franchise failures, there was a push for regulation to protect franchisees. In 1979, the US Federal Trade Commission introduced the Franchise Rule and began to require franchisors to provide disclosure documents to potential franchisees.

Consequently, the franchise turned into a question of international law, while being a contemporary business structure rapidly expanding in interstate economic sectors. Hence compared to traditional contractual arrangements, nowadays franchises are sensitive to accepting a solo legal approach and the agreement players are mainly interested in following private transnational rules and forum selection, rather than just a single country's regulations and jurisdiction.

For instance, the franchise boundaries changed from a licensing system to a special type of agreement in contract law and thus became an issue of commercial law. The former understanding of

[46] The Federal Automobile Dealer Franchise Act. Public Law 1026, U.S.C.A

[47] Robert Emerson, and Michala Meiselles, *U.S. Franchise Regulation as a Paradigm for the European Union,* Washington University Global Studies Law Review, 2021, Volume 20, 743-801.

[48] Laurent Tournois, Damien Forterre, *The extremes of franchising in a post-communist country*, Journal of Business Strategy, 2020, Volume 41, 3-10.

franchises was to regulate competition and support private investment by concluding concession agreements among the state and enterprises, however, over time, franchising contemporary models of Business-to-Business B2B and Business-to-Customer B2C concepts appeared. Therefore, the International Institute for the Unification of Private Law drafted the Model Franchise Disclosure Law in 2002, and after that over 20 countries, enacted disclosure statutes.

In particular, since economic integration throughout Europe and Asia,[49] narrow comprehension of franchising has changed gradually and is more focused on composite legal issues. That being so, Asian countries are intending to reform franchise regulations. Concerning, Mongolian private law legislation has a short history as in other post-socialist countries, and free market competition has developed rather late. Hence, I considered the past 100 years' private law background including the 1998 legal reform that established the conditions for diversifying private law legislation in my dissertation.[50]

Furthermore, the main parts of the research scope cover the theoretical concept of franchising and a comparison of the USA, and EU member states' regulatory frameworks regarding model laws, treaties, and codifications. Also, the legal arrangement that can be introduced in the field of franchise and the experience of solving the problems that arise were reviewed, and jurisprudence and law precedent concerning franchise questions in contract law and examples of countries with different legal systems. Consequently, the thesis has been framed as "Comparative Legal and Economic Analysis of Franchising Regarding European, Anglo-Saxon, and Mongolian Laws".

1.3. A Research Objective and Questions

The research is directed to contrast potential assumptions for balancing law issues specifically a regulatory advantage or barriers and recommending the best practices suitable for franchise-developing countries' soil. The study goal is, targeted at how the franchise law environment has changed adhering to the different manner of the social and economic systems and implemented successfully on the way to its progressive stage. Therefore, I suggested the following interrelated objectives, which are also related to the research area. It includes:

i. Make the counter-hypothesis of the dissertation is intended to re-examine research gaps and summarize the findings.

ii. Investigating domestic and international rules and discovering franchise-friendly legal

[49] Nicola Casarini, The Future of the Belt and Road in Europe, *Istituto Affari Internazionali,* 2024, 1-22, "See", in https://www.iai.it/sites/default/files/iaip2402.pdf

[50] The Parliament Decree N.18, *Project for Legal Reform*, MGL, 1998.

environments concerning contract and commercial law perspectives.

iii. Due diligence on the constructive dispute resolution procedure for franchise lawsuits and compare distinguished franchise litigations in inquisitorial and adversarial systems.

While contemplating the above conceptual matter of the franchise regulatory framework has automatically brought my research questions, and are ranked as follows:

1) *How can systematize the historical development, legal, and economic theoretical foundations of the franchise?*
2) *Does it need more precise coordination in the way franchises are regulated at the international level?*
3) *What are the similarities and differences between the legal arrangements found in the comparative study?*
4) *Why can nonjudicial forums be judged as better for resolving franchise disputes?*
5) *What matters can be Mongolian legal and economic problems of franchising compared to some other franchise-developed countries and its solutions?*

1.4. Research Design

Quantitative and qualitative methodologies of historical, comparative, case study, and data analysis were used in the research.[51] The research has been conducted within the thesis structure with the following design.

Figure 1: Research design. (Source: John W. Creswell, Research design)[52]

➢ The evolution of franchise agreements has roots in Roman contract law, which laid the foundation for various contractual principles that have persisted and evolved. In Roman law, contracts like *societas* (partnerships) and *locatio conductio* (leases and services) provided early frameworks for agreements involving mutual obligations, which are essential in franchising. As these principles spread

[51] Craig Stephens, Alan Graham, & James Lyneis, System dynamics modeling in the legal arena: meeting the challenges of expert witness admissibility, System Dynamics Review, 2005, Volume 21, 95-122.
[52] Creswell (2009), 32-35.

through Europe, they were adapted and expanded by different legal systems. In England, the development of intellectual property law, particularly the Statute of Monopolies (1624), began to formally recognize and protect exclusive rights, a concept crucial for modern franchising, where trademarks and business models are key assets. In the United States, the growth of franchising was further influenced by the development of competition law. The Sherman Antitrust Act of 1890 and later regulations sought to prevent monopolistic practices while allowing businesses to grow through franchising. This balance between promoting competition and protecting intellectual property has been a defining feature of American franchise law. Therefore, historical research on the origin of franchise research is summarized by synthesis and critical thinking on the second source from the literature. The study highlights how the franchise agreement, which originated in Roman contract law, was expanded by legal regulations such as intellectual property statutes in England and competition rules in America.

- Across jurisdictions, the enforcement of franchise agreements typically relies on general principles of contract law, such as good faith, fair dealing, and the binding nature of agreements. Enforcement mechanisms and the degree of judicial intervention differ. The regulatory examination within this comparative framework would focus on identifying potential conflicts or collisions between these legal specifics. For instance, a franchisor operating in multiple jurisdictions might face challenges in complying with different disclosure requirements, which lead to inconsistencies or even legal disputes. Similarly, variations in contract enforcement affect the predictability of legal outcomes, complicating cross-border franchise relationships. Intellectual property protection is another area where differences in national laws could either enhance or undermine a franchisor's ability to safeguard its brand. Hence, I tried to compare parallel similarities and differences of objected studies. Particularly, the regulatory examination revealed whether the collision of law specifics on the franchising business model, including disclosure requirements, contract enforcement, and intellectual property.

- Using case analysis as a method to study judicial and arbitration experience in the context of franchise agreements is highly effective. The approach allowed me for a deep examination of how courts and arbitration panels have interpreted and enforced franchise agreements, providing insights into how legal principles are applied in practice. That is why, case analysis was indeed a valuable method for studying judicial and arbitration experience, particularly in the context of franchise agreements, and consequently, got back systematic and logical answers to the research questions.

1.5. Chapter Summary

The introduction of the thesis is the front part of my research which covers the study scope, topic accuracy, and methodological issues. The research questions outlined in this section served as a guide to align the subsequent chapters and helped the thesis to be detailed and sequenced. While the methodological section described in the introduction aims to express the innovative methods used in the development of the research of each chapter, the literature review shows not only the direction and concept of the research work but also the results sought.

The overview of historical research on franchising included in the chapter outlines how the process of turning intellectual property into business took place in England, America, Europe, and later post-socialist countries. The thesis contains an analysis of the comparative research between countries, as well as discusses the legal, economic, and business issues of franchises.

The scope of the study drew basic assumptions that regulating franchises can pose several modifications due to the nature of the contract and commercial necessities. For instance, franchise regulation needs to strike a balance between ensuring consistency and protecting the interests of franchisees while allowing for flexibility to accommodate diverse business models and industries for operating across multiple jurisdictions. That is why a comparative study has been mainly directed towards the above aspects.

Franchise laws and regulations have developed in response to changes in this industry and emerging challenges. In other words, franchise legislative history provided valuable context for understanding the intent behind franchise laws and, helped to define regulatory problems to address. Therefore, the research analyzed the franchise laws across different jurisdictions, enabling the comparison of legislative approaches and outcomes to assess the impact of regulatory variations.

CHAPTER 2. TRADITION AND MODERNITY OF FRANCHISE: LEGAL AND ECONOMIC ISSUES

Abstract

The chapter examines past and present perceptions and progressive stages of franchising. Therefore, the history of how the franchise originated, the contemporary franchise trends, and conceptual grounds are primarily considered in this chapter.

First of all, within the framework of the research, the ancient franchise arrangements were compared in the Roman-Germanic and Anglo-Saxon legal traditions. As the legal regulation of contracts is inextricably linked with the historical convention of ancient Greek and Roman jurisprudence, it strongly belongs to the study of the origin and development of franchises. Hence, the initial part of the research aims to find out early forms of the franchise in countries with a common legal system and to emphasize the characteristics of the law policy. Besides, how German contract law has regulated franchises, the pathway of franchises from England to America, the era of formation of modern franchise models, and how the entry of franchises into post-socialist and Asian countries have been examined.

The second part of the research conducted a framework for codifying franchises regarding legislative practices and international rules from the perspective of English and German laws. Not only the legal enactments of the USA and EU countries were clear examples for comparing legislative best practices, but the chapter has also reviewed late modern and contemporary franchise international regulatory arrangements such as convention and model laws. For instance, the United Nations Commission on International Trade Law, Model Law on International Commercial Arbitration and Electronic Commerce, the Agreement on Trade-Related Aspects of Intellectual Property Rights, Vertical Block Exemption Acts of the European Union, the Master Franchise Agreement and Codes of Ethics for Franchises are included.

The next parts of the research reviewed the theoretical and conceptual framework, specifically economic, and legal theories on franchising and comparative questions of intellectual property and competition rules. By comparing these foundations, my research has been turned valuable grounded, and new.

Keywords: English & German law, Regulatory Arrangement, Franchise and Franchising, Intellectual property, Vertical restraint.

Part 1: How can systematize the franchise's historical development, legal, and economic theoretical foundations? Examples of European, American, and Asian Characteristics

2.1. The roots of the franchise contract relationship in ancient Greece and Rome

Greek and Roman legal traditions have significantly influenced modern legal systems, particularly the formulation of European Civil Law and English Common Law. Both civilizations placed the background for many notions of private law. The earliest form of legal tradition is the *Amphictyonic* league in ancient Greece. It was a religious association of Greek tribes and cities centered around shared temples and sanctuaries, notably the Temple of Apollo at Delphi. The League provided a platform for cooperation and law obligations among various Greek states.[53] In ancient Greece, commercial and contract law was less formalized than later Roman law but played a core role in economic activities. Nevertheless, Greek territories were involved in extensive trade, which necessitated some form of legal regulation. Therefore, Greek law emphasized the importance of mutual consent, and commercial law was based largely on customs rather than codified statutes. Concerning contract terms for sales, leases, and loans were often verbal agreements, though written contracts existed, particularly for more complex transactions and merchants operated within a framework of traditional laws, which facilitated resolving market disputes.[54] While there were courts and legal procedures, the resolution of contract disputes was often handled through arbitration and mediation by community leaders or third parties.

The earliest codification of Roman law, the Twelve Tables, laid the foundation for Roman legal principles, including aspects of contracts. Although primarily focused on civil and procedural law, the Twelve Tables provided early legal recognition of agreements and obligations. Evidence of contract origins, including deeds of sales and employment agreements, exist from around 2600 BC, these were typically written on papyrus and witnessed by scribes.[55] The maxims of theoretical contracts and commercial obligations leveled up during these times and continued to underpin contemporary jurisprudence. The culmination of Roman contract law's development was the Corpus Juris Civilis, compiled under Emperor Justinian in the 6th century CE. Thus, comprehensive codification preserved

[53] Richard M. Gummere, *The Classical Ancestry of the United States Constitution*, American Quarterly, 1962, Volume 14, 3-18.
[54] Hans Julius Wolff, Commentary: *Greek Legal History Its Functions and Potentialities*, Washington University Law Review, 1975, Volume 2, 395-408.
[55] Johannes Renger, Institutional, *Communal, and Individual Ownership or Possession of Arable Land in Ancient Mesopotamia*, Chicago-Kent Law Review, 1995, Volume 71, 269-311.

and systematized Roman legal principles, including those related to contracts, influencing subsequent legal systems in Europe. For instance, the influence of *Praetorian edicts* led to a more structured and systematic approach to contracts, distinguishing between different types and their specific requirements. Over time, Roman law evolved to accommodate new types of agreements and economic activities, shifting from strict formalism to recognizing the importance of mutual consent.[56]

i. Consensus ad idem

The Roman concept of *Consensus ad idem* (meeting of the minds) still laid the groundwork for negotiation requirements. Without consensus ad idem, there can be no valid contract, as it ensures that all parties have a shared understanding of what has been agreed upon, on the other hand, the parties must intend that their agreement will result in legal obligations. In Roman law, for a contract to be valid, both parties needed to have a mutual understanding of the terms, assuring that they agreed on the same thing in the same sense. Also, contracts were requiring an exchange of goods, services, or promises, reflecting commitments. For a contract to be legally binding, there must be consensus ad idem. If one party believes they are agreeing to something different from what the other party believes, there is no true agreement. Specifically, transparent and mutually understood financial terms are essential for maintaining trust and cooperation.[57]

Nowadays, while many franchise agreements are standardized, there can be room for negotiation on certain terms. Both parties need to engage in discussions to ensure that any negotiated changes are mutually understood and agreed upon. Customization might include specific territorial rights, modifications to the business model to suit local markets, or tailored support services. Furthermore, both parties must clearly understand and accept their respective roles, responsibilities, and expectations to prevent disputes and foster a productive partnership. Concerning the formation of the contract, it is formed when one party makes an offer, and the other party accepts it. Both offer and acceptance must be unequivocal and have an intention to create legal relations. For example, English law uses an objective test to determine whether there has been a meeting of the minds. In cases involving standardized contracts, such as franchise agreements, the courts are particularly cautious about allowing claims based on subjective intentions, as these contracts are meant to apply uniformly across many situations. Similar to English law, a contract is formed through mutual intention in

[56] Lisa Pilar Eberle, The Edicts of the Praetors: Law, Time, and Revolution in Ancient Rome, Law and History Review, 2023, Volume 42, 1-25.
[57] Alan Watson, The Evolution of Law: The Roman System of Contracts, Law and History Review, 1984, Volume 2, 1-20.

German law and places significant emphasis on the subjective intent of the parties, the mutual intention to contract must be clear from the parties' declarations.[58]

ii. Pacta Sunt Servanda

Roman law made significant contributions to the development of contract and commercial law, influencing later European justice framework. *Pacta Sunt Servanda* is a fundamental dogma of contract law, originating from Roman culture and deeply embedded in many current enactments. The Latin phrase translates to "agreements must be kept," underscoring the binding nature of contracts and the expectation that agreement parties will honor their commitments. The strict terms and conditions of franchise agreements have led to strict obedience to this principle. The concept was integral to Roman contract law, reflecting the importance of trust and reliability in economic and social transactions. It was reinforced during the Middle Ages by Canon law, which adopted and expanded on Roman law doctrines, emphasizing the moral and ethical dimensions of keeping promises.[59] Canon law is the body of laws and regulations developed or adopted by ecclesiastical authority, for governing the Christian organization and its members. It primarily pertains to matters within the Roman Catholic Church, the Eastern Orthodox Church, and the Anglican Communion. Canon law is not a direct source of modern contract law, its historical role in shaping legal thought and institutions has left an indirect legacy however canonists contributed to the development of legal concepts that influenced secular law, including notions of justice, equity, and natural law.[60]

Currently, most jurisdictions imply a duty of fulfillment of contract obligations. Once a franchise agreement is signed, it becomes a legally binding contract, which means both parties have to follow already fixed terms and conditions. If a contract term is ambiguous, courts may look at extrinsic evidence to determine the parties' intent. However, even in these cases, the focus remains on what the parties expressed through the contract's language, not their internal, unexpressed intentions. Many contracts include an integration clause (or merger clause) stating that the written agreement is the complete and final version of the agreement between the parties. This reinforces the principle that the court should rely on the contract's terms rather than any external evidence of intent. On the other hand, implement feedback mechanisms to ensure that concerns and suggestions from both sides are heard and addressed and maintain regular communication to address any issues or changes that may arise.

[58] Johannes Ungerer, *A Bidirectional Anglo-German comparison of consideration in contract law*, International & Comparative Law Quarterly, 2023, Volume 72, 251-268.
[59] Hans Wehberg, *Pacta Sunt Servanda*, The American Journal of International Law, 1959, Volume 53, 775-786.
[60] James E. Serritella, *The Code of Canon Law and Civil Law*, The Catholic Lawyer, 1984, Volume 29, 195-206.

For instance, according to English law tradition, the obligations of the parties are determined primarily by the express terms of the contract, which enforces the performance of these obligations strictly according to the terms agreed by the parties. German law recognizes concepts such as *Leistungstreue* (loyalty in performance), which requires parties to act by the contract's spirit. The obligations of the parties are determined by the express terms of the contract, but these are supplemented by implied terms and the principle of good faith.

iii. Bona Fides and Causa

Albeit not explicitly stated in *Pacta Sunt Servanda* the principle often operates in conjunction with the notion of good faith while building franchise negotiation as other contractual agreements. Parties are expected to act honestly and fairly, ensuring that the spirit as well as the letter of the contract is respected. Good Faith '*Bona Fides*' is a crucial maxim in contract law that emphasizes sincerity in contractual relationships. Specifically, parties should assist each other in overcoming obstacles that may hinder the fulfillment of the contract. Besides, the concept of *Causa* was fundamental in Roman contract law, where it was crucial to the classification and validity of contracts. *Causa* refers to the underlying reason or purpose that justifies the creation of a legal obligation or contract and it is the basis of Roman contract law and has influenced many modern legal regimes, particularly within the civil law tradition.[61]

Regarding franchise agreements, the most important object is intellectual property, which can be seen as the main reason for the agreement between the parties. If compared, good faith in franchise agreements is more deeply embedded and broadly applied in German law due to its civil law tradition and codified principles. In contrast, English law, rooted in the common law tradition, treats good faith more cautiously, recognizing it in specific contexts or through express provisions. This fundamental difference shapes how franchise agreements are drafted, interpreted, and enforced in each jurisdiction, with German law providing a more pervasive and automatic application of good faith principles. For instance, the principle of good faith (Treu und Glauben) is explicitly enshrined in the German Civil Code, the franchisor's enforcement of quality standards and operational guidelines must be reasonable and aimed at protecting the brand's integrity rather than imposing undue burdens on the franchisee.[62] In English law, good faith is recognized in certain specific contexts, such as fiduciary relationships

[61] Giuseppe Dari-Mattiacci and Carmine Guerriero, Law and Culture: *A Theory of Comparative Variation in Bona Fide Purchase Rules*, Oxford Journal of Legal Studies, 2015, Volume 35, 543-574.
[62] BGB, Buch 1 Allgemeiner Teil § 157 Auslegung von Verträgen, Buch 2 Recht der Schuldverhältnisse § 242 Leistung nach Treu und Glauben.

(e.g., between a trustee and beneficiary) and insurance contracts. Recent case law has begun to acknowledge good faith obligations in certain long-term relational contracts, including some franchise agreements, though this is still evolving and not universally applied.[63]

2.2. Early patterns of the franchises

Across earliest civilizations, the supervision of specialized knowledge and techniques was a common practice that was often maintained types through personal relationships, guilds, and apprenticeship systems, with masters teaching their skills to pupils in return for labor and loyalty. While not a franchise in the strict sense, this arrangement managed the transfer and use of intellectual knowledge and techniques over a period.

The heritage of the ancient cultures put fundamental principles that affected subsequent economic thought and development, making remarkable inventions and advancements that sustained the basis for modern markets i.e. In ancient Mesopotamia, especially in Babylon, there were guilds and workshops where craftspeople and artisans worked. Skills and techniques were often passed down within these groups, and while not leased, supervised dissemination of specialized ability served a similar function in protecting intellectual output. Greek philosophers and scholars were charged fees for teaching their learning and philosophies, seen as a form of sharing education franchise, where knowledge was temporarily transferred to students.

The patronage system involved wealthy individuals sponsoring artists, writers, and inventors, providing them with financial support in exchange for the benefits of creations. It was considered an element of leasing, where the patron gains the use of the know-how during the creator's lifetime. Craftsmen and inventors in Rome sometimes worked under contractual agreements that specified the terms of work and the use of inventions. Artisans were being contracted to produce works for specific projects or clients, temporarily transferring skills and expertise for the duration of the contract.[64]

i. Concept of Proxenia

The *Proxenia* in ancient Greece was similar to franchise which means a privileged citizen of one province who acted as a representative or patron for another, facilitating trade and diplomatic relations. It could be said that such an arrangement was based on mutual benefit and trust, coincident with the franchisor-franchisee relationship concerning act of giving someone the power or right to do

[63] Maud Piers, *Good Faith in English Law-Could a Rule Become a Principle*, Tulane European & Civil Law Forum, 2011, Volume 26, 124-169.
[64] Leo Oppenheim, Ancient Mesopotamia, The University of Chicago Press, 1964, 63.

something. On the other hand, authorization shares some structural and functional similarities with franchising, particularly in the delegation of authority, and local adaptation aspects. While it differs from modern legal contracts in scope and enforcement mechanisms, the underlying rules of formalized and binding commitments bear similarities. For instance, in the context of contract law, it was a reference to some form of intermediary or representative relationship.[65]

ii. Publicani v. Satraps

During ancient Rome, the government outsourced public services and tax collection to private individuals or companies known as *Publicani.* It was similar to Persian Satraps. For instance, the Achaemenid Empire of Persia divided its vast territory into satrapies, each governed by a satrap. Satraps were delegated significant authority to collect taxes, maintain order, and oversee local administration, though they were accountable to the central authority of the emperor. These contractors were granted licenses to collect taxes, build infrastructure, or supply the military. The contracts, called public contracts or *Societates Publicanorum,* resembled franchise agreements where the state (franchisor) allowed rights to private entities (franchisees) to operate in specific regions or sectors. Thus, a system in ancient Rome is indeed similar to modern franchising in several important aspects regarding revenue-sharing arrangements, standardization to ensure quality and efficiency, and local operation with central oversight. Meantime the primary focus and specific nature of the tasks differ, the precept of leveraging private initiative for broader organizational goals and sharing economic benefits are common to both the *Publicani* and franchising systems.[66]

2.3. Franchise Origins in Common Law Traditions

Throughout the feudal era, which spanned roughly from the 9th to the 15th century in Europe, the system was based on the allocation of land in exchange for service or labor. Lords granted land to vassals who, in return, owed military service or other forms of employment to the lord. The relationship can be seen as a precursor to franchising in that it involves a form of delegation and reciprocal obligation.[67]

The influence of Roman law in England faded with the breakup of the Roman political system. Consequently, when the common law began to develop, it started from a less advanced stage than that

[65] William Mack, *Proxeny* and Polis: Institutional Networks in the Ancient Greek World, Oxford, 2015, 22-89.
[66] Ulrike Malmendier, *Law and the finance at the origin, Journal of Economic Literature*, 2009, Volume 47, 1076-1108.
[67] Robert Emmerson, *Franchising and the Collective Rights of Franchisees,* Vanderbilt Law Review, 1990 Volume 43, 1504-1566.

attained by Roman law. English courts, beginning in the Middle Ages, had to painstakingly construct their legal foundations. Despite this late start, English common law gradually evolved through judicial decisions and the establishment of legal precedents. The process was laborious and incremental, involving the adaptation of existing customs and the formulation of new legal principles to address emerging societal needs. For instance, after the fall of the Roman Empire, much of Europe, including England, reverted to localized customs and tribal laws. The sophisticated Roman legal system was largely forgotten in England, leading to a fragmented legal landscape.

Roman law, known for its advanced and systematic legal principles, no longer provided a foundational structure for English law. English common law, emerging in the Middle Ages, started from a more rudimentary base. Unlike Roman law, which had evolved over centuries with well-developed doctrines and principles, English law had to be built from the ground up. This involved a slow and painstaking process of developing legal concepts and systems through judicial decisions and customs. English courts in the Middle Ages faced the challenge of creating a coherent legal system without the sophisticated framework of Roman law. Judges and legal scholars had to construct fundamental legal principles, such as property rights, contracts, and torts, through case law and judicial interpretation.

During the medieval period in Europe, contract law continued to be discharged, especially through the practices of merchants. The merchant law *Lex Mercatoria* emerged as a body of commercial law used by traders across Europe. The rules and applications were based on customs and mutual agreements and played a role in modern contract law development. The English common law evolved independently of Roman law influences, leading to distinctive features and approaches. While civil law systems in continental Europe continued to be influenced by Roman legal principles, English common law developed its unique doctrines, such as the importance of judicial precedent and the doctrine of consideration in contract law.

Indeed, the common-law system originated in medieval England after the Norman Conquest of 1066. William the Conqueror sought to centralize legal administration, leading to the development of a unified legal system. By the 12th century, royal courts were established, and itinerant judges traveled to hear cases across the country. These judges began to apply common principles to cases, creating a consistent body of law.[68] The Magna Carta, signed in 1215, was founded for common law by affirming

[68] Frank I. Schechter, *Popular Law and Common Law in Medieval England,* Columbia Law Review, 1928, Volume 28, 269-299.

the rights of individuals and limiting the power of the king. The blossoming of contract law in England was a notable milestone in the common law tradition. By the 12th and 13th centuries, English courts began recognizing and enforcing agreements based on the principles of assumpsit.[69]

The development of English common law, particularly in the field of contract law, was a remarkable achievement given its beginnings. When English courts began constructing their legal foundations, the English law of contracts was relatively primitive, comparable to the legal systems of many early societies. However, through persistent effort and judicial creativity, they succeeded in creating a sophisticated body of contract law. Initially, the English law of contracts was rudimentary, lacking the advanced legal doctrines and principles that characterized Roman law at its peak. This early stage of development is comparable to the legal systems found in many ancient societies, where formalized contract principles were minimal or non-existent.

English judges and legal scholars undertook the arduous task of constructing a coherent system of contract law, which involved identifying and categorizing actionable promises, much like the Roman jurists had done. Roman law was known for its categorization of actionable promises, establishing clear principles for contract formation, performance, and remedies. While Roman law dimmed in direct influence, its methodical approach to legal principles served as an indirect inspiration. On the contrary, English courts began to develop categories of actionable promises through case law. Judges created and refined legal doctrines by resolving disputes and setting precedents, gradually building a comprehensive system of contract law.

2.3.1. Franchise in England v. Europe

In some historical contexts, rulers would grant monopoly rights to individuals or companies to produce or trade certain goods. Franchises as arrangements can be determined back to medieval times when the Crown granted persons the administer businesses or collect taxes in designated regions. The evolution of franchising has historical roots starting in England before making its way to America. However, the early forms of franchises were quite different from the contemporary franchising models. In medieval and early modern Europe, monarchs often granted charters or licenses to individuals or groups, allowing them to conduct certain businesses, collect taxes, or exploit natural

[69] Allan Durant and Janny Leung, Language, and Law, Chapter A2 Historical Development of Legal English, Routledge London and New York, 2016, 8.

resources. The licenses were for handling a specific territory or engaging in particular economic activities, similar to the territorial exclusivity often found in latter-day franchise agreements.[70]

The former franchise concept expressed an administrative process of licensing and an effective system for introducing intellectual property to the market, and both definitions were co-existent in past times.[71] The main reason for the progress of the franchise business began with the lack of capital of intellectual creators and innovators and was related to product and service models that would not be effective until they were taught how to use them.

In England, guilds and trade associations served as early forms of business organizations. Craftsmen and merchants formed guilds to regulate trade exercises, ensure quality standards and protect their interests. For instance, the guilds were granted charters by the local lord or king, giving them the sole right to regulate their trade, set standards, and control prices within their jurisdiction. These organizations exhibited elements of a collective business model, where members shared common policies and standards. During the reign of Queen Elizabeth, I the Statute of Artificers was enacted in 1563. The statute aimed to regulate and control apprenticeship and the activities of craftsmen. The law established a system where master craftsmen could take on apprentices and pass on their skills, creating a hierarchical relationship resembling a predecessor to franchising.[72]

Besides, European monarchs granted charters to companies, like the British East India Company or the Hudson's Bay Company, giving them the right to trade and govern in specific regions. These charters can be seen as early forms of franchising, where the crown (franchisor) granted a charter (franchise agreement) to a company (franchisee) to administer in a designated area. Indeed, the earliest example of the franchise is the Hudson's Bay Company, founded in 1670 in Canada, and was operating as a fur trading business under a royal charter granted by King Charles II of England.[73]

Following, the franchise license in Australia under royal privilege was granted by Governor Macquarie in 1809. Governor Macquarie was known for granting land and issuing licenses for various commercial activities as part of his efforts to develop the colony of New South Wales. While Lachlan Macquarie, who served as the Governor of New South Wales from 1809 to 1821, made significant

[70] David Gurnick, *The First Franchise*, Franchise Law Journal, 2021, Volume 40, 631-646.
[71] The word Franchise or "Charte de Franchises" comes from the old French language meaning exclusive or privileged. The earliest franchise is believed to be a printing press model invented by German inventor Johannes Gutenberg in 1491, after which specialized franchises sprung up across Europe. "See", https://fr.wikipedia.org/wiki/Charte_de_franchises
[72] William Bosshardt, and Jane Lopus, *Business in the Middle Ages,* Social Education, 2013, Volume 77, 64-67.
[73] Arthur Ray, Hudson's Bay Company, Article, 2009, "See", in
https://www.thecanadianencyclopedia.ca/en/article/hudsons-bay-company

contributions to the development of the colony during his tenure, there is no credible historical record of him granting franchise licenses as part of a business model similar to nowadays franchising. Nevertheless, these were not structured as a franchise system, which is a business model where individuals or entities are granted the right to operate under the brand and a parent company.[74]

As England became more industrialized in the 18th and 19th centuries, franchising was released to include commercial franchises. For instance, breweries were granted the public house owners' rights to sell their products exclusively, often in exchange for financial backing or supplies. While English common law settled the groundwork for franchise agreements, focusing on contracts and protecting commercial rights.

Later, the landmark case of Hedley v. Baxendale (1854) established the principle of foreseeability in contract damages, further shaping English contract law.[75] The case remains a pivotal example in contract law, establishing the fundamental principles for determining recoverable damages in breach of contract situations in the Commonwealth of Nations. Thus, the part of the franchise-related issues emphasis on predictability and the need for clear communication of special circumstances has shaped the legal landscape, assuring a fair and predictable approach to compensating for losses resulting from breaches of contract. Moreover, the civil law tradition, based on Roman law, continued to influence the headway of contract law in continental Europe. For instance, the Napoleonic Code (1804) in France and the German Civil Code-BGB (1900) are two prominent examples of codified contract law that have had a lasting impact.

The Napoleonic Code and the German Civil Code have significantly influenced modern franchises by establishing written principles of contract law, property rights, and good faith. The codes provided the legal infrastructure necessary for the development and enforcement of agreements, contributing to the growth and success of franchising as a global business model.

For instance, the Napoleonic Code provided a unified legal framework for France, consolidating various regional laws into a single, coherent system. The code's detailed treatment of property rights provided a legal foundation for protecting intellectual property, a critical aspect of franchising. The BGB is known for its thorough and systematic approach to codifying private law. It influenced many legal systems worldwide and provided a detailed framework for contractual relationships, which is

[74] William Killion, The history of franchising, ABA, 1984, Chapter 1, 5-26.
[75] Wayne Barnes, Hadley v. Baxendale and Other Common Law Borrowings from the Civil Law, Texas Wesleyan Law Review, 2005, Volume 11, 627-648.

essential for franchise agreements. BGB itself does not explicitly address franchising, its principles are essential for understanding how franchise agreements are structured and interpreted under German law. The code emphasizes the principle of contractual freedom, allowing parties to freely negotiate and agree upon the terms of their contracts, including franchise agreements, and specifically contains provisions aimed at keeping the interests of businesses safe, including those related to competition and unfair practices. These are vital for maintaining the integrity of franchise systems and ensuring fair competition.[76]

2.3.2. Model Franchising in North America

During the 18th century, the American economy was primarily agriculture, with commerce largely conducted through small-scale merchants, craftsmen, and farmers. Business practices similar to franchising were basic and often involved local monopolies or exclusive rights granted by colonial governments. However, franchising transitioned from England to the United States by evolving from early commercial practices and legal frameworks to a more structured and widespread business model.

The success and proliferation of franchising in America were driven by innovative business practices, regulatory developments, and a mixed cultural environment that favored entrepreneurship.

As European settlers arrived in North America, business relationships accorded to early franchising began to emerge. Merchants and producers established distributorship agreements with individuals in different colonies, allowing local entrepreneurs to distribute and sell goods on behalf of the producers, sharing profits in return. Franchising began to take a more modern form in the late 19th century. In the United States, trademark and product franchising developed when the 'Singer' sewing machine company was formed in 1851. Gradually, local municipalities started granting franchises to utility companies for water, gas, and electricity.[77] The next stage in the renewal of franchising came around the turn of the 20th century when oil refinery companies and automobile manufacturers began to grant the right to sell their products.

In the United States, the development of the doctrine of promissory estoppel during the twentieth century provided an alternative to the doctrine of consideration as a basis for enforcing promises. Promissory estoppel emerged as a doctrine that allows a promise to be enforced even without consideration if certain conditions are met. Doctrine was developed to prevent injustice in situations

[76] Catherine Valcke, Comparative History and the Internal View of French, German, and English Private Law, Canadian Journal of Law & Jurisprudence, 2006, Volume 19, 133-160.
[77] Kevin Shelley, Susan Morton, *Control in Franchising and the Common Law*, Franchise Law Journal, 2000, Volume 19, 119-127.

where one party made a promise, and the other party relied on it, and as a result, suffered a detriment. This evolution was significantly influenced by the Restatement of Contracts, which sought to clarify and systematize American contract law. The American Law Institute's Restatement of Contracts, first published in 1932, played a crucial role in formalizing the doctrine of promissory estoppel, aimed to distill the general principles of contract law into a coherent framework.[78]

Promissory estoppel served as an alternative to consideration, allowing courts to enforce promises based on the commitments' reliance rather than the exchange of value. The development of this enforcement in the United States reflected the adaptability of common law systems in addressing new legal challenges and promoting fairness. Consequently, it has been considered that justifiable reliance is a legal principle that can play a significant role in franchise contracts and prevents a party from going back on an obligation even if a legal contract does not exist, provided certain conditions are met. For instance, franchisors often make representations and swear during the negotiation phase. If a franchisee relies on these promises to their detriment, and the promises are not included in the final written contract, the franchisee may invoke promissory estoppel. Hence, US courts started to implement estoppel to hold the franchisor accountable for the promises made, even if they were not part of the written agreement.

The post-World War II economic boom in the United States created an environment conducive to the expansion of franchising. Increased consumer demand, suburban growth, and the rise of industrial culture facilitated the spread of franchise businesses. Moreover, international franchising such as chain restaurants, hotels, fast food, and consumer goods services had their beginnings in the 1960s.[79] The U.S. pioneered many legal aspects of franchising and influenced other countries through the successful international expansion of American brands. Countries like the UK and France adopted the franchising model laws, benefiting from American franchising know-how while developing their regulatory frameworks. Besides, the traditional American franchise system is significant due to its contributions to economic growth, job creation, and entrepreneurial opportunities. It fosters brand consistency, operational efficiency, and innovation while enhancing market penetration and economic resilience.

[78] Hugh E. Willis, *Restatement of the Law of Contracts of the American Law Institute*, Indiana Law Journal, Volume 7, 1932, 429-436.
[79] Competition Policy and Vertical Restraints, OECD, 1993, 117.

2.4. About the root and development of Franchise in Asia

Ancient Asia, distinctly in China and Japan, exhibited early forms of franchising through various systems and practices that built arrangements for modern franchise concepts. During the Tang (618–907) and Song (960–1279) dynasties, China saw the rise of merchant guilds and trade associations. Business owners often received charters or licenses from the imperial government to operate in specific regions or conduct particular types of trade and were responsible for maintaining standards, setting prices, and regulating trade practices, similar to how franchises proceed under unified brand and quality standards. In era of the Chinese Han and Tang dynasties, the imperial court would commission works of art, literature, and inventions from scholars and artisans. These commissions were a form of leasing intellectual skills for the production of specific works for the court.

The tea trade in ancient Mongolia and China also exhibited franchising elements. Merchants who wanted to sell tea in various regions often had to obtain licenses from the state or local authorities. The licenses allowed them to trade under specific conditions, ensuring the quality and consistency of the tea, similar to the way franchise agreements confirm product and service standards.[80]

The practice of tax farming was another early shape of franchising in Ancient China. The imperial government outsourced the collection of taxes to private individuals or companies. These tax farmers were granted privilege rights to collect taxes in a designated area, in return for a fee or percentage of the revenue. Thus, the system resembles modern franchising, where the franchisee pays the franchisor to handle a business under their brand.

In Japan, the *Za* were merchant and industrial union that received charters from local lords or the "*Shogunate"*. They maintained quality standards and regulated their members' activities, much like franchising. The *Kabunakama* were organized merchants in the *Edo* period which functioned under similar ideas. They controlled trade in various commodities and were granted licenses to operate by the owner. The guilds established rules and standards for their members, certifying consistency and quality in their products and services. Moreover, *Sake* /Alcoholic drink/ brewing in Japan also followed a franchising-like model. Breweries needed licenses from the government to produce and sell *Sake*. The licenses often came with strict regulations on production methods, quality control, and distribution, verifying that the *beverages* met specific standards close to the consistency required in franchise operations.[81]

[80] Yuqin Sun, Xu Chang, A General History of China's Foreign Trade, World Scientific Publishing, 2024, 57.
[81] Charles D. Sheldon, *Merchants and Society in Tokugawa Japan, Modern Asian Studies,* 1983, Volume 17, 477-488.

Later, during the 19th century, many Asian countries were under colonial rule. European powers, particularly the British, introduced Western business practices, including early forms of franchising, albeit limited in scope. That period saw the beginnings of industrialization in parts of Asia, particularly in Japan after the *Meiji* Restoration in 1868. Japan's opening to Western influence and technology set the stage for adopting Western business models, including franchising. Increased trade between continents brought exposure to European business practices, as well as the concept of standardized operations and distribution, which are foundational to franchising. After World War II, many Asian countries focused on rebuilding their economies.[82]

Japan, in particular, experienced rapid economic growth and modernization, which included adopting various Western business models. For instance, the introduction of American fast-food franchises in the 1970s marked the beginning of modern franchising in Japan and set an example for other Asian countries. The economic liberalization policies in countries like China (post-1978 reforms) and India (post-1991 reforms) created a more useful tool for franchising. The reforms included reducing trade barriers, encouraging foreign investment, and fostering private enterprise. Recognizing the potential of franchising to spur economic growth, create jobs, and promote entrepreneurship, several Asian governments implemented supportive policies and regulations. The Asian Financial Crisis in the late 1990s forced many laid-off workers to seek entrepreneurial opportunities, leading to a surge in franchise openings as a relatively secure and established business model.[83] For instance, the Japan Medium-Small Retail Promotion Act of 1973 is the earliest rule impacting franchising, focusing on protecting small and medium-sized retailers. The law included provisions related to the disclosure of information by franchisors to potential franchisees, helping to lay the groundwork for fair franchising practices. Chinese Regulations on the Administration of Commercial Franchises of 2007 were among the first comprehensive efforts to govern franchising in China.

2.5. Transitional period of franchise in Post-Socialist countries

Most of the post-socialist countries have a tradition of civil law systems. In contrast to common law systems, civil law jurisdictions do not emphasize consideration as a requirement for contract formation. Instead, they often focus on the presence of lawful cause or the mutual intent to create legal obligations. Post-socialist countries faced the significant challenge of transitioning from centrally

[82] John P. Tang, *Technological Leadership and Late Development: Evidence from Meiji Japan*, 1868–1912, Columbia Business School, 2009, Working Paper Series, No.278, 1-39.
[83] Frederic S Mishkin, *Lessons from the Asian crisis Journal of International Money and Finance*, 1999, Volume 18, 709-723.

planned economies to market-oriented systems. The transition often resulted in legal vacuums or inconsistencies where existing socialist-era laws were inadequate or incompatible with market principles. The transformation of contract law in post-socialist countries, following the collapse of communist regimes in Eastern Europe and parts of Asia, represents a complex and multifaceted process influenced by historical, political, economic, and legal factors. Many post-socialist countries undertook legal reforms to establish new constitutional frameworks that support private ownership, contract enforcement, and market transactions. Reforms often aimed to strengthen contractual freedom and party autonomy, allowing individuals and businesses to negotiate and structure agreements according to their needs and preferences. The effectiveness of contract law reforms often depended on the capacity and independence of judicial institutions to interpret and enforce contracts impartially. Building a competent judiciary capable of handling complex commercial disputes including franchise lawsuits was a priority.

Significant opportunities and challenges have marked the development of franchising from Western origins to post-socialist countries. While franchising has driven economic growth, and entrepreneurship in these regions, it has also faced hindrances related to cultural adaptation, regulatory environments, and economic stability. European and USA franchises indeed developed robust systems for training, quality control, and brand management. Legal frameworks and support structures were developed to protect both franchisors and franchisees, making franchising a mainstream business practice. Moreover, Franchising has seen evolution as it moved from Western capitalist economies to post-socialist countries. The transition has been marked by unique challenges and opportunities, reflecting the differing economic landscapes, regulatory instruments, and cultural attitudes. Inspired by the success of Western franchises, local entrepreneurs in post-socialist countries began to start their new franchise systems.

Franchising has contributed to economic growth in these countries after the fall of socialism and the transition to market economies, many of countries faced numerous challenges, including the need to develop a private sector, create jobs, and foster entrepreneurial skills. By enabling the establishment of new businesses, franchising has provided numerous employment opportunities. The entry of Western franchises has often led to improvements in standards of quality, customer service, and business operations. In other words, east European and some Asian countries' businesses have had to up their game to compete with the standardized practices of franchises. Post-socialist countries often have advanced legal and regulatory frameworks that can pose challenges for franchises. Navigating

these regulations was still complex and time-consuming. For instance, while not strictly these countries in the same sense as East European nations, China's transition from a centrally planned economy to a market-oriented one has seen a massive influx of franchises.

Part 2. A Framework for Codifying Franchise: Does it need more precise coordination in the way franchises are regulated at the international level?

Lessons from International practice we can answer why systematic enactments are mandatory for regulating franchises. The origin of franchise international regulations can be seen as a response to the growth of franchising as a business model, driven by the need to address legal, commercial, and ethical considerations. The expansion of franchising in several countries has led to the inadequacy of regulation by the laws of one country and the asked for jurisdictions to agree and join the model laws. Therefore, international franchise regulation is often shaped by factors, including bilateral and multilateral agreements, model laws, and directives. The harmonization of the above arrangements does not depend only on market necessities, but it is also appropriate to consider that rules have been formed during the exchange of legal experience between legal systems.

For instance, English law provides guidance and precedent in some aspects of international franchise regulation, particularly for countries with legal systems derived from or influenced by English common law. Like English law, while German legal principles may influence franchise rules in certain jurisdictions, they are not universally regarded as the primary source of international franchise regulation. Even though the United States has a significant influence on global business practices, including franchising, it is not the sole or primary source of international franchise regulation as well.

The question of jurisdictional matters of international franchising regarding the issue of parallel proceedings and justification is based on the idea that different countries cannot decide the same case in the same manner. Considering theoretical grounds for refusing overlapped proceedings are expressed by the concepts of *"Forum Non-conveniens" and "Lis alibi pendens"*.

Forum "*Non-conveniens"* means an inappropriate forum and is commonly used in common law countries. The main content is not to solve the same case in two courts at the same time but to determine the appropriate court and it is a legal doctrine allowing courts to dismiss a case if another court or forum is significantly more appropriate and convenient for the parties involved. For instance, when a franchisor and franchisee are based in different countries, determining the suitable forum can be complex. A court may use forum *Non-conveniens* to move the case to a more appropriate

jurisdiction because there must be an available and adequate alternative forum where the case can be heard. However, *"Lis alibi pendens"* is a regulation widely used in countries with a continental legal system. If a case is filed in two different courts at the same time, the court that filed the case first has jurisdiction. It is an arrangement based on the idea that the courts of a country have exclusive authority, if there is dominant power, that court will review it, on the other hand, refers to a situation where two or more lawsuits involving the same parties and the subject matter are pending in different courts simultaneously.[84] Therefore, the doctrine aims to avoid duplication of judicial proceedings and prevent conflicting judgments by ensuring that only one court hears and decides the case. In the context of franchise litigation, *Lis alibi* pendens is particularly relevant due to the multi-jurisdictional nature of franchise agreements.

The question of the legal system is a central theme of international law. Because the preamble to written laws and sermons is a way for countries to agree on the common jurisdiction of court disputes. Although legal systems differ, how countries achieve common regulation is through mutually agreed norm-setting, the primary source of which is inevitably a set of requirements or written legal rules. For instance, several legal systems are normally grouped under the term "Civil law legal traditions". These are the descendants of Roman law, such as the French, Italian, and Spanish law, and the legal regimes that have drawn inspiration from them, for example, Latin American and several North African justice traditions; the Germanic systems that are derived from German law (Germany, Austria, Switzerland) and the legislative frameworks inspired by them, such as the Japanese and the Eastern European, and also the Scandinavian legal systems which, however, constitute a separate grouping. Except for the Scandinavian, a characteristic of the legal systems of the civil law tradition is the systematic codification of different areas of law private law. The result is a body of law that is organized systematically and which often contains a detailed regulation of several subject matters that in other legal systems are left to the determination of the parties. In other words, as a large number of issues are regulated by the legislative instruments, there is less need for the contracts to enter into great detail except where the parties feel that a certain amount of detail is necessary or desirable. Therefore, if an item that is dealt with in the non-mandatory provisions of the codes is not provided for more specifically in the contract, the provisions of the codes or guide will apply. The mandatory provisions of the codes will always apply no matter what is laid down in the contract. In other words, I would

[84] C. M., Jr, *The Doctrine of Forum Non-Conveniens,* Virginia Law Review, 1948, Volume 34, 811-822.

emphasize that codified norms or the most common standard regulations are mutually agreed upon by the international parties to figure out the conflicting issues in one line. There is a tendency above principle is also being applied in the franchise industry.

2.6. Best Practice of the Western Law

2.6.1. U.S legislative approach

An integral part of the legislative history in the United States is the mixed regulation of commercial and contract law. The development of commercial law in the U.S. began with common law principles inherited from England. During the colonial period, English common law was the predominant legal system in the American colonies. Colonists brought with them the principles of English contract and commercial law, which governed trade and commerce. The English common law system was characterized by its reliance on judicial decisions and precedents. Early American courts adopted these principles, creating a body of case law that would form the basis of U.S. commercial law. After gaining independence, the newly formed United States continued to use English common law as the foundation for its legal system. However, the need for laws that addressed the specific economic and commercial realities of the new nation became evident. States began to develop their legal systems and statutes, drawing heavily on English common law but also innovating to label local conditions and needs. The English Sale of Goods Act, for example, influenced American laws governing the sale of goods, which later evolved into the Uniform Sales Act and ultimately the Uniform Commercial Code. The concept of freedom of contract, which allows parties to freely negotiate the terms of their agreements, was a cornerstone of English common law and became integral to American contract law. Principles such as offer and acceptance, consideration, and the capacity to contract were inherited from English law and continue to underpin American contract law. The growth of interstate commerce led to the need for more uniform regulations. The creation of the Uniform Commercial Code in the 1950s was a significant milestone in achieving uniformity in commercial transactions across states. This period also saw the expansion of federal regulations affecting commerce.[85]

In the 20th century, franchise legislation became necessary in response to the rapid growth and expansion of a business model. Specifically, the Lanham Act of 1946 aims to protect service marks and trade dress, conducted so that franchisors can maintain control over their brand and prevent unauthorized use. The act provides legal remedies for trademark owners to prevent others from using

[85] Isaac A. Hourwich, *The Evolution of Commercial Law,* American Bar Association Journal, 1915, Volume 1, 70-76.

their marks without permission and helps franchisors protect their trademarks and service marks, which are vital assets in franchising, but also to prevent consumer confusion regarding the source of goods or services. Moreover, the Act provided that owners of famous trademarks can bring dilution actions to prevent uses that might dilute the distinctiveness of their marks, even if there is no direct competition or likelihood of confusion, which helps protect the value and reputation of well-known brands.[86]

One of the earliest cases interpreting the Lanham Act is Mishawaka Rubber & Woolen Mfg. Co. v. S.S. Kresge Co. (1942), which was decided a few years before the Lanham Act's enactment but laid the groundwork for the principles later codified in the Act. The plaintiffs produced footwear with a distinctive brand name and a trademarked product. The defendant sold shoes with a similar appearance, which led to a trademark infringement lawsuit by Plaintiff. The case highlighted the importance of secondary meaning in trademark law whether a particular design or mark, through usage, had come to identify the source of the goods. It established that if consumers were likely to be confused by the similar appearance of the products, the trademark owner could claim infringement.[87] The court's decision indicated that a trademark owner could recover not just actual damages but also the profits made by the infringer due to the use of the trademarked design. The principle of unjust enrichment became a crucial aspect of trademark remedies. According to the Mishawaka case, particularly concerning secondary meaning, consumer confusion, and the ability to recover profits from infringers, were incorporated into the Lanham Act. The Act provided a statutory basis for these doctrines, offering clearer guidance on trademark infringement and the protection of brand identity.

Sherman Antitrust Act (1890) and Clayton Act (1914) prevent anti-competitive practices promote fair competition in the marketplace and prohibit monopolistic behaviors, price fixing, and other practices that restrain trade. While both acts aim to regulate and curtail anti-competitive behavior, they differ in their scope, focus, and the specific practices they address.

The Sherman Act is broader and more general, targeting any anti-competitive behavior, whereas the Clayton Act is more specific, addressing particular practices like price discrimination, mergers, and exclusive dealings. The Sherman Antitrust Act is the first federal statute to limit monopolies and cartels in the United States. It was enacted to combat the widespread monopolistic practices and to restore competition. The act mainly prohibits contracts, combinations, or conspiracies in restraint of

[86] Harry W. Porter, The Lanham Act, History of Education Journal, 1951, Volume 3, 1-6.
[87] Mishawaka Rubber & Woolen Mfg. Co. v. S. S. Kresge Co., 316 U.S. 203 (1942), N649, 316 U.S. 203

trade or commerce among the several states, or with foreign nations, and ban monopolization, attempts to monopolize, or conspiracies to monopolize any part of trade or commerce. The Clayton Act was enacted to strengthen and clarify the Sherman Act, addressing specific practices that the Sherman Act did not prohibit, it aims to prevent anti-competitive behaviors before they can cause significant harm to the market.

One of the significant cases that involved both the Sherman and Clayton Acts was United States v. Standard Oil Co. of New Jersey (1911), which was pivotal in applying these statutes. The defendant was accused of violating the Sherman Antitrust Act by engaging in monopolistic practices to control the oil industry. The company was alleged to have used anti-competitive methods to establish and maintain its monopoly. The Court ruled that the defendant had engaged in a combination of practices that stifled competition, including predatory pricing and exclusive agreements. The Court ordered the dissolution of the defendant into several smaller companies to restore competitive conditions in the oil industry.[88] This decision was a landmark in antitrust enforcement, illustrating the application of the Sherman Act to combat monopolistic practices. Furthermore, concerning Robinson-Patman Act (1936) forbade certain forms of price discrimination in sales to retailers, which affected franchisors and franchisees in terms of purchasing products and supplies.[89]

Initially, the grounds of the enactments were to regulate the parties' contractual obligations and ethical requirements, but over time conducted more into commercial arrangements. For instance, the lack of legal arrangements for franchise agreements has led to increased disputes over licenses and compensation. Hence, the Automobile Dealers Franchise Act of 1957[90] and the first U.S. Federal Trade Commission Franchise Rule was originally adopted in 1978. At that time, the establishment of franchise legislation was driven by a recognition of the power imbalance between franchisors and franchisees and made progress in providing a legal framework.[91]

The legislative approach to franchising in the United States is designed to create a fair and transparent marketplace for franchise businesses. By combining federal regulations, such as the Franchise Rule, with commercial and competition laws, the U.S. aims to protect franchisees and ensure that franchisors conduct their business practices ethically and transparently. The regulatory framework supports the growth and sustainability of the franchise industry while protecting the interests of

[88] Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911), 221 U.S. 1.
[89] A. Douglas Melamed, Antitrust Law and its Critics, Antitrust Law Journal, 2020, Volume 83, 269-292.
[90] The Federal Automobile Dealer Franchise Act. Public Law 1026, U.S.C.A
[91] Franchise Rule, US Federal Trade Commission, 16 CFR Part 436, Proposed section 436.2(a)(1)

individual franchisees. Its regulatory framework for franchising aims to create a balanced environment where the franchise industry can grow and thrive while protecting the interests of individual franchisees.

2.6.2. Germany contract law v. US, France, and Italy franchise regulations

Similar to the USA, franchising began to develop in Germany in the post-World War II era, particularly during the economic boom of the 1950s and 1960s. The arrival of American franchises played a significant role in introducing the franchising model to Germany. For instance, the franchising concept gained more traction during the 1970s and 1980s. German businesses started adopting the model, and international franchises expanded into the German market. However, there was no specific legal framework for franchising during that period. The absence of specific franchise legislation accelerated uncertainty regarding disputes between franchisors and franchisees had to be resolved under general commercial and contract law, which did not always address the unique aspects of franchising. On the other hand, a feature of German law is that it obeys strictly the provisions of the written law of the contract. While Germany does not have mandatory pre-contractual disclosure requirements similar to the FTC Franchise Rule in the U.S., best practices and court decisions emphasize the importance of transparency and full disclosure during the franchise negotiation process. Franchise agreements in Germany are detailed contracts that outline the rights and responsibilities of both franchisors and franchisees. These agreements typically cover areas such as territorial rights, fees, training, support, marketing, and the duration and termination of the franchise relationship.[92]

The approach of franchise legislation in Germany is distinct from that of Italy and France primarily because Germany has not enacted a specific franchise law. Instead, franchising in Germany is governed by a combination of general commercial laws, contract laws, and specific judicial decisions. Take an example, for the first time in Europe, France introduced franchise legislation, known as the '*Doubin*' law in 1989.[93] The law is essentially a consumer protection act that requires a franchisor to provide certain information to a franchisee candidate. After that, similar legislation to France has been implemented in Belgium and Italy.[94]

As emphasized before, franchising in Germany is primarily governed by the German Civil Code (BGB), which provides the general principles of contract law. Key provisions related to franchising

[92] Tsahik Kolinko, Krystyna Rezvorovych & Maryna Yunina, *Legal Characteristic of the Franchise Agreement in Germany*, Baltic Journal of Economic Studies, 2019, Volume 5, 96-100.
[93] Raphaël Mellerio, *Franchise Law Review*, The Law Reviews, 2021, Chapter 22, 252-262.
[94] Mark Kirsch (eds), Franchise, International Franchise Association, Lexelogy, 2022, 78.

include those on pre-contractual obligations, good faith, and fair dealing. German law incorporates the concept of *culpa in contrahendo* (fault in contracting), which holds parties to a duty of care during pre-contractual negotiations. Legal scholar Rudolf von Jhering developed this concept in the mid-nineteenth century and is now codified in § 311 II of the German Civil Code (BGB). The German Act against Restraints of Competition (GWB) also regulates franchising, particularly concerning competition and market behavior. Franchise agreements must comply with antitrust laws to prevent anti-competitive practices. As an EU member state, Germany is also influenced by European Union regulations and directives that impact franchising. EU competition law, particularly the Block Exemption Regulation, affects franchise agreements by setting out conditions under which certain types of agreements are exempt from antitrust rules.[95] In addition, the German Franchise Association (DFV), established in 1978, has been instrumental in promoting best practices and self-regulation within the franchising industry.

In comparison, franchise legislation in Italy is regulated primarily by the Italian Franchise Law, known as *"Legge 6 maggio 2004, n. 129"*. Before the enactment of the Law, franchising in Italy was largely unregulated. The sector operated under general commercial and contract law, leading to inconsistencies and a lack of standardized practices. The situation at that time created challenges for both franchisors and franchisees, particularly in terms of transparency, protection, and dispute resolution. The law introduced specific provisions for pre-contractual disclosure, franchise agreement requirements, training, and assistance obligations. The provisions aimed to strengthen transparency, fairness, and legal certainty in the franchising sector. Following the enactment of the law, franchisors operating in Italy had to comply with the new regulations. It included revising franchise agreements, enhancing disclosure practices, and providing additional support and training to franchisees. The law contributed to a more structured and reliable franchising environment in Italy.[96]

The above enactments of the EU countries often aimed to protect that potential franchisee had access to accurate information and the terms of the agreement before entering into a contractual relationship. In other words, franchise Rules were started to require franchisors to provide a Uniform Franchise Offering Circular or Franchise Disclosure Document to prospective franchisees.

Franchise agreements, considered an illegal form of business in Europe, were recognized after the Pronuptia case in 1987, which led to the passage of a series of acts regulating franchising relationships

[95] Gesetz gegen Wettbewerbsbeschränkungen-GWB, 1958, Amendment 2023, Sections 1-187.
[96] *Legge 6 maggio 2004, n. 129 Norme per la disciplina dell'affiliazione commerciale,* Articles 1-9.

in 1989.[97] With this legislative change, the focus on franchising was still considered high in terms of contractual risk. In addition to laws, rules of conduct and regulations issued by international and regional franchise associations played an important role in coordinating franchise business communications, also there was a tendency to become a member of the International Franchise Association and follow their code of conduct. Nonetheless, franchise legislation in the countries still depends on the specific legal and economic reforms that each country has undergone.[98] Nowadays, the EU seeks to establish certain standards and fairness in franchise agreements. It can be described as preventing franchisors from including overly one-sided terms that might disadvantage franchisees. Therefore, franchise law often included provisions emphasizing the need for good faith and fair dealing between contract parties.

2.7. Late Modern and Contemporary Franchise International Regulatory Arrangements

The historical development of international private law hundreds of years in conjunction with political, social, and economic evolution. The earliest forms of it can be traced back to ancient civilizations including Mesopotamia, Egypt, and Rome, and over time treaties, and codes originated. During the Middle Ages in Europe, the concept of the law of nations *"Jus gentium"* arose under the influence of Roman law and Christian principles.[99] Since international legal norms regulate several issues, trade was the primary matter between them. In particular, the "law of merchants" consisted of practices derived from commercial custom, providing a flexible framework for resolving disputes and facilitating cross-border transactions.

Bilateral and multilateral commercial protocols emerged in the 19th century, facilitating trade between nations and establishing tariff levels, and navigation rights rules. Bilateral agreements involve two countries negotiating terms directly with each other. These agreements often focused on reducing tariffs and trade barriers, making it easier for them to exchange goods and services. Examples of such agreements include the Cobden-Chevalier Treaty between Britain and France in 1860, which significantly reduced tariffs and helped spur trade. Multilateral agreements, on the other hand, imply multiple countries coming together to negotiate trade terms. It is aimed to create a more extensive and

[97] Judgment of the Court of 28 January 1986, 161/84, Pronuptia de Paris GmbH v Pronuptia de Paris Irmgard Schillgallis. Bundesgerichtshof - Germany. Competition - Franchise agreements.
[98] Laurent Tournois, Damien Forterre, *The extremes of franchising in a post-communist country*, Journal of Business Strategy, 2020, Volume 41, 3-10.
[99] Svitlana Zadorozhna, *Jus Gentium and the Primary Principles of International Law*, European Journal of Law and Public Administration, Volume 6, 2019, 157-166.

cooperative trading network. One of the early examples of multilateral efforts was the Congress of Vienna (1814-1815), which, although primarily focused on political and territorial issues, also touched upon aspects of trade and navigation. These treaties provide the basis for late modern international agreements and organizations.

From the mid of the 20th century, efforts were made to codify and harmonize international commercial law concepts and conventions. The establishment of contemporary organizations such as the Institute for the Unification of Private Law and the International Chamber of Commerce contributed to the development of uniform rules and standards for international trade. Moreover, several important steps have been taken including The General Agreement on Tariffs and Trade established in 1947, continued to facilitate international trade by reducing tariffs and other trade barriers. Several negotiations (e.g., the Kennedy Round in the 1960s and the Tokyo Round in the 1970s) were conducted to address tariffs and non-tariff obstacles. Established in 1957, the European Economic Community expanded during this period, promoting economic integration and reducing trade difficulty among member states.[100]

The United Nations Commission on International Trade Law, established in 1966, has played a central role in updating transnational commercial laws, including sales contracts, arbitration, and electronic commerce. Subsequently, the United Nations Convention on Contracts for the International Sale of Goods establishes a comprehensive code governing the formation of contracts for the rights and obligations of buyers and sellers. The Convention applies to contracts of sale of goods between parties whose places of business are in various States.[101] After 1990, The United Nations Commission on International Trade Law developed legal instruments and guidelines relevant to commercial transactions, such as the Model Law on International Commercial Arbitration and Electronic Commerce, which indirectly impacted franchising.[102] Consequently, the establishment of the World Trade Organization and the proliferation of free trade agreements have further shaped international commercial law. These agreements established rules for trade liberalization, market access, intellectual property protection, and dispute resolution, influencing the conduct of transnational business transactions. Later, the Agreement on Trade-Related Aspects of Intellectual Property Rights,

[100] Henry J. Steiner, *The Development of Private International Law by International Organizations*, Proceedings of the American Society of International Law at Its Annual Meeting, Cambridge University Press, 1965, Volume 59, 38-52.
[101] *United Nations Convention on Contracts for the International Sale of Goods*, UN Commission on International Trade Law, 1964, Art.1 (1).
[102] Model Law on International Commercial Arbitration 1985, amendments as adopted in 2006.

enforced by the Organization since 1995, sets minimum protection and enforcement standards.

2.7.1. Franchise Regulation in Private International Law

Franchise international regulations refer to the collection of laws, rules, and standards that govern franchising activities across national borders. Besides, I would emphasize that the Code of Ethics on franchising has played a significant role especially since it serves several important purposes in facilitating the growth and sustainability of franchising and establishing consistent standards and requirements to help reduce uncertainty and promote fair and transparent practices. In other words, combining Codes and international rules provided a level playing field and mitigating risks, integrated laws create an environment conducive to franchising, stimulating economic development, and fostering entrepreneurship.

Over time, agreements and Model laws between Federal states and Confederations were influenced progressively in disseminating good franchise practices as a form of international law. For instance, international master franchise agreements are influenced by the European General Data Protection Regulation, Trade Secrets, Vertical Block Exemption Acts of the European Union (2022), Fair Business and Consumer Law of Australia (2017), and Labor Law of France (2016). Since, countries that do not have specific laws governing franchising regulate the franchisor's rights and obligations under Contract Law, Commercial regulation, Intellectual Property or Consumer Protection, and Competition Law.

International franchise regulations are governed by generally accepted principles of transnational trade unless expressly provided for in the laws of that country. Global arrangements are aimed at not favoring or disadvantaging both the franchisor and the franchisee in different countries. In other words, in case of a dispute, or in case of a dispute with a regulatory nature that is not specified in the law of that country, it is decided by international regulatory procedure, avoiding the peculiarities of the laws of any country. For example, the principles of International Commercial Contracts Unidroit should be mentioned here. UNIDROIT is an intergovernmental organization that aims to unify international law (Private law) by issuing unified rules, international conventions, model laws, and guidelines. There are recommendations and directions (guide) that reflect the regulation of the Master Franchise Agreement issued by the above organization in 2007 and other agreements related to it.

The Master Franchise Agreement has provisions of consent, agreement, and the right to use the licensed assets, trademarks, copyrights, insurance policy, the direct relationship of the contract or the term of the contract, financial relationship or revenue schedule, the source of supply, the source

of income of the franchise transferor and sub-franchise. For instance, the transferor's source of income, payment, the obligation to provide information, training, manuals, materials, assistance, use of advertising materials and other services, and trial period are regulated respectively.

In 2000, the International Chamber of Commerce developed the Model international franchising contract, which became an important document defining the rights and obligations of franchisors and franchisees, legal and competition questions, and customer protection at the global level. The contract is a standardized template or framework agreement that is a starting point for negotiating and drafting franchise agreements between franchisors and franchisees operating across international borders.[103]

Subsequently, with the adoption of the Model Franchise Disclosure Law in 2002, the parties were able to determine the scope of information to be disclosed before signing the contract. In addition to the direct use of contracting parties doing business at the international level, these documents continue to be a source for updating the laws of countries.[104] The scope of laws governing franchise relations is defined by international trade, investment, contract, intellectual property, license, competition, corporate, tax, labor, and data legal documents, which makes it difficult to regulate with one law. Therefore, UNIDROIT issued a Guide to international master franchise arrangements in 2007 and WIPO published Managing Intellectual Property Issues in Franchising in 2019.[105] Both UNIDROIT and WIPO have addressed the international aspects of franchising through their respective publications, providing valuable guidance for managing master franchise arrangements and intellectual property issues.

2.7.2. Model Franchise Disclosure Law

Model franchise disclosure law applies to franchises to be granted or renewed for the operation of one or more franchised businesses within the industry. A Model Law is a blueprint for legislation that is designed to be adopted and adapted by jurisdictions to standardize and harmonize laws across different regions. The law aims to protect franchisees from fraudulent or deceptive practices by franchisors. By ensuring they have all the necessary information, it reduces the likelihood of franchisees entering into unfavorable agreements. Specifically, franchisees have a clearer basis for

[103] Ayşe Güvercin Şahan, *ICC Model International Franchising Contract as a Source of Lex Mercatoria*, Public and Private International Law Bulletin, 2020, Volume 40, 1403-1432.
[104] Philip F. Zeidman, P., *With the Best of Intentions: Observations on the International Regulation of Franchising*, Stanford Journal of Law, Business & Finance, 2014, Volume 19, 237-280.
[105] Dumitriţa Florea, Narcisa Galeş, *Franchise Contract in International Trade Law,* European Journal of Law and Public Administration, Volume, 9, 2022, 12-22.

legal recourse if it can be demonstrated that a franchisor failed to provide the required disclosures.

Franchisors must provide prospective franchisees with detailed information about the franchise, including financial performance, fees, obligations, and the franchisor's history, to ensure that potential franchisees can make informed decisions.[106] If there is a willingness to convert the existing franchise regulations in civil or other laws into an individual statute in line with common international standards it can be inspired by model law. Includes it:

For delivery of the Disclosure Document, a franchisor must give every prospective franchisee a disclosure document, to which the proposed franchise agreement must be attached, at least fourteen days before the signing by the prospective franchisee. The disclosure document must be updated within fixed days of the end of the franchisor's fiscal year. Information to be disclosed in the disclosure document contains broad reports or types of documents and, the prospective franchisee shall at the request of the franchisor acknowledge in writing the receipt of the disclosure document.[107]

If the disclosure document or notice of material change has not been delivered within the period, contains a misrepresentation of a material fact, or makes an omission of a material fact then the franchisee may on 30 days' prior written notice to the franchisor terminate the agreement. Therefore, the Model Law ensures that the prospective franchisees who intend to invest in franchising receive material information about franchise offerings, thus permitting them to make an informed investment decision.

Model law emphasizes that state legislators who consider the Model Law when drafting franchise legislation should however consider that some disclosure requirements may discourage foreign investors from expanding into their market. Therefore, legislators should weigh the interests of both the franchisor and the franchisee when considering whether to adopt any specific disclosure requirement. Model laws are more flexible than international conventions. In this case, the intention is from the beginning to permit States to make the changes they consider to be necessary to cater to the specific needs of the country. A further advantage is that it is possible to include in a model law several provisions that the experts preparing the law deem to constitute the most appropriate solution to a specific problem. By the Model law, there is the definition that in master franchising the franchisor grants the sub-franchisor the right not only to operate franchise outlets itself but also to grant sub-

[106] Model franchise disclosure law, UNIDROIT, 2002, Art.6, (1)(A).
[107] *Ibid,* Art.6, (2)

franchises to sub-franchisees in the territory the franchisor has granted it the right to develop. The sub-franchisor therefore to all intents and purposes acts as a franchisor in that territory.

Adoption of the model law by various countries contributes to the establishment of global standards in franchising, making it easier for international franchise networks to operate. The model law serves as a valuable resource for lawmakers in countries where franchise laws are underdeveloped or nonexistent. It provides a comprehensive template that can be adapted to local needs. While the model law provides a standardized approach, it also allows for flexibility in its implementation, enabling jurisdictions to tailor the provisions to their specific legal and economic contexts.

2.7.3. Guide to International Master Franchise Arrangements

The guide gave a basic and broad definition of franchise. For instance, according to the term of the guide, franchising is often divided into industrial, distribution, and service franchises. It incorporates best practices and expert insights, which can help avoid common pitfalls and enhance the probability of successful international expansion. Moreover, the guide offers a structured approach to master franchising, covering critical areas such as legal, financial, operational, and cultural considerations to help both franchisors and master franchisees understand the full scope of the arrangement. The form of collective rights known as the business format is increasingly coming to symbolize franchising as a whole. In business format franchising a franchisor elaborates and tests a specific business procedure, be it for the distribution of goods or the supplying of services, which it then proceeds to grant franchisees the administer. Regarding master franchise agreements the franchisor grants another person, the sub-franchisor, the right, which in most cases will be exclusive, to grant franchises to sub-franchisees within a certain territory and/or to open franchise outlets itself.

The guide provides an overview of the general terms and elements of franchise agreements, classifications, international regulatory compliance, market impacts, risk assessment, settlement, financial management, intellectual property, franchise principles, system organization, sub-franchise, products and services, marketing planning, compensation, insurance, and examples of contract documents were included in the guide.[108] As defined legal barriers of franchising by the Guide the legal environment in the host country is of considerable importance in determining which vehicle is the most appropriate. For franchising to function there must be in place a general legislation on commercial contracts, an adequate company law, intellectual property legislation, and an effective

[108] Guide to International Master Franchise Arrangements, UNIDROIT, 2007, Chapter 5, 65-76.

enforcement of the rights guaranteed by this legislation. If the existence of certain legislation is a pre-condition for the effective functioning of franchising, other legal factors may determine whether or not franchising is appropriate. It includes:

As emphasized in the Guide, a franchise system that is expanding abroad will in most cases need to be modified before it enters the foreign market, as it will be necessary for it to adapt to the local conditions of the prospective host country. The franchise agreement and the ancillary documents will consequently also need to be adapted by the franchisor to cover the local requirements of the prospective host country. Guides impact the efficient allocation of resources to support international operations, ensuring that franchisors can provide adequate support without overstretching their capabilities. Consequently, arranges strategies for effective communication and coordination between parties, ensuring that both franchisors and master franchisees are aligned in their objectives and facilitates international business growth by providing a clear roadmap for entering and succeeding in foreign markets.[109]

2.7.4. Codes of Ethics for Franchises in Europe v. USA, UK, and Baltic Region

Franchise codes are implemented in over 23 countries that have specific franchise laws, including major markets such as the United States, Canada, Australia, China, Japan, and various European nations like France, Germany, and the UK. The regulations direct to protect franchisees by intending they receive essential information before investing, thereby fostering transparency and fairness in the franchise industry. The presence of such laws underscores the importance of well-regulated franchise markets.

The European Code of Ethics for Franchising, established by the European Franchise Federation (EFF), provides a comprehensive framework to verify ethical conduct in franchising. The code serves as a benchmark for good practices and fair dealings between franchisors and franchisees across Europe. The European Code of Ethics for Franchising is not legally binding but is instead based on voluntary compliance. However, many franchisors adopt it as a best practice to demonstrate their commitment to ethical business conduct and build trust with franchisees and consumers. The code outlines the information that franchisors must provide to potential franchisees before they sign any agreements.

[109] *Ibid*, Chapter 1, 29-30.

The Code was originally written in 1972 by major industry actors in Europe, members of the EFF's founding associations. It directly reflects the experience of good behavior of franchisors and franchisees in Europe. It was reviewed in 1992 to reflect the evolution of franchising on the market as well as to meet the development of the EU's regulatory frame. The Code was updated in 2016 to further integrate provisions that reflect the continued franchisor-franchisee experience on the market in the countries of its member associations, as well as to meet the recommendations of the European Commission on matters of self-regulation. Under the code, The Franchise agreement shall comply with the national law, European community law, and this Code of Ethics and any National Extensions thereto.[110]

Currently, the code of ethics commonly used in European countries is the main reference material for most organizations and individuals involved in franchise activities and is used in court to resolve disputes. In addition, some court decisions and other laws in European countries have a corresponding effect on franchise operations. According to the code of ethics, a franchise is a system of renting and selling goods, services, and technology with close cooperation between the parties to the contract, which are legally binding and financially independent business entities. In return for the direct or indirect support provided by the franchisor, the franchisee shall enjoy the right to use the franchisor's goods, service marks, know-how, business and technical methods, operating principles, and other industrial property other words, secrets that are not patented but developed as a result of the franchisor's work experience, are allowed to be used as object of the contract.

Whereas, the US Franchise Rule aims to ensure that potential franchisees have access to essential information to make informed decisions about investing in a franchise. Failure to comply with the Rule does result in significant penalties and legal consequences for franchisors. The Rule refers to the Federal Trade Commission's Franchise Rule, which is a regulation aimed at protecting prospective franchisees by requiring franchisors to provide certain disclosures before the sale of a franchise. According to this rule, franchisors are required to provide a detailed disclosure document, known as the Franchise Disclosure Document, to potential franchisees at least 14 days before they sign any agreements or pay any fees. The FDD should contain essential information about the franchisor, its officers, litigation history, initial fees, ongoing fees, territory restrictions, and other important details.[111]

[110] *The Code of Ethics for Franchising,* The European Franchise Federation, 2023, Article 5.1.
[111] *Franchise Rule*, Federal Trade Commission, 2007, USA. 16 CFR Parts 436 and 437.

The UK Code of Ethics for franchising, primarily governed by the British Franchise Association (BFA), shapes the standards and principles designed to ensure ethical conduct and fair dealings within the franchising industry in the United Kingdom. The code is based on The European Code of Ethics for Franchising and it serves as a benchmark for good practice and is aimed at fostering trust and success in franchising relationships. The code enshrines best and recommended practices regarding pre-contractual disclosure requirements. Franchisors are required to provide a comprehensive disclosure document to potential franchisees at least 14 days before signing any agreement same as the US arrangements.[112] Members of the BFA must disclose certain information in writing. The franchise agreement should include an appropriately worded grant of rights clause defining the extent and limits of the franchisee's right to use the franchisor's intellectual property rights. [113]

In comparison, The Code of Ethics in Baltic franchising is an essential set of guidelines aimed at promoting ethical practices and maintaining high standards within the franchising industry in Estonia, Latvia, and Lithuania. While specific codes may vary slightly among the Baltic countries, they generally align with broader European and international ethical standards for franchising. The Code of Ethics is a practical ensemble of essential provisions for the governance of the relations between a franchisor and each of its franchisees, operating together in the framework of the franchise network. The principles of the Code are applicable at all stages of the franchise relationship; pre-contractual, contractual, and post-contractual stages. The Code's clear and unambiguous principles are not in contradiction with company laws and fundamental rights in the Baltic with the continuing objective of setting up a more efficient framework for franchising. According to the Code, Franchisors and franchisees must comply with all applicable local, national, and international laws and regulations governing franchising and business operations.[114]

Part 3: Theoretical and Conceptual Framework of Franchising Law and Economy

2.8. Agreement Asymmetry

In legal agreements or contracts, there is an expectation that parties will have equal rights and obligations to confirm fairness and balance. Certainly, contract parties typically have the right to expect outcomes or benefits as outlined in the agreement, as well as the responsibility to fulfill obligations. The rights and duties should be fairly distributed among the parties involved as well.

[112] *The BFA Extension and Interpretation of the Code*, British Franchise Association, 2020, Article 1-8.
[113] John Pratt, *Franchising in the United Kingdom*, Franchise Law Journal, 2012, Volume 32, 95-103.
[114] Code of Ethics, Baltic Franchise Association, 2010, 2.2 (viii), 3.6.

Ultimately, the key is to ensure that agreements are entered into voluntarily and that the accountabilities of all parties are clearly defined, and respected. Fairness and transparency are essential elements in creating agreements that uphold the principles of equality and mutual benefit.

Asymmetric commercial contracts, where one party holds significantly more power or advantage over the other, are not explicitly supported by any country's legal system. However, the concept of equal rights among contract parties depends on the context of the agreement and the principles underlying it. One party, typically the larger corporation or franchisor, may hold distinguished market power compared to the other. It seems the dominance allows them to dictate terms more favorable to their interests and it is not to be considered illegal. For instance, franchise agreement parties may negotiate different levels of assistance based on factors such as bargaining power, expertise, resources, or specific needs and interests. In other words, the notion of equal rights can vary depending on the specific circumstances of the agreement.

De facto, principles of equality are slightly different for franchise contracts. This is because the results of the contract cannot be achieved without the strict supervision and advice of the franchise license holder. Asymmetry is a distinguishing characteristic of franchise contracts against other types of contracts. Limitations and control from the franchisor are necessary for the proper protection of intellectual property rights and the operation procedure of the entire system. Nevertheless, asymmetric contracts differ from the competing categories of adhesion, exploitative, and other bad contract categories.[115]

i. Should franchise agreements be inherently asymmetric? Does this conflict with the right of the parties to the contract to be equal?

The question arises as to whether the law of contracts or the agreement of the parties gives special rights to one party, or whether the law of competition and intellectual property makes the contract unequal. Necessary asymmetric agreements typically refer to contractual arrangements where one party holds a significant advantage or has different obligations compared to the other party due to the nature of the relationship or the specific circumstances involved. These agreements are considered necessary or justified based on legitimate reasons, such as protecting intellectual property, ensuring product quality, or managing risk. Agreements between suppliers and distributors may involve asymmetries in bargaining power, particularly when the supplier owns proprietary products or

[115] Tibor Tajti, *Franchise, and Contract Asymmetry: A Common Trans-Atlantic Agenda*. Loyola of Los Angeles International and Comparative Law Review, 2015, Volume 37, 245-273.

intellectual property rights. Licensing agreements allow the licensor to grant rights to the licensee for the use of intellectual property, such as trademarks, and patents.

Also, the asymmetry of the contract means that the franchisor has the power to set high contract terms and conditions, control goods, and services, demand a profit share or royalty payments, manage training, advertising, and brand name, and strictly determine product ingredients. It is imperative to assess the asymmetry of dispute resolution forms, i.e., cross-country franchise disputes, and the asymmetry of post-contractual restraints of competition, i.e., regulations prohibiting former franchisees from engaging in the same type of activity. In the context of franchise contracts, several legal theories and principles come into play. These theories aim to address the unique dynamics of the franchisor-franchisee relationship, ensuring fairness, equity, and adherence to legal standards.[116]

ii. Limiting Agreement Domination and Pre-contractual issues

Franchise contract imbalance can lead to terms and conditions that disproportionately favor the dominant party, typically refers to the franchisor's superior bargaining position over the franchisee, often resulting in stringent and sometimes unfavorable contractual terms for the franchisee. Take an example, American franchises such as 'McDonald's' are known for their strict control over franchise operations, including standardized menus, procedures, and store layouts. 'Subway' has been known to sign development agreements with franchisees, requiring them to open multiple locations within a specified timeframe. 'Starbucks' exercises tight control over store design, layout, and branding, ensuring a consistent customer experience across locations. Hilton charges franchisees initial franchise fees and ongoing royalty payments based on a percentage of revenue, providing a steady stream of income for the franchisor. Franchisees must follow 'KFC's' operational procedures, including staffing, training, and customer service standards, ensuring a consistent brand experience, etc.[117]

Rather than outright prohibiting the inherent dominance of franchise agreements, the legal regulations in the following countries do set moderate restrictions to prevent excessive use of the principle of equal rights in contract law.

Franchise agreements in Germany, as USA, can exhibit elements of asymmetry, the franchisor holds more power or advantages compared to the franchisee. However, German law imposes certain constraints and protections to verify fairness and balance in commercial relationships, including

[116] Rosa Lapiedra, Felipe Palau, and Isabel Reig, Managing asymmetry in franchise contracts: Transparency as the overriding rule, Management Decision, 2012, Volume 50, 1488-1499.
[117] Charles Murry and Peter Newberry, Franchise Contract Regulations and Local Market Structure, Online paper, 2021, 2-26. "See", in http://fmwww.bc.edu/EC-P/wp991.pdf

franchise agreements are governed by the provisions of the German Civil Code (Bürgerliches Gesetzbuch or BGB), which include regulations on contracts, obligations, and unfair terms. The BGB includes provisions to control unfair contract terms (Allgemeine Geschäftsbedingungen or AGB), allowing courts to strike down terms that are unreasonably favorable to one party.

France has specific legislation governing franchise agreements, including the Doubin Law (Loi Doubin) and the Hamon Law (Loi Hamon), which impose pre-contractual disclosure requirements and provide protections for franchisees. In comparison, English contract law emphasizes the freedom of parties to negotiate and enter into agreements according to their terms, subject to legal limitations and requirements. For instance, the case of Central London Property Trust Ltd v. High Trees House Ltd (1947) is seminal in the development of promissory estoppel, a key equitable principle in English contract law. It illustrates how courts can prevent a party from reneging on a promise, especially when the other party has acted in reliance on that promise to their detriment, while also clarifying that such estoppel may have limits based on the context and conditions of the original promise.[118]

In English contract law, the significance of a term in a contract can be important when determining whether a breach of that term justifies terminating the contract. Courts often assess whether the term is a "condition" or a "warranty". If a condition is breached, the non-breaching party is generally entitled to terminate the contract and claim damages. For instance, Auto Garage Solutions v. Sawyers case deals with issues of misrepresentation, breach of contract, and the interpretation of franchise agreements. It includes, auto Garage Solutions (AGS) entered into a franchise agreement with Mr. Sawyers to operate a garage under AGS's brand. The agreement included detailed terms about the operation, marketing, and financial contributions required from the franchisee. Mr. Sawyers claimed that AGS had made several misrepresentations during the pre-contractual negotiations, particularly regarding the profitability and support provided by the franchisor. He also alleged that AGS failed to provide adequate training and support as stipulated in the franchise agreement. The court examined the claims of misrepresentation and found that some of the statements made by AGS during negotiations were indeed misleading. These statements were crucial in Mr. Sawyers' decision to enter into the franchise agreement. Also, the court found that AGS had breached the contract by failing to provide the promised level of training and support, which significantly impacted Mr. Sawyers' ability to run the franchise successfully. Hence, the court held that the misrepresentations made by AGS were

[118] Central London Property v High Trees, [1947] KB 130; [1956] 1 All ER 256; 62 TLR 557; LJR 77; 175 LT 333.

sufficient grounds to rescind the contract. Additionally, the breaches of contract by AGS justified Mr. Sawyers' decision to terminate the agreement. The court awarded damages to Mr. Sawyers for the losses incurred as a result of entering into the franchise agreement based on AGS's misrepresentations and breaches.[119]

Under German law, parties are required to observe the *"necessary diligentia"* (due diligence) during negotiations. This means that even before a formal contract is concluded, parties must act in good faith and avoid causing harm to each other through negligent or deceitful behavior. If a party fails to meet this standard of care and the other party suffers losses as a result, the negligent party can be held liable for those reliance losses. Indeed, it creates a form of pre-contractual liability where parties are accountable for the damages caused by their failure to act diligently during the negotiation process. The key difference between common law and German law lies in the treatment of precontractual negotiations. Common law emphasizes freedom and flexibility, whereas German law imposes a duty of care to protect parties from reliance losses. In common law jurisdictions, parties may feel more secure in withdrawing from negotiations, knowing pre-contractual obligations do not bind them. However, it can also lead to situations where parties suffer significant reliance losses with no legal recourse. Conversely, in German law, parties are incentivized to act responsibly and transparently during negotiations to avoid liability for reliance losses. For international business and cross-border transactions, understanding these differences is crucial which means parties negotiating across jurisdictions need to be aware of the potential for precontractual liability in systems like Germany's and may need to adjust their negotiation strategies accordingly.

2.9. Game theory

A franchise runs according to Nash's Equilibrium which means every player can achieve the desired outcome by not deviating from their initial strategy and the market can be shared. For this purpose, the franchisor provides an amount of assistance to the franchisee in starting and managing the business activities. For franchisees who have received a license, it is clear that they play by the rules of the franchisor and cannot change the business format on their initiative, update the brand, trademark, know-how, or marketing plan only according to a pre-developed platform. It starts with the principle of maintaining the basic business strategy and not changing the market experience.[120] A franchise agreement does not mean that one party agrees to the strict terms of the other party, but

[119] John Pratt, *Franchising in the United Kingdom*, Franchise Law Journal, 2012, Volume 32, 95-104.
[120] Nash (1950) 48-49.

respects the business format and experience or reputation that provides a real opportunity for profitability.

Game theory provides a powerful analytical framework for understanding the further interactions and decision-making processes underlying contract negotiations and enforcement. By modeling the behavior of a rational franchisor, game theory helps identify strategies, that promote fairness and efficiency in contractual relationships. The theory sheds light on power dynamics between agreement parties with more bargaining power and could be able to secure favorable terms in a contract. Moreover, the theory can be applied to various aspects of franchise business, including pricing policy, and competitive interactions between franchisors and franchisees. While game theory principles can be implemented in franchise businesses worldwide, some countries may have particular examples or case studies where game theory has been applied effectively. Concepts from game theory, such as bargaining models and the Ultimatum Game, help analyze how parties negotiate and reach agreements. These models explore how different strategies and negotiation tactics affect outcomes. Insights from game theory can guide legal approaches to contract formation and enforcement, influencing how courts interpret contract terms and resolve disputes over contract performance and breaches. Game theory, a mathematical framework for analyzing strategic interactions among rational decision-makers, has found various applications in Western commercial law. By modeling how individuals or firms make decisions in competitive and cooperative settings, game theory provides insights into behavior and outcomes in legal contexts. The models help understand why firms might collude to fix prices or divide markets and how such behavior can be stabilized or disrupted. Antitrust regulators use these insights to detect and address anti-competitive practices. For example, understanding the conditions under which firms might cooperate rather than compete can inform investigations and enforcement strategies. Models such as the Cournot and Bertrand competition models are used to predict the competitive effects of mergers and acquisitions.

i. How does game theory affect franchising?

The theory has been influential in shaping contract law and commercial practices in various countries, although it is not explicitly mentioned or adopted as a formal legal doctrine. Instead, game theory principles are often applied implicitly by legal practitioners, policymakers, and business professionals to analyze strategic interactions, negotiate agreements, and resolve disputes. For instance, franchisors in the U.S. use game theory to set pricing structures and royalty rates that incentivize franchisees to maximize their performance while ensuring profitability for the franchisor.

Besides, UK competition laws prevent anti-competitive behavior, aligning with the Nash Equilibrium by ensuring companies engage in competitive practices that benefit consumers.

Whereas, Germany has a civil law legal system but has been receptive to economic analysis in law, including game theory. Scholars in Germany have applied game-theoretic models to analyze contractual relationships and legal doctrines such as efficient breach.[121] For instance, under German law, the principles of freedom of contract and good faith (section 242 of the BGB) play a significant role in any negotiations. In this regard, game theory can help elucidate how parties might use negotiation strategies to achieve their desired outcomes while complying with legal norms.

If compared to USA Franchise rules, Section 242 of the BGB requires parties to act in good faith and deal fairly with each other. Specifically, Franchisees must keep accurate and detailed records of their business operations. They are often required to submit regular financial reports and other relevant documentation to the franchisor. Franchisees often must keep certain information confidential, both during and after the term of the franchise agreement. They do also be subject to non-compete clauses, which prevent them from engaging in competing businesses for a specified period and within a certain geographical area after the termination of the franchise agreement. Moreover, Sections 305 to 310 of the BGB cover standard terms and conditions, which are often included in franchise agreements. These sections ensure that any unfair contractual terms can be contested. Act Against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen - GWB) addresses issues related to anti-competitive practices, including vertical restraints that may be included in franchise agreements, such as exclusivity clauses and non-compete agreements. On the other hand, German courts have developed a body of case law that shapes the interpretation of franchise agreements and the duties of franchisees. Court decisions often address issues like the obligations of franchisees to fulfill operational standards. It means a game is always based on the initial purpose of the contract parties, and obligatory negotiations are relatively connected to game theory.

2.10. The Coase Theorem

Clear and enforceable property rights are essential for the Coase Theorem to function. Contract law plays a crucial role in defining and protecting these rights. Effective contract law reduces transaction costs by providing standardized terms. On the other hand, contracts serve as instruments through which parties negotiate and agree upon the allocation and use of resources. In case of property

[121] Kenneth Dau-Schmidt, Eric Rasmusen and others, *On Game Theory and the Law*, Law & Society Review, 1997, Volume 31, 613-630.

rights are clear and transaction costs are negligible, parties will negotiate to reallocate resources to maximize overall welfare or efficiency, regardless of the initial allocation of rights, assuming that parties can negotiate without incurring costs.

On condition the theorem of Coase is that negotiation is costless and there are no wealth effects, the outcome of contracting is property rights and determined solely by efficiency.[122] It requires that the property rights should be defined by its source and ownership who has the right to transfer. For instance, without a license, there is no franchisor, and a patent certificate is not money but it can be turned into a tool for a franchise contract or investment. While the theorem itself does not directly address contract fairness, its principles can inform discussions about fairness in contracts, particularly in terms of how parties negotiate and allocate rights and responsibilities. The basic premise of Coase's theory is that it is justified if the benefits outweigh the difficulties. For instance, while taking steps to limit competition through franchise agreements can seem risky to the market, the positives outweigh them. The formulation and principles of the above theorem, as the economic fundament of the franchise model, demonstrate that intangibles would be capitalized and profit comes from them despite vertical restraints or issues of competition imbalance. Consequently, the franchise agreement is about the legal transfer of property rights, the introduction of intellectual capital into the market, and its legal protection.

The U.S. and England legal systems have extensively incorporated the Coasean approach, particularly through the influence of the Law and Economics movement. Common law courts often apply Coasean reasoning in cases involving property rights, nuisance, and externalities. Landmark cases like Calabresi and Melamed's property rules, liability rules, and inalienability framework in one view of the Cathedral reflect Coasean thinking. Similar to the United States, the UK has seen the adoption of the Coasean approach in judicial decisions, particularly in the allocation of property rights. The principles are used to argue for efficient outcomes through private negotiations.

Australian and Canadian courts have also embraced the Coasean approach, especially in cases related to social franchises, where private bargaining is seen as a mechanism to resolve conflicts efficiently. The principles of the Coase Theorem influence judicial reasoning and the interpretation of property rights and liability. While the legal systems within the EU are diverse, the influence of the Coase Theorem is apparent in the harmonization of contract law and property rights. The EU's

[122] Coase, (1960) 1-44.

approach to market-based instruments and contract law principles reflects the Coasean theorem aimed at achieving efficient results.[123] For instance, according to Sections 433-453 of the German Civil Code, the Sale of Goods (Kaufvertrag) defines the obligations of the seller and the buyer in sales contracts, and Lease Agreements (Mietrecht) outline the rights and obligations of landlords and tenants. Whereas sections 854-1296, Possession and Ownership deal with the acquisition, transfer, and protection of possession and ownership. Content of Ownership covers ownership rights, including the right to use, enjoy, and dispose of the property, The above sections govern the owner's right to reclaim possession from unauthorized possessors.

2.11. Competition with Asymmetric Costs

Understanding competition costs helps in designing antitrust policies to prevent collusion and promote competition. A franchisee is not just a lessee of know-how and trademarks, but a payer party of the business model. Training and supply logistics provided by the franchisor, and profit planning, are all together elements from intellectual property. It is an early economic model of price justification between firms that produce homogeneous goods and compete by setting prices. The model is named after the French mathematician Joseph Bertrand, who introduced it in 1883 as a critique of the Cournot competition model.[124] Firms produce and sell identical products, so consumers will always choose the cheaper option if prices differ. The equilibrium in Bertrand's competition is that each firm sets its price equal to marginal cost. If one firm sets a higher price, it loses all customers to the firm with the lower price. Regarding franchise business, parties try to strict prices at the lowest level as soon as possible and make a sufficient income. On the contrary, brand loyalty and switching costs can prevent consumers from always choosing the lowest-priced product.

Bertrand competition, characterized by firms competing by setting prices for homogeneous products, has several implications for legislation and regulatory policies in countries. Understanding the outcomes of competition costs can help legislators and regulators design policies to promote fair competition, prevent monopolistic behavior, and protect consumer interests. For example, the United States has the Sherman Antitrust Act, and the European Union has similar regulations under EU competition law. Laws that require firms to disclose pricing information clearly and accurately help consumers make informed choices, enhancing the competitive dynamics envisioned by Bertrand's

[123] Trent J. MacDonald, The Political Economy of Non-Territorial Exit, Chapter 3: The political-jurisdictional Coase theorem, Elgar Publishing, 2019, 70-118.
[124] Demuynck (2019) 147-154.

competition. To maintain competitive pressure, laws can be crafted to lower barriers to entry for new franchises including encouraging innovation and market entry, and help maintain a dynamic competitive environment. It can provide incentives for firms to differentiate their products, reducing the direct price competition predicted by Bertrand and fostering innovation through intellectual property protections.

Price policies in franchises are critical for maintaining brand consistency and competitiveness. However, they are also subject to various legal regulations in both the European Union (EU) and the United States (USA). In the EU, price policies in franchises are primarily governed by competition law, particularly by the Treaty on the Functioning of the European Union (TFEU) and the European Commission's Block Exemption Regulations (BER). Resale Price Maintenance is generally prohibited, meaning franchisors cannot impose fixed or minimum resale prices on franchisees. However, recommended retail prices (RRP) and maximum resale prices are allowed, provided they do not amount to a fixed or minimum price through indirect means. On the contrary, in the USA, Franchisors can engage in resale practice maintenance (RPM) exercises if they can demonstrate that such policies have pro-competitive effects outweighing any anti-competitive impacts. Franchisors must be prepared to justify their pricing strategies under the rule of reason.[125]

2.12. Agency and Institutional Perspective

Agency theory focuses on the relationship between principals and agents. In the franchise market, the party's communication is a principal-agent dynamic. The challenge is to align the interests of both parties and mitigate the agency problems that may arise, such as the potential for shirking or moral hazard.[126] Besides, institutional theory examines how organizations conform to and are influenced by societal norms, rules, and values. In the franchise market, institutional factors cover communication frameworks between subjects such as franchisor and franchisee. Compliance with these institutional norms is essential for success in the franchise industry. The theory examines how the institutional environment such as regulations, standards, and cultures affect business practices. It helps explain franchises' adaptation and localization strategies when entering different markets, as firms must navigate various legal and cultural differences.[127]

[125] Amit Zac, Competition Law and Economic Inequality: *A Comparative Analysis of the US Model of Law*, Journal of International Economic Law, 2022, Volume 25, 484-500.
[126] Ross (1973) 134-139.
[127] Meyer and Rowan, (1977) 340-363.

The conception of institutional capital offers a comprehensive explanation for the sources of competitive advantage, highlighting the importance of aligning internal resources with external institutional environments. Because it enhances an organization's reputation and credibility, facilitating access to resources and opportunities.[128] Furthermore, the study on hybrid organizational arrangements in new franchisors underscores the importance of combining company-owned and franchised units to achieve growth and survival. By leveraging the strengths of above model, new franchisors can optimize resource allocation, maintain brand consistency, and adapt to market changes, thereby enhancing their overall performance.[129]

Also, Norton's study provides a foundation for understanding the strategic choice of franchising as an organizational form. By analyzing the factors that drive firms to adopt franchising, the study highlights the advantages of franchising in terms of cost efficiency, market penetration, risk management, and motivation alignment. The findings suggest that franchising is a viable and often advantageous strategy for firms seeking to expand while managing operational challenges and capital constraints.[130]

Mathewson and Winter's "The Economics of Franchise Contracts" provides a detailed economic framework for understanding the complexities of franchise agreements. The study highlights the importance of incentive alignment, risk sharing, and transaction cost minimization in designing effective franchise contracts. By addressing agency problems and ensuring mutually beneficial terms, franchisors and franchisees can achieve sustainable growth and competitive advantage.[131]

Theories contribute to defining investment, company, corporate, and labor law policies directly related to the franchise business. Namely, the EU Agency Directive governs the relationship between commercial agents and their principals, ensuring agents act in the best interests of their principals. Agents are entitled to a commission for transactions concluded during the agency contract, aligning their interests with successful business outcomes. The Directive on Temporary Agency Work (2008/104/EC): Aims to ensure equal treatment for temporary agency workers, reflecting the principle

[128] Christine Oliver, *Strategic Responses to Institutional Processes,* The Academy of Management Review, 1991, Volume 16, 145-179.
[129] Scott A. Shane, *Hybrid Organizational Arrangements and Their Implications for Firm Growth and Survival: A Study of New Franchisors,* The Academy of Management Journal, 1996, Volume 39, 216-234.
[130] Seth W. Norton, *An Empirical Look at Franchising as an Organizational Form,* The University of Chicago Press, 1988, Volume 61, 197-218.
[131] Frank G Mathewson, Ralph A. Winter, *The economics of franchise contracts,* Journal of law and economics, 1985, Volume 28, 503-526.

of fair treatment and alignment of interests between workers and employers. In the USA, directors and officers of corporations owe fiduciary duties to the corporation and its shareholders. These include the duty of care, loyalty, and good faith between employer and employee, corporate and partnerships. UK Companies Act 2006 codifies directors' duties, including the responsibility to promote the success of the company, the duty to exercise independent judgment, and the duty to avoid conflicts of interest. Employment Rights Act 1996 provides various protections for franchise employees, ensuring fair treatment and aligning the interests of employees with those of the employer through rights to fair dismissal, redundancy pay, and whistleblower protections.

Moreover, contract laws often mandate agents' comprehensive disclosure of relevant information to mitigate information asymmetry. Contract laws often impose fiduciary duties on agents, requiring them to act in the best interests of the principals. These duties include loyalty, care, and good faith. For instance, the United States Uniform Commercial Code reflects both agency and institutional theories by standardizing commercial transactions and providing clear guidelines for contractual obligations, disclosures, and remedies.[132] EU General Data Protection Regulation incorporates institutional theory by setting standardized norms for data protection in contracts involving personal data. Thus, regulation exemplifies institutional theory by setting standardized norms and practices for data protection, influencing organizational behavior across the EU and beyond. By establishing a comprehensive legal framework, the GDPR institutionalizes data protection norms, compelling organizations to adopt compliant practices to gain legitimacy, avoid penalties, and align with societal values.

2.13. Market Entry, Transaction Cost Economics

Theories related to market entry and expansion strategies, such as the Uppsala Model and the Born Global Theory, are applied to understand how franchises enter new markets. Franchisors often choose between different entry modes and expansion strategies based on factors like market knowledge, risk tolerance, and resource availability.[133]

Market entry theory focuses on the strategies and barriers companies face when entering new markets. In the context of franchising, theory helps to understand how regulations can either facilitate or hinder the establishment and expansion of franchise businesses. In many countries, including the

[132] Radwa Elsaman, Disclosure and Registration Requirements in Franchising: Common Law or Civil Perspective, Tulsa Law Review, 2023, Volume 58, 279-296.
[133] Johansen and Vahlne (1977) 23-32.

United States and Australia, specific small business support programs are available to help franchisees with financing and training. The Australian Fair Work Act of 2009 Amendment made franchisors jointly liable for workplace contraventions committed by franchisees.[134] Besides, disclosure requirements ensure that potential franchisees have all the necessary information to make informed decisions, reducing the risk of failure and promoting market entry.

Transaction cost economics explores how firms make decisions about whether to produce goods or services internally or to transact in the market. In the context of franchising, it can explain why some businesses choose to franchise rather than maintain centralized ownership. Franchising can be seen as a way to reduce transaction costs related to monitoring and coordinating operations.[135] Furthermore, the resource-based view suggests that a firm's competitive advantage is determined by its unique and valuable resources. Successful franchisors often possess intangible assets such as brand reputation, standardized business processes, and support systems in the franchise market. The view helps to understand why certain franchises thrive based on the resources they bring to the table. The theory highlights the importance of firm resources and capabilities in gaining a competitive advantage. Franchising allows firms to leverage their brand, business model, and operational expertise to expand rapidly without the need for substantial capital investment. Franchisees contribute their capital and local knowledge, facilitating growth.[136]

Also, network theory explores the relationships and interactions between entities within a network. In the franchise market, this theory can be applied to understand the connections between franchisors, franchisees, suppliers, and customers. Network relationships can impact the franchise system's flow of information, resources, and support.[137] Namely, European countries often have stricter regulations on non-compete clauses to ensure they are fair and do not unduly restrict trade. The EU's competition laws regulate vertical agreements, including those between franchisors and suppliers, to prevent anti-competitive practices. Legislators may promote the use of standardized franchise agreements to reduce negotiation costs and legal uncertainties. For example, in Australia, the Franchising Code of Conduct provides a framework for standardizing agreements, which helps reduce transaction costs for both franchisors and franchisees.

[134] The Fair Work Act, N28. 2009, AUS.
[135] Williamson (1981) 548-577.
[136] Wernerfelt (1984) 171-180.
[137] Johanson and Mattsson (1988) 303-321.

2.14. System Dynamic Approach

System dynamics is a methodology for understanding the nonlinear behavior of complex processes over time using stocks, flows, internal feedback loops, and time delays. Describing franchise growth with system dynamics involves modeling the various factors and feedback loops that influence the expansion and performance of a franchise system over time. Building stocks and flow diagram means the number of franchise units, total revenue, franchisee satisfaction, flows of new franchise openings, franchise closures, and revenue per franchise, as well as converters variables like marketing budget, support, and training quality.

Simulations work to observe how the system behaves over time under different scenarios including the growth trajectory of franchise units, total system revenue, franchisee satisfaction trends, and market saturation effects. It tests different strategies to enhance franchise growth, such as increasing marketing efforts, improving support and training, or optimizing the rate of new openings. The model is used to predict the outcomes of these interventions and identify the most effective strategies. For instance, new franchise openings are driven by marketing efforts and franchisee satisfaction, on the contrary, franchise closures are influenced by franchisee satisfaction. Moreover, revenue per franchise impacts franchisee satisfaction, affecting both new franchise openings and closures.

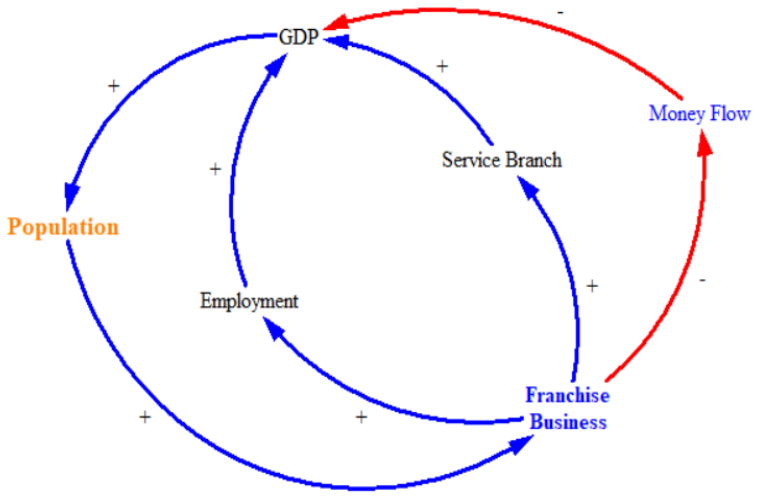

Figure 2: The sample of Franchise loop in System Dynamic[138] *(Source: Begoña López, Begoña González-Busto, Yolanda Álvarez, The dynamics of franchising agreements, 2013)*

[138]"See"in, https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=5e397457a8e30704e1ad15cae4d37792bc71956a

For instance, research in Spain includes 58 outlets in the nine years. Given this size, it was only possible to take into account the difference between chains belonging to product or distribution sectors and those dedicated to the provision of services. The results of the study highlight that when the initial investment the franchisee must make is reduced, the attractiveness of the chain's contractual conditions increases, and this, in turn, increases the availability of new potential franchisees willing to join the chain. So, in case the franchisor decides that the best option is to franchise the new branches, there will be more opportunities for opening these franchised units because the availability of prospective franchisees will not limit growth. In other words, a positive feedback loop can be detected, associated with the interrelations between franchised units, brand recognition, and the legal environment. Thus, the greater the business attractiveness, the more potential franchisees wish to join the franchise chain. As franchised units increase and, therefore, brand recognition, the law environment is positively influenced, as well as business attractiveness. [139]

Part 4: Comparative Questions of Intellectual Property and Competition Rules

2.15. How does franchising differ from other similar concepts?

The nuances among franchises and franchising are subtle but similar. Yet they require differences in structure, obligations, regulatory requirements, and operational control. Franchising is designed for long-term sustainability, evolving as needed to remain viable. For instance, it surrounds the entire network of franchises, and the framework supporting it. On the contrary, a franchise likely focuses on the contractual relationship between parties. Indeed, a franchise is a specific instance or unit of the overall business system, it belongs to the actual business that a franchisee runs, following the guidelines and leasing the brand.

Franchising is a strategy to expand its activity without taking on the full operational and financial responsibilities of managing each location. The rental issue of patent rights and vertical restraints on the market distinguish franchising from distributor trade and other affiliate business alliances, respectively. The franchise defines privilege and discount, while the name of the firm is a system with a special concept, internationally recognized in the field of production, and service. Contemplating both terms, franchising covers the overall system and process by which a lessor grants the rights to a lessee to operate a business under its rule and recommendation that encloses the context questions. Whereas a franchise refers to a legal and commercial collaboration between the owner of a trademark

[139] Andranik Akopov, *Designing of integrated system-dynamics models for an oil company,* Computer Applications in Technology, 2012, Volume 45, 220–230.

and an individual or company that wants to use that identity. Franchises are highly regulated to protect franchisees and maintain brand consistency, with specific laws governing disclosure, and operational standards. Other business concepts like dealerships and distributorships often involve less regulatory oversight and provide more autonomy to the business owner in terms of operations and decision-making, focusing more on commercial agreements and contract law.

The subject of the franchise contract is mainly intellectual property including management systems and marketing technology, and thus it is distinct from the other assets ownership. A franchise agreement is a legally binding document that has particular considerations that belong to the scope and territory of the license and specify the duration of the negotiation and renewal terms. For instance, licensing agreements typically involve the use of trademarks or technology. The licensee pays royalties, but there is generally less control over the business operations compared to a franchise. Franchisors exert significant supervision to maintain brand consistency, whereas licensors have limited authority over licensee uses, as long as the use complies with the contract terms.[140]

A franchise is very similar to an independent distributor who has a lot of freedom in how to run the business. In other words, a distributor under the strict control of the supplier and manufacturer begins to resemble a franchise. Although, a distributor often buys the product and sells it at a value-added price. To distinguish distribution and licensing rights from franchising, the main object of the contract should be considered. Distributors know their local markets and customers well and have business relationships with many suppliers and manufacturers.[141] It acts independently and does not typically follow the extensive operational guidelines required of franchisees. They do not operate under the manufacturer's brand as franchisees do. In other words, distributors sell products but do not replicate the business model or adhere to the same level of brand standards.

Management contracts involve one company managing another company's business operations. The focus is on management services rather than replicating a business model. The level of operational control is more direct and involves day-to-day management, unlike the broader oversight seen in franchising. In contrast to other, agreements such as licensing, distribution, or management contracts, franchises entail a more integrated and controlled relationship between the parties.

[140] Dianne Welsh, David Desplaces, and Amy Davis, *A Comparison of Retail Franchises, Independent Businesses, and Purchased Existing Independent Business Startups,* 2011, Volume 18, 3-16.
[141] *Guide To International Master Franchise Arrangements,* UNIDROIT, 2019, 8.

2.16. Intellectual Property (IP)

The historical connections between intellectual property and franchises have deepened and diversified as both issues have moved forward. Intellectual property has become a vital component of the franchise model, contributing significantly to franchise systems' identity, success, and legal formation. In the early days of franchising, intellectual property played a role in branding and identifying the source of goods or services. Trademarks and commercial names were among the initial forms of intellectual property used to distinguish one franchise from another. Over time trademarks became a crucial aspect of franchise systems for establishing brand recognition and consumer trust. Franchisors started to seek legal protection for their trademarks to prevent unauthorized use and to maintain consistency across their network. Moreover, as franchises were released, the scope of intellectual property within systems expanded to include trade secrets, copyrights, and patents.

According to common regulatory examples, trademarks are the brand identity that franchisees are licensed to use, ensuring consistency and recognition across all franchise locations, and trademark owners can take legal action against entities that use their marks without permission, which includes seeking injunctions and monetary damages. Moreover, trade secrets are confidential business information that provides a competitive advantage, such as formulas, practices, processes, designs, instruments, or compilations of information. Franchisors share trade secrets with franchisees, including proprietary methods and business strategies, protected through confidentiality agreements to maintain exclusivity within the franchise system. For instance, Businesses use non-disclosure agreements (NDAs) and confidentiality clauses in contracts to legally bind employees, partners, and franchisees to keep trade secrets.

Franchisors provide copyrighted materials like marketing content, training manuals, and software to franchisees to ensure uniformity and standards across the franchise network. Under the franchising agreement, patents protect unique products or technologies, confirming that only franchisees can use them, and providing a competitive market advantage. The protection verifies that only franchisees have the legal right to use these patented items, giving them a competitive edge in the market, such exclusivity can be a significant advantage, as it prevents competitors from replicating the patented products or technologies, thereby maintaining the franchise's unique value proposition. These are coordinated by laws that grant inventors complete rights to their inventions for a limited time. Regarding design rights in franchising protect the unique look and feel of products, packaging, or even

the layout and decor of franchise locations, specifically aesthetic consistency and customer appeal across the network.

Franchisors developed established business methods, licensing, operating manuals, and marketing strategies, all of which became integral to a franchise's overall intellectual property portfolio. While licenses and franchises share common elements such as the granting of rights and financial considerations, the key differences lie in the comprehensiveness of the business relationship, the level of control and support provided, and the association with a brand and business model. Understanding these distinctions is crucial for businesses when deciding between a licensing arrangement and a franchise model based on their specific needs and objectives. Therefore, the activity of "leasing" a trademark called a franchise, and the system that defines the entire relationship between the parties and the conditions related to running the business by the franchisor's requirements is called franchising.

In international legal practice, a license is a payment for the right to use a specific trademark. As mentioned before, unlike franchisors, licensors focus more on monitoring the activities of franchisees and are more interested in managing license usage and collecting fees than influencing business operations. On the other hand, every franchise is licensed, but not every license is a franchise. Franchising is the consistent and sustainable obedience to the company's brand promise and is characterized by the duplication of standard documents, as it focuses on the reuse of business dignity. Hence, the franchise agreement shall also specify the conditions related to the use of trademarks or brand names. For instance, the franchisee has the right to use the brand name in a certain field and is responsible for equipping its service facilities per the standard requirements set by the franchisor. It is also necessary for the franchisor to meet the constant needs of the franchisee to supervise their independent business, which is subject to the requirement to regularly encounter the necessity of the brand standards.[142]

i. International IP regulatory framework

Regarding International legal arrangement, article 8 of the Paris Convention for the Protection of Industrial Property states that in all member countries, the name of an enterprise, regardless of whether it is included in the trademark system, is protected without the need to apply. A commercial name is used by an entrepreneur as a business card for his business, to prevent confusion among business

[142] Leyland Pit, Julie Napoli, *Managing the franchised brand: The franchisees' perspective*, Journal of Brand Management, 2003, Volume 10, 411-420.

partners, to maintain his reputation among consumers, and to gain their trust. Since the trade name generates economic benefits, it is considered a property right and is included in legal relations through inheritance, gift, and transfer. For instance, Administered by the World Intellectual Property Organization (WIPO), the Madrid System simplifies the process of registering trademarks in multiple countries by allowing applicants to file a single international application. Administered by WIPO, the Hague System facilitates the international registration of industrial designs, providing a simplified and cost-effective mechanism for obtaining design protection in multiple countries.[143]

Most countries are signatories to key international treaties such as the Berne Convention, the Paris Convention, and the TRIPS Agreement, which set minimum standards for IP protection. As of now, 181 countries are parties to the Berne Convention, making it one of the most widely adopted international treaties. The convention provides a robust legal framework for the protection of literary and artistic works, emphasizing automatic protection, moral rights, and non-discriminatory treatment across borders. According to the TRIPS agreement, member countries must provide effective mechanisms for IP rights holders to enforce their rights, including fair and equitable legal procedures. By integrating IP protection into the WTO framework, the Agreement links IP rights with global trade, confirming that IP protection is considered within the broader context of international commerce. Ensuring effective implementation and enforcement of provisions remains a challenge, particularly for developing and least-developed countries with limited resources and institutional capacity. For instance, the Agreement continues to face scrutiny over its ability to balance the protection of IP rights with the broader public interest, including access to knowledge, technology transfer, and economic development.

ii. Comparative IP regulatory framework

While Anglo-Saxon and European countries aim to protect intellectual property effectively, their approaches are shaped by legal traditions and regulatory frameworks. Take an example, both the UK and the US have robust patent systems. Aligning with international standards, The US follows a "first to file" system according to the Invents Act (2011). The UK has long kept to the same principle and trademark protection is granted through both registration and use. The US employs the Lanham Act (1946) as its primary trademark statute, while the UK follows the Trade Marks Act 1994. Based on the Statute of Anne (1710), the first modern copyright law, also the UK's Copyright, Designs, and

[143] Irene Calboli, Maria Lillà Montagnani (eds.), Handbook of Intellectual Property Research: Chapter 3, Comparative Legal Analysis and Intellectual Property Law, 2021, 46-66.

Patents Act 1988, and the US Copyright Act (1976) provide strong protection for creative works. These jurisdictions protect trade secrets through a combination of statutory law (such as the UK Trade Secrets) Regulations 2018 and the US Defend Trade Secrets Act 2016 and common law principles.

In comparison, The European Patent Convention (EPC) governs the granting of member states patents. Individual countries also have their patent laws, but the EPC provides a centralized application process. The EU Trade Mark (EUTM) system allows for trademark protection across all member states with a single application, governed by the EU Trade Mark Regulation. On the contrary, Anglo-Saxon countries often rely on courts for the interpretation and enforcement of IP laws, with significant influence from judicial precedents. Whereas European countries tend to follow codified laws with less reliance on judicial interpretation. Besides, the EU has made significant strides in harmonizing IP laws across member states, creating a more unified system compared to the more fragmented approach in Anglo-Saxon countries.

For instance, countries that are members of the European Union follow directives and regulations related to intellectual property, such as the Trade Marks Regulation and the Community Design Regulation. Germany, France, Italy, and Hungarian are signatories to major international IP treaties, including the Paris Convention, the Berne Convention, the TRIPS Agreement, and the Madrid Protocol. Patents in these countries are governed by the European Patent Convention (EPC), allowing for a centralized process through the European Patent Office (EPO). National patents can also be granted, but the procedures and requirements are generally aligned with EPC standards. Trademarks can be registered nationally or through the European Union Intellectual Property Office (EUIPO) as an EU trademark, which protects all EU member states.[144]

Regarding patent enforcement and litigation, Germany is known for its efficient and specialized litigation system, with dedicated patent courts in Düsseldorf, Mannheim, and Munich. The bifurcation system separates validity and infringement proceedings. Whereas, France has a centralized IP litigation system with the *Tribunal de Grande* Instance in Paris handling most cases. However, it does not have a bifurcation system, validity and infringement are handled together. Similar to France, Italy has specialized IP courts and follows a system similar to France, where infringement and validity are considered in the same proceedings.[145]

[144] Lavinia Brancusi, EU trademark law and product protection, Routledge, 2024, 39.
[145] Trevor Cook, *Territoriality and Jurisdiction in EU IP law*, Journal of Intellectual Property Rights, 2014, Volume 19, 293-297.

2.17. Comparative competition rules

Economically, franchise resources are considered to maximize the total benefit to society. Competitive markets validate that goods and services are produced at the lowest cost and prevent practices leading to higher prices, reduced quality, or less innovation. Hence, competition law seeks to ban the formation of monopolies and cartels that can distort the market. Monopolies can lead to unreasonable prices and reduced output, while cartels can engage in price-fixing, market division, and other anti-competitive practices.

From this consideration, monopoly refers to the existence of a single supplier in the same market, and cartel involve the conspiracy between companies to stop competition. Therefore, the main purpose of competition law is to protect the interests of consumers, who are compositors of the market. One of the important topics of communication regulated by modern competition law is the process of market sharing under franchise agreements. By signing an agreement with the franchisor, the franchisee will receive permission to carry out production and services alone in a certain territory according to the contract, and it will be possible to maintain the balance of future profits. It is not considered direct anti-competitive conduct, such as cartels, or abuse of dominance.

Franchise agreements and their relationship with monopoly rights in both EU and Anglo-Saxon countries are governed by specific competition laws designed to balance the benefits of franchising with the prevention of monopolistic practices. For instance, The United States has a long history of antitrust legislation, with the key statutes being the Sherman Act (1890), the Clayton Act (1914), and the Federal Trade Commission Act (1914). These acts were enacted to prohibit monopolies and attempts to monopolize, prevent anticompetitive mergers and acquisitions, and ban price-fixing, bid-rigging, and other collusive practices. In the USA, franchisors can grant exclusive territories to franchisees, similar to the EU. These agreements must be structured to avoid creating unreasonable restraints on trade. Exclusive territories are permissible, but they must not lead to illegal market division or monopolization. While franchisors can set certain standards and recommend pricing, they must avoid resale price maintenance (RPM), which is generally prohibited under U.S. antitrust laws. Franchisees typically retain some autonomy over pricing, even though they often follow the franchisor’s recommendations. These are allowed but scrutinized under antitrust laws to authenticate

they are not excessively restrictive. Non-compete agreements must be reasonable in scope, duration, and geographic area to be enforceable.[146]

Vertical Block Exemption Regulation exempts vertical agreements, including franchising, from the forbidden restrictive practices under certain conditions. It allows for non-compete clauses, exclusive supply agreements, and selective distribution systems, provided they do not over-restrict competition. Franchisors in the EU can grant exclusive territories to franchisees. This is legitimate as long as it does not significantly limit competition within the internal market. Selected territories are often used to verify that franchisees have a guaranteed market area where they can operate without direct competition from other franchisees or the franchisor itself. The EU allows certain controls over pricing and supply within franchise agreements, provided they do not constitute hard-core forbid such as resale price maintenance or absolute territorial protection. These are permitted within limits. For instance, non-compete obligations can be imposed for the duration of the franchise agreement and a maximum of one year after its termination, provided they are necessary to protect the franchisor's know-how and do not prevent competition beyond what is reasonable. Key provisions include Article 101 of the TFEU, Article 102 of the TFEU, and Merger Control Regulations.[147]

Whereas the UK's competition framework is rooted in the Competition Act 1998 and the Enterprise Act 2002. The country allows exclusive territories within franchise agreements, provided they do not significantly impede competition. The Competition and Markets Authority (CMA) oversees these practices to ensure compliance. As in the EU, a mandated boundary is designed to protect franchisees' investments and incentivize business development. Under the UK competition law allows certain controls over pricing and supply within franchise agreements, with similar restrictions on resale price maintenance. These are accepted under UK law, provided they are reasonable and necessary to protect the franchisor's legitimate business interests.

2.18. Business Format Franchising

Business modeling for a franchise involves creating a structured plan that defines how a franchise will operate, generate revenue, and deliver value to the franchisor and the franchisees. Compared to a startup, a franchise business has a lower risk of failure and can easily compute a margin. The systematic franchise is based on proven methods, equipment, experience, training, advertising, and set-up accounting systems. It is believed that getting the right to represent an internationally known

[146] William H. Page, Direct Evidence of a Sherman Act Agreement, Antitrust Law Journal, 2020, Volume 83, 347-392.
[147] European Code of Ethics for Franchising, EFF, 2020, 3.6 (iii).

brand and introducing its goods and services to the local market is less risky and costly than starting a new business.

The framework for business model franchising involves a structured approach to expanding a business to operate under the franchisor's brand, using their established model, systems, and support. Regarding the types of franchising agreements, single or multi-unit on-area development and master franchises can be established. Among these contractual options, for example, the master franchisee has the advantage of not only opening several branches under his ownership but also selling the right to open a franchise in that area to other entrepreneurs.

Having a franchise is advantageous in many ways, but to fulfill the obligations under the contract, the parties have to obey severe requirements and guidelines, strictly follow established business methods and culture, and have special conditions. Franchise agreements often impose special conditions, such as minimum sales targets, mandatory participation in marketing campaigns, and requirements for regular reporting and audits. While these obligations can be demanding, they support the franchisee's success and protect the franchisor's brand integrity. Therefore, the law asks before signing a franchise agreement and investing, the franchisee should decide in advance which classification of the franchise will choose from the options.[148]

Business Format (Model) franchising is the predominant type of franchise covered in model laws and master franchise agreements, characterized by comprehensive support. The Master Franchise Agreement further extends these principles by allowing the master franchisee to sub-franchise within a designated territory, adding layers of complexity and opportunity for expansion. So, the Model Franchise Disclosure Law and various national franchise regulations set out the legal requirements for disclosures, operational standards, and franchisee protections that apply to business format franchises and master franchise agreements. A Master Franchise Agreement is a specific type of business format franchise arrangement, which includes sub-franchising rights, territorial exclusivity, training and support, revenue sharing, and compliance and standards. Business format refers to adopting and using products and services, trademarks, and comprehensive programs under an existing model.

For example, while the core principles of business format franchising are similar in the USA and Europe, regulatory frameworks, disclosure requirements, and market practices differ significantly. The USA has a more standardized and regulated approach, providing clear protections and criteria for both

[148] William Gillis, Gary Castrogiovanni, *The Franchising Business Model: An Entrepreneurial Growth Alternative*, International Entrepreneurship and Management Journal, 2010, Volume 8, 75-98.

franchisors and franchisees. Europe, with its diverse legal systems and cultural practices, offers a varied landscape where franchising practices must adapt to local laws and market conditions. Franchise models that are successful in one member state may need to be adapted significantly to fit the legal requirements, business norms, and consumer expectations in another.

While Asian business format franchising exhibits unique characteristics shaped by rapid economic growth comparable to the Western world. Sharing core principles with franchising in North America and Europe, the Asian market requires tailored approaches to accommodate local preferences, legal requirements, and business practices. Even so, the contemporary phenomenon of business format franchising is more defined by technological integration, consumer-centric approaches, global expansion, regulatory compliance, innovative models, and enhanced franchisee support rather than one country's specifics.

2.19. Management, Investment franchising, and other patterns

A management franchise is a type of franchise where the franchisee is responsible for managing the operations of the business. In this pattern, the franchisee typically oversees staff, handles administrative responsibilities, and ensures the business runs according to the franchisor's standards and guidelines. On the other hand, the owner of the franchise, based on career and work experience, provides consulting services for format and operations, trains, monitors the business, mediates services, and costs management. Management franchise agreement outlines the elements of responsibilities, including management expectations, support provided, and compliance requirements, collaborating so that both franchisors and franchisees understand their rights and obligations, and fostering a fair and transparent business relationship.

A production franchise establishes a factory in the authorized territory under the franchise agreement and supplies products developed by the trademark, patent, know-how, technique, technology, design, and standards, or communicates indirectly with the end user. The franchisee sets up a factory or production unit, fulfilling to the franchisor's specifications and standards. The franchisor may supply raw materials or components required for production, or the franchisee may source them according to the franchisor's guidelines. The franchisee might sell the products directly to end users or distribute them through retail channels, depending on the franchise agreement. Although the franchisee might not interact directly with end users, they must arrange that the products and branding line up with the franchisor's marketing and customer service standards. Whereas, the

product trademark franchise represents the business of selling franchise commodities using commercial names, licenses, sales networks, and marketing.

Conversion Franchise is the reshaping of a company engaged in business in a particular field to franchising a well-known brand in its field. This allows the franchisee to leverage the brand name, marketing and advertising programs, training systems, and customer service standards to increase profitability. As a pre-existing business, the franchisee can collect royalties and re-open branches in a very short period. Industries that widely use convertible franchising include real estate agents.

Investment franchising is the implementation of large-scale projects that require a huge amount of investment, and the franchisee either hires a management team himself or entrusts the operation to a franchisee to get a return on finance. Management franchisees are actively involved in operations, while investment franchisees are primarily investors. In an investment franchise, the franchisee takes a more passive role. They invest capital into the business but do not get involved in its daily operations. The primary focus for investment franchisees is to generate a return on their investment and hire managers to run the business while they oversee the financial aspects. On the contrary Job franchising is a type of franchising that is usually used for small businesses that require a minor investment. Franchisees typically have a limited inventory of products and services such as travel agencies, coffee trucks, event planning, childcare services, etc.

Recently, the concept of social franchising has been discussed. It is an option for international credit, aid, and voluntary organizations' franchising activities. Micro-franchise networks may positively influence the social development of a country by improving healthcare services and alleviating poverty.[149] For instance, it can expand access to essential healthcare services in underserved and remote areas. By establishing small, local healthcare franchises, communities that previously lacked medical facilities can receive necessary care. These networks can ensure a standard level of care across all locations by providing franchisees with training, resources, and standardized protocols. This helps improve the overall quality of healthcare services. Micro-franchises often include health education as part of their services, teaching communities about preventive care, hygiene, and disease management. Organizations like Living Goods and Health Store Foundation use micro-franchise models to provide affordable healthcare and medicines in low-income communities. Programs like

[149] Lisa Jones-Christensen, Helen Parsons & Jason Fairbourne, *Micro-franchising as an Employment Incubator*, Journal of Business Research, 2010, Volume, 63, 595-601.

One Acre Fund help smallholder farmers increase their productivity and incomes by providing them with seeds, tools, training, and market access through a franchise model.

Social franchising often involves additional considerations due to its focus on social goals, such as healthcare, education, or poverty alleviation. Hence, franchisors must provide clear and comprehensive information to prospective franchisees including details about the franchisor's mission, social impact goals, financial expectations, and operational requirements.

2.20. Chapter Summary

While there is a lack of research materials on the history of franchise development, there are differing opinions. Because the legal, economic, and other concepts of franchise have not developed simultaneously anywhere. By comparing legal regulations and the commencement of the term, not only did I learn about the patterns, changes, and innovations of the franchise, as well as the factors that influenced them, but also gained information for future research and policy.

The international legal regulations included in this chapter and the experience of Europe, the United States, and England have directly influenced the evaluation of the franchise as a legal codification and the identification of achievements and shortcomings. It is also understood that this chapter shows how basic economic theories have played a role in determining franchise platforms. For example, game theory, system dynamics model, and contract asymmetry principles have been able to create a balanced model of modern franchises.

The main thing identified during the research is that the franchise evolved from a concession of performing public functions to an intellectual property lease, and then turned into a multinational commercial model and contract law object. That is why, the economic and legal basis of franchising theories, international standard regulations, conceptual, competition, and intellectual property issues were comprehensively considered.

The main findings of these studies are that franchising relationships are governed by international laws rather than domestic laws, and there is a tendency for countries to align their laws in this area with model laws. At the same time, it is emphasized that the legal relationship of the franchise agreement has changed over time into a commercial legal issue from a contract law.

CHAPTER 3. COMPARATIVE ANALYSIS OF FRANCHISING

Abstract

There is no one-size-fits-all approach to coordinating franchises, therefore following the comparison allowed me to understand the strengths and weaknesses of different law frameworks and learn from their perspectives. Modern comparative law studies the similarities and differences between civil and common law systems, with contract law as a fertile field for such groundwork. This research explores how common law (e.g., U.S., Canada) and civil law (e.g., France, Germany, Italy) jurisdictional approach franchising differently, with case law focusing more on judicial decisions and continental law emphasizing codified statutes.

Regulating franchise contracts is pivotal for economic stability of immediate practical relevance, moreover, cross-country analysis helps identify common principles and divergent matters. Hence, the study was conducted to figure out which legislative instruments are the most useful and mixed arrangements that can be used to exchange the best experiences between nations. In this regard, I have considered countries that have formulated comprehensive disclosure requirements, ensuring franchisees are well-informed before entering into agreements.

Globalization plays a significant role in reducing conflicts related to franchising by creating more uniform and predictable legal frameworks. Research into how field laws are changing whether they have a contract or commercial-oriented tendency can provide valuable insights into the evolution of franchising laws. On the other hand, focusing on harmonizing private laws, including competition, intellectual property, and consumer protection regulations, can facilitate smoother international franchise operations.

Ultimately, in the foundation of the study, an attempt was made to compare the countries' franchise tax, investment, and business-oriented policies. Under the comparative analysis, the study suggests matching tax policies to reduce complexities in cross-border franchising and proposing measures to create a more favorable investment climate for franchises, including improved legal protections and reduced regulatory burdens.

Keywords: Contract law, Disclosure Documents, Commercial Approach.

Part 1. Introduction to Comparative Study

3.1. What are the similarities and differences between the legal arrangements found in the comparative study?

The criteria for franchise contracts typically encompass regulatory standards, operational guidelines, and clearly defined responsibilities for both parties. In some ways, franchising involves complex relationships that are often governed by incomplete contracts, leading to potential conflicts and challenges. Concerning these issues requires contract design, effective governance, and supportive legal and institutional frameworks. By managing the problems associated with contracts, franchisors, and franchisees create more stable and mutually beneficial communication around the world.[150] That is why, mainly *European, and North American* franchise legal practices are compatible with the expectations of my research.

Since 1970, western countries started to develop their franchise regulations labeling the unique legal and commercial considerations associated with disclosure requirements, intellectual property protection, and dispute resolution mechanisms. They have enacted specific franchise legislation that fulfills the medium and high standards while passing general commercial laws to govern franchising. Such constructive rules were based on a balance between managing the interests of contract parties and holding up the sustainability, growth positive influence of franchising as a business model.

Although franchising occupies a prominent position in international law and economic backbone, there is still no unified regulation and most countries were arranging it within the framework of their jurisdictions. Therefore, franchise agreements are usually governed by individual country's specific laws and standard documents. Take an example, The US Federal Trade Commission adopted the Franchise Rule in 1978, requiring the franchisor to design and comply with the demands of the contract, and later the requirement has been included in Franchise Disclosure Documents. Succeeding the US best practice, franchising in Canada is regulated at the level of regional legal relations regarding some specific provisions depending on the state, commonly highlighting considerations of the agreement, such as pre-sale information, the duty of fair dealing, and the procedure to be followed when terminating the contract.

The European countries have their franchise laws, and by including detailed provisions in the law, conditions have been created to make franchise operations clearer and reduce business risks. For

[150] Gillian K. Hadfield, *Problematic Relations: Franchising and the Law of Incomplete Contracts*, Stanford Law Review, 1990, Volume 42, 927-992.

example, legislations in Italy cover the issue of the franchise agreement in detail. Within the framework of the law, the main concerns are connected to the documents of the franchise notification system and the legal Agreement.

Moreover, the disclosure laws in Europe and Asia expose the diversity of laws and their enforcement across different regions, there are developing integrated regulations that have indicated that the framework for franchising is becoming increasingly formalized.[151] For instance, China adopted the Franchising Law in 1997 which is regulated by legal acts such as Franchising Management Procedures, Administrative Procedures on Registration, and Procedures on Franchise Open Documents. The Franchise Administration Regulations came into force in 2007, and the enactments regulate matters such as documents related to the transfer of rights, and the form of payment.[152]

Contract and commercial laws of countries are getting integrated through franchising. In particular, Franchise businesses must navigate complex tax regulations, including corporate, value-added, and income taxes which means franchisors and international franchising often presume considerations of double taxation treaties and transfer pricing rules. Also, legislative reforms in franchises are expected to continue in the broader areas of technology franchising, the regulation of large franchise networks in the territory, unified intellectual property verification, inquiries, and monopoly statutes in economic rules such as the European Union, ASEAN, or Mercosur, rearrangement might focus on harmonizing monopoly and competition laws to prevent anti-competitive practices in franchising. With the expansion of large franchise networks, reforms aim to address issues related to market dominance and the balance of power.

3.2. Civil and Common Law Approaches

Both the civil and common law approaches center on offer and acceptance procedures as essential components of franchise contract formation, and also deal with issues of non-performance and figure remedies for such breaches. Technically, a contract traces the circumstances under which either party terminates the agreement, including breach of contract, bankruptcy, or failure to meet performance standards. The legal frameworks often dictate how notice of termination has to be given and the rights and obligations of parties upon termination. Despite these similarities, in civil law systems, particularly French law, the doctrine of "cause" (causa) refers to the reason or purpose behind a

[151] Michael Edwards, *Comparative Analysis of Franchise Disclosure Laws Around the World,* "See", in https://michaeledwards.uk/comparative-analysis-of-franchise-disclosure-laws-around-the-world/

[152] Alan Adcock, & others, *An Overview of Franchising Law in Southeast Asia*, Franchise Law Journal, 2021, Volume 41, 247-267.

franchise contract, which must be lawful for the contract to be valid. Whereas in common law systems, the doctrine of "consideration" requires that something of value be exchanged between the parties for the contract to be enforceable. These differences provide a rich field for comparative study, allowing scholars and practitioners to understand how legal traditions handle similar issues in varied ways.

There is a tendency to see the increasing dominance of one party in franchise agreements due to English law's preference for freedom of contract. Because it is believed that detailed norms in the continental legal system balance the party's responsibility. On the other hand, the written law creates an immovable imbalance. Therefore, the assumption that the basic principles of franchise agreements differ depending on the specifics of the legal system does not make sense.

Monist contract theory posits that contract law should be based on a single, overarching principle. Pluralist contract theory recognizes multiple principles as the foundation of contract law. It argues that no single principle can adequately explain all aspects of franchised contractual obligations and that a combination of various principles is necessary to address the complexities of contract law. Civil law systems, particularly those influenced by the Roman-Germanic tradition, often display monist tendencies due to their reliance on comprehensive legal codes. These codes typically embody a unified set of fundamentals that guide contract law. Common law systems tend to be more pluralist, as they develop through judicial decisions that incorporate a variety of assumptions.

The main difference is that franchises are regulated by contract in English law and by statutes in German law. It should not be explained as positive law is more important for regulating franchises. In both common and civil law systems, positive law consists of the codified rules, regulations, and judicial decisions that form the enforceable body of law. Normative law, on the other hand, comprises the underlying prepositions, ethical standards, and social values that application of positive law.

Civil law cultures are based on comprehensive, written acts. These codes are intended to cover all possible scenarios and provide a complete legal framework, which is heavily influenced by Roman law, particularly the Corpus Juris Civilis compiled under Emperor Justinian in the 6th century.[153] Legal scholars play a significant role in interpreting and developing the law. Their theoretical writings and commentaries influence the application and evolution of legal mission. Civil law emphasizes a systematic and abstract approach to law. Legal principles are formulated in broad terms and are meant to apply generally, providing a theoretical framework that judges and other jurists follow. For this

[153] Frederick W. Dingledy, *The Corpus Juris Civilis: A Guide to Its History and Use*, Library Staff Online Publications, 2016, 231-255, "See", in https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1122&context=libpubs

reason, the legal principles underlying the provisions of the franchise agreement and the responsibilities of the franchise parties to the agreement tend to be regulated in detail by law.

Common law systems are influenced by legal realism, which recognizes that the law is shaped by social, economic, and political factors. Judges are seen as active participants in shaping the law based on the realities of the cases before them and emphasize practical outcomes and the resolution of specific disputes. The development of law through judicial decisions reflects a pragmatic approach to addressing societal needs and issues.[154]

Civil law systems are based on comprehensive legal codes that shape legal principles and rules. The codification provides a high degree of certainty, as the laws are systematically organized and accessible. It reduces the complexity of legal principles, making it simple to understand rights and obligations however sometimes it is more theoretical. Civil law systems strive for uniform application of principles across cases which means consistency is achieved through detailed codes and centralized judicial oversight, decreasing variability and uncertainty in legal outcomes. While judicial decisions are considered, they do not bind future cases to the same extent as in common law systems for the reason of preventing inconsistencies and fluctuations in legal interpretations over time. The procedural rules in civil law systems are often more straightforward and less adversarial, making the process more accessible to franchises.

Common law cultures codify established business practices, creating a stable legal environment that helps standardize procedures and expectations in transactions, each case is examined on its own merits, allowing for customized solutions that fit the specific circumstances of a dispute. The traditional and long-standing position under English law was that a good-faith clause was not ordinarily binding, or capable of being enforced. In England, most laws regulating business activities are part of commercial and contract law. Accordingly, franchisors and franchisees have the right to enter into an agreement and terminate it as provided for in the franchise agreement itself or as governed by the common law.[155] Franchise contracts are legally enforceable, providing parties with the assurance that their agreements will be upheld in court. The legal framework provides various remedies for breach of contract, including damages, specific performance, and injunctions. If compared common law to civil law systems often have greater freedom to negotiate contract terms,

[154] Grant Gilmore, *Legal Realism: Its Cause and Cure*, The Yale Law Journal, 1961, Volume 70, 1037-1048.
[155] Aldo Frignani and John Pratt, *Termination and Non-renewal of Franchise Agreements in the European Union*, Franchise Law Journal, 2017, Volume 37, 15-42.

allowing for customized franchise agreements that suit the specific needs. But unlike civil law systems, common law systems may lack comprehensive statutory regulations specifically governing franchises, potentially leading to gaps in legal protections and procedural rules and requirements that are complex and difficult to navigate, particularly for small franchises without substantial legal resources.

Part 2. Comparative Franchising Contract and Commercial Law Arrangements

3.3. EU Regulatory Framework (Directives)

The idea of a Common European Civil Code (CECC) refers to the initiative to harmonize and unify civil law across the European Union. The objective is to create a cohesive legal framework that would standardize aspects of civil law, including contract law, property law, and tort law, to facilitate effective cross-border transactions and legal proceedings within the EU. In 2010, the European Commission published the Draft Common Frame of Reference (DCFR), a possible CECC model. The DCFR provides detailed principles, definitions, and European private law model rules. The idea has been discussed and developed in various forms over the years, notably through the work of the Study Group on a European Civil Code and the European Research Group on Existing EC Private Law. Moreover, the communication on European Contract Law covers official documents and statements issued by the European Commission to address the need for harmonization and coherence in contract law across the European Union. These communications typically outline the European Commission's views, proposals, and strategies for achieving greater legal integration and facilitating cross-border transactions within the internal market.[156]

The European Union adopts a flexible approach to respecting the individual contract laws of its member states while promoting certain harmonized standards to ensure consistency and fairness across the single market. Union upholds the principle of freedom of contract, allowing parties to negotiate and agree upon terms that suit their specific needs, provided these terms do not violate mandatory national or EU laws. On the law applicable to contractual obligations, whenever a business directs its activities to consumers in another member state, it must comply with that state's contract law. The parties' freedom to choose the applicable law is the cornerstone of the system of conflict-of-law rules in matters of contractual obligations. An agreement to confer several courts or tribunals of a state

[156] David Schmid, *Do We Need a European Civil Code*, Annual Survey of International & Comparative Law, 2012, Volume 18, 263-293.

exclusive jurisdiction to determine disputes under the contract places the factors to be taken into account in determining whether a choice of law has been demonstrated.[157]

Where there has been no choice of regulation, the applicable law should be determined by the rule specified for the particular type of contract. Where the contract cannot be categorized as being certain types or where its elements fall within more than one of the sorts, it should be governed by the law of the country where the party is required to affect the characteristic performance of the contract as the defendant's habitual residence.[158]

Considering the contracts in European countries, at the initiative of one party, the parties can extend the contract for a certain period or under revised conditions until the end of the business relationship, as a guide to the principle of mutual trust and cooperation. This indicates that the duration of the contract is set by law, but the parties can change it by agreement, and it is a matter of the will of the parties to conclude or extend a new contract. The franchise system has been defined in a broader scope, i.e., not only the transfer of the above rights but also the level of relationship between suppliers and dealers for selling products. Of course, the requirements of this type of contract are relatively low or have simple conditions. As for the characteristics of the franchise agreement, the necessary clauses cover the rights and obligations of the parties, payment conditions, and intellectual property disputes that arise after the contract is terminated. These detailed regulations are reflected in the contract laws of Member states. Besides, it contains mandatory features regarding the principles of honesty, mutual respect, equal treatment, and compliance with the standard requirements of the contract that the contracting parties should expect. For this reason, there will be fewer barriers to franchisors from any country operating in the EU zone, mergers, divisions, joint investments, market allocation, and licensing of domestic and foreign enterprises.

One of the main goals of EU contract law directives is to harmonize regulations across member states, checking a consistent legal framework for businesses and consumers. The Commission evaluates whether harmonization is achieved and identifies discrepancies that may need addressing. The European Commission conducts periodic reviews and publishes reports on the implementation and effectiveness of directives. These reviews assess whether the directives achieve their intended goals and identify any areas needing improvement or updates. Before proposing new legislation or

[157] Martijn W. Hesselink, *Progress in EU Contract Law,* European Review of Contract Law, 2022, Volume 18, 281-302.
[158] Regulation 593/2008 of the European Parliament and of the Council, Article 12-19, Official Journal of the European Union, Volume 177, 6-16.

amendments to existing directives, the Commission conducts impact assessments to evaluate the potential economic, social, and environmental impacts of the proposed changes, confirming they are justified and beneficial. The Commission carries out comprehensive evaluations known as "fitness checks" to assess the coherence, relevance, effectiveness, efficiency, and EU-added value of a group of related directives. Besides, there is no specific "Franchise Directive" in the European Union law, but franchise agreements are subject to several EU directives and regulations that govern the protection of franchisees and regulate the relationship between contract parties within the EU. It includes:

i. Unfair Commercial Practices Directive (UCPD)

The UCPD has been subject to updates and revisions to keep pace with evolving market conditions, digitalization, and new commercial practices. For instance, recent amendments address issues related to online platforms, digital content, and consumer reviews. By setting clear standards for franchise business conduct and providing robust protections for consumers, the UCPD plays a crucial role in maintaining trust and fairness in the EU's internal market. Each member state designates national authorities responsible for enforcing the directive. These authorities can take various actions, including imposing fines, ordering the cessation of unfair practices, and seeking redress for affected consumers. The directive also rules aggressive practices that use harassment, coercion, or undue influence to significantly impair consumers' freedom of choice. Examples include high-pressure selling techniques and exploitation of a consumer's misfortune including a "blacklist" of 31 practices that are considered unfair and thus prohibited.[159] The list provides clarity on applications that are unacceptable under any circumstances, such as false claims of limited stock or misleading claims of a product being "free."

ii. Consumer Rights Directive (CRD)

The CRD applies to business-to-consumer (B2C) contracts, including sales of goods, provision of services, and digital content. It covers both distance contracts (e.g., online, phone, mail) and contracts concluded off-premises (e.g., door-to-door sales). The directive requires traders to provide consumers with key information before they enter into a contract including the characteristics of the goods or services, the identity of the trader, the right of withdrawal and conditions for exercising it, and the duration of the contract and conditions for termination. The CRD grants consumers a 14-day "cooling-off" period during which they can withdraw from a distance or off-premises contract without giving any reason. The withdrawal period starts from the day the consumer receives the goods or, in the case

[159] Directive 2005/29/EC of the European Parliament.

of services, from the day the contract is concluded. If the franchisor and franchisee fail to inform the consumer about the right of withdrawal, the withdrawal period is extended to 12 months. EU member states are required to transpose the CRD into their national law. While they must comply with the directive's minimum standards, they can choose to provide higher levels of protection.[160]

iii. Unfair Contract Terms Directive (UCTD)

The directive governs those contractual terms in consumer contracts that are fair and transparent, thereby promoting customer confidence and fair competition within the internal market. The main objectives are to safeguard users against unfair contractual terms that create a significant imbalance in the rights and obligations between the parties to the detriment of the consumer, and contractual terms are drafted and understandable to the average consumer. The UCTD applies to all contracts concluded between a consumer and a seller or supplier. It covers standard terms that have not been individually negotiated. Individually negotiated terms are excluded unless they were pre-formulated and not subject to negotiation. In particular, a term is considered unfair if it causes a significant asymmetry in the parties' rights and obligations under the contract, to the detriment of the consumer. The assessment of fairness takes into account the nature of the goods or services, the circumstances surrounding the conclusion of the contract, and all other terms of the contract. That is why, national courts have the power to assess the fairness of a contractual term on their initiative (ex officio), even if the consumer does not raise the issue.[161]

iv. E-Commerce Directive

The directive has been instrumental in promoting cross-border e-commerce within the EU, making it easier for consumers to shop online across member states and for businesses to offer their services throughout the internal market. In December 2020, the European Commission proposed the Digital Services Act, which aims to update and complement the E-Commerce Directive. The DSA introduces new rules for online platforms and intermediaries, addressing issues such as transparency, and accountability. The directive encourages the development of codes of conduct at the national and EU levels to help implement its provisions and address specific issues within particular sectors. It sets rules for online advertising and marketing and also requires the name, geographic indication, and franchise license of the service provider for the formation of electronic contracts.[162]

[160] Directive 2011/83/EU of the European Parliament.
[161] Council Directive 93/13/EEC of 1993 on unfair terms in consumer contracts.
[162] Directive 2000/31/EC of the European Parliament.

v. Late Payment Directive

The directive seeks to improve cash flow for businesses, particularly small and medium-sized enterprises (SMEs), by establishing strict rules on payment periods and providing effective measures against late payment. Hence, it applies to all commercial transactions such as franchises, whether in the private or public sector, involving the supply of goods or services for remuneration including transactions between businesses (B2B) and transactions between businesses and public authorities (B2G). According to the directive, the standard payment period is 30 calendar days unless otherwise agreed. However, the payment period can be extended to a maximum of 60 calendar days if explicitly agreed upon in the contract and not grossly unfair to the creditor. If payment is not made within the stipulated period, the creditor is entitled to interest on the amount due. The statutory interest rate is set at the reference rate of the European Central Bank plus at least 8 percentage points. The directive prohibits contractual terms and practices that are grossly unfair to the creditor, including payment periods or conditions that deviate significantly from the statutory provisions or impose excessive administrative requirements.[163]

3.3.1. Pre-Contractual Regulations

Franchising is based on a more sophisticated policy and procedure that requires transparency, and fair competition, in most European countries, the franchisor should have experience of at least one year and have to disclose relevant documents before the franchisee within a short period ASAP. The provisions that are acceptable in franchise agreements differ from similar exclusive or selective contracts. In particular, legal frames are applicable both in either pre-contractual (*Ab initio*) or post-contractual stages. Disclosure of potential profit and actual risk is the main requirement of the agreement between the parties. Hence, pre-contractual principles are specifically legislated, if one of the parties misled the other before concluding the contract, the court has to settle the dispute and compensate for the damage.

As regards the pre-contractual stage, the statutory period for information disclosure is on average one month or more in Member states. For instance, according to the Italian Franchise Act, a franchisor is obliged to supply information to the franchisee at least 30 days before the established agreement, on a merely territorial basis, consisting of the pursuit of business in Italy.[164] At the request of the

[163] Directive 2011/7/EU on combating late payment in commercial transactions.
[164] Italian Franchise Law n. 129/2004.

Franchisee, the Franchisor shall deliver to the Franchisee a copy of all reports related to the Agreement and other attached documents. Besides, the Commercial Franchise Ordinance issued by the country's government regulates the following requirements for open documents:

- The legal name of the franchisor, company assets, and financial statements of the last three years at the request of the franchisee, if the franchisor has been operating for less than three years, financial statements since its establishment;
- A brief description of the purpose of the business, a list of activities carried out by stakeholders in the franchise system, and the trademark details, registration, deposit, or permission granted by the third party to the franchisee. The franchisor is bound by the terms and conditions to be included in open documents, which creates opportunities for the franchisee to make decisions, and fulfill other requirements. A franchisee requires a specialized business model with market experience to establish a branch network.

The franchisor's pre-contractual disclosure duty is the subject of extensive case law in France, in circumstances where the franchisee's business is unsuccessful and the alleges that he or she has been misled by the franchisor on the financial prospects of the franchised business. Franchisors are required to inform the social dialogue committee of decisions likely to affect the volume or structure of the workforce, labor duration, and conditions of hiring. Moreover, courts may "rebalance" the terms of franchise agreements or remove from contracts a term that creates an imbalance.[165]

In German and Austrian law there is a general duty of information by principles of contract law.[166] "pre-contractual disclosure obligations are imposed based on the principle of *culpa in contrahendo*, which is codified in Section 311(2) of the BGB. Franchise agreements that contain pre-emptive rights relating to the acquisition of real estate property or shares in a GmbH must be contained in a notarial deed executed in Germany before a German notary to be enforceable. A German notary will review and notarize those provisions only if they comply in all regards with German laws."[167]

Take an example, Bakery Franchise Case in German courts involves issues of good faith and disclosure obligations within franchise agreements. The case involved a franchisee who entered into a franchise agreement with a franchisor to operate a bakery under the brand name. The franchisor provided the franchisee with financial projections and other information that indicated the business

[165] Courtenay Atwell, *Franchising in France: An Overview*, European Business Law Review, 2019, Volume 30, 439-467.
[166] Reiner Schulze and Fryderyk Zoll, The Law of Obligations in Europe, Sellier European Law Publishers, 2013, 174.
[167] Ned Levitt, Kendal Tyre, & Penny Ward, Controlling Your International Franchising System, ABA, 2010, 21.

would be profitable. The franchisee claimed that the financial projections provided by the franchisor were overly optimistic and misleading. The franchisee argued that the franchisor failed to disclose important information about the market conditions and the performance of other franchisees, which were necessary for making an informed decision. Consequently, the German Federal Court of Justice (BGH) held that franchisors have a duty of good faith and fair dealing, which includes an obligation to provide prospective franchisees with accurate and complete information. The court emphasized that franchisors must disclose any information that is crucial for the franchisee's decision-making process. Moreover, the court found that the franchisor had provided misleading financial projections and had failed to disclose relevant market information, which constituted a breach of the duty of good faith. The court held that such misleading information and omissions could give rise to a claim for damages or the right to rescind the contract. That is why, the court ruled in favor of the franchisee, allowing them to revoke the franchise agreement and claim damages for the losses incurred as a result of the misleading information provided by the franchisor.[168]

Belgium franchise law has two parts: the first regards disclosure of significant contractual provisions, and the second addresses facts contributing to the correct appreciation of the agreement. Within two years of executing the franchise, the franchisee can request nullification based on asserted non-compliance with the disclosure requirements.[169] The legislation aims to balance the position of the contracting parties, with direct application to franchise agreements. This means it applies to all franchise agreements where the territory of responsibility is located in Belgium, irrespective of the franchisor or franchisee's location or any foreign governing law clause of the franchise agreement. By law, the franchisor is obliged to provide the franchisee with a pre-contractual disclosure document at least one month before the conclusion of the franchise agreement. "Under the law, the purpose of any pre-contractual disclosure is precisely to establish a certain balance and transparency between the contracting parties. It ensures that the franchisee has access to all the relevant information about the franchise proposition, has an opportunity to assess the business model, make inquiries, and potentially walk away at this preliminary stage if they consider the proposed obligations to be too onerous."[170]

[168] BGH, Judgment of 12.02.1992 - VIII ZR 91/91.
[169] Reinhard Zimmermann and Simon Whittaker (eds), *Good faith in European contract law: Surveying the legal landscape*, Cambridge University Press, 2000, 24.
[170] Pieter Jan Aerts, Karolina Cotronei, and Babette Märzheuser-Wood, *New Franchise Law in Belgium- How Should Your Template Franchise Agreement Change,* 2021, "See", in https://www.martindale.com/legal-news/article_dentons-sirote-pc_2547610.htm

Spain has more structured regulations for franchising, emphasizing transparency and regulatory oversight. Spanish law mandates that franchisors provide franchisees documents at least 20 days before signing the agreement and obliges franchisors to be transparent in their dealings with potential franchisees in two ways: by imposing upon them a duty to provide certain pre-contractual information and by requiring them to register in the franchisor registry. Franchisors are required to register with the authority of the government before engaging in franchising activities. Registration confirms that franchisors meet specific standards and furnish a level of transparency and credibility. Apart from specific aspects like pre-contractual disclosure, there is no extensive statutory regulation for franchise contracts, allowing parties to customize the agreement as needed.[171]

3.3.2. Contract responsibility and Remedies for breach

The Italian 2004 franchise law governing franchising provides the basis of the franchisor's relationship, including the model and terms of the franchise agreement, the franchisee's duties, reconciliation, termination, and other clauses.[172] It can be said that the Franchise Law is a detailed domestic regulation contractual law, which mainly covers the model, terms, and conditions of the franchise agreement. Whereas, the 2005 decree of the government approved the franchisee's component rights. The decree applies to franchisors operating outside the territory of Italy. The term of the franchise agreement continues for at least three years, and the agreement covers the initial payment and the total amount of investment, territorial exclusivity, and procedures (know-how) to be transferred to the franchisee. The franchisee shall prohibit the transfer of trade without the consent of the franchisor, and maintain business secrets, and if the parties present false information or documents, the franchisee may terminate the contract and shall be responsible for compensation for damages. As for the model and terms of the franchise agreement, it must be made in writing.

The same rules as Italy exist in French and German laws. Under French law, the principle that allows for the termination of a contractual relationship is based on the notion that every bilateral contract is concluded under an implied resolutive condition, meaning that the proper performance of reciprocal duties is a fundamental aspect of the contract. If one party fails to perform their obligations, this failure can lead to the termination of the contract. Thus, the principle is inspired by the French Civil Code, specifically under Article 1224, which provides for the termination of a contract due to

[171] Jaume Martí Miravalls, *Spanish Legal System on Disclosure in Franchise Network*, European Business Law Review, 2014, Volume 25, 943-955.
[172] Law n. 129/2004, Decree n. 204/2005. Italian Franchise Law.

non-performance. In French contract law, a resolutive condition is an implied condition that allows for the termination of the contract if one party fails to perform their obligations. The concept is essential in ensuring that both parties uphold their end of the bargain. A party seeking to terminate the contract due to non-performance must typically obtain a court order unless the contract expressly provides for termination without judicial intervention. The court will assess whether the non-performance is sufficiently serious to justify termination.[173]

In German contract law, obligations can be categorized into primary and secondary (or ancillary) obligations. Primary obligations are the main duties arising from the contract, while secondary obligations are supplementary and support the fulfillment of primary obligations. Breaches of primary obligations can lead to the right to terminate the contract and claim damages. In contrast, breaches of secondary obligations generally do not justify termination but are sanctioned by a claim for damages. This distinction is based on the principle of proportionality and the need to balance the interests of both parties. The BGB provides the legal framework for them. For example, Sections 280-286 outline the conditions under which damages can be claimed for breaches of both primary and secondary obligations.[174]

Spanish laws offer a broad definition that relates entirely to the rights granted by the franchisor and contains the use of the words: 'franchisor' and 'franchisee'. It is not necessary to record the contract in writing, although the existence of documentary proof is usual. Article 7 of the Spanish Civil Code explicitly establishes the obligation to act in good faith and applies to both the formation and performance of contracts. One primary remedy is specific performance, where the breaching party is required to fulfill their contractual obligations as agreed. The non-breaching party can terminate the contract if the breach is significant. Termination allows the non-breaching party to be released from their obligations under the contract. In some cases, particularly in commercial contracts, the non-breaching party may seek a reduction in the price as a remedy. If the breach involves late payment, the franchisor may be entitled to claim interest for the delay.[175]

Comparing franchise regulations in Hungary, Czech, and Poland highlights different approaches to governing franchise relationships, given that none of these countries has specific franchise laws. The current Civil Code of Hungary, which came into force in 2014, reflects this transition and

[173] French Civil Code, Paragraph of the Effects of Indivisible Obligations, Articles 1222 to 1225.
[174] BGB, Damages for breach of duty. Section 280.
[175] Spanish Civil Code, 2012. Chapter III. Art.7.

modernization, incorporating principles from both civil law traditions and contemporary European influences. As an EU member state, Hungary's contract law is influenced by EU legislation and case law, particularly in areas such as consumer protection, electronic commerce, and cross-border transactions. Hungarian contract law is codified primarily in the Civil Code (Polgári Törvénykönyv or Ptk.), which provides a comprehensive framework for private law, including contract law. One of the fundamental principles of Hungarian contract law is the freedom of contract, allowing parties to negotiate and agree upon the terms of their contracts freely. Hungarian contract law emphasizes the principles of good faith and fair dealing (jóhiszeműség és tisztesség), requiring parties to act honestly and fairly in the formation and performance of contracts. Hungarian civil law recognizes the concept of pre-contractual liability (*culpa in contrahendo*), where parties may be held liable for damages caused by bad faith or unfair conduct during the negotiation phase.[176]

The Hungarian Civil Code has provisions such as the licensing of copyright, intellectual property rights, the franchisor's obligation, and supervisory rights, and rules on the termination of contracts. The lack of specific franchise laws provides flexibility but requires careful drafting of franchise agreements to follow compliance with general contract law. For the duration of the contract, the franchisor shall ensure that the franchisee can exercise continuously and without disturbance the rights of exploitation and use necessary to operate the franchise.[177] For the duration of the franchise agreement, the franchisor is obligated to assure that the franchisee can exercise the rights of exploitation and use necessary to operate the franchise continuously and without disturbance.

The Czech Civil Code emphasizes the principle of contractual freedom, allowing parties to negotiate and define the terms of their agreements, including franchise contracts. It regulates agreements, providing a legal framework for franchising activities. The Civil Code establishes that everyone is obliged to act in good faith and fair dealing. Legal acts must be interpreted in a way that respects the intention of the parties and adheres to the principle of good faith and fair dealing. Besides providing pre-contractual information about the franchise system, financial obligations are not strictly required. However, during the initial stage, parties must inform each other of all facts they know or should know are material to the decision of the other party to enter into a contract. According to principles of the Civil Code agreement parties are subject to legal constraints and public policy

[176] Act V of 2013 on the Civil Code, Hungary. 1:3.
[177] Péter Rippel-Szabó, Bettina Kövecses, and Péter Sziládi, The Franchise Law Review: Hungary, "See" in, https://thelawreviews.co.uk/title/the-franchise-law-review/hungary.

considerations. Once a contract is validly concluded, it is binding on the parties and must be performed as agreed, with remedies available for breach.[178] A legal act committed under deceit, where one party is misled by the other, is invalid. If a party enters into a contract under a mistake, especially if the mistake was induced by the other party, the mistaken party may seek to have the contract declared invalid. On condition that parties engage in serious negotiations and one party, without legitimate reason, breaks off the negotiations causing harm to the other party, the injured party may claim damages.

Whereas franchise agreements fall under the general contract provisions of the Polish Civil Code. Because there are no specific pre-contractual disclosure obligations mandated by law, it is a common practice to include comprehensive disclosure in agreements. The Civil Code of 1964, though amended, remains the cornerstone of Polish contract law, supplemented by EU law and judicial interpretations. The Polish Civil Code, contract law focused on the questions of the liability of the parties and good faith requirements in the negotiation process.[179] The code outlines these remedies, including specific performance, termination, and damages. Before terminating the contract, the non-breaching party must usually give the breaching party a notice to cure the neglect within a reasonable time. The non-breaching party can claim damages for losses resulting from the violation including actual losses and lost profits. The breaching party is generally liable for damages unless they can prove that the breach was caused by circumstances for which they are not responsible. Also, parties may agree on a predetermined number of damages in case of an infringement.[180]

The law and judicial practice of European countries are similar in the sense that contract liability is a process aimed at compensating or rehabilitating the harm caused by the breach of contract. The types of liability imposed by the courts of European countries for violations of the franchise agreement are pecuniary and non-pecuniary damages, contractual and non-contractual. Liability for non-fulfillment of contractual obligations is usually required in the forum clause of the contract. For instance, there are common clauses that impose fines to compensate for damages caused by the supply of defective raw materials. While it is theoretically a legitimate issue to raise a dispute about potential revenue due to a breach of the franchise agreement, it is difficult to prove this claim. The general concept of the law of the contract of the EU member states seeks to define in detail the obligations of

[178] Act No. 89/2012, the Czech Civil Code. Art.1729.
[179] Schulze and Zoll, *The Law of Obligations in Europe*, Cambridge University Press, 2013, 104.
[180] ACT of 1964, Poland Civil Code, Section II. Art. 471-484.

the parties to the contract. As a producer of goods, the franchisor, together with the franchisee, is responsible before the end consumer, and in case of violation of the rights of customers, the franchisor is responsible for mass disputes.

3.4. US franchise laws

Franchise Terms and Conditions Since the 1960s, the boom in franchising has led some franchisors to sell poorly designed systems through false advertising. As a result, in 1968, the first franchising law was drafted in the United States. Subsequently, the Federal Trade Commission adopted franchising rules in 1978, requiring franchisors to draft and comply with a document outlining their terms and conditions. It used to be called Uniform Franchise Offering Circular and since 2007 it has been called Franchise Disclosure Documents. Currently, 14 states require franchisors to register their FDD with the state before they can offer or sell franchises. These states also typically have their disclosure requirements. Moreover, 23 states have franchise relationship laws. The laws govern the ongoing relationship between franchisors and franchisees, including termination, renewal, and transfer of franchise agreements. U.S. franchise law has implemented policies to prevent fraud, misrepresentation, and violations of intellectual property rights, including Federal Trade Commission legislation and the International Franchise Association's Code of Ethics, the country's states have adopted franchise general requirements.[181] The list of documents to be submitted to the franchisee before the conclusion of the contract covers the franchisee's business experience, intellectual property litigation, financial statements, bankruptcy information, restrictions on products and services, territories, trademarks, and patent rights certificates.[182]

As mentioned before, Federal law requires all franchisors to give prospective franchisees a disclosure document, also called a Uniform Franchise Offering Circular. It is an important component of franchising and gives prospective information such as fees to be paid, the obligations of parties. In addition to contractual requirements limiting rights to terminate, franchisors must also satisfy any applicable statutes.[183] Federal and state franchise laws impose pre-sale disclosure obligations and restrictions. First, the FTC Rule and most states require franchisors to provide prospective franchisees

[181] Robert Emmerson, *Franchising and the Collective Rights of Franchisees,* Vanderbilt Law Review, 1990, Volume 43, 1504-1565.
[182] Guenter Treite, *Some Comparative Notes on English and American Contract Law*, SMU law review, 2002, Volume 55, 357-365.
[183] Deborah S. Coldwell, Iris Gibson, William D. White, & Laura Warrick, *Franchise law*, SMU Law Review, 2012, Volume 65, 472-499.

with the Franchise disclosure document upon reasonable request by the prospective franchisee, and no later than 14 calendar days before any agreement is signed or any money is paid.[184]

The principle of good faith is a pervasive and fundamental aspect of the U.S. That is why, the UCC, which governs commercial transactions, explicitly incorporates the principle of good faith. For instance, every contract or duty within imposes an obligation of good faith in its performance and enforcement. Parties must perform their contractual duties and enforce their rights in loyalty. Although not universally required during negotiation phases, in certain contexts, courts may apply the duty of good faith during contract negotiations to prevent misrepresentation or deceit.[185]

3.5. Is Canadian franchise law inspired by US FDD?

Canadian franchise laws contain various provisions addressed to prevent parties from contracting outside of the legislation. Waivers or releases of franchisees' statutory rights are void, as are contractual terms that purport to change the governing law of the franchise agreement or change the venue for disputes to that of a jurisdiction other than where the franchise is operated.[186] Canadian British Columbia Disclosure Law has a similar content of disclosure documents to U.S FDD. In particular, some of the regulatory frameworks indicated under the provincial disclosure in Ontario and Alberta are aligned with those of the U.S. The regulation subjects the franchisor to certain conditions that must be met before any business contract is signed by the potential investors.[187] The franchisor must provide the disclosure document at least 14 days before signing the agreement. In addition to the non-disclosure clause, the document also contains an agreement specifying the area of operations. The franchisee partner must also pay any fees set by the franchisor. However, the franchise fee does not exceed 20 percent of the total fee. The franchise disclosure document should include all the facts necessary for the franchisee to decide to purchase the franchise. The parties involved in the franchise agreement are obliged to act in good faith under the legal provisions when exercising their contract rights. The duty of fair dealing is based on the principle of good faith and includes the duty to set reasonable prices by trading standards.

[184] U.S Federal Trade Commission, 16 CFR Parts 436 and 437.
[185] Uniform Commercial Code, US, 2012. 1-304.
[186] Evan Thomas, *Recent Developments in Canadian Franchise Class Action*, Franchise Law Journal, 2016, Volume 35, 399-420.
[187] Philip Zeidman, *With the Best of Intentions: Observations on the International Regulation of Franchising*, Stanford Journal of Law, Business & Finance, 2014, Volume 19, 35-77.

The franchise agreement prohibits the parties from waiving any of their rights or obligations under the franchise rules. If the documents are incomplete or do not meet the legal requirements, within 60 days from the receipt of the documents, the franchisor has the right to terminate the agreement without incurring any obligations or penalties within two years if the disclosure document is not provided at all after the conclusion of the contract. The franchisor is prohibited from interfering in any way with the franchisee and his partner to establish an association or establish a relationship with other organizations under the franchise agreement. The franchisor may not directly or indirectly penalize the franchisee for engaging in the above activities. If the franchisee purchases the franchise knowing that the information is false, the disclosure document is proven to have been obtained without the franchisor's knowledge, and after the disclosure document is provided, the franchisee must review the document before purchasing the franchise. Upon learning of any incorrect information, the franchisor may revoke the consent and, in the event of refusal, refuse to accept claims related to contractual disputes in court. In the event of termination of the agreement due to the fault of the franchisee, the franchisor must compensate for the net loss incurred in the operation within 30 days from the receipt of the notice of termination.

The contract defines the basic conditions, such as the rights and obligations of the parties, payment, territory, and duration of activities. Since the franchise agreement sets out the responsibilities of the franchisor and the franchisee, both parties must have a complete understanding of all provisions. Franchise agreements are fairly standardized, but some franchisors are open to negotiating their terms. Common components of franchise agreements include fees and other additional costs, late payment schedules, use of intellectual property rights, grounds for renewal and termination, and territorial provisions. In addition, the franchisor grants the franchisee a license to use its logo, trademark, and business operating system for a specified period. The contract will detail how these marks will be used.[188]

The franchisor specifies the training to be conducted and the responsibility of the franchisee, the requirements and limitations of the franchise business will be discussed. The agreement includes the type of ongoing support that the franchisor can provide to the franchisee. The opening date and duration of the franchise are determined. It also mentions the requirements that must be met to extend the contract period. The franchisor shall state the conditions under which the franchisee may terminate

[188] British Columbia Franchise Act, Chapter 35, 2017, CAN.

the franchise for poor performance or other reasons and shall clarify whether the franchisee has any remedy for the breach. Moreover, the steps the franchisee needs to take after the contract expires are included. These steps typically include returning confidential materials, ceasing the use of intellectual property, and paying outstanding fees. Also, a non-competition period may be specified in which the terminated franchisee is prohibited from working with the named companies for a certain time.

The responsibilities of the franchisor and franchisee to contribute to advertising and marketing are specified separately. The franchisor must make repairs and renovations to the location to the satisfaction of the franchisee. Franchise laws state whether the franchisee has a specific territory to operate and whether the franchisee has the right to open a branch close to the other franchisee. Also, the contract will set the minimum requirements for the level of performance and the amount of income to be earned during the period. Failure to meet the minimum performance targets will result in termination of the contract or non-renewal of it. Franchisees are responsible for obtaining all necessary business insurance. If the franchisee does not have adequate insurance, the franchisor may obtain insurance on its behalf and seek reimbursement from the franchisee. According to British Columbia Disclosure law and the Law and Equity Act, the franchisee shall provide compensation for any actions that damage the franchisor's brand.

3.6. Are Chinese Franchise laws stricter than in Japan and Singapore?

Chinese, Japanese, and Singaporean contract laws have distinct legal frameworks influenced by their unique historical, cultural, and legal backgrounds. However, they also share similarities due to common influences from civil law traditions and international legal standards. Both Chinese and Japanese contract laws have been influenced by civil law traditions, particularly German law in the case of Japan, and a mix of Soviet and German influences for China. While Singapore primarily follows the common law tradition due to its British colonial history, it has incorporated elements of civil law through its statutory framework and international agreements. All these countries have regulations in place to protect franchisees, including mandatory disclosure requirements to ensure that prospective franchisees receive adequate information before entering into a franchise agreement. China and Japan require franchisors to register with government authorities or comply with certain registration procedures. On the contrary, there is no statutory requirement for franchisors to register their franchise, but compliance with the FLA guidelines is encouraged in Singapore.

According to Chinese franchise rules, businesses must satisfy the "2+1" requirement, which means franchisors must own at least two stores of the franchises for at least one year. Chinese law requires

to disclosure of financial statements a minimum of 30 days before signing the contract.[189] Commerce Act addresses disclosure and payment duties and there are specific commercial franchising regulations that stipulate among other enactments, franchise contract requirements. These regulations apply to both foreign-invested and local franchisors. Good faith in the contract and transparency of the franchise agreement are governed by articles 17, 42, and 60 of the Civil Code of the country. Civil law jurisdiction and the requirements in the Franchise measures regarding disclosure are simply a clarification of the general principle regarding pre-contractual negotiations as set out in Article 42 of the Chinese Civil Code.[190]

The Chinese Franchise Management Regulations approved in 2007, the Franchise Registration Regulations approved in 2011, and the Administrative Regulations on Open Documents approved in 2012 include regulations on franchise operation management, access to open documents, and legal liability. China's Franchise Regulatory Act 2011-2012, the procedures for registration of franchise management systems and information disclosure measures, are known as progressive regulatory steps, furthermore, the approval of the above regulations reduced the risk of the franchise agreement and legal regulation has been more detailed.

By the following regulations, the franchisor can only be an organization and cannot be any other unit or individual. Regarding the local franchisor, the name, address, legal representative of the franchisee, the number of registered assets, scope of operation and basic information of franchise activities, registered trademarks, corporate marks, and patent certificates have to be applied in the contract. The foreign franchisor should complete more requirements including the expected number of outlets in China, and submit financial and accounting reports for the last 2 years.[191] Seemingly, over the past 30 years, China has implemented new rules with flexible regulations in the commercial franchise industry, creating a standardized, fair, and efficient legal environment. For example, the capital and experience requirements for the transferor are higher than in other countries, individuals cannot be franchisees or transferors, and the list of open disclosure documents is required to be quite comprehensive.[192]

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[189] Decree No. 2 of 2012. Information Disclosure Measures, China.
[190] Paul Jones, *The Regulation of Franchising in China and the Development of a Civil Law Legal System*, East Asian Law Review, 2006, Volume 2, 78-87.
[191] Ordinance No. 485 of 2007. Commercial Franchise Administration Regulation, China.
[192] Wang, Zhiqiong, Terry Andrew, Zhu Mingxia, *The development of franchising in China*, Journal of Marketing Channels, 2008, Volume 15, 167-184.

Moreover, the franchisor must have a sophisticated business model, and be obliged to provide ongoing services such as operational guidance, technical assistance, and business training to the franchisee. The presentation of open documentation by the franchisee ensures that the franchisee has a timely, complete, and accurate understanding of the applicable terms and conditions. By making investment decisions based on complete and adequate information, the franchisee has a significant impact on fraud prevention. Therefore, open documentation is considered essential in any Chinese franchise rule. The franchisor must notify the franchisee promptly if there are significant changes in the open documents issued to the franchisee. The franchisee may terminate the franchise agreement if the franchisor withholds relevant information or discloses falsified open documents. Also, the transferor should use the advertising fees collected from the franchisee for the purposes specified in the contract. Information on the use of advertising and its fees will be presented rapidly. The franchisee may terminate the franchise agreement if the execution of the franchise agreement is affected by the concealment of the transferor's information or presentation of false open documents, as well as if the purpose of the agreement cannot be fulfilled.

Regardless of whether or not a franchise agreement is entered into, the franchisee may not disclose or misuse confidential business information obtained during the execution of the agreement. Specifically, after the termination of the franchise agreement, even if no post-termination non-disclosure agreement has been concluded, the franchisee is obliged to maintain the business secrets acquired in the contractual relationship.[193]The transferor shall register with the Ministry of Commerce within 15 days from the date of the first conclusion of the franchise agreement. When registering, the franchisor has to submit a copy of the license to operate, or a copy of the organization's registration certificate, a model of the franchise agreement, and a market plan.

Most problems and disputes arising in franchise operations are directly due to insufficient standardization of franchise agreements. Therefore, the franchise agreement should clearly define the rights and obligations between the franchisor and the franchisee. In Chinese Franchise Management Regulations, the franchise agreement's main elements consist of the agreement's duration, payment, training, quality of goods and services, standard requirements and guarantees, contractual obligations, and a dispute resolution forum. The term of the franchise agreement is at least 3 years. There are also

[193] Dominic Hui and Danny Tsui, *A Primer on Franchising in China*, Franchise Law Journal, 2020, Volume 40, 293-314.

high criteria for the transferor, such as no financial or legal disputes, and strict requirements such as submitting an annual progress report to the Ministry of Commerce after the contract is signed.

Japan's franchise laws are relatively less strict compared to China. The key regulations are contained within the Small and Medium-sized Retail Business Promotion Act (1973) and the Fair-Trade Commission (JFTC) guidelines. Franchisors must provide a disclosure document to prospective franchisees at least two weeks before signing the franchise agreement. The JFTC enforces fair trading practices, focusing on preventing abuses of power by franchisors. Due to the 2002 replacement of concerned guidelines, the Medium and Small Retail Commerce Protection Act addresses both disclosure and relationship matters such as detailed requirements and business indemnification. There is no mandatory clause required to be included in a franchise agreement. Parties are free to negotiate the terms of the deal.[194]

Singapore's legal framework has been modeled closely after the common law and statutory instruments of the United Kingdom. Singapore's franchise laws are among the least strict in this comparison. The main regulatory framework is the Franchise Disclosure Document (FDD) under the Singapore Franchising and Licensing Association (SFLA) Code of Ethics. Contracting parties are prohibited from offering, selling, or promoting the sale of any franchise, product, or service through any explicit or implied representation that tends to deceive or mislead prospective purchasers of such a franchise, product, or service. The franchisor is required under the Code of Ethics to disclose to the franchisee at least 14 days before the execution of the franchise agreement its current operations, the investment required, performance records, and any other information reasonably required by the franchisee that is material to the franchise relationship.[195]

Part 3. Antitrust and Intellectual Property Matters

3.7. EU Vertical Restraint Policy

By international common examples, if franchisees leave the system, for two years, they will not compete within the same line of work in territories. Local antitrust laws can affect the viability of a franchise system and the franchisor's ability to control the franchisee in a variety of ways. So due diligence on legal barricades is mandatory before a franchise agreement. Regarding IP transferors

[194] Nobuo Mlyake, *Franchising in Japan*, Antitrust Law Journal, 1989, Volume 58, 975-996.
[195] Steven Anderman, The Interface Between Intellectual Property Rights and Competition Policy, Cambridge University Press, 2007, 375.

should check whether the trademarks have been registered and are valid, as well as figure out market restrictions applicable to the franchisor.

Comparing the European Union's vertical restraint regulations with those of other countries reveals distinct approaches to competition law and its enforcement. The EU regulates vertical restraints under Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), with the Vertical Block Exemption Regulation (VBER) and accompanying Vertical Guidelines providing detailed guidance.[196] Since Regulation No 19/65, the Commission has adopted Regulation No 772/2004 conferring block exemption on technology transfer agreements under Article 101 (3) of the Treaty.[197] Article 101 TFEU prohibits agreements that may affect trade and prevent, restrict, or distort competition. The VBER exempts certain vertical agreements if the supplier and buyer's market share is below 30 percent. It provides exemptions for agreements that meet specific criteria, creating legal certainty for businesses. Certain restrictions, such as resale price maintenance (RPM) and territorial restrictions, are considered hardcore and are generally prohibited. Franchise agreements are subject to a full review under EU competition law. A franchisor is not allowed to implement practices that are not permitted under competition law, such as vertical or horizontal price-fixing, sharing markets, prohibiting passive sales, and imposing a direct or indirect ban on internet sales.[198] Furthermore, Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market removes several barriers to cross-border trade in the EU.[199] Competition law mainly restricts the action that can be taken against parallel trade.[200]

Specific contractual restrictions on the franchisee which are necessary to protect know-how and goodwill, and to maintain the common identity of the franchise network fall outside the European cartel prohibition.[201] A key element of a franchise agreement is the licensing of certain intellectual property rights. Hence, as mentioned before, the franchisor is not prohibited from having a priority right in the countries.[202] "Within the EU, the basic policy of free movement of goods dictates that

[196] Derek French, Stephen Mayson, and Christopher Ryan, *Company Law*, Oxford University Press, 2012, 21.
[197] Richard Whish and David Bailey, Competition Law, Oxford University Press, 2021, 781.
[198] Guy Tritton and Richard Davis, Intellectual Property in Europe, Sweet & Maxwell, 2008, 975.
[199] Stephen Weatherill and Ulf Bernitz (eds), The Regulation of Unfair Commercial Practices under EC Directive 2005/29: New Rules and New Techniques, Hart Publishing, 2007, 31.
[200] Christopher Stothers, Parallel Trade in Europe: Intellectual Property, Competition, and Regulatory Law, Hart Publishing, 2007, 9.
[201] Lucy Jones, Introduction to Business Law, Oxford University Press, 2017, 641.
[202] Annette Kur, Thomas Dreier and Stefan Luginbuehl, European Intellectual Property Law, Edward Elgar Publishing, 2013, 528.

intellectual property may not be used in this way to prevent a parallel importer from moving 'legitimate' goods between one member state and another."[203] So the European single market is a strong factor in the process of globalization.[204] However, the franchisee must trade and provide services only in the designated geographical location, population, and market. This is the main way to impose restrictions on the market without affecting the franchise party's legal rights. Because market share and fair competition are the fundamental rules of game theory. On the other hand, due to technological advances, strict market rules have begun to change.

For instance, E-commerce is an unlimited virtual environment.[205] Therefore, recently the most pressing issue is the legal and market regulation related to the scope of conducting this type of business in digital form.[206] Franchising is the vertical production process of supplying goods or services to customers. Franchising usually contains a combination of different vertical restraints concerning the products being distributed, such as exclusivity, quality requirement, assortment, customer group, and certain internet sales restrictions. That is why, under EU competition law it is not allowed for a franchisor to impose on its franchisees an absolute ban on online sales and services.[207] It can be considered the second flexible regulation enshrined in the rules of the European Union. EC Regulation No 330/2010 on vertical restrictions on competition and its subsequent guidelines makes a fundamental distinction, as far as online sales are concerned, between active and passive ones. Online sales are considered passive when the franchisee offers goods and/or services on the web, without "actively" soliciting consumers to come to his website. However, franchisors can regulate, in the franchise agreement, the terms and conditions of use of the websites by the franchisees participating in the network, to protect their image and their distinctive signs. These and other provisions, to be specifically included in the franchise agreement, are aimed at protecting the franchisor and his network, to ensure uniformity of image and the same quality standards of products and services, whether they are sold online or through traditional channels.

[203] Andrew Burrows, English Private Law, Oxford University Press, 2007, 6.
[204] Arthur Hartkamp, Martijn Hesselink, and Ewoud Hondius, Towards a European Civil Code, Wolters Kluwer Law international, 2010, 110.
[205] Rozenn Perrigot and Thierry Pénard, *Determinants of E-commerce Strategy in Franchising,* International Journal of Electronic Commerce, 2013, Volume 17, 109-130.
[206] Robert W. Emerson, and Michala Meiselles, *U.S. Franchise Regulation as a Paradigm for the European Union,* Washington University Global Studies Law Review, 2021, Volume 20, 743-801.
[207] EU competition law rules applicable to antitrust enforcement. Volume 1, General rules, 2013.

In the EU, franchise monopoly issues are often examined under the broader framework of competition law, particularly concerning vertical restraints and market practices. One notable case that illustrates issues related to franchising and territorial exclusivity is the MasterCard (Applicant) v. Euro Commerce (Defendant) case. The case concerned the legality of the applicant's rules on cross-border transactions and its impact on franchise operations and competition. Defendant, representing a group of retailers, argued that applicant's practices led to anti-competitive effects in the market by imposing restrictions that were akin to creating a monopolistic environment. Besides, the case dealt with vertical restraints in the context of payment systems and their implications for market competition. Specifically, it examined whether applicant's rules on cross-border credit card transactions restricted competition and harmed consumers. The defendant claimed that the applicant's rules gave it undue market power, creating conditions detrimental to competition and contrary to EU competition law principles. The General Court ruled that the applicant's practices restricted competition and were contrary to EU competition law. The court found that the applicant's rules on cross-border transactions had anti-competitive effects, such as inflating fees and restricting competition among retailers and within the payment systems market.[208]

The dual application of national and EU competition law can sometimes create legal uncertainty for businesses. However, the franchisor and the franchisee have the right to choose between the laws of the European Union and the Member States, taking into account how the legal protection is beneficial to them.[209] For instance, competition issues are governed by both French and EU competition rules in France. But in cases of conflict between competition laws, the EU directive takes precedence. French competition law is primarily embodied in the French Commercial Code. Articles L420-1 and L420-2 of the French Commercial Code prohibit anti-competitive agreements and abuse of a dominant position. The Competition Authority (ADLC) is responsible for enforcing competition law in France. It investigates anti-competitive practices, such as cartels, abuse of dominance, and merger control. The ADLC also reviews mergers and acquisitions to ensure they do not harm competition. Transactions that meet certain turnover thresholds must be notified to the ADLC. The ADLC and the European Commission cooperate closely to ensure consistent enforcement of

[208] General Court of the European Union, T-111/08, 2011.
[209] Martijn W. Hesselink, *The New European Legal Culture*, Kluwer Law International, 2002, 11-75.

competition rules. It applies both French and EU competition law when dealing with cases that affect trade within the EU.[210]

In Germany, franchise agreements are subject to general competition law. The objective of the thus law is the suppression of unfair business practices under the Act Against Illegal Competition, whose basic aim is the prevention of unethical, excessive, or otherwise abusive practices in competition. The German antitrust law also addresses aggressive commercial practices, which could include undue pressure on franchisees to make decisions or enter into agreements. Franchisors must avoid any coercive tactics that could be seen as exploiting their power over franchisees. Franchise agreements are not specifically defined under the ARC. Nevertheless, agreements are considered to be those by which a franchisor grants franchisees the right to use his firm name or trademark to distribute goods and services within the framework of a marketing concept. On the other hand, the German antitrust law framework, governed by the Act Against Restraints of Competition can be highly complex. For instance, legal proceedings are lengthy, which is burdensome for businesses, especially small and medium-sized enterprises. The stringent rules against certain types of cooperation among businesses, such as joint ventures and collaborative research and development, can sometimes stifle innovation and collaboration. While German competition law is largely harmonized with EU competition law, some differences can create compliance challenges for companies operating across Europe.[211]

In Hungary, franchise agreements must comply with the Competition Act. The act establishes the rules for market conduct, regulates mergers, and addresses both anti-competitive practices and unfair commercial behavior. Certain agreements may be exempted if they contribute to improving production or distribution or promote technical or economic progress while allowing consumers a fair share of the resulting benefit. Also, includes a leniency program that encourages companies involved in cartels to report their activities in exchange for reduced penalties. Otherwise, the Act prohibits agreements and concerted practices between undertakings that aim to prevent, restrict, or distort competition. Furthermore, it forbids the abuse of a dominant market position, which can include predatory pricing, unfair trading conditions, limiting production, and discriminatory practices. In the absence of a special block exemption regulation on franchises, the general block exemption rules set out the criteria as to how franchise agreements may be exempted from the prohibitions relating to the restriction of

[210] Courtenay Atwell, Franchising in France, 2019, European Business Law Review, Volume 30, 439-467.
[211] Communication from the Commission: Guidelines on vertical restraints, European Commission, 2022, 3-102.

competition. With intellectual property rights and know-how, the provisions of the Trademark Act, Copyright Act, Patent Act, and Trade Secret Act may apply to franchise agreements."[212]

In Poland, competition law has provisions aimed at protecting and supporting small and medium-sized enterprises, which can help foster a more competitive market environment. Combating unfair competition in Poland involves a robust legal framework designed to protect both businesses and consumers, promote fair competition, and ensure a healthy economy. Franchisees must comply with Polish consumer laws if they offer products or services. A franchise agreement is a type of distribution relationship between independent entities. Under certain circumstances, such a relationship may affect trade by restricting or distorting competition in the relevant market, as it usually contains a combination of different vertical restraints. The confidentiality of trade secrets is protected under the Act on Combating Unfair Competition, even before entering into non-disclosure obligations.[213]

In Italy, the domestic antitrust law, Act 287/1990, applies to the sole extent that the concerned vertical agreements, abuse of dominant position, or concentrations do not fall within the scope of the EU rules. Because, similar to EU regulations, Italian law prohibits agreements that restrict competition, including both horizontal (between competitors) and vertical (between suppliers and distributors) agreements. On the other words, the law prohibits the abuse of a dominant position in the market, mirroring Article 102 of the Treaty on the Functioning of the European Union (TFEU). [214] A competitive market environment encourages businesses to innovate and improve their products and services. Hence, by preventing monopolies and cartels, Italian antitrust law fosters innovation and efficiency.

Spanish competition law is governed by EU Regulation No 330/2010, as well as Royal Decree 261 of, 2008 on antitrust regulation and Act 15/2007 on the competition. These regulations provide a block exemption for vertical agreements, allowing certain agreements between suppliers and distributors to be excluded from the EU's general competition rules, provided they meet specific conditions. As an EU regulation, it directly applies to Spain and takes precedence over national laws in areas it covers. Act 15/2007 prohibits agreements that restrict competition, such as cartels and restrictive practices. The law prohibits the abuse of a dominant position in the market. Practices such as predatory pricing, refusal to supply, and exclusive dealing that harm competition are targeted. There is a leniency

[212] Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices, Hungary.
[213] Act on Competition and Consumer Protection of 2007, Poland.
[214] Antitrust law, Act 287/1990, Italy.

program in place to encourage companies to report cartel behavior. Companies that provide evidence of cartel activities can receive reduced fines.

3.8. US Antitrust Laws v. English Competition Law

Restricting market dominance or promoting the franchise business is not a bipolar concept. This is because there is an economic and legal practice of granting monopolies to innovation in the market. The legal framework in the countries is generally based on the protection of the franchise's market share in certain territories and customers, and, on the special regulation of some monopoly franchises by investment and tax policies.

U.S. competition rules belong to a wide web of laws that are particularly worth noting, namely the Sherman Act of 1890, the Clayton Act of 1914, the Federal Trade Commission Act of 1914, and the Federal Trade Commission Act.[215] The U.S. and European experiences show that pre-emption norms can be used to limit the expansion of protection in intellectual property and unfair competition cases, but that the reverse effect of pre-emption can be that harmonization efforts have to take into account the existing practice.[216] Section 1 of the Sherman Act prohibits "restraints of trade" which include agreements that unreasonably restrain trade. The focus is on whether the agreement harms competition and consumer welfare. Certain practices are considered "per se" violations (e.g., price-fixing), meaning they are automatically deemed illegal without further analysis. Others are analyzed under the "rule of reason," where the court assesses the overall impact on competition. Sherman Act Section 2 bans monopolization and attempts to monopolize, and focus on exclusionary practices that harm competition. Whereas, the merger review process is governed by Section 7 of the Clayton Act, focusing on whether the merger significantly lessens competition or tends to create a monopoly. Mergers that meet certain thresholds must be notified to the Federal Trade Commission and Department of Justice, which can challenge or approve the merger.[217]

In the context of franchise law in the United States, there are several notable cases where franchise agreements and allegations of monopolistic practices have been addressed by the courts. One significant example is the Kendall (plaintiff) v. Franchise Associates, Inc. (defendant) case, which illustrates issues related to franchise monopolies and territorial rights. The case involved a dispute between a franchisee and a franchisor over the exclusivity of franchise rights in a particular geographic

[215] Maher Dabbah, International and Comparative Competition Law, Cambridge University Press, 2010, 237.
[216] Anselm Sanders, Unfair Competition Law: The Protection of Intellectual and Industrial Creativity, Clarendon Press, 1997, 22.
[217] A. Douglas Melamed, *Antitrust Law and Its Critics*, Antitrust Law Journal, 2020, Volume 83, 269-292.

territory. The plaintiff, the franchisee, alleged that the franchisor (Franchise Associates) had violated the agreement by allowing another franchisee to operate in the same territory, effectively creating a situation akin to a monopoly that harmed the plaintiff's business. The central legal issue was whether the franchisor had breached the franchise agreement by granting overlapping territorial rights to multiple franchisees, which could be seen as creating a monopolistic or unfair competitive environment. That is why, the plaintiff claimed that the franchisor's actions constituted a breach of the contractual obligation to provide an exclusive territory. The court held in favor of the plaintiff, finding that Franchise Associates had indeed breached the franchise agreement by failing to honor the territorial exclusivity granted to the plaintiff. The court determined that the franchisor's actions were inconsistent with the agreement's terms and had unfairly impacted the plaintiff's business. The decision reinforced the importance of adhering to agreed-upon territorial rights in franchise agreements to avoid monopolistic practices and unfair competition.[218]

The English competition legislation that applies to franchise agreements is comprised of four traditional statutes: the Fair-Trading Act 1973; the Restrictive Trade Practices Act 1976; the Resale Prices Act 1976 and the Competition Act 1980. The Fair-Trading Act, which deals with monopoly situations, may apply to franchises if the franchised group falls within the definition of "complex monopoly". Currently, the Competition Act 1998 incorporates EU competition rules into UK law, covering anticompetitive agreements and abuse of dominance. Enterprise Act 2002 addresses merger control and the regime for market investigations. Under the Enterprise Act, the UK has a public interest test for certain mergers that may affect national security, media plurality, or other public interests. US competition law emphasizes consumer welfare and economic efficiency, while UK competition law includes a broader consideration of market competition and public interests.

For instance, Care Watch Services Ltd v. Focus Caring Services Ltd [2014] EWHC 2313 (Ch) is a bright example of it. The case deals with the enforcement of franchise agreements and the consequences of breaches by the franchisee. Regarding Care Watch (Plaintiff), a provider of domiciliary services entered into a franchise agreement with Focus Caring (Defendant) to operate a franchise under the brand. The agreement included strict terms regarding the operation of the business, including adherence to the franchisor's standards and procedures. The franchisor alleged that the franchisee had breached the agreement by failing to adhere to the operational standards and procedures

[218] United States Court of Appeals for the Ninth Circuit, 40 U.S. 518 (1980)

outlined in the agreement. The franchisor sought to terminate the agreement and enforce restrictive covenants that would prevent franchisees from competing with franchisors post-termination. The court found that the defendant had indeed breached the agreement by failing to comply with operational standards. Because the breach was significant enough to justify termination of the agreement. Therefore, the court considered the enforceability of the restrictive covenants, which were designed to protect the plaintiff's business interests by preventing the franchisee from operating a similar business in competition with the franchisor. The court held that the restrictive covenants were reasonable and enforceable, given the context and the need to protect the franchisor's legitimate business interests. In other words, the court granted an injunction to enforce the restrictive covenants, preventing the franchisee from engaging in competing activities within the specified geographical area for a certain period after the termination of the franchise agreement.[219]

3.9. Anti-Monopoly law of China v. Japan and Singaporean field laws

China, Japan, and Singapore have provisions for the review and control of mergers and acquisitions to prevent excessive market concentration that could harm competition. China's Anti-Monopoly Law (AML), which came into effect in August 2008, is designed to prevent anti-competitive practices and promote fair competition. As such, it applies to conduct both within and outside China which has the effect of eliminating or restricting competition in the market. It is permissible for a franchisor to exercise control over the franchisee's business.[220] The Anti-Monopoly Law also allows private actions to be brought by parties who have suffered loss as a result of the contravention. The Law defines a dominant market position as the ability of one or several business operators to control the price, volume, or other trading terms in the relevant market, or to otherwise affect the conditions of a transaction.[221] The law prohibits agreements, decisions, or coordinated actions between businesses that eliminate or restrict competition. This includes both horizontal agreements (between competitors) and vertical agreements (between companies at different levels of the supply chain). The law requires businesses to notify the relevant authorities of mergers and acquisitions that meet certain thresholds. The purpose is to review and prevent transactions that may lead to excessive market concentration and harm competition.

[219] Care Watch Care Services Ltd v. Focus Caring Services Ltd [2014] EWHC 2313 (Ch)
[220] Radwa Elsaman, *How Does Chinese Law Regulate Franchising,* Ohio North University Law Review, 2023, Volume 49, 527-541.
[221] Yane Svetiev and Lei Wang, *Competition Law Enforcement in China: Between Technocracy and Industrial Policy*, Law and Contemporary Problems, 2016, Volume 79, 187-222.

The Antimonopoly Act (AMA) of 1947 is one of the oldest competition laws in Asia, giving Japan a long history of regulatory experience and refinement. Under Antimonopoly laws, either franchise agreements as a whole or specific provisions of franchise agreements can be found to constitute unfair business practices. Under the decree guidelines, the franchise agreement as a whole must be so balanced as to avoid unreasonable restrictions on the franchisee. The AMA covers a wide range of anti-competitive practices, including franchisor cartels, abuse of dominant position, and unfair trade practices. Franchisors cannot impose minimum resale prices on franchisees. Setting fixed or minimum prices for the goods or services sold by franchisees is generally considered an unfair trade practice under the AMA. Franchisors can suggest prices, but these must not be binding. Exclusive dealing arrangements, where franchisees are required to buy products exclusively from the franchisor or designated suppliers, are scrutinized. Similarly, territorial restrictions that prevent franchisees from selling outside a designated area can raise antitrust concerns if they limit competition excessively. Franchisors cannot compel franchisees to purchase unrelated products or services as a condition of entering into the franchise agreement. Tying arrangements that have no legitimate business justification and harm competition may be deemed illegal. The AMA prohibits the abuse of superior bargaining position, which is particularly relevant in franchising where franchisors typically have greater bargaining power. Practices such as imposing unfair contract terms, sudden contract termination without just cause, or unfairly shifting costs to franchisees can be deemed abusive. The detailed guidelines and explanatory notes on the AMA, help businesses understand compliance requirements. Transparency in decision-making and enforcement actions builds trust and predictability in the regulatory framework.

The Singaporean Competition Act came into force in 2005 and has a retrospective effect, applying equally to all agreements made before the effective date of the Act or the relevant provisions. In general, the Competition Act prohibits any agreement that has the object or effect of preventing, restricting, or distorting competition within Singapore. Therefore, a franchise agreement will be rendered void to the extent that the franchise agreement prevents, restricts, or distorts such competition. The Competition Act provides certain exemptions to and exclusions from the strict application of the provisions in the Competition Act. If a franchise agreement meets all the criteria required for any exemptions or falls within any exclusions, it can be exempted from compliance with the Competition Act requirements. Any agreements between franchisors and franchisees that restrict competition, such as price-fixing, market sharing, or resale price maintenance, could be scrutinized.

For instance, resale price maintenance, where a franchisor dictates the minimum resale price of goods or services sold by franchisees, is generally prohibited. Franchisors can recommend prices but must ensure these recommendations do not become binding. Franchisors often grant exclusive territories to franchisees to prevent intra-brand competition. While this can be justified to protect franchisee investments, the authority will assess whether such arrangements unduly restrict competition. Also, exclusive dealing agreements, where franchisees are required to purchase products exclusively from the franchisor or designated suppliers, are examined for their impact on market competition.[222]

3.10. Comparative Intellectual Property Issues

According to the WIPO convention, intellectual property rights are put into economic circulation through licenses, franchises, merchandise, and other agreements, that allow full or partial use of the IP by transfer of ownership. Know-how includes information related to the delivery of goods and services to end users, especially attracting the interest of buyers, communicating with customers, and improving administrative and financial management. Agreements related to know-how can be included in the main franchise agreement and other agreements, which after the expiration of the agreement should be useful for the participants of the franchise agreement to improve their operations, enter new markets, and increase their competitiveness.[223] In countries, franchisees are usually granted the right to use the trademarks, commercial names, and Know-how and the franchisor retains ownership of these rights. For instance, the French courts have stressed the importance of know-how and continuing technical assistance as criteria distinguishing franchising from other distribution systems.[224] The French courts also attach great importance to a balanced contractual vertical relationship between franchisor and franchisee that shelters the franchisee from arbitrary impositions by the franchisor. A duly registered trademark confers exclusive rights on its holder for 10 years, which is renewable indefinitely.[225]

In Germany, franchisors have multiple options for registering trademarks to protect their brand and intellectual property. They can choose to register their trademarks as domestic trademarks, European Union trademarks, or through international registrations. Each option offers different levels of protection and coverage. Franchisors should consider the geographical scope of their current and

[222] Kenneth Khoo and Allen Sng, *Singapore's Competition Regime and its Objectives*, Singapore Journal of Legal Studies, 2019, Volume 1, 67-107.
[223] Marcus Smith and Nico Leslie, The Law of Assignment, Oxford University Press, 2013, 451.
[224] Zimmermann, and Whittaker, Good Faith in European Contract Law, Cambridge University Press, 2000, 695.
[225] Law no. 92-597 of 1992, France.

future operations. Domestic registration is sufficient for purely local operations, while European Union Trademark (EUTM) or international registration is better for broader markets. Comprehensive protection through EUTM or international registration can prevent trademark issues in multiple jurisdictions, which is particularly important for franchises with cross-border activities. In Belgium, franchise agreements typically grant the franchisee the right to use the franchisor's trademarks or distinctive signs as part of the franchise arrangement. Most franchise agreements explicitly include provisions that allow franchisees to use the franchisor's trademarks and distinctive signs. The agreement does specify the duration of the franchisee's right to use the trademarks, often aligned with the terms of the franchise agreement. Provisions for renewal or extension of these rights may also be included. In Hungary, copyright rules and industrial property standards, including trademarks and patents, have territorial effects, meaning they are enforceable only within the borders of Hungary. Franchisors must ensure their trademarks are registered in Hungary to protect their brand within the country. Franchise agreements should stipulate the rights and obligations regarding the use of these trademarks by franchisees. For franchises operating in multiple countries, including Hungary, franchisors need to secure trademark registrations in each jurisdiction to ensure consistent protection. The EU trademark system simplifies the process by allowing the registration of a single trademark with the European Union Intellectual Property Office (EUIPO) which covers EU member states.[226]

Comparable to the EU at the federal level of U.S. law, both intellectual property protection and antitrust policy share a common goal of encouraging innovation. This provides a second level of intellectual property protection besides each state protecting intellectual property through its own trade secret and trademark laws. Trademark rights in the United States are based on use under common law rather than arising from trademark registration. This means that from the moment that an owner begins to use a trademark on or in connection with some goods or service, the owner owns rights to the mark and it generates associated goodwill. Whereas the licensing guidelines address unilateral acquisitions of intellectual property when they take the form of exclusive licensing arrangements.

Under the Canadian Trade-Marks Act, a trademark is defined as a mark used by a person to distinguish their wares or services from those of others. The definition of a trademark under the Trade-Marks Act highlights the importance of distinctiveness in identifying the source of goods or services. A mark must be distinctive to function as a trademark, meaning it must be capable of distinguishing

[226] Anikó Grad-Gyenge: The Law of Intellectual Property in Sándor István: Business Law in Hungary. (Magister Books) Budapest: Patrocinium Kiadó, 2016, 425-443.

the goods or services of one party from those of others. Hence, a trademark does not need to be registered to be valid, and common law rights are established through the actual use of a trademark in commerce. If compared to Canada to Australia, the franchisor is required to provide disclosures about any patents or copyrights that are material to the franchise system. Such information must include a description of the intellectual property and details of the franchisee's rights and obligations in connection with the use of the intellectual property. The Patents Act, the Copyright Act, and the Designs Act all make provisions for compulsory licensing. The patentee blocks parallel imports if they are put on the market in a foreign country by a licensee who does not have the authority to sell in Australia.

In Japan, intellectual property has always been interpreted in the wider context of competition policy and domestic development. This has often been regarded as discrimination against foreign rights owners. Compared with patents, know-how is characterized by an uncertain technological scope, weak exclusivity protection, and uncertainty as to the duration of protection. Therefore, in determining competition in market know-how licensing agreements, takes into account these specific characteristics of know-how. Singapore's Patents Act 1994 sets out a legislative framework for grants. One of the central features of the internal interface between patent law and competition law is how the patentee's exclusive rights over the invention are circumscribed by the language he has used in his patent claims and specifications. The Trademarks Act 1998 promulgates the legal framework that supports the registered trademark system in Singapore, setting out the legal standards for acquiring intellectual property rights in signs that are used as indicators of origin for goods and services. There is no time limit for registering any trademark, therefore a trademark may be used by the owner without the need for registration. However, unless a trademark is registered, the owner cannot take action for registered trademark infringement or seek relief under the Trade Marks Act.

Part 4. Comparative Commercial Franchising

The primary purpose of commercial franchising has historically been to support entrepreneurs in forming their businesses. For trade and industry to function effectively as a franchiser, it generally needs to be an established enterprise as a legally recognized entity, such as a corporation, limited liability company (LLC), or other formal business structures. A well-structured enterprise with independent financial systems can scale operations more effectively. Therefore, scalability is essential for expanding the franchise network and maintaining consistency across different locations. For instance, an independent accounting system ensures that the franchiser can maintain accurate and

separate financial records which is important for transparency, financial planning, and compliance with legal and tax requirements.

Tax policy plays a significant economic role in the development of franchising. Favorable tax incentives, such as deductions for start-up costs, can encourage companies to invest in franchising. These incentives can lower the initial financial burden and make franchising a more attractive option for business expansion. High corporate taxes, on the other hand, can deter investment and expansion. That is why lower corporate tax rates can increase the profitability of franchises, encouraging more businesses to adopt the franchising model. For international franchises, double taxation treaties and clear guidelines on the taxation of cross-border transactions are crucial. Favorable policies can facilitate easier expansion into new markets. The way royalties and franchise fees are taxed can significantly affect the financial model of franchising. Hence, I considered the enterprise and tax law environment of some countries in this part.

3.11. The Contrast of Franchise Taxes

According to 2024 statistics, franchising produces over two trillion US dollars in revenue per year worldwide. The sector, representing 2.5 percent of world GDP, has 2.4 million companies involved. Two major economies, America and Europe, still have a major impact on determining the economic outlook for franchises. Regarding the United States, there are 806 thousand franchise establishments registered and an estimated number of 8.7 million direct jobs were employed by franchise businesses, which contribute 477 billion US dollars to the GDP. Whereas, over 10000 franchise networks operate in the EU, with nearly 405,000 outlets scattered, generating a turnover of almost 215 billion euros.[227] Considering the U.S. franchise regulation as a paradigm for the European Union involves examining the regulatory framework of franchising in the United States and assessing how similar approaches might be applied or adapted to the European context. The rules and regulations issued by the EU are directed at boosting member countries' exports, developing domestic manufacturers creating value-added products, and absorbing profits into Europe. The franchise business in the area is solvent, but the tax scale is relatively high (about 20 percent more than compare to the Asian average). The rules and legal standards of playing in the market have elevated criteria including consumer protection.[228]

[227] Franchising Economic Outlook, IFA, 2024.
[228] Robert W. Emerson and Michala Meiselles, *U.S. Franchise Regulation as a Paradigm for the European Union*, Global Studies Law Review, 2021, Volume 40, 743-802.

For instance, the standard value-added tax rate of 19.6 percent applies to all sales of goods or services including fees paid to the franchisor in France. If the franchisor is a company, income will be charged up to 45 percent depending on the revenue level. Franchisors in Germany are liable for a corporation toll of 15 percent plus a solidarity surcharge is added to income tax at a rate of 5.5 percent. As such, trade tariffs are individually determined by each municipality, and a withholding tax of 25 percent is payable on dividends. The royalty fee for the granting of rights under the German Copyright Act bears a reduced VAT rate of 7 percent, while all other fees paid to the franchisor by the franchisee are subject to VAT at 19 percent. The initial franchise fee is usually amortized throughout the franchise for income tax purposes. In addition to corporation tax and the solidarity surcharge, trade tariff is also payable by franchisees.[229] Belgium's corporate toll is equal to 33.99 percent of net profit. Belgium offers a broad range of double tax treaties and domestic exemptions allowing the setting of tax-efficient franchising structures such as reduced rates can apply to small and medium-sized enterprises. Italian income tax rates for residents and non-residents range from 23 percent to 43 percent in cases of cross-border franchising, a withholding tax of 30 percent is applied to the amount of royalties paid by the franchisee.[230] The rapid development of the franchise network in Central and Eastern Europe is due to the resilience of tax policy. For instance, in Hungary, the corporate toll is 18 percent of the positive tax base. VAT rates are 27 percent. The specificity of Hungarian law is a flexible tax system with policies that support the franchise business environment, with franchise agreements detailed in civil and other legislation.[231]

Corporate toll policies in Canada, Australia, and the USA have several similarities, reflecting common principles in tax regulation. In these countries, corporations are tolled on their net income, i.e., profits after deducting allowable expenses, and tax codes allow businesses to depreciate capital assets (e.g., machinery, and equipment) over time, which can be reduced from taxable income. For instance, as far as the Canadian corporate toll rate on business income is 15 percent, and for private corporations eligible for small business deductions, the net tax rate is 9 percent. Compared to Canada, the standard VAT rate in Australia is a goods and services tariff of 10 percent. A federal income tax rate is 30 percent, but small or medium franchise companies can pay a reduced toll rate of 5 percent.

[229] German Act on Copyright and Related Rights, Section 26, 2021.
[230] Taxation in Italy: An Overview, Senato Della Repubblica, Servizio Biblioteca, 2021, 36.
[231] Act LXXXI of 1996 on Corporate Tax and Dividend Tax, Section 8. Corporate Tax Rate, Hungary.

Franchise royalties are often calculated as a function of sales, they are typically 5-6 percent but can be as high as 15 percent. Also, some franchisors charge a fixed fee irrespective of sales levels.[232]

The federal corporate income tax rate in the U.S. is flat at 21 percent. For individuals, including sole proprietors or partners in a franchise, federal income tax rates range from 10 to 37 percent, depending on income levels and filing status. Franchisees typically pay an initial franchise fee to the franchisor, which covers the right to use the franchisor's brand and access to their business systems and support. The minimum initial franchise fee in the U.S. is generally around 615 USD, though it can vary significantly based on the franchise system. In addition to the initial fee, franchisees usually pay ongoing royalties to the franchisor. The royalties are typically a percentage of the franchisee's gross sales and can range from 4 to 8 percent or more.[233]

3.12. Corporate laws linked to franchise

The companies are established and regulated under private law frameworks. The Civil Code provides the general principles for the creation and functioning of enterprises and sets the procedures for confirming the legal capacity of entities, including requirements for registration, documentation, and the legal recognition of business structures. The principles governing contracts, including franchise agreements, are usually found in the Civil Code. These count the demands for a valid contract, the rights and obligations of parties, and remedies for breach. However, company laws complement the Civil Code by detailing the rules for forming and managing companies. Corporate Laws or Business Corporation Acts, provide regulations for the governance, and dissolution of companies. These laws are more comprehensive than Civil Codes and are designed to address the needs and complexities of modern business operations and classify enterprises into for-profit and non-profit categories, franchising can sometimes fall into the non-profit sector, especially when it involves social or educational objectives.

The regulation of franchise entities and their business activities is affiliated with complex legal considerations, especially when dealing with the distribution of capital and the operation of large monopolies across multiple countries. Furthermore, governments require foreign franchises to register locally, either through setting up a subsidiary, branch, or joint venture. Some countries have minimum capital requirements for foreign businesses, including franchises, to ensure they have sufficient financial resources to operate and contribute to the local economy. The essence for determining the

[232] Income Tax Assessment Act, N38. Franchise Fees Windfall Tax Act, N132.
[233] Tax Cuts and Jobs Act of 2017, The US, Corporate Provisions, Sec. 13001.

jurisdiction of a legal entity varies significantly between regions, reflecting different approaches. The primary criterion for determining jurisdiction is the location where the company was established and adopted its charter.

For instance, EU directives harmonize certain aspects of company law across member states, such as the Company Law Package, which includes directives on corporate governance, mergers, and financial reporting. In Germany, and France, a company that operates extensively in regions may need to register and comply with local regulations, even if its original incorporation was elsewhere. Also, countries use a hybrid approach where both the place of incorporation and the place of business activity are considered assuring that entities are subject to relevant laws in jurisdictions where they are active. The main goal of the franchise is to decentralize production, operate branch factories and units with franchise agreements, and support the use of licenses and the growth of profits. However, various aspects of a franchise agreement, such as financial leases, investment, marketing and management agreements, and the establishment of branches or cooperation with domestic companies, can lead to legal conflicts. Specifically, when a legal entity distributes its registered capital among shareholders of different countries, the legal entity's jurisdiction often changes, which causes difficulties in determining the composition of assets.[234]

In this regard, the scope of EU Company law covers the protection of the interests of shareholders and others. As companies are creatures of the law, and more specifically enterprises of persons and assets organized by rules, including the law, there is an unbreakable link between companies.[235] For instance, a Limited Liability Company (GmbH) is the most widespread form of corporation in Germany. The legal form of the stock corporation (AG) was originally intended for large enterprises. Today, both large public and smaller companies are organized in the legal form of an AG and a group of AGs. Thus, the basic provisions of the organization under civil law apply analogously to the GmbH. Although there are no specific rules, according to the laws of civil and legal entities, to market goods and technology in Germany and to carry out franchise operations, an enterprise with a capital of at least 25,000 euros must be established. The parties to the franchise agreement shall comply with Articles 305 and 307 of the German Civil Code and the European Union's franchise regulations. To

[234] Gerhard Wirth and Michael Arnold, Corporate Law in Germany, München: Beck, 2004, 63.
[235] Nicola De Luca, *European Company Law*, Cambridge University Press, 2021. 4.

start a franchise business in the country, franchise experience, enterprise capacity, and investment are the first requirements before signing the contract.[236]

The formation and regulation of business entities are primarily governed by state laws, such as the US Delaware General Corporation Law (DGCL) for corporations and the Revised Uniform Limited Liability Company Act (RULLCA) for LLCs. The DGCL offers a straightforward and flexible process for incorporating a business. Many franchisors choose to incorporate in Delaware because of the state's business-friendly environment, including flexible corporate structures, efficient registration processes, and well-developed case law. Franchisors and franchisees can choose from various corporate forms, such as C-corporations, S-corporations, and LLCs, each offering different benefits regarding liability protection, taxation, and operational flexibility. The DGCL outlines the roles and responsibilities of the board of directors, which is crucial for franchisors in maintaining control over the system and ensuring compliance with the franchise agreement. The law provides a clear framework for shareholder rights and obligations, which is essential for franchisees who may hold shares in the franchisor company or a regional master franchise. The DGCL also offers a flexible framework for mergers, acquisitions, and consolidations for franchisees considering merging their operations. The law facilitates smooth transitions and clear guidelines for corporate restructuring.[237]

The Uniform Limited Liability Company Act (RULLCA) provides a comprehensive legal framework for the formation, operation, and dissolution of Limited Liability Companies (LLCs) in the United States. RULLCA simplifies the process of forming an LLC, making it an attractive option for both franchisors and franchisees. One of the most significant benefits of forming an LLC under RULLCA is the limited liability protection it offers to its members. This means that franchisees, as LLC members, are typically not personally liable for the debts and obligations of the business, protecting their assets. RULLCA's provisions can be adapted to comply with the specific franchising regulations in different states, helping franchises navigate varying legal landscapes effectively. The operating agreement under RULLCA includes dispute resolution mechanisms, such as arbitration, which can be useful in resolving conflicts between franchise partners without resorting to litigation.[238]

[236] Joachim Rosengarten, Frank Burmeister, and Martin Klein, The German Limited Liability Company, München: Beck, 2015, 6.
[237] General Corporation Law, The US, 2013, Title 8, Chapter 1 of the Delaware Code, Subchapter IX. Merger, Consolidation or Conversion, X. Sale of Assets, Dissolution, and Winding Up.
[238] The Uniform Limited Liability Company Act, The US, 2006, Articles 1-11.

The Canada Business Corporations Act (CBCA) and various provincial business corporation act govern the formation, operation, and dissolution of corporations, which are commonly used structures for franchises. Compared to the US, the preferred choice of vehicle used for the expansion of a foreign franchise system into Canada is the incorporation of a Canadian subsidiary. By using a Canadian subsidiary, the franchisor has a direct physical presence and indicates to the general public that it has committed to Canada. Each franchisee must operate as a truly independent and distinct entity from its franchisor to be considered a separate employer for labor union certification and collective bargaining purposes. [239]

According to the experience of the above countries, the preferred form of setting up a franchise is for the franchisor to operate his branch according to the needs of the local market. Depending on whether the contract is international or domestic, the contracting entity can take any form. Depending on the nature of the legal entity, it can take any form, such as two companies joining together to own a single franchise, and a local master franchisor licensing and supervising other affiliates. Head or joint companies will have a common agreement to conduct corporate activities as independent legal entities for certain purposes, and the form of cooperation varies depending on the legal and economic environment and will of the parties. The franchisor has the right to operate, manage, supervise, distribute profits, and protect the intellectual property against misuse of the joint venture, which is permitted in most jurisdictions.

Master Franchise is a form of granting the right to conduct business under a license to affiliates to make full use of the opportunity to conduct business activities within a large territory. Such rights granted to the franchise applicant can be in the form of a business format franchise, providing extensive know-how, training, and consulting services, or in the form of trading or exercising the rights of the franchisor only in a certain territory, as shown by some local experiences. Although it is possible to expand the territory and increase the number of franchisees within the framework of the franchise agreement, the sub-franchisee established by it does not have the right to transfer the license to third parties.

Franchise relationships between legal entities are directly related to the procedure of transfer of rights in contract law, as shown by the code of ethics of the countries. This is because the use of a complex franchise system by a legal entity under certain conditions is a process that requires

[239] Investment Canada Act, C 28. R.S.C.

supervising. Creating a business plan, expanding the franchise network, developing a cooperation program, or commercial and technical documents, and recruiting and training employees are all possibilities based on the capabilities of the legal entity. The laws of the countries, do not prohibit the individual licensor from being a party to the franchise agreement, however, the main player in real life is the enterprise. Hence, only the franchisor company can register the agreements, issue training certificates, audit contract confidentiality, provide material and technological support, supply raw materials, and check product quality. For franchisor companies, it is no longer important what products are produced in which country, but whether the production provides jobs for workers, profits for corporations, and economic growth for countries.

3.13. Approach to Commercial Franchise Legislation

The franchise is a question of international law while being an innovative business structure rapidly expanding in interstate economic sectors. The relationship between contract law and franchise is integral, as contract law principles are still crucial in establishing, interpreting, and enforcing the terms and conditions of franchise agreements. Compared to traditional contractual arrangements, franchises are sensitive to accepting sole legal form and the agreement parties are mainly interested in following private transnational rules and forum selection, rather than just one country's Civil law. Under economic integration, the franchise framework changed from a licensing system to a special type of contract law agreement and then became a commercial law issue. This progression can be seen in the context of legal, economic, and regulatory developments across different jurisdictions, particularly in regions with high levels of economic integration such as the European Union (EU) or the United States. As markets became more combined due to factors like the growth of cross-border trade, harmonization of laws, and economic unions the simple licensing model was no longer sufficient. For instance, franchising is now governed by comprehensive regulatory frameworks that address not only the relationship between franchisor and franchisee but also issues like competition law, consumer protection, and market regulation. In the EU, franchising is subject to regulations on competition law, including block exemptions that allow certain practices under specific conditions. Also, some jurisdictions started to develop specific legal frameworks to govern franchise agreements, recognizing the unique nature of franchising as both a business model and a contractual relationship. For example, the U.S. introduced the Franchise Rule under the Federal Trade Commission (FTC), which required franchisors to provide detailed disclosures to prospective franchisees. The requirement of transparency for the contract means setting up separate or specific franchise legislation, while

another goal is to develop franchise rules from a commercial legal perspective. Hence, Franchise law will have to tendency contain commercial typology in the long run.

Commercial law differs from contract law in that it is the law governing enterprises and business communications in private law. Thus, law changes more frequently than contract law because it creates innovative systems to improve the competitiveness of enterprises. In particular, there is always a need to enrich and clarify the norms that comprehensively coordinate business relations between traders, i.e., B2B and B2C communication. The Civil Code mainly regulates B2C, C2B, or C2C relationships between entrepreneurs and consumers. However, the principles of protecting B2B goals between for-profit entrepreneurs, freedom of contract parties, easy, quick, and cost-effective negotiation, trust protection, and accountability are not sufficiently implemented. For instance, franchising is a method of organizing the vertical production process of supplying goods or services to consumers. Hence, EU competition law not allowed for a franchisor to impose on franchisees an absolute ban on online sales. In regards, European Commission Regulation NO 330/2010 on vertical restrictions on competition and its subsequent Guidelines makes a fundamental distinction, as far as online sales are concerned, between active and passive ones. Commercial laws are expanding due to the favorable legal environment for e-commerce businesses and as a result, franchisors operating a plural form network are more capable of conducting a multichannel strategy.[240]

[240] Rozenn Perrigot and Thierry Pénard, Determinants of E-Commerce Strategy in Franchising: A Resource-Based View, International Journal of Electronic Commerce, 2013, Volume 17, 109-130.

3.14. Chapter Summary

The differences between Western and Eastern franchise regulations reflect broader variations in legal traditions, regulatory approaches, and market maturity. Western countries tend to have more comprehensive and standardized franchise regulations, with a strong emphasis on disclosure and franchisee protection. Particularly in North America and Europe, have well-established and comprehensive franchise regulations. The European Union, while lacking a unified franchise regulation, has detailed national regulations and industry guidelines in countries like France and Italy. Whereas Eastern countries often have varying levels of regulation, with developing frameworks and emerging standards. In many Asian countries, the franchise market is still developing, and regulations are evolving to keep pace with market growth.

The evolution of disclosure laws in franchising underscores the diversity of legal approaches and enforcement mechanisms across different regions. This variation reflects the broader regulatory landscape, with some countries adopting stringent, detailed contract requirements, while others maintain a more laissez-faire approach. Despite these differences, there is a discernible trend toward the integration and formalization of franchising regulations, driven by globalization, economic integration, and the need for standardized practices. For instance, while the EU does not have a unified franchise law, there is increasing pressure for harmonization, especially as cross-border franchising within the EU grows. One example is The EU has influenced franchise regulation through directives related to competition law, unfair commercial practices, and consumer protection.

Many countries are formalizing their franchising frameworks through comprehensive national legislation. Such a trend reflects a growing recognition of franchising as a significant economic activity that requires clear and enforceable rules. As more countries adopt similar disclosure and franchising regulations, the legal environment for franchising becomes more consistent globally. Similar diversity of franchise disclosure laws across regions highlights the varying levels of regulatory maturity and enforcement in different parts of the world. As global concerns about sustainability and ethics grow, franchising may also drive the integration of laws related to environmental standards, labor practices, and corporate social responsibility. It could lead to the development of more holistic legal frameworks that address not only commercial interests but also broader societal impacts.

CHAPTER 4. COMPARATIVE STUDY ON FRANCHISE DISPUTE RESOLUTION

Abstract

Comparing franchising practices across different industries reveals both commonalities and industry-specific nuances, which can deepen understanding of how contextual factors influence franchise dynamics. Understanding these nuances is essential for developing appropriate resolutions to franchise disputes, as it allows for a more tailored approach that considers the specific dynamics at play in each case.

Modern franchise agreements are highly detailed, often including clauses that address complex issues like intellectual property, data privacy, and global supply chains. This has led to more sophisticated legal disputes that require nuanced understanding and resolution. Moreover, the globalization of franchising has introduced new challenges, including cross-border legal issues, cultural differences in business practices, and varying regulatory environments. These factors have influenced the nature of franchise disputes, making them more complex and multi-jurisdictional.

The chapter examines franchise dispute resolution scenarios based on drawing comparative research findings and places the author's assumption of the further approach of legal proceedings. Therefore, it found the research gap by applying study results from the literature and analyzing alternative dispute resolution. Namely, the chapter cited not only distinguished legal coordination but also the briefing of notable franchise litigations in the US and some EU countries. The importance of this part of the study is to make comparisons between law texts while considering civil procedure matters linked to jurisdiction and tribunal field.

Key Words:

Franchise, Arbitration, Jurisdiction, Forum Selection.

4.1. Why can nonjudicial forums be judged as better for resolving franchise disputes?

Examining how to resolve franchise disputes compares the complexities of the civil procedure, then leads to an analysis of which option is best to use in what kind of circumstances. Hence it is necessary for more comparative studies to fill the research gap or to support a win-win game. My study is directed at this purpose and I considered franchise theoretical and practical questions as follows.

The main reasons for the research question emerge from considering the fundamental principles of legal philosophy. Namely, the rule by law means that legal subjects shall abide by the requirements of certain regulations enacted through legislative powers. Whereas the rule of law teaches all are equal before the law, and have free will to exercise.[241] Hence, the balance is essential for upholding the rule of law and ensuring that legal disputes are resolved equitably and alternatively. The balance requires an adjustment of competing interests to maintain negotiation liberty. A contract procedure rule is a plain example of it. In particular, a commercial contract is considered the priority regulation regarding businesses with combining company law.

The traditional civil procedure aims usually to regulate general issues related to material and non-material wealth, but it is still not good enough for business activities in various jurisdictions. There is a need to enrich and clarify the norms that comprehensively coordinate business relations between traders, i.e. B2B communication. In other words, the Civil Code and its procedure mainly regulate C2C or C2B relationships between consumers and entrepreneurs. However, the principles of protecting business interests between for-profit entrepreneurs, freedom of contract parties, quick, and cost-effective negotiation, and accountability are not sufficiently implemented.

While most participants in everyday private law communications are persons, the parties in franchise agreements are typically licensors and intellectual property owners.[242] That being so, contract law should provide an interactive framework for social, and economic compounds and encompass market goals.

[241] Robert A. Stein, *What Exactly Is the Rule of Law?* University of Minnesota Law School, 2019, 186-201. “See”, in https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1711&context=faculty_articles

[242] Dumitriţa Florea, Narcisa Galeş, *Franchise contract in international trade law*. European Journal of Law and Public Administration, 2022, Volume 9, 12-22.

According to common concepts, contract law has one language with its own set of principles, rules, and doctrines aimed at regulating the relationships and associations between entities.[243] Nevertheless, distinction in the continental system has separate pieces of legislation known as codification, whereas Common law consists of judge-made rules. For instance, Inquisitorial and Adversarial forms are practical models of them. While the inquisitive form is a way, too focused on a court proceeding that refers to litigation, the accusatorial form tends to engage in alternative dispute resolution. From this point, the philosophical root of dispute resolution manner starts, I would say.

Today countries with civil law systems, arbitral power is less than the court and in case of enforcing an arbitral award, it needs to file again to the court. The reason is judicial bodies have more power than defense lawyers and arbiters. Besides, the court handles all evidence in advance and aims to make a decision directly. It shows that, in some law fields, we still need to resolve conflicted questions to prevent unbalance.

As mentioned before, legal subjects enter into some type of negotiation daily, thereby taking part in a relationship in which obligations and rights are granted to others. If the controversy that arose between them cannot be resolved by consensus, it goes to a third party for deciding, and that role has been performed by the courts for hundreds of years. Even though, countries have found that the option of alternative dispute resolution improves the local business enabling environment and helps increase investors' confidence. Franchise agreements often involve ongoing business relationships and disputes are a bright example of settling contract or commercial lawsuits. Because franchise partnerships have the type of B2B. Arbitration and mediation allow B2B parties to work together to find mutually acceptable solutions, potentially preserving the franchisor-franchisee bond and avoiding further damage.[244]

Regardless of the branch, arbitration can provide a sound alternative to resolve contract and commercial disputes. First of all, tribunals can provide a level playing field and ensure that disputes are adjudicated by professionals who understand the complexities of the industry. Moreover, arbitration institutions have rules and procedures specifically designed for international disputes,

[243] Robert W. Emerson, *Franchising and the Collective Rights of Franchisees,* Vanderbilt Law Review, 1990, Volume 43, 1503-1567.
[244] Tamara Milenkovic, *The main Directions in Comparative Franchising regulations,* European Research Studies, 2010, Volume XIII, 103-118.

providing a neutral forum for parties from different jurisdictions to resolve their conflicts.[245] Therefore, the enhancement of the non-judicial sector can help the court ease its burden and focus on commercial priorities and the reform is an ongoing process. As previously quoted, there are no absolute winners in contract disputes unless one party has been misled or deceived the another. Hence the question arises of where and how to resolve the disagreement between disputers with flexibility. Therefore, dispute resolution form is an important issue for fields of international franchises concerning investment or intellectual property infringements, and market competition.

When selecting a dispute resolution forum, parties should consider jurisdictional issues, including the enforceability of judgments or awards in the relevant frame. Understanding the legal landscape and potential challenges associated with enforcement is essential in choosing the most appropriate forum. Ultimately, the choice of dispute resolution forum will depend on various factors, concerning the nature of the dispute, the preferences of the parties involved, and the specific circumstances of the franchise agreement. By carefully considering these factors, when necessary, parties can select a dispute resolution method that offers effectiveness in resolving international franchise quarrels.

Given the complexities of franchises and the multitude of potential disputes that can arise, selecting the appropriate dispute resolution forum is indeed crucial. The balancing of dispute resolution means that, while avoiding bias, business-to-business contractual relationships should be distinguished from typical contract dispute resolution forums due to the specialty of franchise and other similar law issues.

4.2. The question of legally binding

Each form of dispute resolution has advantages and disadvantages; however, the best form of franchise dispute resolution should be in a soft way. In most cases, a combination of approaches, concerning negotiation followed by mediation or arbitration, if necessary, could be the most effective way to resolve franchise disputes.

Namely, negotiation is the best approach when the dispute is relatively minor or when the parties have a good working relationship. It allows for flexibility in finding a mutually agreeable solution for B2B. Nevertheless, it does not belong official resolution structure, and conflict may arise again. Arbitration is advantageous more than negotiation because it typically offers a faster resolution

[245] Philip F. Zeidman, P., *With the Best of Intentions: Observations on the International Regulation of Franchising*, Stanford Journal of Law, Business & Finance, 2014, Volume 19, 237-280.

compared to litigation and can be less formal. However, the decision made by the arbiter is binding, which means there is limited recourse if one party is disappointed with the outcome.[246]

Some disputes would benefit from a scenario of different dispute resolution methods. For example, parties may engage in negotiation first, with arbitration as a fallback option if negotiation is unsuccessful. This hybrid approach can provide credibility while still ensuring a binding resolution if needed.

Litigation can be necessary for certain situations, such as when there are significant legal complex issues at stake or when other forms of dispute resolution have failed. However, it should generally be considered a last resort. For instance, franchise disputes can involve complex legal issues, including serious breach of contract, intellectual property rights, and violations of franchise regulations. Navigating these complex issues requires a thorough understanding of franchise, contract, and intellectual property laws, and other relevant regulatory frameworks. Moreover, franchise agreements typically outline the rights and obligations of both the franchisor and the franchisee. Disputes may arise when one party alleges that the other has failed to fulfill its contractual obligations. This could include issues such as missing to pay royalties, breach of territorial rights, or non-compliance with operational standards.

On the other hand, disputes would be complicated if either party alleges non-compliance with obligatory franchise regulations, such as not fulfilling required disclosures, or violation of statutory duties or standards. Disputes can arise whether the franchisee uses the intellectual property in a manner not authorized by the agreement or there are allegations of trademark infringement, copyright violation, or misappropriation of trade secrets as well. If the dispute involves significant financial losses or other serious issues that cannot be resolved through negotiation, court litigation may be necessary to protect the interests of both parties.

Furthermore, court proceedings are a matter of public record, which means that the details of the dispute, including evidence and legal arguments presented by both parties, become part of the public domain. This transparency can be advantageous in cases where one party seeks to hold the other accountable for wrongdoing or breaches of contract. On the contrary, arbitration awards do not create the same type of formal legal precedent as court decisions do. For the reason that disputes are awarded behind closed doors at the request of the parties.

[246] Guide to International Master Franchise Arrangements, UNIDROIT, 2007, Chapter 17, 198-216.

Frankly, arbitration proceedings are often conducted behind closed doors and are confidential by nature. This means that the details of the dispute, the evidence presented, and the arbitrator's reasoning are not typically made public. Without public access to this information, arbitration awards do not have the same impact on shaping the law or influencing future cases as court decisions, which are part of the public record and can be cited as legal precedents. Because arbitration awards are based on the specific facts and circumstances of each case, they are generally seen as applying only to the parties involved in that particular arbitration and do not have broader legal implications for other parties or future disputes.

Arbitration awards are subject to limited review by the courts. While courts may review awards to ensure that they are not in violation of public policy or that the arbitrator did not exceed their authority, they generally do not scrutinize the merits of the decision itself. However, arbitration awards can still be persuasive in future disputes, particularly if they are well-reasoned and based on legal principles, even though they may not carry the same formal weight as court precedents.

Quarrel resolvers must base their judgments solely on the facts and applicable law, without being influenced by personal biases or external pressures. It does include various principles and rules aimed at ensuring that all parties to a civil lawsuit are treated fairly and that their rights are protected throughout the legal process. Regarding due process, it requires that parties to a lawsuit are given notice of the proceedings against them and an opportunity to be heard. It ensures that individuals have a fair chance to present their case and defend themselves before a neutral decision-maker.[247] While court litigation can provide a final and binding resolution to franchise disputes, parties should consider available options to determine the most appropriate course of action based on the specific circumstances of the case.

In the past period, a court was a form of power that implemented the functions of the state, so it is considered the most reliable way to balance disputes. Courts were being indeed played a central role in administering justice and resolving disputes, serving as an essential institution for upholding the rule of law. Nonetheless, dispute resolution manners gradually have changed in progressive ways. While courts have been traditionally relied upon to balance disputes, it's important to recognize that alternative dispute resolution methods, such as mediation and arbitration, have gained prominence in recent years.

[247] Model Franchise Disclosure Law, UNIDROIT, 2002, Article 85(G)

Nowadays, two types of suit resolution have dominated around the world. As mentioned before, the adversary process supports options for solving disputes such as conciliator, mediator, and arbitrator as parallel to the court. Therefore, I consider that this is not just a matter of the legal system, but an effective way to diversify the dispute resolution ways. The issue of ensuring legal balance is not a matter of worshiping one way or the other, so every option, such as court, arbitration, or mediation, should be given an equal footing.

4.3. Why do franchise quarrels fit alternative dispute resolutions?

As regards the case of transnational businesses such as franchises, prefer to choose mediators or arbitrators instead of filing a lawsuit in the territorial jurisdiction. That is why, mediation and arbitration offer transnational businesses an effective alternative to traditional litigation for resolving disputes across borders. By choosing mediators or arbitrators with expertise in international law and cross-border transactions, parties can achieve efficient resolutions that preserve their business relationships. Take an example, only in Europe has the number of intellectual property or patent infringements increased by 8 percent in the last 5 years as well. Major disputes belong to in fields of competition and intellectual property.[248]

A franchise requires transparency, fair competition, vertical restraints, and a well-negotiated payment schedule since it is a legally binding agreement and business model for transmitting intellectual property to the economy. Franchise agreements should provide clear and comprehensive information regarding the rights, obligations, and expectations of both the franchisor and the franchisee. This includes details about fees, royalties, territorial rights, operational standards, and any restrictions or limitations imposed by the franchisor. Transparency fosters trust and helps mitigate misunderstandings or disputes down the line. Besides, franchising operates within a competitive marketplace, and it's crucial to ensure that franchise agreements do not unfairly restrict competition or stifle innovation. Even so, franchisors should avoid engaging in anti-competitive practices, such as price-fixing, immoral market allocation, or imposing unreasonable restrictions on franchisees that hinder their ability to compete effectively.

The goal of resolving a franchise contract dispute is to find the cause of the conflict between the parties and offer a practical solution to them. Hence, depending on the situation, franchise or other

[248] Intellectual Property Indicators 2022, WIPO, 25. "See", in https://www.wipo.int/edocs/pubdocs/en/wipo-pub-941-2022-en-world-intellectual-property-indicators-2022.pdf

patent disputes are more likely to be settled in alternative dispute resolution. In the field of investment and intellectual property negotiations, arbitration is the appropriate form of dispute resolution.[249]

Namely, as for the franchise agreement, arbitration[250] is a distinctive dispute resolution forum requiring rational decisions of the parties before submission to arbitration. Moreover, for franchisees who wish to remain in their respective systems, arbitration is less adversarial.[251] The reason, it is troublesome with the countries have a variety of legal arrangements for civil procedure. Consequently, arbitration offers the parties dispute settlement outside of the framework of national courts. However, unlike an arbitrator, other soft versions of dispute settlement such as a mediator do not make a mandatory decision for the parties. Therefore, patent and license disputes are rarely brought to the mediator. Nevertheless, the coercive power of the arbitrators is less than the court in most countries, so this is common where a lawsuit is filed again to the court to enforce the awards.

However, questions about jurisdiction have already been decided in some countries. As common law jurisdiction, does strongly supports the principle of party autonomy in international arbitration. This means that if parties have a valid arbitration agreement that is reasonable ground to finalize a dispute, the courts in these jurisdictions are generally inclined to stay in court proceedings and enforce the arbitration agreement. For example, England and Australian courts support the autonomy of international arbitration and will stay court proceedings in the presence of a valid arbitration agreement broad enough to cover the dispute.[252] In this way, the contract law of the countries has been reformed from time to time. Due to such renewed law coordination, international arbitration cases may doubled in the UK over the last decade.[253]

As in many jurisdictions around the world, EU countries typically uphold the principle of party autonomy in arbitration. This means that parties are generally free to choose arbitration as the method for resolving their disputes and to determine the procedures and rules that will govern the arbitration process. Arbitration remains a popular and effective means of resolving disputes in the EU, particularly in international commercial matters. The EU has adopted several directives and regulations that promote and support arbitration within the member states. Moreover, Directive

[249] Stavros L. Brekoulakis, Loukas A. Mistelis, The evolution and future of international arbitration, Kluwer Law International, 2016, 5.
[250] Neil Andrews, On Civil Processes: Court Proceedings & Principles, Intersentia, 2013, 89.
[251] Arthur L. Pressman, Justin M. Klein, The strategy of Arbitration, ABA, 2012, 1-32.
[252] J William Rowley, (2004), 119-124.
[253] Total annual number of cases of international arbitrations, mediations, and adjudications in the UK 2009-2019 "See", in https://www.statista.com/statistics/611403/international-legal-services-activity-in-the-united-kingdom-uk/

2008/52/EC on mediation in civil and commercial matters encourages the use of mediation as an alternative dispute resolution, including in cross-border disputes within the EU.

If take an example, in Germany, the franchisor and franchisee may agree to seek arbitration, in case of a dispute. The German Civil Procedure Act[254] (Schiedsgerichtsgesetz) governs arbitration proceedings. The act provides a legal framework for parties to submit their disputes to arbitration and ensures the enforceability of arbitration agreements and awards. The parties are free to determine the essential framework of such a procedure themselves. Further advantages of arbitration are that these proceedings can be held confidential and arbitration awards are easily enforceable, especially with decisions of foreign courts outside the European Economic Area and Switzerland.

For instance, the US fast-food chain 'Subway' a Franchisor, and a German Franchisee entered into a contract for the operation of a branch in Germany. The contract was based on the Franchisor's multi-purpose standard form contract which was governed by the law of Liechtenstein and under the Arbitration Rules of the UN Commission on International Trade Law. A dispute arose and the Franchisor initiated arbitration proceedings before the American Dispute Resolution Center in Glastonbury, New York, and obtained a favorable arbitral award which it sought to enforce in Germany before the Higher Regional Court in Dresden. It concluded that since all three arbitration clauses were valid, the franchisee's counterclaims were inadmissible based on the application by analogy of Section 1032(1) of the German Civil Procedure Code.[255]

The main legislation governing arbitration in Italy is Law No. 353/1990, also known as the Italian Arbitration Act (*Legge sull'Arbitrato*). The law is based on the UNCITRAL Model Law on International Commercial Arbitration and provides comprehensive provisions for domestic and international arbitration proceedings. Arbitration law upholds the principle of party autonomy in arbitration, allowing parties to agree to resolve their disputes through arbitration and to determine the procedures and rules that will govern the arbitration process. Italian courts have a pro-arbitration approach and are generally supportive of arbitration agreements and awards. The country has a well-developed legal framework for arbitration and is generally supportive of arbitration as a viable method for resolving franchise disputes. The country is a signatory to the New York Convention on the

[254] Section 1029-1033, German Arbitration Law 98.
[255] Oberlandesgericht Dresden/11 Sch 08/07 2007, Germany. "See", in https://newyorkconvention1958.org/index.php?lvl=concept_see&id=66&page=57&nbr_lignes=2124&l_typdoc=

Recognition and Enforcement of Foreign Arbitral Awards, which facilitates the enforcement of arbitration awards as well.

Arbitration in France is governed primarily by the French Code of Civil Procedure (*Code de procédure civile*), as well as the French Arbitration Code (*Code de l'arbitrage*). These laws provide a comprehensive framework for all arbitration proceedings. According to the Code of Civil Procedure, an arbitration clause is an agreement by which parties to a contract undertake to submit to arbitration any disputes that may arise in relation thereto.[256] Arbitration awards rendered in France are enforceable and have the same legal effect as court judgments. Many franchise agreements in France include arbitration clauses as a way to provide a streamlined and confidential dispute resolution process that is tailored to the specific needs of the franchising industry. Parties may choose to arbitrate their disputes through private arbitration institutions or ad hoc arbitration proceedings, depending on their preferences and the terms of their franchise agreement. While arbitration is not mandatory for franchise disputes in France, it is a commonly used and accepted method of franchise dispute resolution, offering parties an effective alternative to traditional court litigation.

The process of increasing the value of arbitration in the states of the European Union is being implemented in the form of supporting the legal framework and expanding the scope of arbitration, as well as the validity of arbitration decisions. In this regard, the recognition of arbitration alongside domestic courts is considered a policy measure to reduce transnational business and legal conflicts. As a result of this process, there is no question that the judicial power can be over-reduced or that the business dispute resolution process will become unregulated or excessively arbitrary. Instead of it, as markets, contracts, and commercial law are reformed, court involvement will indeed decrease.

4.4. Dispute affiliation in the pre-contractual stage

The next questions are a specific affiliation of arbitration and transparency. Courts and Arbitrators have jurisdiction to hear disputes arising from pre-contractual negotiations and agreements, including those related to franchises. Parties may bring claims in court alleging breaches of pre-contractual duties, misrepresentation, fraud, or other legal violations. In pre-contractual franchise cases, courts and arbitrators may consider various legal principles, such as the duty of good faith and fair dealing, negligent misrepresentation, and statutory consumer protection laws.

[256] Code of civil procedure - Arbitration in force 1981, France, Chapter 1. Article 1442.

The court has the authority to award remedies such as damages, specific performance, rescission of contracts, or restitution to compensate parties for losses suffered as a result of pre-contractual disputes. Whereas arbitral awards issued in pre-contractual franchise cases are generally enforceable and have the same legal effect as court judgments. The parties are bound by the arbitration agreement and are required to abide by the arbitrators' decisions. Take an example, according to UN Arbitration Rules where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the Arbitration Rules, then such disputes have to be settled in accordance.[257] The franchise contract is often made before the dispute arises. Also, an agreement to arbitrate can be made anytime-even after the dispute arises.[258] Virtually any business matter such as franchise and transnational commerce disputes can be submitted to arbitration or court at any stage of the contract.

Franchise disputes can potentially be resolved before the contract is concluded, although the specific circumstances may vary depending on the nature of the dispute and the willingness of the parties to engage in pre-contractual negotiations or alternative dispute resolution ways. While it's preferable to resolve franchise disputes before the contract is finalized, parties should be mindful of the potential legal and practical implications of entering into binding agreements or making concessions during pre-contractual negotiations.

For instance, in the case of Hoffman v. Red Owl Stores: During preliminary negotiation, Hoffman and Red Owl Stores delivered a promise to give a franchise contract with a conditional precedent. In reliance on Red Owl stores' commitment to invest 18000 USD, Hoffman bought a premise for his prospective store. However, Red Owl stores breached their promises and asked for more investment. Hoffman cannot afford it and the Franchise Contract was not concluded between them. Under the classical legal doctrine, there is no liability during preliminary negotiation and therefore Red Owl Stores was not liable for such expenses paid by Hoffman. Anyway, the court held that Hoffman deserved compensation and awarded him reliance damages for his loss. The court was only awarding reliance damages for the expenses and not awarding expectation damages since the franchise contract has not been concluded yet.[259]

[257] UNCITRAL Arbitration Rules, 2013, Article 1.1.
[258] Bruce D. Fisher, Michael J. Philips, *The Legal Environment of Business*, West Pub. Co, 1986, 86.
[259] Donald Harris and Denis Tallon, Contract law today: Anglo-French comparison, Oxford: Clarendon Press, 1989, 27. "Hoffman v. Red Owl Stores Inc.-26 USA. Wis. 2 d 683, 133 N.W.2d 267.1965."

The North American and German courts' practice of dealing with pre-franchise agreements is more sophisticated. Take an example from the case of German, OLG Düsseldorf: The claimant was seeking to reverse the franchise agreement that was concluded between the parties. The franchisee justified this by stating that the defendant had incorrectly informed him in advance that he would maintain business relationships with several customers, from which the claimant, as a potential franchisee, could also profit economically on a large scale. In particular, the franchisor promised a turnover of 33,000 euros for the first four months according to gross planning, but the franchisee was only able to achieve an income of 1500 euros after the conclusion of the franchise agreement in the same period. The court considered the scope of pre-contractual information obligations in franchise contracts in this case. The franchisor's obligation to inform is a basic requirement of any contract. Therefore, courts do consider pre-contractual disputes regardless of their damages.[260] However, there is no specific franchise law in Germany and pre-contractual disclosure is not regulated by special statutes or monitored by a specific agency.[261]

4.5. What about forum selection provisions?

From the perspective of the Franchise Model Law, the parties to the contract have to agree on which laws, courts, or arbitration shall be selected in the event of a dispute. As a result, the door shall have opened to avoid bias, to overcome possible risks, and to simplify difficulties through joint principles.

The Model law requires the disclosure of forum selection or choice of law provisions. In international situations, franchisors often impose the provisions relating to these items.[262] The consequence is a forum that the franchisor finds convenient, often in its own country, and that the law that applies to the contract is the law of the State of origin of the franchisor. This might give rise to problems for the franchisee, who will be less familiar with the law of the franchisor's state. Hence, the prospective franchisee needs to know which arbitration rules will apply and which court will be seized of any dispute, in particular considering that the expenses faced by the parties may differ.

Therefore, most franchise agreements contain a forum selection clause that governs the location of where disputes between the parties should or must be resolved. Parties to a franchise agreement

[260] OLG Düsseldorf GER, Urteil vom 25.10.2013- Az. 1-22 U 62/13. "See", in https://www.evers-vertriebsrecht.de/mandanten/franchisenehmer/

[261] Dagmar Waldzus, *Germany-pre-contractual disclosure requirements and relevant case law,* International Journal of Franchising Law, 2014, Volume 12, 3-10.

[262] Model Franchise Disclosure Law 2002, UNIDROIT. Article 6 (2) (L)

should understand the legal distinction between permissive and mandatory forum selection clauses. When parties agree to refer their disputes to arbitration under specific arbitration rules, they are bound to settle their disputes by those rules. This agreement typically forms part of the arbitration clause within their contract or agreement. For instance, in the case of litigation, the parties cannot choose their courts, as they will be decided by territorial jurisdiction. Considering it from this point, arbitration procedures, which are more in line with international law, sometimes conflict with the national judicial system.

In particular, it is necessary to mention the extreme of agreements containing provisions to the effect that investment disputes will be subject to the law of the host state. In the majority of cases applicable law includes both international law as well as the law of the host state and in the case of a transnational franchise agreement, the parties usually provide for the choice of arbitration or an international specialized court. The New York Convention on foreign arbitration, by Article V (1) (e) lays down a procedural norm that an arbitral award, duly rendered, attains finality if, and only if, a domestic court endorses it.[263]

For every arbitration proceeding there is an underlying agreement to arbitrate, by which the parties agree to submit their dispute to an arbitral tribunal. The agreement to arbitrate is also where the players determine some aspects of the procedure to be followed by the tribunal. One essential element that the parties should specify is whether their arbitration will be ad hoc or institutional and what arbitration rules will be applied.

The jurisdiction of disputes varies from country to country and is largely governed by arbitration law. For example, in the EU zone, legal disputes must be resolved, first through mediation and, if it fails, through arbitration "organized or approved by a European Franchise Federation National Association Member" or through litigation.[264] Franchise law cases are often handled at the national level rather than by a specific European court dedicated to franchise issues. However, there have been instances where EU directives or regulations have influenced franchise-related matters within member states.

Although countries are taking decisive steps to accept broad dispute resolution powers and adopt flexible commercial law policies, contracting parties retain the right to choose their jurisdiction. The

[263] V.C. Govindaraj, Private International Law, Oxford University Press, 2018, 127.
[264] Gordon Blanke, Phillip Landolt, *EU and US antitrust Arbitration*, Kluwer Law International, 2011, Volume 1, 11-45.

formal protection of the forum selection right is mandatory in the written contract itself and prevents interfering with the choices of the parties to the contract.

4.6. The Coercive Power of the Arbitration

Recently common law countries started to adopt statute laws, while civil law countries are studying case law in their court affair. The mixed system is becoming more ideal in countries and both systems have the same purpose of adherence to due process of law.

Some countries have anti-suit policies for the parties' satisfaction. It is a matter of *"Res Judicata"* and so good practice to restrict double jurisdiction. By implementing anti-suit policies, countries aim to promote the effectiveness and enforceability of arbitration agreements and other chosen dispute resolution methods in franchise agreements. These policies help ensure that parties' rights and obligations are determined following the agreed-upon procedures and forums, thereby enhancing legal certainty and facilitating the resolution of franchise disputes fairly and efficiently. The laws may restrict or prohibit parties from pursuing litigation in foreign jurisdictions or forums outside of the agreed dispute resolution manner, such as arbitration. By preventing parties from initiating legal proceedings in jurisdictions other than those agreed upon in the franchise contract, anti-suit policies seek to uphold the integrity of the chosen dispute resolution process and prevent forum shopping or tactical litigation.

Andrews cited, that English law has employed anti-suit injunctions for many years to the satisfaction of aggrieved parties to arbitration agreements. An anti-suit injunction is a court order that prohibits a party from pursuing legal proceedings in another jurisdiction or forum, typically when there is a valid and binding agreement to resolve disputes through arbitration or in a specific court. In the context of franchise disputes, English courts do grant anti-suit injunctions to prevent a party from initiating or continuing litigation in a foreign jurisdiction in breach of an arbitration agreement or forum selection clause.[265]

The English court would consider factors such as the validity and scope of the arbitration agreement, the parties' intentions, and the principles of international comity in deciding whether to grant the injunction. In deciding whether to grant an anti-suit injunction in franchise disputes, English courts could also consider the public interest, fairness, and the interests of justice. Courts shall balance the parties' contractual rights and obligations with broader policy considerations, such as the

[265] Harold Brown, Case Against Contractual Arbitration Covenants, Franchise Law Journal, 1992, Volume 11, 112-114.

promotion of arbitration as an efficient and effective means of dispute resolution, and the principle of party autonomy in contract law.

Canadian courts also grant anti-suit relief as well. If the franchise agreement contains a forum selection clause designating Canadian courts as the exclusive forum for resolving disputes, and one party commences legal proceedings in a foreign jurisdiction in violation of this clause, the other party may seek an anti-suit injunction. In deciding whether to grant an anti-suit injunction in franchise disputes, Canadian courts will balance the interests of the parties and consider the public interest. Ultimately, the decision to grant an anti-suit injunction rest within the discretion of the Canadian court, which will assess the merits of the case and exercise its equitable jurisdiction to provide appropriate relief.

Regarding Europe, the OLG Dresden, Decision of 2007, 11 Sch 8/07 is an example of how if any contract is governed by Arbitration Rules, the domestic court would not accept counterclaims. This norm is applicable as the contract is governed by the private law of Lichtenstein, where the Austrian ABGB is the applicable law for such cases. The sole objective of this arbitration clause was to further increase the imbalance in power between the commercially less adept franchisee and the franchisor, with the help of the US American parent company.[266]

4.7. Franchise class lawsuit

Technically, an agreement takes either the form of an arbitration clause or a submission agreement. Such provisions can include permission for mass or complex mediation, and multi-party arbitration.[267] Furthermore, franchisees accept the need, for practical, economic, and other reasons, to unite as a group to challenge franchisor actions in the same proceeding.[268]

To the court, mass franchise actions are joint of more than one petitioner who participates in a class of franchisees against the respondent. For instance, owners of "Meineke Discount Muffler" franchises sued franchisor corporates. The plaintiffs claimed that the franchisor's handling of advertising breached the Franchise and Trademark Agreements. The plaintiffs also advanced a raft of tort and statutory unfair trade practices claims arising out of the same conduct. Finally, they won a 390 million USD judgment against the franchisor and its affiliated parties. To conclude, the first

[266] Aneta Wiewirówska, *Franchising Study*, EU, Policy Department A: Economic and Scientific Policy, 2016, 125.
[267] W. Michael Garner, Stephen C. Hagedorn & Leonard H. MacPhee, Mass litigation by Franchisees, IFA, 2012, 8.
[268] Barry M. Heller, Robert Zarco, The 7 most significant franchise cases of all time, ABA, 2014, 16.

obstacle to class treatment of this suit was a conflict of interest between groups of franchisees concerning the appropriate relief.[269]

The above sort of claim exists in both arbitral and court proceedings which belong to common law and statutory, or international law. In comparison, participant in class action whether to apply for arbitration or join a lawsuit is a matter of will for the franchisee. Also, contract disputes cannot be forced to submit arbitration only excepting agreed-upon by all parties.

The arbitral award should be overturned if the arbitrator exceeds its power. Namely, Bazzle v. Green Tree Financial Corp, and Stolt-Nielsen v. Animal Feeds International Corp cases from the US Courts exhibit courts and arbiters how should approach any class action. In an attempt to solve a contract dispute, Lynn and Burt Bazzle filed suit against Green Tree Corporation. After they filed the suit, Plaintiff learned that other respondent's customers were dealing with the same sort of dispute. As a result, they asked for and received permission to file a class action suit. However, Green Tree contracts had a clause requiring that any contract disputes be settled by an arbitrator. Green Tree asked the court to revoke the class certification because the Federal Arbitration Act, it argued, did not permit class-wide arbitration. Instead, the arbitration would have to be conducted on a case-by-case basis.[270] The South Carolina Supreme Court disagreed, ruling that, unless specifically banned in the contract, class-wide (A legal case organized by a group of people.)[271] arbitration could be permitted by the courts.

Another example of class action, in 2015 chain franchise Jimmy John's faced controversy over its fulfillment of non-compete agreements with its franchise employees. The agreements prohibited employees from working for competing sandwich shops or starting similar businesses. The case involved arbitration proceedings initiated by franchisees. The dispute highlighted the challenges and legal considerations related to non-compete clauses in franchise agreements. Consequently, a United States District Court in Illinois issued an opinion and order which held that two employee plaintiffs did not have standing to pursue their claims for declaratory relief to determine the legal interests, validity, and enforceability of the Confidentiality and Non-Competition Agreements.[272]

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[269] Broussard v. Meineke Discount Muffler Shops 1998, US, No.87-1808.
"See", in https://casetext.com/case/broussard-v-meineke-discount-muffler-shops-inc
[270] "Green Tree Financial Corp. v. Bazzle, 539 US 444. 2003, "See", in www.oyez.org/cases/2002/02-634
[271] Susan Ellis Wild, *Law Dictionary*, Merriam-Webster, 2006, 11.
[272] Brunner v. Liautaud., US 14-C-5509. 2015, "See", in https://casetext.com/case/brunner-v-james-john-liautaud-jimmy-johns-llc

4.8. Transparency requirements and pecuniary damages

Many countries have specific laws or regulations that mandate franchisors to provide disclosure documents to prospective franchisees. These documents typically include details about the franchise system, the franchisor's financial performance, the obligations and responsibilities of the parties, any fees or payments required, and other relevant information.[273]

Franchisors are often required to provide these disclosure documents a certain number of days before the franchise agreement is signed to give prospective franchisees ample time to review the information. Even in jurisdictions without specific franchise disclosure laws, franchisors may still have common law duties to provide accurate and complete information to prospective franchisees. Courts may impose a duty of good faith, fair dealing, or full disclosure on franchisors, requiring them to act honestly and transparently in their dealings with franchisees.

Franchise transparency requirements aim to protect the interests of franchisees by ensuring they have access to the information they need to make informed decisions about entering into a franchise agreement. Courts can provide relief for pecuniary damages resulting from a lack of transparency through various legal remedies, including monetary damages and other forms of relief to compensate franchisees for their losses.

In cases where a franchisor's lack of transparency or misrepresentation has caused pecuniary damages to a franchisee, courts may order various forms of relief to compensate the franchisee for their losses. This could include monetary damages to cover the franchisee's financial losses, as well as other forms of relief such as rescission of the franchise agreement, restitution, or specific performance. Franchisees must mitigate their damages by taking reasonable steps to minimize their losses once they become aware of a breach of contract or misrepresentation by the franchisor. Failure to alleviate damages may affect the amount of compensation awarded by the court.

Along with the general principle of contract law, where a party breaches the obligations imposed on it by the contract, this usually results in a claim for damages. For example, German law goes even further than this and partially grants claims for damages if a breach of duty occurs even when no contract has yet been concluded. Therefore, there is an obligation on the franchisor to clarify the profitability of the franchise system on an accurate factual basis in other words, truthfully as a whole.

[273] Ned Levitt, Kendal Tyre, & Penny Ward, Controlling Your International Franchising System, ABA, 2010, 21.

The duty of disclosure includes making accurate statements regarding the turnover to be achieved and, in particular, not presenting the franchise system as more successful than it is.

German courts have stressed that, as a rule, a franchisee should obtain information on its initiative about the general market conditions and their impact on the prospective franchised business. It reflects the expectation that franchisees should conduct due diligence and assess the viability of the franchise opportunity before entering into a franchise agreement. German courts expect franchisees to exercise reasonable care and diligence in evaluating the franchise opportunity. It includes researching and understanding the relevant market conditions, such as consumer demand, competition, economic trends, and regulatory requirements. While franchisors are typically responsible for providing certain information about the franchise system, German courts recognize that franchisees also have a responsibility to gather information independently. This helps mitigate information asymmetry and ensures that franchisees make informed decisions about the franchise investment. However, if there are particular circumstances about which only the franchisor is aware, and which would be important to the potential franchisee's decision as to whether to enter into the franchise contract, the franchisor must disclose that information. German case law has ruled that a franchisor must refrain from providing misleading information about the franchise system and must disclose all relevant information about it to avoid subsequent damage claims.[274]

4.9. Disputes related to Business format franchising

Franchisees raise concerns about the quality or consistency of products or services supplied by the franchisor. Disputes can arise over the allocation of advertising and marketing funds, as well as the effectiveness of marketing campaigns question the adequacy of marketing support provided by the franchisor, or dispute the use of advertising funds. Financial disputes probably arise over issues such as royalty fees, accounting practices, or financial reporting by the franchisor. Franchisees might challenge the franchisor's enforcement of operational standards or compliance requirements. This could involve disputes over training programs, operational procedures, or health and safety standards. Also, it is necessary not to miss regulatory compliance issues, such as violations of franchise disclosure laws, consumer protection regulations, or antitrust laws.

Today, most franchise disputes related to licensing, supervision and support, system implication, material, product prices, payments, or accounting, post-termination arise among the franchisor and

[274] Robert A. Smith and Tom Billing, *Franchising in Germany.* Franchise Law Insider, 2019, "See" in https://franchiseinsider.quarles.com/2019/09/franchising-in-germany/

franchisee, license owner, manufacturer, and distributor. Accordingly, in the proceedings, precedent is used to resolve franchise-related litigation. For instance, The Australian Courts generally look to both American cases and relevant Codes of Australia for guidance on how to define a 'system or marketing plan.'

The court considers the meaning of "franchise agreement" under the Code and sets out several indicators that are to be used when determining the existence of a system or marketing plan. Which includes: a) the provision by the franchisor of a detailed compensation and structure for distributors b) centralized bookkeeping and record-keeping computer operation provided by the franchisor for distributors; c) a scheme prescribed by the franchisor under which a person could become a distributor and director; d) the reservation by the alleged franchisor of the right to screen and approve all promotional materials used by distributors; e) a prohibition on re-packaging of products by distributors; f) the provision of assistance by the alleged franchisor to its distributors in conducting opportunity meetings; g) suggestion by the franchisor of the retail prices to be charged for products; h) a comprehensive advertising and promotional program developed by the alleged franchisor.[275]

For systemizing these helpful indicators were relied upon in the case of ACCC v. Kyloe Pty Ltd. The main issue was whether or not a franchise agreement had been entered into inadvertently between two distribution companies. The Federal Court followed its previous decision in Capital Networks Pty Ltd and clarified the criteria set out in the Code, which determines when an agreement is considered to be a 'franchise agreement'. While the Court found that there was no franchise agreement, in this case, the decision provided a full discussion on the definition of a 'system or marketing plan' as previously explored and solidified the Court's willingness to follow American jurisprudence.[276]

4.10. How does regulate contract termination disputes?

The main provisions that the parties must agree on when concluding a franchise agreement are market restrictions and termination fees. The agreement sets out how the parties will resolve these issues, which are common in practice, through the courts and arbitration. For example: In the United Kingdom, formal termination that would invoke arbitration or litigation is unusual. Because the franchisor faces disruption costs whenever a franchisee leaves the system, comprising lost royalties,

[275] Chalermwut Sriporm, *Franchising legal frameworks: A comparative study of the DCFR, US law and Australian law regarding franchise contracts*, Universiteit Leiden, 2023, 49. "FCA 808 (2004) Capital Networks Pty Ltd v. au Domain Administration Ltd."

[276] Gillian K. Hadfield, Problematic Relations: *Franchising and the Law of Incomplete Contracts*, Stanford Law Review, 1990, Volume 42, 927-992.

costs of finding premises and a replacement franchisee, and training and promotional costs. So, the same arbitration, renewal, and asset-valuation clauses discussed in connection with lease control are invoked whenever a franchisor wishes to terminate a franchise agreement. Consequently, Franchisors use professional limitation (no competition) restrictive covenants in their contracts.

Franchisees must agree that, on leaving the system, for periods of between six months and two years, they will not compete within the same line of work within their old franchise territories. British and European courts will enforce such covenants as long as they are specific to the business and not too long-lived, as shown by Connors v. Connors, Commercial Plastics v. Vincent, and the *'Pronuptia'* case in the European Court.

The case was referred to the Court of Justice under Article 177 of the EEC Treaty by the German Federal Court of Justice for a preliminary ruling on the interpretation of Article 85 of the EEC Treaty and Commission Regulation No 67/67/EEC of 22 March 1967, on the application of Article 85(3) of the Treaty to certain categories of exclusive dealing agreements. It concerned the franchisee's obligation to pay the franchisor arrears of fees. The Court came to a series of conclusions of general applicability in its discussion of the Pronuptia case. Inter alia, the Court admitted that the franchisor must be in a position to protect certain interests vital to the business and to the identity of the network (for example the know-how), although the provisions must be essential for this purpose. However, certain categories of clauses that limit the franchisee's activities (for example price determination clauses) were not considered acceptable by the Court.

Another example is given by Avis: "The Licensee undertakes that it will not for 12 months after termination be involved directly or indirectly in any vehicle rental business within the licensed territory." Thus, much of the investment the franchisee has made in building up his business may become worthless to him upon exit from the franchise network.[277]

The vast majority of civil lawsuits filed in the courts of countries claiming termination of a franchise agreement are due to non-payment of contract fees or royalties. For example, according to the agreement, it set out that the licensee would pay Kangol (appellant) a running royalty of 7.5 percent of the wholesale price of the products bearing the mark. If the licensee fails to pay the appellant the minimum royalty level specified agreement, the appellant may terminate this agreement forthwith.

[277] Antony W. Dnes, *A Case-Study Analysis of Franchise Contracts* 1993, The University of Chicago Press Journals. Volume 22. 367-393.

That being so the Court of Appeal held in Robertson v Kangol that a trademark license agreement could be terminated with immediate effect due to failure to pay agreed charges. [278]

The judgment of 2020 issued by the Supreme Court of Spain refers to a franchise agreement entered into by two companies. The price clause of the contract established two pecuniary obligations for the franchisee: 1) an initial franchise fee; and 2) monthly royalty payments to be paid during the term of the agreement. About a year and a half after the beginning of the contractual relationship, the franchisee sent the franchisor a termination notice as a consequence of disputes between the parties. In summary, the franchisee claimed that the franchisor had breached its contractual technical assistance and support obligations, while the franchisor claimed the non-payment of several monthly royalty payments.

The Supreme Court concluded that, although in a franchise contract, it is possible to distinguish between benefits of continual performance and others of unique performance, all of these together make up the benefits framework that the franchisor undertakes to provide to the franchisee. In this sense, other than the grant of the contract itself, there is no 'interest' of the franchisee that could be deemed fully satisfied by the training and know-how received at the beginning of the contract, since the training and know-how alone are useless once the contract has been terminated. Hence, the partial refund of the initial single-payment franchise fee in a proportion that reflected both the actual duration of the agreement and the term of the contract that was not fulfilled was appropriate and, therefore, the franchisor's appeal was dismissed.

In terms of franchisors need to reject the regulations of the state that violate constitutional principles and interfere with the contractual relationship between franchisors and franchisees. On the other hand, the court must restrain the bias of either party, regardless of whether the government has a legitimate interest in protecting franchisees. Thus, a delicate balance between protecting franchisees from unfair practices and preserving the contractual freedom of franchisors and franchisees.

[278] England and Wales Court of Appeal. Robertson plc v Kangol Ltd BLD 2301040197. 2004 "See", in https://www.bailii.org/ew/cases/EWCA/Civ/2004/63.html

4.11. Chapter Summary

We are standing in front of reactive and proactive legal policies that exist around the world. Dissimilar legal systems expand the gap in which contract parties avoid going to court. The traditional way of preferring the territorial jurisdiction is gradually changing, and there is a tendency to resolve contractual disputes, through arbitration instead of courts. Franchise is a global phenomenon with issues of legal and economic aspects. Hence, non-judicial and international institutions are more specialized in franchise disputes. Nowadays, the legal experience of countries suggests that alternative dispute resolutions are supported by their courts for resolving franchise and other commercial disputes. The reason is that the court has narrow deadlines and is also expensive. The main advantages of arbitration would be defined as confidentiality, cost-effectiveness, and applicable rules. Therefore, building a legal basis such that arbitration awards are as binding as court decisions is crucial in the long run. I would emphasize that if there is no administering power to enforce its decision metaphorically it is like a toothless lion.

An important area of comparative research concerns the dispute resolution procedure and I have made due diligence through the study on reforms of arbitration and considered judicial precedents in selected countries. In order, to respect jurisdiction boundaries between the countries there exists a gap to overwhelm legal disputes, and which stipulates, that franchise parties have barriers referring to forum selection clauses. Hence, the study pointed out the distinguished patterns of inquisitorial and adversarial systems in litigation or award on franchise breaches. Furthermore, balancing dispute resolution in a manner is a matter of modern sense. It has the advantage of reducing the workload on the courts while decreasing the government intervention in contract dispute resolution. Therefore, advanced steps have been taken to enhance the legal competence of arbitral tribunals and the validity of their decisions in recent years throughout European countries. There is no wonder that such good practice will give value to the prompt resolution of legal problems of transnational business by updating the laws of nations.

CHAPTER 5. THE LEGAL AND BUSINESS ENVIRONMENT OF FRANCHISING IN MONGOLIA

Abstract

The chapter starts with a short history of the codification of Mongolian private law when systematized laws began to be applied regularly. The features of the Civil Laws after 1926 were analyzed in connection with the political, social, and economic factors of the time while clarifying the scope of legal policy and techniques. Moreover, how the legal reforms since 1998 have affected the development of private law, the major reforms to date, the franchise-oriented law environment, court practice, as well as the analysis of the economic environment for conducting franchise business are briefly mentioned. Mongolia has been aligning its legal standards with international norms, particularly in areas such as trade, investment, and intellectual property. That is why, specifically reviewed antitrust, intellectual property, and other branch laws.

Besides, the research of the currently valid contract and other related laws aimed to show what legal regulations are missing in the franchise relationship domestically. For instance, the 2002 codification of franchising in the Mongolian Civil Code was a significant legal development. It provided a formal legal structure for franchise agreements, outlining the rights and obligations of both franchisors and franchisees. However, the absence of a specific Franchise Disclosure Law means that franchising is regulated through a combination of over ten different laws covering intellectual property, consumer protection, and more. While this legal framework provides a comprehensive basis for regulating franchise relationships, it can also lead to complexities and challenges in navigating these various laws. As the franchise sector continues to grow in Mongolia, there may be a need for unified or specific legislation to streamline and clarify the legal environment for franchising, ensuring that both franchisors and franchisees have clear guidelines and protections. This is why, the chapter has examined the above questions.

Part 1. What matters can be Mongolian legal and economic problems of franchising compared to some other franchise-developed countries and its solutions?

5.1. Legislative tradition of Private law

The development of civil law in Europe reflects a significant transformation influenced by the harmonization of various legal traditions, particularly those rooted in Roman law and rational principles of natural law. Hugo Grotius, a Dutch jurist, played a pivotal role in the early stages of this transformation. His work, "Introduction to Jurisprudence" (1631), is notable for synthesizing Roman law with Dutch customary law. This synthesis helped lay the groundwork for the more systematic codification of laws. The process of codification, which sought to create comprehensive and cohesive legal codes, began in earnest in the late 18th and early 19th centuries such as Austria's 1786 Code, the Austrian Complete Civil Code of 1811, and French Civil Code of 1804. The codification movement and the influence of Roman law have had lasting impacts on civil law systems globally. The legal systems of European, later central Asian countries particularly those on the continent, have been framed by Roman law to varying degrees.[279] After the dissolution of the Soviet Union, Central Asian countries undertook legal reforms to modernize their legal systems. While these reforms were influenced by a variety of legal traditions, including Islamic law and customary law, the Roman law-based civil law tradition continued to play a role. Many of these countries adopted new civil codes and other legislation that reflect Roman law principles, particularly in areas like property, contracts, and obligations.

Mongolian law history is deeply rooted in the country's nomadic traditions, as well as its interactions with neighboring cultures and empires. Namely, for over 2,000 years they were developing commercial and transnational trade distributorship. Looking back at the history of the Silk Road, which connects Asia and Europe it was a best practice of peaceful trade based on the rule of law. Throughout the time international merchants specifically, played a vital role in the building of extensive networks of exchange of not only goods but also business and law ideas and structure.[280] The modern legislative history of Mongolia can be classified as the period when private law was regulated by the Civil Code since 1926. It covers a short history of around 100 years, compared to the 19th century when the French Civil Code was first enacted in Europe. To become a model for the adoption of the first civil laws, while drawing inspiration from the civil laws of France and Germany,

[279] John Merryman, Civil Law Tradition, *The American Journal of Comparative Law*, 1987, Volume 35, 438-441.
[280] Macabe Keliher, *Law in Mongol and Post Mongol World, China Review International*, 2017, Volume 23, 107-125.

the Russian legal system, which has traditional Byzantine and Scandinavian law, later European legal traditions, was copied. Therefore, the first part of this chapter is limited to the history of the codification of Mongolian private law, when systematized laws began to be applied regularly.

i. Earlier Civil Codes

The Civil Code of Mongolia was enacted and published in 1926 under the Compendium of Laws and Rules to be obeyed by the People. The earliest Civil Code was drafted based on economic and cultural levels, traditional life habits, morals, and mentality, and it was amended several times until 1929. Thus, the law provided an opportunity to change the previous feudal social market communication, to create equality of contract law, to eliminate family and cultural backwardness, and to modify the form and content of legislation. On the other hand, the code was used for political purposes to punish the unequal distribution of capital at the time and dispense the wealth of the bourgeoisie to the poor.[281] The next Civil Codes were passed in 1952 and 1963, historically known as the socialist-style law, to strengthen the socialist economic system, prohibiting private property. However, as for the 1963 Civil Code compared to the previous law, the structure, systematization, and legal codification have become more sophisticated. For example, the grounds for establishing the legal capacity of a citizen or entity, agreement, statute of limitations, and obligations along with responsibilities of various contracts are well defined in detail. For the first time, the 1994 Civil Code included a brief provision that intangible property may be used on a contractual basis. For example, a patent owner allowed others to lease his work. Under the Civil Code, the subject of the contract for the use of IP was the invention, product design, and trademark registered in the state registry.[282]

ii. Legal reform toward Private law

Like other Central Asian countries, Mongolia has been increasingly engaging with international legal standards and practices, often looking to European models for guidance. This has led to further integration of Roman law principles into their legal systems, particularly in areas such as commercial law, where the need for consistency and predictability is paramount. In 1998, the Parliament of Mongolia approved the Legal reform program.[283] The reform of legislation was a natural starting point in transforming society from socialist legal traditions and a centrally-planned economy to a free market

[281] Civil Code, MGL, 1929, Chapter 4.
[282] Civil Code, MGL, 1994, Article 287.
[283] The Parliament Decree 18, MGL, 1998.

while reflecting the conceptual policy of society as a whole.[284] Moreover, reform has created the conditions for the diversification of legislation, elimination of codification gaps, and development of the private law branch.[285] Since the Legal Reform was implemented, field laws separated from the Civil Code regarding Company, Labor, Arbitration, Consumer Protection, Patent, Competition, and Trademarks inspired by a variety of European and North American models. For instance, under the Law on Companies, two types of companies were permitted limited liability and joint stock. The former resembles the German GmbH, the French SARL, or the British private company. The joint-stock company is the approximate equivalent of the German AG or the British public company etc.[286] As a result of such diversification, the legal regulation of private laws has expanded, modern types of trade and commercial contracts have been formed between enterprises, and legal disputes also increased. For example, while court caseloads were dominated by criminal cases in the former socialist system, the civil litigations doubled and the suit sorts have changed substantially over the last two decades.[287]

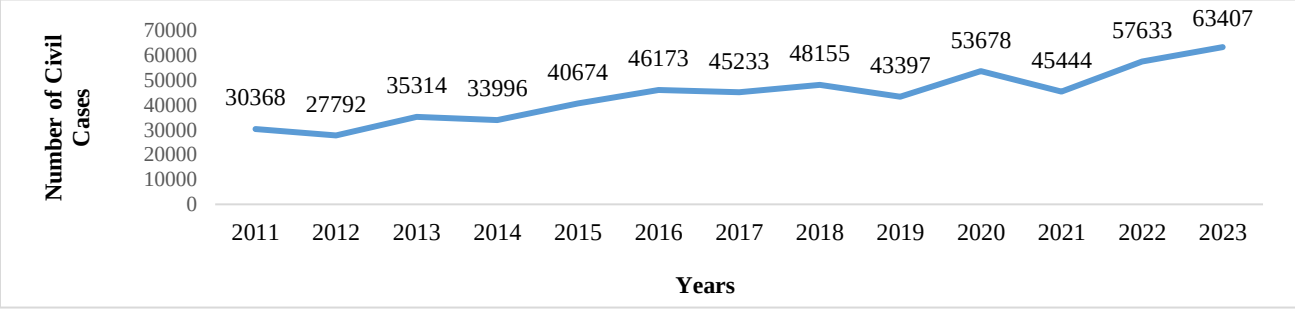

Figure 3: Civil case Statistics of Mongolia (Source: Mongolian Statistical Information Service)[288]

5.2. Franchise Contract law arrangements

The franchise is the latest topic of legal practice in Mongolia, it was first codified by the Civil Code in 2002 as a special type of contractual obligation related to the transfer of intangible assets.[289]

[284] Astrada, S., *Exporting the Rule of Law to Mongolia: Post-Socialist Legal and Judicial Reforms.* Denver Journal of International Law and Policy, 2010, Volume 38, 472.
[285] Gramckow, A., Allen, F., *Justice Sector Reform in Mongolia*: *Looking Back, Looking Forward.* Justice and Development paper series, 2011, Volume 16, 1-16.
[286] Ross Clendon, Developing Mongolia's Legal Framework: A Needs Analysis, Asian Development Bank Report, 1995 "See", in http://www.asianlii.org/asia/other/ADBLPRes/1995/1.html
[287] Jay Carver, The Judicial Reform Program in Mongolia, USAID, 2009, 4-21. "See", in https://pdf.usaid.gov/pdf_docs/PDACO255.pdf
[288] "See", in https://www2.1212.mn/tables.aspx?tbl_id=DT_NSO_2300_031V1&CR005_select_all=0&CR005SingleSelect=_2&YearY_select_all=1&YearYSingleSelect=&viewtype=linechart
[289] Civil Code, MGL, 2002, Art. 335.

Hence, the general requirements of the franchise agreements are ruled by contract law which refers to the Civil Code, and the country does not have a franchise disclosure law. Under the Civil Code of Mongolia, a franchisor shall transfer a license, obtained according to established procedures and allowing the use of nonmaterial property, to a franchisee, and the latter is obliged to conduct activities by structures and cooperation program agreed with the franchisor. The franchisee is obliged to pay the franchisor the agreed fees or royalties, as well as a share of the profits, which can be considered the same as the common standard arrangement. For instance, the franchisee must pay proper lump-sum fees accepting upon a profit-sharing scheme or a certain part of the revenues to the franchisor. While franchising can encompass elements of various commercial contracts, it often stands as an independent contract with unique characteristics, particularly due to its reliance on trade secrets and confidential know-how. Unlike patents or registered designs, which are publicly disclosed and legally protected, trade secrets require strict confidentiality measures and ongoing protection. Franchisees receive the right to use the franchisor's trademarks, trade names, and complete business format, including operational methods, marketing strategies, and customer service protocols. On that account, distribution and license agreements are legislated separately from franchises while it is prohibited to get a double license and process distributorship without having the permission of the franchisor as well. Besides there are provisions in the Mongolian Civil Code such as a franchisor must protect a cooperation program from the involvement of third parties, regularly update the program, supply the necessary information to the franchisee, provide technical assistance, and offer training for employees. The protection of a franchisor's cooperation program involves clauses related to intellectual property, confidentiality, and non-competition.

While the Civil Code provides some protections for franchisors, particularly with intellectual property and contractual obligations, these protections are not as clearly defined or robust as those found in many Western legal systems. Western franchise laws provide more detailed, predictable, and enforceable protections, particularly concerning the involvement of third parties in a franchisor's business model and cooperation program. In Mongolia, without franchise-specific regulations, franchisors must rely on general contract law, which may not offer the same level of protection.

i. Pre-contractual breach

The Civil Code does not provide for an exact obligation to exchange information in the pre-contractual stage, nor do period boundaries. Whereas, franchise parties have to exchange all necessary information if a contract is concluded and it is not allowed to transfer the license to a third party

without the franchisor's consent. If others are deceived to agree, the deceived franchisor or franchisee has the right to demand that the agreement be considered invalid. Whether the defrauded party intended to gain profit or harm does not affect the invalidity of the contract. On the other hand, although the relationship between the parties before the conclusion of the Franchise Agreement is not specified in the Civil Code of Mongolia, obligations may arise during the preparatory phase of the agreement by the general provisions of the Civil Code. This applies to the relationship between the responsible party and the obligation to compensate if it causes damage during the relationship that occurred before the contract in the principle of the *"Culpa in Cotrahendo"*. [290]

ii. Freedom to negotiate

Mongolian contract law follows the maxim that Everything that is not forbidden is allowed.[291] The contract parties have the right to freely conclude the contract within the framework of the law and determine its content by themselves. The terms agreed upon individually by the parties are not considered standard terms of the contract, and the regular terms of the contract are the frequently used and predetermined conditions offered by one party to the other. If the acceptance of the expression of the intention of one party is expressed by the other party by its specific actions, the transaction is considered to be concluded by actual initiative. Whether the content of the agreement cannot be determined, the transaction is considered not concluded. The franchisor is not obliged to issue any guarantee as to possible revenues the franchisee may earn under the franchising contract. The franchisor shall not be liable for any damage caused to clients as a result of conduct by a franchisee. As well as the parties to the contract shall comply with the general requirements including good faith outlined in the Civil Code of Mongolia when concluding or terminating a franchise agreement.

iii. Good Faith

Good faith in contract refers to the principle that parties involved in a contract should deal with each other honestly, fairly, and in a manner that is consistent with the reasonable expectations of the other party. It implies a duty of honesty and fair dealing in the performance and enforcement of contractual obligations. The franchisor and franchisee should not make false statements or misrepresentations of material facts during contract negotiations or performance. Contract parties have to provide accurate information and disclose any relevant information that could affect the other party's decision-making process. Also, have got to act fairly and reasonably towards each other

[290] Catherine Elliott, Frances Quinn, Contract Law, Pearson Longman, 2009, 124.
[291] Ewan Mckendrick, *Contract law*, Palgrave Macmillan, 2009, 176.

throughout the contract. This includes refraining from taking advantage of the other party's vulnerabilities, exercising undue pressure or coercion, or engaging in behavior that undermines the other party's interests. Good faith may influence the interpretation of contractual terms and obligations in Mongolian contract law practice.

iv. Contract form and duration

The franchise agreement must be written, and if the parties sign the agreement with a power of attorney, it must be notarized. Franchise agreements can be concluded on behalf of a representative by common contractual arrangements, in which case a power of authorization is required. The agreement becomes effective when the parties execute and sign a document expressing their will. Franchise parties shall determine the duration of the contract depending on the demand for a particular product or service and market share. If a contract was concluded for more than 10 years, or the duration of the contract is not fixed, either party may terminate the contract within one year of notifying the other party of termination. Upon the expiration of the franchising contract, the franchisor shall have the right to prohibit the franchisee's successor from competing in a specific territory for up to one year. If this prohibition stated by the Civil Code causes serious damage to the main business of the franchisee, the franchisor shall award reasonable compensation to the franchisee. Such requirements are similar to the USA, the length of a franchise agreement will vary on a case-by-case basis, but most agreements are long-term deals. Standard franchise agreement lengths can last 5 to 20 years or longer. Furthermore, franchise agreements include options for the franchisee to renew or extend the length of the agreement with proper notice.[292]

v. Intellectual Property

According to conditional requirements, the franchisee shall be required to have the legal right to own and use the intellectual property that is the subject of the agreement and shall satisfy the key terms of the agreement. Specifically, the rights and responsibilities of both parties are equally specified, and the amount of payment to be paid in return for the transfer of ownership and use rights of non-material assets must be mutually agreed upon. Also, the duration of the contract, the procedure for termination and extension of the contract, and the special obligations of the parties have to be considered in the main conditions of the contract. On the other, the name of a company, trademark, product design,

[292] James A. Brickley, Sanjog Misra, and R. Lawrence Van Horn, *Contract Duration: Evidence from Franchising*, The Journal of Law & Economics, 2006, Volume 49, 173-196.

packaging, planning, management and communication, and guidelines on goods and services procurement assets have been protected by Civil and other relevant laws.[293]

vi. Statute of limitations

A conditional agreement regarding a franchise is a transaction made by agreeing to implement the negotiation or terminate the contract in the event of an unknown situation. If the conditions do not meet the requirements of the law or are contrary to generally accepted moral standards or are impossible to fulfill, the contract is not valid. The statute of limitations for franchise agreements is 10 years, as with any other agreement. However, the statute of limitations does not apply to the intellectual property rights of the franchise agreement, but the general statute of limitations applies to claims for actual property damage. In comparison, the statute of limitation period for a commercial claim will depend on the reason for the claim. The limitation time for the lawsuit is around six years from the breach of contract in many jurisdictions. The period for claiming damages and restoring rights under the franchise contract stipulated in the civil law of Mongolia is sufficient, which is about 4 years higher than the average of the countries. For example, the normal statute of limitations for civil cases is 3 years in Germany[294] and up to 6 years in England.[295]

vii. Pacta Sunt Servanda

It can be considered that the above regulations connected with the relationship of Franchise contracts in Mongolia meet the basic requirements determined by universal contract law theory. In particular, a general criteria of contractual good faith requires that parties do not deal dishonestly or contrary to standards of fair dealing in contract negotiations. Regarding contracts already negotiated and formed, a general requirement of contractual good faith needs as well that parties observe the fundamental rightness norm of '*Pacta Sunt Servanda*'. The principle asserts that contracts must be honored and observed as they are written, upholds the sanctity of contracts, and ensures that parties are bound by the terms they have agreed to, regardless of subsequent changes in circumstances. Furthermore, '*Clausula Rebus Sic Stantibus'* allows for contracts to be modified or terminated if the circumstances under which they were formed have significantly changed. It recognizes that unforeseen and substantial changes in circumstances can make the performance of contractual obligations excessively burdensome or even impossible. The principle provides a safety valve for parties who find

[293] Civil Code, MGL, 2002, Article 27.
[294] Section 195 of the German Civil Code (BGB).
[295] Limitation Act 1980, Section 5, UK.

themselves in situations where adhering strictly to the contract would lead to unjust or impractical outcomes. The balance between these two principles is essential in Mongolian private law.[296]

5.3. Field laws

The special requirements of the franchise agreement stipulated in the Civil Code of Mongolia while complying with the general principles of contract law, try to regulate the main principles of commercial relations for the circulation of intellectual property and business format franchising. As mentioned before, since there is no Franchise disclosure law in the country, there are more than 10 other field laws governing franchise relationships, such as issues of intellectual property, and consumer protection.

i. Antitrust rule

Vertical foreclosure arises when the firm with a license takes action to exclude a competitor from the downstream market.[297] Hence, almost all intellectual property confers an exclusive right to stop others from behaving in specified ways and in that limited sense, it confers a legal monopoly.[298] While franchising itself is not inherently monopolistic, certain characteristics of successful franchise systems can lead to market conditions that resemble monopolies, at least within specific geographic areas or market segments. Therefore, regulators seek to monitor franchising practices to ensure competition remains healthy and consumers have choices in the marketplace. A complex array of franchise and licensed distributor arrangements exist in the vertical distribution of goods and services, competition laws are often enforced to protect, not prohibit, franchises. For instance, vertical restraints are mandatory for carrying franchises in a specific territory, if the country or economic bloc does not have any proper ban that the franchisor expected, the business would fail soon.

Governments often assess the impact of these restraints on market competition and consumer welfare to determine whether they comply with competition laws and regulations. For instance, in comparison to the European Union, Mongolia does not have specific regulations targeting vertical restraints.[299] However, the Authority for Fair Competition and Consumer Protection of Mongolia has a similar function to the French administrative bodies to oversee the fulfillment of franchise law, ensuring compliance with disclosure requirements. The organization has the power of Legal remedies

[296] Reinhard Zimmermann and Simon Whittaker, Good Faith in European Contract Law, Cambridge University Press, 2000, 7-26.
[297] Gary A. Moore, Arthur M. Magaldi, The Legal Environment of Business, South-Western Publishing, 1987, 362.
[298] Andrew Burrows, English private law, Oxford, 2007, 499.
[299] Articles 101 of the Treaty on the Functioning of the European Union, 2003.

for non-compliance can include fines, and injunctions.[300] Franchise agreements in many cases include provisions for granting exclusive territories to franchisees, meaning that no other franchisee of the same brand can operate within that territory. While this is intended to protect the investments of individual franchisees and prevent intra-brand competition, it can also contribute to a situation where a single franchisee holds a monopoly within their designated territory.

The threshold for being considered a dominant entrepreneur is set at one-third or 33 percent of the market share. This is a relatively common benchmark in competition law globally, used to identify entities that have significant market power. The Law on Competition of Mongolia considers monopoly as the supply of one-third or higher percentages of the productions, sales, or purchases of certain kinds of goods and products in the market shall be considered as a dominant entrepreneur. The law has prohibited dividing markets by location, production, services, sales, names or types of products or consumers, and restricting. However, these regulations do not cover legal monopoly. For example, in case a franchise agreement is terminated, the prohibition of the company that was the franchisee to carry out the same type of activity again is a process to prevent the violation of intellectual property rights. Moreover, in the frame of the franchise contract, the price of goods and services can be fixed or flexible if the parties negotiate. For instance, the franchisor makes a decision based on the density of the population living in a territory and the financial ability of the franchisee applicant. There can be a strict agreement that only one franchise applicant could sign and the market would not be divided during the contract term to being continued. This is typical for franchise agreements and depends on the business plan agreed upon between the franchisee and the franchisor. It is worth considering that competition laws apply differently and flexibly depending on the characteristics of certain types of contracts, such as franchises.

Whether franchise vertical restraint agreements should be specifically included in Mongolian competition law is a question with far-reaching implications. In particular, regulation can be made in the field of allocating territories or customer groups to franchisees, ensuring the balance of investment required for the assigned territory or exclusive sales, and comparing the sale of franchised products and services to other distributors. The content of the Mongolian Competition Law indicates the following things: the terms of the franchise agreement with special conditions are not prohibited, they are not allowed, and they are not specified in detail. If the first scenario, the non-prohibition argument,

[300] Law on competition, MGL, 2010, Article 6.1.

is used, the franchise agreement, which is agreed to impose appropriate restrictions on the market, will not be considered illegal. For instance, setting the price of products and services under the franchise agreement is different from fixing the price to capture the market, and negotiating the price of the products to be sold in the market under the franchise agreement is not considered a monopoly. On the other hand, the Mongolian legal framework implements an anti-cartel policy by protecting franchise patent rights.

ii. Intellectual property protection

Although franchises may be somewhat similar to patent and license agreements, it is a complex system of intellectual property rights related to one or more trademarks, names of legal entities, product designs, inventions, know-how, and business secrets. Under the franchise agreement, the transferor gives the franchisee the company name, trademark, product design, and management policy. Hence, according to Mongolian Competition law, using trademarks, labels, names, and quality guarantees of others' products is extremely prohibited without proper authorization, copying brand names or packages and disseminating inaccurate information that the particular good and product sales, or making.

The mode of transfer of intellectual property rights does require detailed rules for economic circulation through franchises and merchandise.[301] Most antitrust claims relating to intellectual property involve challenges to agreements, or affirmative conduct involving the use or disposition of the products they cover.[302] The patentee shall enter into an exclusive agreement on the condition that the license shall not be used by a third party at the same time.[303] Licensed know-how fulfills information that is significant and useful for the production covered by the agreement or the application of the process accepted by the written contract. The regulation of Mongolia's intellectual property law consists of common international legal norms and domestic statutes. For example, the standardization documents include national, company, international, and regional standards, and guidelines developed in compliance.[304] The government agency shall perform powers issuing and revoking patents and certificates and creating a database due to all types of licenses are certified only by government agencies for reuse in the market.[305] It is the same regulatory arrangement as other

[301] Abdul Kadar, Ken Hoyle & Geoffrey Whitehead, Business and commercial law, Butterworth-Heinemann, 1996, 91.
[302] Alexandra Lajoux, Charles M. Elson, The art of M&A Due Diligence, McGraw Hill, 1976, 289.
[303] Law on Patent, MGL, 2006, Article 6.
[304] Law on Standardization, technical regulation and accreditation of conformity assessment, MGL, 2018, Article 8.
[305] Law on Intellectual Property, MGL, 2020, Article 7.

countries' similar laws. For instance, in European Union member states government agencies play a pivotal role in issuing, revoking, and maintaining records of patents and licenses, ensuring legal clarity and protection for intellectual property rights. Whereas in the US trademarks are a type of intellectual property that protects any signs or symbols that distinguish goods and services in the marketplace. A registered trademark protects a brand owner against a competitor making improper use of its mark. Geographical indications can be expressed in solely the geographical name of a locality that identifies a good as originating therein or a combination of the name of goods. Accreditation of conformity assessment signifies eliminating technical barriers to trade, facilitating trade, increasing consumer confidence in products, and enabling bilateral and multilateral recognition of conformity assessment results at international, and national levels.[306]

According to the Mongolian law on trademarks and geographical indications rules to ensure the legal guarantees for trademarks and service marks, to protect the rights and legitimate interests of their owners and users, and to govern relations arising in connection with the ownership. A trademark registration shall be valid for 10 years following the filing. The exclusive rights of a trademark holder arise on the registration of the trademark in the state register. A trademark owner can transfer the right to own a license to others using a written agreement concerning all or some of the goods or services related to a registered trademark.[307] The practices in Mongolia regarding the transfer and licensing of trademarks through written agreements are indeed similar to those in the EU and USA. All these jurisdictions require written documents for such transactions and have mechanisms to register or record these transfers to ensure they are enforceable and effective against third parties. This harmonization helps maintain clarity and protection in the ownership and use of trademarks across different legal systems.

iii. Company and Tax law

A company is a legal entity and the main subject in Contract law in Mongolia. Under Mongolian company law, sole proprietorship, partnership, corporation, and Limited Liability companies may have branches or representative offices in domestic or foreign countries. A for-profit legal entity defined by the Company Law of Mongolia includes the types of limited liability and joint-stock companies. A company may conduct any activity not prohibited by law and exercise rights and incur obligations necessary to conduct such activities. A company (franchisor or franchisee) shall conduct activities

[306] Lucy Jones, Introduction to Business Law, Oxford University Press, 2019, 629
[307] Law on Trademarks and Geographical Indications, MGL, 2021, Art.4.

requiring special permits based on obtaining written permission from relevant authorities. A founder of a company may be a citizen or legal person of Mongolia and, if provided by law, a foreign citizen or legal person, or a stateless person.[308] According to the law on investment of Mongolia, an investor can have a right to seek tax and non-tax support to support investment. Investors shall have a right to transfer their following assets and revenues out of Mongolia without hindrance on the condition of having properly fulfilled their tax payment obligations in the territory of Mongolia. It includes profits of business activities and dividends, license fees for use of their intellectual property rights and service charges, payment of principal amounts, and interests of overseas loans. Also, investment law sets the general statutory and regulatory framework for all investors in Mongolia. Under the law, foreign investors may access the same investment opportunities as Mongolian enterprises and receive the same protections as domestic investors. Investment domicile, not investor nationality, determines if an investment is foreign or domestic. Under the rules, all foreign and domestic enterprises must register with the Registration office. Also, the government generally offers the same tax preferences.[309]

Taxpayers not residing in Mongolia shall comprise the following business entities: a foreign business entity operating in the country through its representative office, a foreign business entity earning income in Mongolia, and sourcing income from Mongolia. The tax rate is 10-25 percent depending on the amount of income and a 5 percent tax has to be paid for the sale of intellectual property rights is mandatory. Value-added tax at the rate of 10 percent is imposed on the supply of goods, services, and works imported, exported, and sold in the country. The taxpayer is obliged to pay taxes including the income from operations and properties, and the sale and transfer of property, goods, works, and services. The fees on income from royalties consist of plural taxes following: 1) fee for the use and the right for the use of copyrighted works by the Law on copyright and related rights, 2) fee for the use and right for the use of inventions, products, or useful models as specified in the Patent law, 3) fee for the use and related right for the use of trademarks as stipulated in the Law on trademark and geographical indications, 4) fee for the transfer of technology, 5) fee for the use and related right for the use of information related to production, trade, and scientific experiments.

iv. Consumer protection, Advertisement

Under the Mongolian Civil Code, the consumer has the right to be assured of the quality and safety of the goods during the warranty and service life. It is a common feature of consumer protection laws

[308] Law on Company, MGL, 2011, Art.8.
[309] Law on Investment, MGL, 2013, Art.6.7.

in many countries, including those in the European Union and the United States. For instance, EU consumer protection laws, particularly the Consumer Sales and Guarantees Directive (1999/44/EC), ensure that consumers have the right to expect goods to be of satisfactory quality and safe to use. The US Magnuson-Moss Warranty Act governs warranties on consumer products. Similarly, in Mongolia, consumers are entitled to clear and detailed information about warranty coverage et cetera. Compensation shall be paid by the franchised parties at fault by the Civil Code if the consumer's life, health, or property has been damaged due to non-compliance with the quality and safety of goods, works, and services.[310]

By the Law on Advertising, the use of abbreviations of products, trademarks, and names in advertisements was not obtained in advance from the legal entity, as well as did not provide consumers with accurate and factual information about goods and products is prohibited. In other words, the Mongolian Law on Advertising provisions regarding the use of abbreviations, trademarks, and names in advertisements, and the requirement to provide accurate and factual information, align closely with advertising regulations in the EU and the USA. For instance, advertising laws similarly regulate the use of trademarks, abbreviations, and names to ensure they are not misleading and are used by intellectual property rights. The EU has governed by directives such as the Misleading and Comparative Advertising Directive, while in the USA, the Lanham Act provides near protections. These jurisdictions emphasize that trademarks and names must be used truthfully and accurately in advertisements to avoid consumer confusion and protect the rights of trademark owners.

v. Labor law

The large franchisors have common rules for employment standards, wages, working hours, and employee conditions within the network. This is the same concept as the collective agreement allowed by the labor law of Mongolia. The scope of the Labor Law also applies to the relations that have arisen in connection with the work performed or the services provided in the territory of Mongolia, or that the parties have mutually agreed to be regulated by the law. According to Mongolian labor law, collective agreements shall be concluded for no more than three years and may be concluded flexibly depending on the general term of the Franchise Agreement. The parties shall mutually agree upon the relationship regulated by the collective agreement, and it has been legislated to reflect the employee's right to work, wages, and incentives related to legal interests, employee training, workplace safety,

[310] Law on Consumer rights, MGL, 2003, Art.5.4

and working hours. Simultaneously, the employee is obliged not to disclose information related to the organization, personal secrets, or business of the employer during the performance of his duties. To protect the secrets of production and business, the franchise owner must mutually agree with the employee who has an employment contract with special conditions to work for an enterprise, organization, or individual that directly competes with the employer for a certain period after the termination. The grounds for the prohibition of competition, the type of activity, the territory subject to restrictions, the period of service, and the compensation to be provided by the employer during that period shall be included in the employment contract or the non-competition agreement. The period of validity of the additional non-competition clause or ancillary agreement in the employment contract is not more than one year after the termination.

The employment contract shall include the name of the occupation, duties specified in the job description, the location of the franchise industry, working conditions, skills, and competence requirements mutually agreed upon by the parties. In the case of companies operating under a franchise agreement, there may be a case where the employee is required to perform a combination of duties and work for a trial period. If the employee is allowed to perform tasks that are not included in the employment contract, the employer shall require that the tasks to be performed and the remuneration to be paid to the employee be agreed in advance with the employee. The franchisor company may enter into the labor contract, or enter into a supplementary agreement in this regard, by mutual agreement with the employee for the training, professional development, and specialization of the employee at its own expense. In the labor contract, or in the accompanying contract for learning at the expense of the employer, the type of training, duration, retention of the employee's job, and responsibility can be included. The duration of the employee's continued employment at the enterprise or organization after the training shall be mutually agreed upon by the parties and shall not exceed three years. If the employment contract is terminated at the initiative of the employee, the employer shall reimburse the training expenses pro rata for the time the employee did not work, unless the employer exempts the training expenses in whole or in part.[311]

vi. Civil Procedure

Mongolia is a party to the Convention on the recognition and enforcement of foreign arbitral awards and it is possible to enforce foreign commercial arbitral awards in Mongolia.[312] However, the

[311] Labor law, MGL, 2021, Art.73.
[312] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958

main way to resolve a civil dispute is through the courts, if there is an appeal against the decision of the court of the first instance, it shall go to the appellate court. The grounds for filing a civil case are claims for violation of rights related to material and non-material wealth, and there is a procedure for filing the claim in the court of the defendant's place of residence.

The period of legal proceedings related to franchise and other ancillary contract disputes shall be 60 days from the date of filing a civil case, and if the case is submitted for reconsideration by the appeal or review court, the judge shall decide the case within 30 days. According to Article 189 of the Civil Procedure Law, foreign citizens, and legal entities have the same rights as Mongolian citizens and legal entities unless otherwise provided by law. Also, the courts of Mongolia shall handle disputes related to the registration of patents, trademarks, and other intellectual property rights by the competent authorities of Mongolia and the acceptance of registration applications.

Part 2. Domestic Economic Issues

5.4. Business Environment of Franchising in Mongolia

The economy of Mongolia, a country of 3.5 million population located in Central Asia, is sustained by traditional animal husbandry, agriculture, and mining. The five-year average inflation rate is 8 percent, unemployment is 5 percent, and gross domestic product is 6 percent. As of 2023, trade with 162 countries and a total foreign trade turnover of 19.0, of which exports 11.1 and imports 7.9 billion US dollars.[313] International experts conclude that Mongolia's markets are highly dependent on the Chinese economy, the investment law environment and freedom of doing business are moderate, and the tax policy is relatively stable. For instance, in the World Bank's 2023 study, Mongolia's macroeconomics would expand by an average of more than 6.2 percent in the coming years, which can be influenced by measures strengthening investment in the market.[314] As the country continues to experience significant economic growth and diversification. While the economy grows, the number of trade and service outlets with brand names continues to rise. As the economy diversifies and incomes rise, Mongolian consumers are increasingly seeking out branded products and services, which they associate with quality, consistency, and prestige. The growth of branded outlets is also fueled by foreign direct investment (FDI), particularly in sectors like retail, hospitality, and food services. International brands are entering the Mongolian market, attracted by the growing consumer base and

[313] Mongolian Foreign trade-statistic, "See", in https://www2.1212.mn/tables.aspx?TBL_ID=DT_NSO_1400_001V1
[314] Asian Development Outlook, "See", in https://www.adb.org/publications/asian-development-outlook-december-2023

economic potential. The rise of branded outlets raises competition in the trade and service sectors, pushing businesses to innovate and improve the quality of their offerings.

According to Moody's report of 2022, Mongolian credit rating has been evaluated as 'B3', whereas Standard and Poor's has given a mark of 'B' lastly. As mentioned in the World Bank's report, the state business environment is ranked 81st among 190 countries, while by Index of Economic Freedom, has scored 62 points. Since domestic production has already lagged behind global market patterns, introducing a franchise can be the uncomplicated and most efficient arrangement. Consequently, value-added goods or jobs are created, and production costs and prices are supposed to decrease.[315]

The main participants in the franchise industry are Small and Medium Enterprises (SMEs) that are portable in terms of workforce and production, have flexible manufacturing technology and are competitive in the market. The largest number of people work in the SME industries and services sector and significantly contribute to the economy. SMEs play a special role in countries' markets, especially in increasing the flow of investment and workforce. By the World Bank research, SMEs alone account for 40 percent of employment in developing countries and up to 60 percent of gross domestic product. The law on the support of SMEs, a company belonging to this category has up to 200 employees and an annual sales income of up to 2.5 billion MNT (approx. 0.7 million USD). On average, over the last 3 years, 43 percent of Mongolia's gross domestic product was accounted for by manufacturing and 41 percent by the service sector. The export of goods by SMEs and service providers accounted for 3 percent of the total export trade, and the added value of service SMEs accounted for 8.7 percent of the total tertiary sector.[316]

There exists a tendency for the franchise system would be widely used in the hospitality industry and retail sectors. For instance, as of 2020, 94,675 business entities are operating in the country, it's 68 percent of which are SMEs, and service providers. From 2000 up to 2020, gross sales and output of the retail market have grown 70 times.[317] Factors affecting the internal environment of SMEs include workforce skills, labor supply, organizational competitiveness, product sales, construction availability, equipment quality, raw material distribution, human resource policies, and new product

[315] Mongolia's Economy Continues to Pick Up, But Growth Remains Uneven, World Bank report, "See", in https://www.worldbank.org/en/news/press-release/2023/11/28/mongolia-s-economy-continues-to-pick-up-but-growth-remains-uneven

[316] Mongolian Statistical Information Service, 2021. "See", in https://www2.1212.mn/BookLibraryDownload.ashx?url=Small_and_Medium_enterprises_-_2021.pdf&ln=Mn

[317] "See", in https://www2.1212.mn/Stat.aspx?LIST_ID=976_976_L57&type=sectorbook

introduction indicators.[318] Currently, there are 3 industrial (Coca-Cola e.g.), and 38 business format franchises (KFC e.g.) active domestically.[319] For instance, the joining of the real estate brand franchise, which provides property brokerage services worldwide, has opened the opportunity to participate in respected brokerage in 118 countries, in addition to the benchmark prices and standards of the domestic housing market. As of 2023, 'ReMax Mongolia' has more than 1,200 agents and 170,000 property listings. Furthermore, the franchise program for training centers and schools is widening in the context of the franchise program. In 2019 with the opening of the local franchise of the international Wall Street English Institute, and with support from the European Union, the EBRD's Advice for Small Businesses program has helped WSE Mongolia to grow its brand name. Hence, for the franchising industry in Mongolia, it is important to be able to implement flexible policies in the near term, such as correct economic and legal regulations, quick adaptation, and open access to foreign investors, to develop and pick up international standards.

When organizing a franchise system, the issues of setting competitive prices in the market and regular business development are raised. The principle of some franchises requires that not only their products and services but also prices are fixed. Domestic franchisees are required to purchase raw materials and products from suppliers identified by the franchisor, which limits their access to the free market and leads to higher prices for raw materials and products. It can be called "Franchisor Colony". However, some of the strict requirements cannot be followed for franchises in Mongolia, and depending on the purchasing volume of people, inflation, and market capacity, it is more limited. Currently, the challenges faced by Mongolian enterprises include a lack of investment, underdeveloped human resources, and marketing policies. Franchisees are also forced to pay for centralized marketing and advertising costs, which continue to increase the running costs of their business. Even so, from an investor's point of view, Franchising can be said to be a business opportunity with average returns and continuous profitability as it reduces the risk. With the development of franchising, the competition in the Mongolian retail industry tends to intensify, the quality of service is bound to improve, and eventually, the end users will be more profitable. The development of the free market will enter the next stage as the conditions for the domestic private sector to fully utilize all the opportunities of franchising business are created.

[318] Central Bank of Mongolia, Sample Survey of Small and Medium Enterprises, 2018, 32. in https://www.mongolbank.mn/file/files/documents/SME_2018_report_last.pdf

[319] Bat-Erdene, Odontsetseg (eds.), 2020, Characteristics of successful franchising: A Study of franchise businesses operating, "See", in http://repository.ufe.edu.mn:8080/xmlui/handle/8524/1933

Moreover, in Mongolia, the necessary funds to operate a franchise business consist of capital ventures and bank loans rather than the assets of the franchisees. However, the banking sector occupies 95 percent of the financial market and, it does a kind of hindrance for the industrial sector concerning franchise entitles to start and lengthen with outsourcing. By the reason of the average interest rate for business loans offered by commercial banks to enterprises is 22 percent per year. It is more than 16 percent of than Asian average and has difficulty attracting investment resources to expand business activities and obtain working capital resources needed for daily operations in the form of loans from banks and financial institutions.[320] Therefore, businesses have trouble getting loans due to the lack of collateral or insufficient valuation.

Part 3. Development Approaches of Franchise Law

5.5. Improvement of the Regulatory Framework by Contemporary Standards

As a result of pivot changes through the period in the legal relationship between citizen-state-citizen and private sectors, the position of commercial law has expanded considerably. In this process, there has been a tendency to regulate business models such as franchises across a combination of contractual and commercial law. According to the experiences of the countries taken example, the general requirements and principles of the franchise contract are left to the regulation of the Civil Code, while collective issues concerning commerce and competition rules are regulated by other private separate statutes. For Mongolia, it is scrutinized optimal to have a separate or mixed law along with updating the legal regulation of franchise agreements stipulated in the Civil Code. As a consequence, the detailed statutes on transparency and other linked issues of the pre-contractual parties, are important to ruling the relationship associated with the compliance of the business format and procedure. To improve the legal environment as much as possible without duplication, the method of consolidation or diversification of legislation can be used.

Consolidation of legislation is a unique form of creating a new law by combining several laws of the same type into one law without changing the content of the legal regulation or making any additions to the existing legislation. In the process of preparing a consolidated law with franchise relevance, all previous laws are placed in a logical sequence and the general structure of the future law is developed. It will be included in the unified composition and uniform terminology. The goal of

[320] ADB, *Financing SMEs in Asia and the pacific credit guarantee schemes*, 2022. "See", in https://www.adb.org/sites/default/files/publication/774531/financing-smes-credit-guarantee-schemes.pdf

unification of constant laws is important to make the legal regulations more compact and to eliminate pressures, contradictions, excesses (slogans), and inconsistencies between the observed norms.

On the other hand, diversification is one of the scenarios of legalization for separate or independent franchise acts. It provides the opportunity to establish new norms that meet the demands of society, eliminate legal regulations, and replace outdated ones with new legal provisions. In the framework of "legal futurism, legal futurology", the evolving franchise contract and legal relationship of business creates the need for speculation in addition to methodology and application level. Therefore, it is emphasized that the time has come to focus on legal studies in this field. For instance, The Hague Institute on the Globalization of Private Law has launched an interdisciplinary study to identify future trends. By analyzing the issues of population growth, scarcity of food and natural resources, security threats, economic globalization, global energy distribution, and the growth of access to information, it is possible to formulate changes in the legal regulation of franchises.

i. Confronted Challenges

Mongolia's private law was formed under the influence of the former Soviet Union during the socialist integration. In particular, some norms regulating international private legal relations have been reflected in the specialized civil laws in force since the beginning of the 20th century. Even though branch laws were renovated after economic reform in 1990, still the Civil Code of Mongolia does not include adequate principles of international private law. Therefore, it is important to improve the legal regulation of transnational business forms, franchising, and contract relations, which is expanding increasingly, to settle disputes, and to adopt the practice of proper application of the legal regime. When the state arranges private law issues, it regulates relations based on the principles of horizontal interaction between the parties, rather than public policy. Hence, it is necessary to pay attention to the concept and direction of the legislature in this regard every time it makes a private law. Especially, in the context of the dispute arising from the franchising relationship, the court judgment has to apply the appropriate article and correctly interpret it, however, it is not enough in judicial practice. For instance, through this study, I found out narrowly two franchise litigation cases had been settled from 2013 to 2023 countrywide. It includes,

"Case content is the franchise fee was not paid on time. The defendant is a franchisee of the store; the plaintiff is the franchisor of a chain store. The parties agreed in writing, and a court decided to

compensate the damage because it confirmed the franchisee had underpaid the payment for 3 years.[321] The next case is related to the breach of contract payments mutually agreed conditions by the parties to the franchise agreement, and the breaching party to pay the contract fees and fines to the plaintiff. In the explanation provided by the plaintiff, the contracting party did not fulfill the duties of following the technology card, signing a confidentiality agreement with the employees, organizing training for each new employee, pay fixed monthly payments. So, the franchisor demanded compensation according to the contract. The court ordered that guaranteed not to operate trademarked products and services in the territory of Mongolia without official rights and agreements."[322] The statistics discussed in the first part of this chapter show that the number of civil lawsuits that go to court has been steadily increasing, but it is puzzling that franchise disputes have not.

The positive status of law refers to existing laws. Whereas, when the law is amended, changed, or repealed, legal dynamics are considered to have occurred. Since Mongolia's private law branch is in the first stage of development, the process of integrating or improving the regulatory fragmentation continues slowly. If take a quote, the evaluation of the implementation of the Legal Reform Program approved by the parliament in 1998 was carried out in 2016, respectively. As a result, the Program generally achieved its initial goals, not only to update the private laws but also to ensure the implementation of the law, the system, and procedures for applying the law. Nevertheless, judging from the point of view of some of the goals have not been sufficiently implemented. For instance, the new Civil Code adopted in 2002 aimed to regulate associations between legal entities related to material and non-material wealth, but it is still not good enough for business activities. In particular, there is a need to enrich and clarify the norms that comprehensively coordinate business relations between traders, i.e., B2B and B2C communication. Because the laws on competition and protection of consumer rights have not been brought into line with the basic regulations and concepts of the contract law. The Civil Code mainly regulates B2C, C2B, or C2C relationships between entrepreneurs and consumers. However, the principles of protecting B2B business goals between for-profit entrepreneurs, freedom of contract parties, easy, quick, and cost-effective negotiation, trust protection, and accountability are not sufficiently implemented.

[321] Judgement of Bayanzurkh District Civil Court, № 20, MGL, (2020)
[322] Resolution of the Appeal Court for Civil Case, №210/MA2023/01243, MGL, (2023)

ii. Civil code provisions that need to be updated

On the surface, a franchise contract is a legal agreement that sets out the terms and conditions or responsibilities of the IP lessor or lessee. The Civil Code of Mongolia covers the requirements of the contract between the franchisor or franchisee, which is a general condition mainly followed by the agreement. For instance, the rights and duties of the parties to the contract stipulated in Article 334 of the Civil Code include "protecting the cooperation program from third-party involvement, providing information to the beneficiary, maintaining the confidentiality of information, providing technical assistance, training the workforce, and efficiently using the intellectual property leased by license, fees shall be amended that the mutual rights and obligations to pay the income share on time". The franchisor may supervise the operation of the business, provide advice, demand payment within a specified period, change the terms of the agreement, or terminate the contract, while the franchisee may require the handover of commercial and technical documents. Article 338 of the Civil Code legalizes the requirements of merchandising contracts. In other words, the right to use a person's name, likeness, voice, literature, artwork, image, or image of a person in products or services is granted by the owner or owner to the manufacturer or distributor. The manufacturer or distributor is responsible for paying the owner or owner from the sales revenue.

However, the Civil Code does not have a concept of buying a whole franchise which is necessary in modern franchising. In particular, the franchisee may assume the obligation to purchase a certain amount of goods /works/ services from the franchisor, in which case the parties must mutually agree along with contract law. Franchise fees, confidentiality of contracts, financial statements, amendments to contracts due to unforeseen circumstances, cancellation of certain clauses, protection of consumer rights or data, and the need for special regulations on labor disputes are also key issues. For instance, franchise regulations may prohibit the immediate rescission of an illegal or fraudulent agreement, unilateral modification of the terms of the agreement, improper or asymmetric dominance of any party, or imbalance of profits between the parties. This means it is necessary to focus on improving the role of the transferor and recipient of the transaction, the main documents of the franchise system, especially the contract, and the responsibilities of the parties.

Assuming there is no need for a specific law on the disclosure of information before the conclusion of the franchise agreement, it is necessary to amend the current Civil Code to regulate the omitted relationship to fill the above gap. Those considerations are important for the stability of cooperation between the parties, the trust of partners, efficient sales planning, pricing policy, use of competitive

advantages, and ensuring the reliability of supply. Besides, detailed regulation is urgent on whether the terms of use of the trademark such as equipment standard, and the mode of use can be constructed as a separate agreement, and it is unclear whether the parties would mutually agree on the terms. Hence, the missing of the following basic requirements on regulating franchises in the contract law leads to biased rights and obligations arising between the parties. In particular,

- how to deal with royalties and initial fees for the use of trademarks;
- plural patterns of franchising and the transfer of the right to use secrets and technology;
- mandatory prior notice of termination or non-renewal of the franchise agreement;
- the scope and capacity of the license, granting or reserving territorial rights;
- franchisor's assistance program, advertising, and training;
- limitations on the modification or test of the franchise;
- disposal of immovable property, liquidation of legal entities, ownership, possession, and use.

The main legal document of the franchise relationship is the Franchise Offering Circular. The purpose of the system notice is to provide franchisees with information about the transferor and the introduction of the entire business. Currently, there is no regulation related to the franchise system notice in Mongolia. Therefore, necessary provisions such as license and insurance policies, investments, acquisitions, and contract mergers should be amended as mandatory disclosure information requirements for franchise contracts in the Civil Code. The terms of the franchise agreement are extensive, but there are existence where the legal regulation is limited in Mongolia. For instance, before entering into the contract, the franchisor needs to disclose all relevant information and prohibit deception, and misrepresentation. It should also state how the licensee will not open confidential information or business secrets collected during the franchise agreement. The requirement of contract transparency means setting up separate or specific franchise legislation, while another goal is to develop franchise rules from a commercial legal perspective. If a special law on franchises is adopted in Mongolia, it will contain commercial law typology and will coordinate franchise relations regulated by current civil law in more detail.

iii. Alternative Dispute Resolution Forum

Currently, one of the important issues in the field of international private law is the issue of parallel proceedings and their negative consequences. It is based on the idea that two courts cannot decide the same case at the same time, and therefore one of them should refuse. The appropriate theoretical grounds for refusing overlapped proceedings are expressed by the concepts of *"forum non*

conveniens" and *"lis alibi pendens". Forum non conveniens* means an inappropriate forum and is commonly used in common law countries. The main content is not to solve the same case in two courts at the same time but to determine the appropriate court. However, *Lis alibi pendens* is a regulation widely used in countries with a continental legal system. If a case is filed in two different courts at the same time, the court that filed the case first has jurisdiction. It is an arrangement based on the idea that the courts of a country have exclusive jurisdiction, and if there is exclusive jurisdiction, that court will review it. In addition to the fact that the parallel process takes place, the parties to the dispute will spend a lot of time and money, if two courts, or the court and the arbitrator decide with different content.

According to the Civil Procedure Law of Mongolia, if provided by law, an international treaty to which Mongolia is a party, or the litigants have agreed, the disputes between persons, and legal entities shall be resolved by arbitration. If the parties have not provided in their agreement to resolve disputes by arbitration, or have not agreed on arbitration, or if the inter-governmental agreements do not provide to resolve disputes by arbitration, the claim shall be adjudicated by the court. Unless otherwise provided by law or a contract, a dispute shall be lodged with the court of the area where the defendant resides.[323] Consequently, it seems highly recommendable to better clarify how arbitral tribunals and national courts are meant to share their authority in this regard. An important element that the franchise parties should consider in drafting their arbitration is the issue of confidentiality. Article 32 of the Mongolian law on arbitration does specify that the arbitral tribunal and parties have to maintain a certain degree of confidentiality. However, not many national laws or arbitration rules impose obligations of complete confidentiality and should therefore address this issue in their arbitration clause. Looking at the cases settled by international arbitration in Mongolia for an average of the past 5 years by economic category, 33 percent are construction, 24 percent are financial operations, 17 percent are information communication, rest of the percentages are involving insurance, transportation, food, agriculture, and mining. However, there is no Franchise Dispute Arbitration Class for these types of disputes.[324]

[323] Civil Procedure Law of Mongolia, 2002, 13.2.
[324] AmCham Mongolia Policy Circular Series on Improving the Business Environment, Hogan Lovells, 2023, 1-18.

5.6. Chapter Summary

The legal and business environment for franchising in Mongolia is still in its underdeveloped, with significant challenges but also considerable opportunities. Addressing the gaps in the legal framework, improving access to financing, and adapting to local market conditions are critical steps toward encouraging a vigorous franchise sector in Mongolia. The country lacks specific franchise regulations, which can create uncertainties for both franchisors and franchisees. The legal framework mainly revolves around general contract law, competition, and intellectual property rules. For instance, competition law, primarily governed by the field statute, aims to prevent monopolistic practices and promote fair game.

The Civil Code of Mongolia outlines the basic rules for contract formation, performance, and enforcement. However, the absence of a dedicated franchise law means that the unique aspects of franchising, such as the protection of franchisees and the duties of franchisors, are not specifically addressed. Therefore, establishing a legal framework specifically for franchising would provide clarity and protection for both franchisors and franchisees in the long run including mandatory disclosure requirements, guidelines for contract terms, and dispute resolution mechanisms. Moreover, Mongolia’s economy is heavily dependent on the mining and traditional agricultural sectors, leading to volatility based on global commodity prices. Such economic instability can affect consumer spending and the overall business environment, making it challenging for franchise to thrive. Besides, the financial sector is underdeveloped, with limited availability of loans or credit facilities tailored to franchises. High interest rates and stringent lending requirements further complicate the ability of entrepreneurs to secure the necessary capital to invest in a franchise. Despite these challenges, the country presents occasions for businesses, particularly in sectors like hospitality and services.

THESIS SUMMARY

The legal framework of international franchises presumes a blend of branch laws, local legal requirements, and contractual obligations that are built on several components. Franchising internationally will usually require more strategy and a "think outside the box" approach than franchising domestically. While these advantages are large in scope, it's imperative to discuss the challenges that could arise.[325]

In chapter 2 of my thesis, I researched the historical background and concept of franchising to suggest harmonizing and improving legal practices by drawing lessons from various traditions. The study strongly focused on German and English law traditions regarding contract and comparative commercial legal studies. Combining law and economic analysis to study franchise regulatory arrangements and market contrasts across different social systems helped to reveal a comprehensive approach to understanding the broader impact of franchising on commerce and industries.[326]

The influence of international legal regulations and the experiences of Europe, the United States, and England on the evaluation of franchise law is significant. These regions have played a major role in shaping the modern understanding and codification of franchise agreements, providing both achievements and shortcomings that inform current practices and future developments. For instance, England has developed a legal framework that is both business-friendly and protective of franchise relationships. Sometimes, the absence of heavy statutory regulation allows for flexibility in franchise agreements, which can be beneficial for both parties. English contract law, with its emphasis on freedom of contract, has influenced franchise practices worldwide. Whereas, European countries, particularly through the European Union, have made noteworthy strides in standardizing franchise laws across member states. The EU's approach often emphasizes consumer protection and fair competition, which has led to a more balanced regulatory environment. While the U.S. has been a pioneer in franchise law, with the Federal Trade Commission Franchise Rule setting a standard for disclosure requirements that many other countries have adopted. The U.S. legal system has also developed a powerful body of case law that provides clarity on issues such as territorial rights, termination, and the enforceability of non-compete clauses.[327]

[325] Moritz, (2014) 235.
[326] Killion (1984) 5-26.
[327] Shelley, Morton, (2000) 119-127.

The evolution of franchising has been significantly influenced by various international and regional legal frameworks, agreements, and guidelines, including those developed by the United Nations, the European Union, and other global entities. The UNCITRAL Model Law has furnished a framework for the arbitration of commercial disputes, including those arising from franchise agreements. Its adoption by many countries has facilitated the resolution of cross-border franchise disputes through arbitration, offering a neutral, predictable, and enforceable mechanism. The TRIPS Agreement, administered by the World Trade Organization, sets minimum standards for the protection and enforcement of intellectual property rights, including trademarks and trade secrets, which are connected to franchising.[328] The EU's Vertical Block Exemption Regulation allows certain vertical agreements, including franchise agreements, to be exempt from competition law prohibitions, provided they meet specific criteria. It also enables franchisors and franchisees within the EU to structure their agreements with greater flexibility, knowing that these agreements are generally exempt from antitrust scrutiny as long as they adhere to the rules. [329]

A Master Franchise Agreement allows a franchisee to operate franchises in a specific territory and to sub-franchise to others. The model is commonly used for international expansion. The Master Franchise Agreement is critical in global franchising, as it enables rapid market penetration and local adaptation by delegating operational control to a master franchisee who understands the local market.[330] However, it also introduces complexities in contract enforcement and brand consistency, which need to be carefully managed. Also, Various national and international franchise associations, such as the International Franchise Association, have developed Codes of Ethics that set standards for fair and ethical conduct in franchising. Such codes often address issues like transparency, fairness, and dispute resolution. Adherence to these ethical codes helps maintain trust between franchisors and franchisees and promotes a positive public image of the franchising sector. Ethical guidelines ensure that franchising practices are conducted in a manner that respects the rights and interests of all parties involved, contributing to long-term success and stability.[331]

The chapter identifies a clear evolution in the concept and practice of franchising, tracing its origins from a concession for performing public functions to its current status as a complex multinational

[328] Model Franchise Disclosure Law (2002)
[329] Mark Abell (2019) 34-133.
[330] Guide to International Master Franchise Arrangements (2007)
[331] The Code of Ethics for Franchising (2023)

commercial model and a distinct object of contract law. The concept of franchising originally emerged in the form of concessions granted by sovereigns or governments to individuals or entities to perform public functions. As economies progressed, the concept of franchising shifted from public functions to the commercial sector. The transition marked the beginning of franchising as an intellectual property lease, where franchisors granted franchisees the rights to use trademarks, business models, and proprietary processes. Franchising has now become a sophisticated object of contract law, encompassing a range of legal issues, including intellectual property rights, competition law, contract enforcement, and dispute resolution. Modern franchise agreements are comprehensive documents that carefully delineate the rights and obligations of franchisors and franchisees, reflecting the complexity of operating across different legal systems and markets.

The application of basic economic theories, such as game theory, system dynamics modeling, and contract asymmetry principles, has significantly influenced the development of modern franchise platforms. These theories help explain and predict the behavior of franchisors and franchisees, contributing to more balanced and effective franchise models.[332] Game theory, which studies strategic interactions between rational decision-makers, has been instrumental in understanding the dynamics between franchisors and franchisees. It gives insights into how both parties can optimize their strategies to achieve mutually beneficial outcomes. Economic analysis of contract asymmetry helps identify potential risks and imbalances that could lead to disputes or exploitation. For example, franchisors typically possess more information and control over the brand, which can create an asymmetrical relationship with franchisees.[333] By recognizing biases, franchisors can design contracts that are more transparent and equitable, promoting trust and reducing the potential for conflict.

Chapter 3 indicated the exploration of how common law and civil law jurisdictions approach franchising differently highlighting the distinct legal traditions and methodologies that influence the regulation and interpretation of franchise agreements. The regulatory landscape for franchising shows specific differences between Western and Eastern countries, reflecting the varying stages of market development and legal traditions in these regions. Western countries, particularly in North America and Europe, have well-established disclosure requirements designed to protect franchisees by ensuring they receive all necessary information before entering into a franchise agreement. Eastern countries

[332] Dau-Schmidt and others, (1997) 613-630.
[333] Demuynck (2019) 147-154.

are gradually adopting similar requirements, but the level of detail and enforcement can vary. For instance, China has established franchise regulations, including the Commercial Franchise Administration Regulation, which requires franchisors to meet specific criteria, such as having at least two company-owned outlets operating for more than one year before franchising. Whereas, the EU's influence on franchise regulation through competition law, unfair commercial practices, and consumer protection directives ensures a framework that enhances fairness, transparency, and competition in the franchise sector. Franchisors and franchisees operating in the EU must navigate the regulatory environment to ensure compliance and protect their interests, while also adapting to the specific requirements of different member states.[334]

Furthermore, as global concerns about sustainability and ethics continue to grow, franchising is likely to see a transfer towards integrating environmental standards, fair labor practices, and corporate social responsibility into its legal and operational frameworks. Such evolution reflects a broader trend towards holistic business practices that balance commercial interests with societal impacts, driving positive change across the franchise sector and beyond. legal frameworks may evolve to integrate standards related to sustainability, labor practices, and corporate social responsibility into franchise agreements and operational guidelines. Such a process could demand new regulations or amendments to existing laws to encompass these broader concerns.

Chapter 4 has examined franchise dispute resolution scenarios based on comparative research findings. Indeed, the inquisitorial and adversarial systems present distinct approaches to litigation, and understanding these can offer insight into how franchise disputes might be handled differently depending on the jurisdiction. The inquisitorial system is commonly found in civil law. In this system, the court plays an active role in investigating the case. Judges are involved in gathering evidence, questioning witnesses, and determining the facts of the case. The process is more focused on uncovering the truth and less on the parties' presentations.[335] It could assume an in-depth examination of contract terms, compliance with franchise laws, and the conduct of both parties. The adversarial system is prevalent in common law countries. In this system, the parties to the dispute are responsible for presenting their cases, including evidence and arguments. Franchise disputes in such systems may connect rigorous legal arguments and strategic presentation of evidence by the parties. However, in

[334] Tournois & Forterre (2020) 3-10.
[335] Beyer & Weber, (2003) 221-223.

recent times, some jurisdictions and international arbitration forums have used hybrid approaches, combining elements from both systems to suit the specific needs of the dispute. For instance, a tribunal might adopt inquisitorial methods in investigating facts while allowing parties to present their arguments and evidence.

Many countries are increasingly favoring alternative dispute resolution methods like mediation and arbitration for resolving franchise and commercial disputes. Such an approach is inspired by the desire to reduce court caseloads, expedite resolution processes, and offer more flexible and cost-effective solutions for the parties involved. For instance, in the United States, alternative dispute resolution is widely utilized, with many states having mandatory mediation or arbitration requirements before proceeding to trial in certain types of disputes. The Federal Arbitration Act supports the enforcement of arbitration agreements. The EU promotes arbitration through various directives, such as the Alternative Dispute Resolution Directive which aims to enhance access to justice and resolve disputes efficiently. Arbitration is gaining traction in countries like Singapore and Hong Kong, which have established themselves as major hubs for international arbitration. The above countries have strong legal frameworks supporting alternative dispute resolution and have seen a notable increase in its use.[336]

Chapter 5 directly reviewed a short history of the codification of Mongolian private law, and current franchise legal arrangements such as intellectual property, and consumer protection. Evaluating Mongolian franchise laws in comparison to Western laws involved examining several key areas where these legal frameworks differ or align. The legal framework for franchising in Mongolia is relatively nascent compared to the USA and European countries. Key regulations include the Civil Code, Law on Competition, and other commercial regulations, which are not as detailed or comprehensive in addressing franchise-specific issues. Particularly, franchise disclosure requirements are less detailed. According to the Civil Code, there are fewer mandated disclosures about the franchisor's financial status, business experience, and legal history compared to Western standards.[337] Improving Mongolian contract law related to franchising involves enhancing disclosure requirements, standardizing franchise agreements, strengthening franchisee protections, integrating effective dispute resolution mechanisms, and developing a dedicated regulatory framework. By addressing these areas,

[336] Andrews (2013) 89-94.
[337] Civil Code, MGL, 2002, Article 27, 335.

Mongolia can create a more favorable environment for franchising, support market growth, and protect the interests of both franchisors and franchisees. If Mongolia has a well-structured franchise law can encourage market growth and attract both domestic and international franchisors by providing a stable and predictable legal environment. For instance, implementing a separate, dedicated franchise law in Mongolia would address current gaps in franchise regulation, enhance protections for franchisees, standardize agreements, and establish effective dispute-resolution mechanisms.

Judging from the best practices discussed in the comparative study, it is recommended to create a franchise law that incorporates best practices from the EU while addressing Mongolia's unique requirements.[338] By intensifying regulatory oversight, implementing effective dispute resolution mechanisms, and promoting commercial-oriented franchises, the country can create a franchise law that supports a fair and dynamic market. Reshaping Mongolia's intellectual property and competition policies inspired by Western countries would require adopting comprehensive laws, improving enforcement mechanisms, and aligning competition policies with international best practices.

[338] Franchise Rule (2007) USA. 436 and 437.

REFERENCES

1. Bibliography

1.1. Books and book chapters

1. Abdul Kadar, Ken Hoyle & Geoffrey Whitehead, Business and commercial law, Butterworth-Heinemann, 1996.
2. Alexandra Lajoux, Charles M. Elson, The art of M&A Due Diligence, McGraw Hill, 1976.
3. Allan Durant and Janny Leung, Language, and Law, Chapter A2 Historical Development of Legal English, Routledge London and New York, 2016.
4. Andrew Burrows, English Private Law, Oxford University Press, 2007.
5. Andrews, N., Arbitration & Mediation, Intersentia, 2013.
6. Annette Kur, Thomas Dreier and Stefan Luginbuehl, European Intellectual Property Law, Edward Elgar Publishing, 2013.
7. Anselm Sanders, Unfair Competition Law: The Protection of Intellectual and Industrial Creativity, Clarendon Press, 1997.
8. Arthur Hartkamp and Martijn Hesselink (eds), Towards a European Civil Code, Wolters Kluwer Law & Business, 2011.
9. Bruce D. Fisher, Michael J. Philips, The Legal Environment of Business, West Pub. Co, 1986.
10. Catherine Elliott, Frances Quinn, Contract Law, Pearson Longman, 2009.
11. Christopher Stothers, Parallel Trade in Europe: Intellectual Property, Competition, and Regulatory Law, Hart Publishing, 2007.
12. Derek French, Stephen Mayson, and Christopher Ryan, Company Law, Oxford University Press, 2012.
13. Donald Harris and Denis Tallon (eds), Contract law today: Anglo-French comparison, Oxford: Clarendon Press, 1989.
14. Donella Meadows & others, The limits to growth, Universe books, 1972.
15. Ewan Mckendrick, Contract law, Palgrave Macmillan, 2009.
16. Gary A. Moore, Arthur M. Magaldi, The Legal Environment of Business, South-Western Publishing, 1987.
17. Gerhard Wirth and Michael Arnold, Corporate Law in Germany, München: Beck, 2004.
18. Guy Tritton and Richard Davis, Intellectual Property in Europe, Sweet & Maxwell, 2008.
19. Irene Calboli, Maria Lillà Montagnani (eds.), Handbook of Intellectual Property Research: Chapter 3, Comparative Legal Analysis and Intellectual Property Law, 2021.
20. J William Rowley QC (eds), Arbitration world. Jurisdictional comparison, Reference Press, 2004.
21. Jan Johanson and Lars-Gunnar Mattsson, Internationalization in Industrial Systems, Strategies in Global Competition. New York: Croom Helm, 1988.
22. Jay Forester, Industrial dynamics, M.I.T Press, 1961.
23. Joachim Rosengarten, Frank Burmeister, and Martin Klein, The German Limited Liability Company, München: Beck, 2015.
24. John W. Creswell, Research design, Sage Publications, 2009.
25. Lavinia Brancusi, EU trademark law and product protection, Routledge, 2024.
26. Leo Oppenheim, Ancient Mesopotamia, The University of Chicago Press, 1964.
27. Lindia-Marie Moritz, Single Unit Franchising versus Multi Unit Franchising, AV Akademikerverlag, 2014

28. Lucy Jones, Introduction to Business Law, Oxford University Press, 2019.
29. Maher Dabbah, International and Comparative Competition Law, Cambridge University Press, 2010.
30. Marcus Smith and Nico Leslie, The Law of Assignment, Oxford University Press, 2013.
31. Mark Abell, The Regulation of Franchising Around the World, The Law Reviews Press, 2019.
32. Martijn W. Hesselink, The New European Legal Culture, Kluwer Law International, 2002.
33. Neil Andrews, On Civil Processes: Court Proceedings & Principles, Intersentia, 2013.
34. Nicola De Luca, European Company Law, Cambridge University Press, 2021.
35. Philip Zeidman, The UNIDROIT Guide to International Master Franchise Arrangements: An Introduction and a Perspective, 1998.
36. Raphaël Mellerio, Franchise Law Review, The Law Reviews, 2021.
37. Reiner Schulze and Fryderyk Zoll, The Law of Obligations in Europe, Sellier European Law Publishers, 2013.
38. Reinhard Zimmermann and Simon Whittaker (eds), Good faith in European contract law: Surveying the legal landscape, Cambridge University Press, 2000.
39. Richard Whish and David Bailey, Competition Law, Oxford University Press, 2021.
40. Schulze and Zoll, The Law of Obligations in Europe, Cambridge University Press, 2013.
41. Stavros Brekoulakis, Julian Lew, & Loukas Mistelis, The evolution and future of international arbitration, Kluwer Law, 2016.
42. Stephen Weatherill and Ulf Bernitz (eds), The Regulation of Unfair Commercial Practices under EC Directive 2005/29: New Rules and New Techniques, Hart Publishing, 2007.
43. Steven Anderman, The Interface Between Intellectual Property Rights and Competition Policy, Cambridge: Cambridge University Press, 2007.
44. Susan Ellis Wild, Law Dictionary, Merriam-Webster, 2006.
45. Trent J. MacDonald, The Political Economy of Non-Territorial Exit, Elgar Publishing, 2019.
46. V.C. Covindaraj, Private International Law, Oxford University Press, 2018.
47. William Killion, The history of franchising, ABA, 1984.
48. William Mack, Proxeny and Polis: Institutional Networks in the Ancient Greek World, Oxford, 2015.
49. Yuqin Sun, Xu Chang, A General History of China's Foreign Trade, World Scientific Publishing, 2024.
50. Zimmermann, and Whittaker, Good Faith in European Contract Law, Cambridge University Press, 2000.

1.2. Journal Articles

1. Alan Adcock, & others, An Overview of Franchising Law in Southeast Asia, Franchise Law Journal, 2021, (41).
2. Alan Watson, The Evolution of Law: The Roman System of Contracts, Law and History Review, 1984, (2).
3. Aldo Frignani and John Pratt, Termination and Non-renewal of Franchise Agreements in the European Union, Franchise Law Journal, 2017, (37).
4. Amit Zac, Competition Law and Economic Inequality: A Comparative Analysis of the US Model of Law, Journal of International Economic Law, 2022, (25).
5. Andranik Akopov, Designing of integrated system-dynamics models for an oil company, Computer Applications in Technology, 2012, (45).

6. Andrew Terry and Joseph Huan, Franchisor liability for franchisee conduct, Monash University Law Review, 2013, (39).
7. Antony W. Dnes, A Case-Study Analysis of Franchise Contracts, The University of Chicago Press Journals, 1993, (22).
8. Astrada, S., Exporting the Rule of Law to Mongolia: Post-Socialist Legal and Judicial Reforms. Denver Journal of International Law and Policy, 2010, (38).
9. Ayşe Güvercin Şahan, ICC Model International Franchising Contract as a Source of Lex Mercatoria, Public and Private International Law Bulletin, 2020, (40).
10. Birger Wernerfelt, A Resource-Based View of the Firm, Strategic Management Journal, 1984, (5).
A. M., Jr, The Doctrine of Forum Non-Conveniens, Virginia Law Review, 1948, (34).
11. Catherine Valcke, Comparative History and the Internal View of French, German, and English Private Law, Canadian Journal of Law & Jurisprudence, 2006, (19).
12. Charles D. Sheldon, Merchants, and Society in Tokugawa Japan, Modern Asian Studies, 1983, (17).
13. Christine Oliver, Strategic Responses to Institutional Processes, The Academy of Management Review, 1991, (16).
14. Courtenay Atwell, Franchising in France, 2019, European Business Law Review, (30).
15. Craig Stephens, Alan Graham, & James Lyneis, System dynamics modeling in the legal arena: meeting the challenges of expert witness admissibility, System Dynamics Review, 2005, (21).
16. Dagmar Waldzus, Germany pre-contractual disclosure requirements and relevant case law, International Journal of Franchising Law, 2014, (12).
17. David A. Beyer & Scott P. Weber, Lawsuits to Get into the Franchise System, Franchise Law Journal, 2003, (23).
18. David Gurnick, The First Franchise, Franchise Law Journal, 2021, (40).
19. David Schmid, Do We Need a European Civil Code, Annual Survey of International & Comparative Law, 2012, (18).
20. Davis Gurnick, The First Franchise, Franchise Law Journal, 2021, (40).
21. Deborah S. Coldwell, Iris Gibson, William D. White, & Laura Warrick, Franchise law, SMU Law Review, 2012, (65).
22. Dianne Welsh, David Desplaces, and Amy Davis, A Comparison of Retail Franchises, Independent Businesses, and Purchased Existing Independent Business Startups, 2011, (18).
23. Dominic Hui and Danny Tsui, A Primer on Franchising in China, Franchise Law Journal, 2020, (40)
24. Douglas Melamed, Antitrust Law and Its Critics, Antitrust Law Journal, 2020, (83).
25. Dumitriţa Florea, Narcisa Galeş, Franchise Contract in International Trade Law, European Journal of Law and Public Administration, 2022, (19).
26. Evan Thomas, Recent Developments in Canadian Franchise Class Action, Franchise Law Journal, 2016, (35).
27. Francine Lafontaine, Agency Theory and Franchising: Some Empirical Results, The Rand Journal of Economics, 1992, (23).
28. Frank G Mathewson, Ralph A. Winter, The economics of franchise contracts, Journal of law and economics, 1985, (28).
29. Frank I. Schechter, Popular Law and Common Law in Medieval England, Columbia Law Review, 1928, (28)
30. Frederic S Mishkin, Lessons from the Asian crisis Journal of International Money and Finance, 1999, (18).

31. Gillian K. Hadfield, Problematic Relations: Franchising and the Law of Incomplete Contracts, Stanford Law Review, 1990, (42).
32. Giuseppe Dari-Mattiacci and Carmine Guerriero, Law and Culture: A Theory of Comparative Variation in Bona Fide Purchase Rules, Oxford Journal of Legal Studies, 2015, (35).
33. Giuseppe Dari-Mattiacci and Carmine Guerriero, Law and Culture: A Theory of Comparative Variation in Bona Fide Purchase Rules, Oxford Journal of Legal Studies, 2015, (35).
34. Gordon Blanke, Phillip Landolt, EU and US antitrust Arbitration, Kluwer Law International, 2011, (11)
35. Gramckow, A., Allen, F., Justice Sector Reform in Mongolia: Looking Back, Looking Forward. Justice and Development paper series, 2011, (16).
36. Grant Gilmore, Legal Realism: Its Cause and Cure, 1961, The Yale Law Journal, (70).
37. Guenter Treite, Some Comparative Notes on English and American Contract Law, 2002, SMU law review, (55).
38. Guvercin Sahan, ICC Model International Franchising Contract as a Source of Lex Mercatoria, Public and Private International Law Bulletin, 2020, (40).
39. Hans Julius Wolff, Commentary: Greek Legal History Its Functions and Potentialities, Washington University Law Review, 1975, (2).
40. Hans Wehberg, Pacta Sunt Servanda, The American Journal of International Law, 1959, (53).
41. Harold Brown, Case Against Contractual Arbitration Covenants, Franchise Law Journal, 1992, (11)
42. Harry W. Porter, The Lanham Act, History of Education Journal, 1951, (3).
43. Heike Gramckow and Frances Allen, Justice Sector Reform in Mongolia: Looking Back, Looking Forward, Justice and Development working paper series, 2011, (16).
44. Henry J. Steiner, The Development of Private International Law by International Organizations, Proceedings of the American Society of International Law at Its Annual Meeting, Cambridge University Press, 1965, (59).
45. Hugh E. Willis, Restatement of the Law of Contracts of the American Law Institute, Indiana Law Journal, (7).
46. Isaac A. Hourwich, The Evolution of Commercial Law, American Bar Association Journal, 1915, (1).
47. James A. Brickley, Frederick H. Dark, The choice of organizational form the case of franchising, Journal of Financial Economics, 1987, (18).
48. James A. Brickley, Sanjog Misra, and R. Lawrence Van Horn, Contract Duration: Evidence from Franchising, The Journal of Law & Economics, 2006, (49).
49. James E. Serritella, The Code of Canon Law and Civil Law, The Catholic Lawyer, 1984, (29).
50. Jan Johansen, Jahn Eric Vahlne, The internationalization process of the firm: A model of knowledge development and increasing market commitments, Journal of International Business Studies, 1977, (8).
51. Jaume Martí Miravalls, Spanish Legal System on Disclosure in Franchise Network, European Business Law Review, 2014, (25).
52. Johannes Renger, Institutional, Communal, and Individual Ownership or Possession of Arable Land in Ancient Mesopotamia, Chicago-Kent Law Review, 1995, (71).
53. Johannes Ungerer, A Bidirectional Anglo-German comparison of consideration in contract law, International & Comparative Law Quarterly, 2023, (72).
54. John Merryman, Civil Law Tradition, The American Journal of Comparative Law, 1987, (35).

55. John Meyer and Brian Rowan, Institutionalized Organizations: Formal Structure as Myth and Ceremony, American Journal of Sociology, 1977, (83).
56. John P. Tang, Technological Leadership and Late Development: Evidence from Meiji Japan, 1868–1912, Columbia Business School, 2009, Working Paper Series, (278).
57. John Pratt, Franchising in the United Kingdom, Franchise Law Journal, 2012, (32).
58. John. F. Nash, Equilibrium points in-person games, Proceedings of the National Academy of Science, 1950, (36).
59. Kenneth Dau-Schmidt, Eric Rasmusen and others, On Game Theory and the Law, Law & Society Review, 1997, (31).
60. Kenneth Khoo and Allen Sng, Singapore's Competition Regime and its Objectives, Singapore Journal of Legal Studies, 2019, (1).
61. Kevin Shelley, Susan Morton, Control in Franchising and the Common Law, Franchise Law Journal, 2000, (19).
62. Laurent Tournois, Damien Forterre, The extremes of franchising in a post-communist country, Journal of Business Strategy, 2020, (41).
63. Leyland Pit, Julie Napoli, Managing the franchised brand: The franchisees' perspective, Journal of Brand Management, 2003, (10).
64. Lisa Jones-Christensen, Helen Parsons & Jason Fairbourne, Micro-franchising as an Employment Incubator, Journal of Business Research, 2010, (63).
65. Lisa Pilar Eberle, The Edicts of the Praetors: Law, Time, and Revolution in Ancient Rome, Law and History Review, 2023, (42).
66. Macabe Keliher, Law in Mongol and Post Mongol World, China Review International, 2017, (23).
67. Martijn W. Hesselink, Progress in EU Contract Law, European Review of Contract Law, 2022, (18).
68. Maud Piers, Good Faith in English Law-Could a Rule Become a Principle, Tulane European & Civil Law Forum, 2011, (26)
69. Nicholas F.R. Crafts, The First Industrial Revolution: A Guided Tour for Growth Economists, The American Economic Review, 1996, (36).
70. Nobuo Mlyake, Franchising in Japan, Antitrust Law Journal, 1989, (58).
71. Oliver E. Williamson, The Economics of Organization: The Transaction Cost Approach, American Journal of Sociology, 1981, (87).
72. Paul H Rubin, The Theory of the Firm and the Structure of the Franchise Contract, The Journal of Law and Economics, 1978, (21).
73. Paul Jones, The Regulation of Franchising in China and the Development of a Civil Law Legal System, East Asian Law Review, 2006, (2).
74. Philip F. Zeidman, P., With the Best of Intentions: Observations on the International Regulation of Franchising, Stanford Journal of Law, Business & Finance, 2014, (19).
75. Radwa Elsaman, Disclosure and Registration Requirements in Franchising: Common Law or Civil Perspective, Tulsa Law Review, 2023, (58).
76. Radwa Elsaman, How Does Chinese Law Regulate Franchising, Ohio North University Law Review, 2023, (49)
77. Richard M. Gummere, The Classical Ancestry of the United States Constitution, American Quarterly, 1962, (14).
78. Robert Emerson, and Michala Meiselles, U.S. Franchise Regulation as a Paradigm for the European Union, Washington University Global Studies Law Review, 2021, (20).

79. Robert Emmerson, Franchising and the Collective Rights of Franchisees Vanderbilt Law Review, 1990 (43)
80. Ronald. H. Coase, The Problem of Social Cost, The Journal of Law and Economics, 1960, (3).
81. Rosa Lapiedra, Felipe Palau, and Isabel Reig, Managing asymmetry in franchise contracts: Transparency as the overriding rule, Management Decision, 2012, (50).
82. Rosa Mariz-Pérez, Teresa García-Alvarez, A Systems Dynamics Model to Analyze the Influence of Financial Resources on The Percentage of Franchised Units, International Business & Economics Research Journal, 2009, (8).
83. Rozenn Perrigot and Thierry Pénard, Determinants of E-commerce Strategy in Franchising, International Journal of Electronic Commerce, 2013, (17).
84. Scott A. Shane, Hybrid Organizational Arrangements and Their Implications for Firm Growth and Survival: A Study of New Franchisors, The Academy of Management Journal, 1996, (39).
85. Seth W. Norton, An Empirical Look at Franchising as an Organizational Form, The University of Chicago Press, 1988, (61).
86. Stephen Ross, The economic theory of agency, The American Economic Review, 1973, (63).
87. Svitlana Zadorozhna, Jus Gentium and the Primary Principles of International Law, European Journal of Law and Public Administration, (6).
88. Tamara Kerkovic, The main Directions in Comparative Franchising regulations, European Research Studies, 2010, (13).
89. Thomas Demuynck & others, Bertrand Competition with asymmetric costs: A solution in pure strategies, Theory, and Decision, 2019, (87).
90. Tibor Tajti, Franchise, and Contract Asymmetry: A Common Trans-Atlantic Agenda. Loyola of Los Angeles International and Comparative Law Review, 2015, (37).
91. Trevor Cook, Territoriality and Jurisdiction in EU IP law, Journal of Intellectual Property Rights, 2014, (14).
92. Tsahik Kolinko, Krystyna Rezvorovych & Maryna Yunina, Legal Characteristic of the Franchise Agreement in Germany, Baltic Journal of Economic Studies, 2019, (5).
93. Ulrike Malmendier, Law and the finance at the origin, Journal of Economic Literature, 2009, (47).
94. Wang, Zhiqiong, Terry Andrew, Zhu Mingxia, The development of franchising in China, Journal of Marketing Channels, 2008, (15).
95. Wayne Barnes, Hadley v. Baxendale and Other Common Law Borrowings from the Civil Law, Texas Wesleyan Law Review, 2005, (11).
96. William Bosshardt, and Jane Lopus, Business in the Middle Ages, Social Education, 2013, (77).
97. William Gillis, Gary Castrogiovanni, The Franchising Business Model: An Entrepreneurial Growth Alternative, International Entrepreneurship and Management Journal, 2010, (8).
98. William H. Page, Direct Evidence of a Sherman Act Agreement, Antitrust Law Journal, 2020, (83).
99. William J. Baumol, Williamson's The Economic Institutions of Capitalism, The Rand Journal of Economics, 1986, (7).
100. Yane Svetiev and Lei Wang, Competition Law Enforcement in China: Between Technocracy and Industrial Policy, Law and Contemporary Problems, 2016, (79).

1.3. Handbook, Brochure, Conference book

1. AmCham Mongolia Policy Circular Series on Improving the Business Environment, Hogan Lovells, 2023.

2. Aneta Wiewirówska, Franchising Study, EU, Policy Department A: Economic and Scientific Policy, 2016.
3. Anikó Grad-Gyenge: The Law of Intellectual Property in Sándor István: Business Law in Hungary. Budapest: Patrocinium Kiadó, 2016.
4. Arthur L. Pressman, Justin M. Klein, The strategy of Arbitration, ABA, 2012.
5. Barry M. Heller, Robert Zarco, The 7 most significant franchise cases of all time, ABA, 2014.
6. Chalermwut Sriporm, Franchising legal frameworks: A comparative study of the DCFR, US law and Australian law regarding franchise contracts, Universiteit Leiden, 2023.
7. Competition Policy and Vertical Restraints, OECD, 1993.
8. Franchising Economic Outlook, IFA, 2024.
9. Guide To International Master Franchise Arrangements, UNIDROIT, 2019.
10. Mark Kirsch (eds), Franchise, International Franchise Association, Lexelogy, 2022.
11. Ned Levitt, Kendal Tyre, & Penny Ward, Controlling Your International Franchising System, ABA, 2010.
12. Taxation in Italy: An Overview, Senato Della Repubblica, Servizio Biblioteca, 2021.
13. W. Michael Garner, Stephen C. Hagedorn & Leonard H. MacPhee, Mass litigation by Franchisees, IFA, 2012.

2. Legal Sources

2.1. Statute Laws

➢ International laws

1. Articles 101 of the Treaty on the Functioning of the European Union, 2003.
2. Communication from the Commission: Guidelines on vertical restraints, European Commission, 2022.
3. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.
4. Directive 2000/31/EC of the European Parliament.
5. Directive 2011/7/EU on combating late payment in commercial transactions.
6. Directive 2011/83/EU of the European Parliament.
7. EU competition law rules applicable to antitrust enforcement. Volume 1, General rules, 2013.
8. Model franchise disclosure law, UNIDROIT, 2002.
9. Model Law on International Commercial Arbitration 1985, amendments as adopted in 2006.
10. Regulation 593/2008 of the European Parliament.
11. The BFA Extension and Interpretation of the Code, British Franchise Association, 2020.
12. The Code of Ethics for Franchising, The European Franchise Federation, 2023.
13. The Code of Ethics, Baltic Franchise Association, 2010.
14. UNCITRAL Arbitration Rules, 2013.
15. United Nations Convention on Contracts for the International Sale of Goods, UN Commission on International Trade Law, 1964.
16. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958

➢ Germany

17. Arbitration Law, 1998.

18. Act on Copyright and Related Rights, 2021.
19. BGB, Buch 1 Allgemeiner Teil, Amendment 2002.
20. Gesetz gegen Wettbewerbsbeschränkungen-GWB, 1958, Amendment 2023.

- **Italy**

21. Antitrust law, Act 287/1990.
22. Franchise Law n. 129/2004.
23. Legge 6 maggio 2004.

- **Hungary**

24. Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices.
25. Act LXXXI of 1996 on Corporate Tax and Dividend Tax, Section 8. Corporate Tax Rate.
26. Act V of 2013 on the Civil Code.

- **France**

27. Civil Code. Last amended in 2016.
28. Code of Civil Procedure - Arbitration in force 1981.
29. Law no. 92-597 of 1992.

- **Spain**

30. Spanish Civil Code, 2012.

- **Czech**

31. Act No. 89/2012, the Civil Code.

- **Poland**

32. ACT of 1964, Civil Code.
33. Act on Competition and Consumer Protection of 2007.

- **USA**

34. Franchise Rule, Federal Trade Commission, 2007, USA. 16 CFR.
35. General Corporation Law, The US, 2013.
36. Tax Cuts and Jobs Act of 2017, The US, Corporate Provisions, Sec. 13001.
37. The Federal Automobile Dealer Franchise Act. Public Law 1026, U.S.C.A.
38. The Uniform Limited Liability Company Act, The US, 2006.
39. U.S Federal Trade Commission, 16 CFR.
40. Uniform Commercial Code, US, 2012.

➢ **UK**

41. Limitation Act 1980, UK.

➢ **Canada**

42. British Columbia Franchise Act, 2017.
43. Investment Canada Act, C 28. R.S.C.

➢ **Australia**

44. The Fair Work Act, N28. 2009, AUS.
45. Income Tax Assessment Act, N38. Franchise Fees Windfall Tax Act, N132.

➢ **Mongolia**

46. Civil Codes, 1929, 1994, 2002.
47. Civil Procedure Law, 2002.
48. Labor law, 2021.
49. Law on Company, 2011.
50. Law on competition, 2010.
51. Law on Consumer rights, 2003.
52. Law on Intellectual Property, 2020.
53. Law on Investment, 2013.
54. Law on Patent, 2006.
55. Law on Standardization, technical regulation and accreditation of conformity assessment, 2018.
56. Law on Trademarks and Geographical Indications, 2021.
57. The Parliament Decree N.18, Project for Legal Reform, 1998.

➢ **China**

58. Decree No. 2 of 2012. Information Disclosure Measures. Ordinance No. 485 of 2007. Commercial Franchise Administration Regulation.

2.2. Cases

➢ **EU**

1. Master Card v. Euro Commerce, General Court of the European Union, T-111/08, 2011.

➢ **Germany**

2. Judgment of the Court of 28 January 1986, 161/84, Pronuptia de Paris GmbH v Pronuptia de Paris Irmgard Schillgallis. Bundesgerichtshof - Germany. Competition - Franchise agreements.
3. BGH, Judgment of 12.02.1992 - VIII ZR 91/91.
4. Oberlandesgericht Dresden/11 Sch 08/07 2007.

5. OLG Düsseldorf GER, Urteil vom 25.10.2013- Az. 1-22 U 62/13.

➢ **USA**

6. Broussard v. Meineke Discount Muffler Shops 1998, US, No.87-1808.
7. Brunner v. Liautaud., US 14-C-5509. 2015.
8. Green Tree Financial Corp. v. Bazzle, 539 US 444. 2003.
9. Hoffman v. Red Owl Stores Inc.-26 USA. Wis. 2 d 683, 133 N.W.2d 267.1965.
10. Kendall v. Franchise Associates. Inc, United States Court of Appeals for the Ninth Circuit, 40 U.S. 518 (1980)
11. Mishawaka Rubber & Woolen Mfg. Co. v. S. S. Kresge Co., 316 U.S. 203 (1942), N649, 316 U.S. 203
12. Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911), 221 U.S. 1.

➢ **The UK**

13. Care Watch Care Services Ltd v. Focus Caring Services Ltd [2014] EWHC 2313 (Ch)
14. Central London Property v High Trees, [1947] KB 130; [1956] 1 All ER 256; 62 TLR 557; LJR 77; 175 LT 333.
15. England and Wales Court of Appeal. Robertson plc v Kangol Ltd BLD 2301040197. 2004.

➢ **Australia**

16. "FCA 808 (2004) Capital Networks Pty Ltd v. au Domain Administration Ltd."

➢ **Mongolia**

17. Judgement of Bayanzurkh District Civil Court, № 20, MGL, (2020)
18. Resolution of the Appeal Court for Civil Case, №210/MA2023/01243, MGL, (2023)

3. Internet sources

1. ADB, Financing SMEs in Asia and the pacific credit guarantee schemes, 2022. https://www.adb.org/sites/default/files/publication/774531/financing-smes-credit-guarantee-schemes.pdf
2. Arthur Ray, Hudson's Bay Company, Article, 2009. https://www.thecanadianencyclopedia.ca/en/article/hudsons-bay-company
3. Asian Development Outlook. https://www.adb.org/publications/asian-development-outlook-december-2023
4. Bat-Erdene, Odontsetseg (eds.), 2020, Characteristics of successful franchising: A Study of franchise businesses. http://repository.ufe.edu.mn:8080/xmlui/handle/8524/1933
5. Begoña López, Begoña González-Busto, Yolanda Álvarez, The dynamics of franchising agreements.
https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=5e397457a8e30704e1ad15cae4d37792bc71956a

6. Central Bank of Mongolia, Sample Survey of Small and Medium Enterprises, 2018, 32. https://www.mongolbank.mn/file/files/documents/SME_2018_report_last.pdf
7. Charles Murry and Peter Newberry, Franchise Contract Regulations and Local Market Structure, Online paper, 2021, 2-26. http://fmwww.bc.edu/EC-P/wp991.pdf
8. E. Allan Farnsworth, Comparative contract law, Oxford Handbooks Online, 2012.
9. Frederick W. Dingledy, The Corpus Juris Civilis: A Guide to Its History and Use, Library Staff Online Publications, 2016, 231-255. https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1122&context=libpubs
10. https://edisciplinas.usp.br/pluginfile.php/5182946/mod_resource/content/1/COMPARADO%20-%20Farnsworth%20-%20Comparative_Contract_Law.pdf
11. https://pdf.usaid.gov/pdf_docs/PDACO255.pdf
12. Intellectual Property Indicators 2022, WIPO, 25. https://www.wipo.int/edocs/pubdocs/en/wipo-pub-941-2022-en-world-intellectual-property-indicators-2022.pdf
13. Jay Carver, The Judicial Reform Program in Mongolia, USAID, 2009, 4-21.
14. Michael Edwards, Comparative Analysis of Franchise Disclosure Laws Around the World. https://michaeledwards.uk/comparative-analysis-of-franchise-disclosure-laws-around-the-world/
15. Mongolia's Economy Continues to Pick Up, But Growth Remains Uneven, World Bank report. https://www.worldbank.org/en/news/press-release/2023/11/28/mongolia-s-economy-continues-to-pick-up-but-growth-remains-uneven
16. Mongolian Foreign trade-statistic. https://www2.1212.mn/tables.aspx?TBL_ID=DT_NSO_1400_001V1
17. Mongolian Statistical Information Service, 2021. https://www2.1212.mn/BookLibraryDownload.ashx?url=Small_and_Medium_enterprises_-_2021.pdf&ln=Mn
18. Nicola Casarini, The Future of the Belt and Road in Europe, Istituto Affari Internazionali, 2024. https://www.iai.it/sites/default/files/iaip2402.pdf
19. Péter Rippel-Szabó, Bettina Kövecses, and Péter Sziládi, The Franchise Law Review: Hungary. https://thelawreviews.co.uk/title/the-franchise-law-review/hungary.
20. Pieter Jan Aerts, Karolina Cotronei, and Babette Märzheuser-Wood, New Franchise Law in Belgium- How Should Your Template Franchise Agreement Change, 2021. https://www.martindale.com/legal-news/article_dentons-sirote-pc_2547610.htm
21. Robert A. Smith and Tom Billing, Franchising in Germany. Franchise Law Insider, 2019. https://franchiseinsider.quarles.com/2019/09/franchising-in-germany/
22. Robert A. Stein, What Exactly Is the Rule of Law? University of Minnesota Law School, 2019, 186-201. https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1711&context=faculty_articles
23. Ross Clendon, Developing Mongolia's Legal Framework: A Needs Analysis, Asian Development Bank Report, 1995. http://www.asianlii.org/asia/other/ADBLPRes/1995/1.html
24. The total annual number of cases of international arbitrations, mediations, and adjudications in the UK from 2009 to 2019. https://www.statista.com/statistics/611403/international-legal-services-activity-in-the-united-kingdom-uk/