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A SUMMARY  
of DOCTORAL THESIS  
*for Public Defense*

**A Comparative Survey for Developing and Harmonizing  
the Legal Framework for Franchising in Mongolia**

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## INTRODUCTION

### Research Background and Scope

Contract law is one of the most fundamental pillars of legal regulation, providing the framework for governing agreements between individuals, businesses, and other entities. The legal principles underpinning contract law validate that parties entering into agreements can rely on legal mechanisms to enforce their rights and obligations. It is a foundation for domestic and international commerce, offering legal certainty and predictability in business relationships. In Mongolia, contract law is primarily shaped by the civil law tradition, which emphasizes codified statutes and legal principles, alongside growing influences from global legal practices as the country integrates further into the international economy.<sup>1</sup>

The modernization of Mongolia's contract law is intricately tied to the nation's broader economic and political transformation. Following transitioning from a centralized socialist system to a market-oriented economy, Mongolia has undergone substantial reforms to modernize its legal and financial infrastructure.<sup>2</sup> This shift towards a market economy necessitated a re-examination of the country's legal framework, particularly concerning private law, where contract law is pivotal in facilitating the exchange of goods, services, and capital. The introduction of the new Civil Code of Mongolia in 2002 marked a decisive moment in this reform process, as it laid down a comprehensive and modern set of legal principles governing private transactions,

including contract formation, performance, and enforcement. The Civil Code was designed to address the needs of a rapidly changing economy, offering clear and consistent rules that could support business development, investor confidence, and the protection of individual rights.

Despite this progress, the development of contract law in Mongolia continues to be influenced by internal and external factors. Integrating international legal norms and best practices is an ongoing process, as Mongolia seeks to contribute its legal framework with global standards while retaining its legal traditions. As such, the development of contract law in Mongolia reflects its domestic legal culture and aspirations to participate in the worldwide economy through attachment to internationally recognized legal standards and practices.

A clear example of this is the franchise agreement, and there is a growing need to study the regulatory framework for this type of agreement in detail, compare it with the experience of other countries, and thereby improve the regulation of franchise agreements in the Civil Code. On the other hand, as Mongolia continues integrating into the global franchise system, a comprehensive legal and economic analysis is essential to develop the sector's sustainable growth. For instance, the franchise and distribution business has rapidly expanded in Mongolia's economy since the early 2000s. Introducing franchise models has played an essential role in integrating Mongolia into global

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<sup>1</sup> Teshig MunkhJargal, *History of Mongolian Civil law*, National University Press, 2006, 180.

<sup>2</sup> Constitution of Mongolia, Article 5.1, in <https://legal-info.mn/mn/detail?lawId=367> (February 12, 2025)

commercial networks, allowing for the transfer of established business practices.

Since 2001, the Mongolian market has witnessed significant growth in franchising, with the entry of 38 international franchise brands spanning various industries. These include globally recognized manufacturing brands such as Coca-Cola, which operates through local bottling and distribution partnerships, and business format franchises such as KFC, which exemplify the growing presence of multinational fast-food chains nationwide. Expanding these franchises has diversified Mongolia's business landscape, creating employment opportunities and enhancing competition in multiple sectors.<sup>3</sup>

Beyond the food and beverage industry, the franchising model has also extended into the real estate sector, offering new opportunities for professionalization and international integration. A notable example is the entry of the global real estate franchise ReMax into the Mongolian market. ReMax, a brand operating in 118 countries, has introduced standardized brokerage services, benchmark pricing mechanisms, and international best practices to Mongolia's real estate industry. Such developments highlight the transformative impact of franchising on local industries, demonstrating its potential to enhance market efficiency and attract investment through globally recognized business models.<sup>4</sup>

Expanding franchising in Mongolia has introduced new business opportunities,

facilitating international brand entry and economic growth. However, despite its increasing prevalence, the legal framework governing franchising may remain underdeveloped. The Civil Code of Mongolia, which serves as the primary source of private law, does not provide comprehensive regulations addressing the characteristics of franchise agreements.

Key elements such as the distinctive legal definition of a franchise, disclosure obligations, and specific contractual requirements, including the timing and scope of material facts that must be disclosed before the conclusion of a franchise contract, are absent from the current legislative framework.

This regulatory gap raises significant legal and practical concerns, as the absence of explicit statutory provisions creates uncertainty for both franchisors and franchisees, potentially undermining the enforceability and stability of franchise relationships.

According to my examination, the lack of detailed franchise-specific regulations in the Civil Code highlights a legal deficiency. It raises research questions about the practical applicability of the existing provisions to franchising arrangements. Without a well-defined legal structure, disputes arising within franchise relationships may not be adequately addressed under the current legal framework, leading to judicial interpretation and enforcement

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<sup>3</sup> 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>

<sup>4</sup> "See," in <https://www.remax.mn/aboutus.aspx> (March 20, 2024)

inconsistencies. Such a situation is particularly evident in the limited number of franchise-related disputes adjudicated in Mongolian courts. Notably, between 2020 and 2024, only four cases have been registered and resolved under franchise-related litigation.

The small number of cases may indicate several issues: franchise disputes might be resolved through alternative means such as private arbitration or informal negotiations, or, more concerningly, franchisees may be reluctant to pursue legal action due to the legal uncertainties surrounding franchise contracts.

Additionally, it raises the possibility that some franchise disputes are being adjudicated under broader contract law or commercial law principles rather than being explicitly recognized as franchise-related cases.<sup>5</sup>

Given franchising's increasing significance as a business model in Mongolia, there is probably an urgent need to develop a more comprehensive legal framework to regulate franchise relationships effectively. Amendments to the Civil Code that incorporate essential franchise-specific

provisions could enhance legal certainty and protect franchisees from potentially unfair contract terms. As Mongolia continues integrating into the global franchise market, its legal framework must contribute to international best practices. Hence, this study analyzes the legal regulation of franchise agreements in Mongolia, focusing on its contract law framework.

It examines the definition of franchising, key conceptual foundations, and the historical development of the franchise model on a global scale. Additionally, the research explores international legal frameworks, stressing the European Union's regulatory approach.

To provide a comparative perspective, the study evaluates the significance of franchise regulation in some jurisdictions representing Civil Law and Common Law traditions.

### Status of Research

Internationally, Spencer<sup>6</sup>, Buchan<sup>7</sup>, Norton<sup>8</sup>, Perkins<sup>9</sup>, Hesselink<sup>10</sup>, Diaz<sup>11</sup>, Gurnick<sup>12</sup>, Bosshardt and Lopus<sup>13</sup>, Shelley and

<sup>5</sup> "See," in <https://shuukh.mn/cases/1/1> (January 15, 2025)

<sup>6</sup> Spencer (2013) 25-51.

<sup>7</sup> Jenny Buchan, *Deconstructing the Franchise as a Legal Entity: Practice and Research in International Franchise Law*, Journal of Marketing Channels, 2014, Volume, 21, 43-158.

<sup>8</sup> Seth Norton, *An Empirical Look at Franchising as an Organizational Form*, The University of Chicago Press, 1988, Volume 61, 197-218.

<sup>9</sup> Eric Perkins, *Fundamentals of Franchising*, Perkins Law PLC, 2019, 5.

<sup>10</sup> Martijn Hesselink & Others, *Principles of European Law Study Group on a European Civil Code: Commercial Agency, Franchise and Distribution Contracts*, European Law Publishers, 2006, 91-143.

<sup>11</sup> Odavia Buena Diaz, *Franchising in European Contract, Comparison Between the Main Obligations of the Contracting Parties in the Principles of European Law on Commercial Agency, French and Spanish Law*, European Legal Studies, Volume 8, 2008, 19-54.

<sup>12</sup> David Gurnick, *The First Franchise*, Franchise Law Journal, 2021, Volume 40, 631-646.

<sup>13</sup> William Bosshardt, Jane Lopus, *Business in the Middle Ages*, Social Education, 2013, Volume 77, 64-67.

Morton<sup>14</sup>, Terry<sup>15</sup>, Sahan<sup>16</sup>, Florea<sup>17</sup>, Zeidman<sup>18</sup>, Zimmermann<sup>19</sup>, Hartkamp<sup>20</sup>, Kerkovic<sup>21</sup>, Anderman<sup>22</sup> and Tajti<sup>23</sup>, Abell<sup>24</sup>, Brekoulakis<sup>25</sup>, Rowley<sup>26</sup>, Beyer, and Andrews<sup>27</sup>, and many other authors have conducted research and published scholarly works on franchising.

Domestically, franchising research is quite limited, except for the study by Bat-Erdene / Odontsetseg<sup>28</sup>, Dorjpalam<sup>29</sup>, Buyan-khisig<sup>30</sup>, Mendsaikhan<sup>31</sup>, and Batbayar's contract law works.<sup>32</sup>

Their work suggests the need for additional research on the regulation of franchising agreements to reveal significant gaps in understanding the complexities of

franchise regulation in Mongolia and its alignment with international standards.

However, no existing comprehensive or academic studies have thoroughly examined franchise regulation in Mongolia or compared them with other countries' regulatory arrangements. Therefore, this thesis establishes a foundation for advancing further research.

### Research Purposes and Objectives

This dissertation aims to compare franchise regulation in Mongolian contract law with the legal features of some other countries where franchising is highly developed and to draw valuable

<sup>14</sup> Kevin Shelley, Susan Morton, *Control in Franchising and the Common Law*, Franchise Law Journal, 2000, Volume 19, 119-127.

<sup>15</sup> Andrew Terry, Joseph Huan, *Franchisor liability for franchisee conduct*, Monash University Law Review, 2013, volume 39, 388-410.

<sup>16</sup> Guvercin Sahan, *ICC Model International Franchising Contract as a Source of Lex Mercatoria*, Public and Private International Law Bulletin, 2020, Volume 40, 1403-1432.

<sup>17</sup> Dumitrița Florea, Narcisa Galeș, *Franchise Contract in International Trade Law*, European Journal of Law and Public Administration, 2022, Volume 9, 12-22.

<sup>18</sup> Philip Zeidman, *The UNIDROIT Guide to International Master Franchise Arrangements: An Introduction and a Perspective*, 1998, 748-768.

<sup>19</sup> Reinhard Zimmermann, Simon Whittaker, *Good Faith in European Contract Law*, (eds) Cambridge: Cambridge University Press, 2000, 7-26.

<sup>20</sup> Arthur Hartkamp, Martijn Hesselink, (eds) *Towards a European Civil Code*, Wolters Kluwer Law & Business, 2011, 110-125.

<sup>21</sup> Tamara Kerkovic, *The Main Directions in Comparative Franchising Regulations*, European Research Studies, 2010, Volume 13, 103-116.

<sup>22</sup> Steven Anderman, *The Interface Between Intellectual Property Rights and Competition Policy*, Cambridge University Press, 2007, 369-375.

<sup>23</sup> 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.

<sup>24</sup> Abell (2019) 34-133.

<sup>25</sup> Stavros Brekoulakis, Julian Lew and Loukas Mistelis, *The Evolution and Future of International Arbitration*, Kluwer Law, 2016, 321-330.

<sup>26</sup> William Rowley, (eds) *Arbitration World. Jurisdictional Comparison*, Reference Press, 2004, 119-124.

<sup>27</sup> Andrews Neil, *Arbitration & Mediation*, Intersentia, 2013, 89-94.

<sup>28</sup> Bat-Erdene, Odontsetseg, (eds) *Characteristics of Successful Franchising: A Study of Franchise Businesses Operating*, 2020, 17.

<sup>29</sup> Hyaraadai Dorjpalam, *Contract Law*, 2016, 81,

<sup>30</sup> Buyankhisig, *Law of Obligations*, 2013, Soyombo Printing, 24.

<sup>31</sup> Tumenjargal Mendsaikhan, *On Standard Terms of Contract*, 2003, 58.

<sup>32</sup> Batbayar, *Some Issues of Contract Theory and Practice in Mongolia*, Munkhiin Useg Press, 2012, 69.

conclusions for further improving franchise contract regulation in the Mongolian Civil Code. Therefore, the following objectives and research methodology are set.

1. To study the definition of a franchise, its main characteristics, types, and categories that distinguish it from other contracts.
2. To compare how franchises' concept, meaning, and scope have changed.
3. To determine the features of Mongolian contract law, including the status of franchise agreements.
4. To conduct an in-depth study of franchise regulations in Mongolian contract law.
5. Examine the international legal framework of franchises and the European Union's franchise regulations.
6. To compare franchise regulations in some countries regarding Civil Law and Common Law legal systems.

### **Hypotheses**

This study is based on the following two hypotheses:

1. The Civil Code of Mongolia regulates franchise agreements in an overly general manner and lacks sufficient legal provisions.
2. Examining comparative franchise regulation and conducting comparative studies can identify this regulatory gap.

To examine these hypotheses, the research first analyzes the nature, scope, and regulatory characteristics of contracts within the Civil Code of Mongolia, assessing how general contract law principles apply to franchise agreements.

Subsequently, an in-depth analysis of Chapter 29 of the Civil Code, which governs franchise contracts, will be conducted. Interviews with some Mongolian contract lawyers will be conducted to validate the research findings.

Finally, the study compares franchise regulations in Civil Law countries such as Germany, France, Italy, and Spain with those in Common Law countries such as Canada, the United States, England, and Australia. This comparison aims to identify best practices and legal reforms that could be adapted to improve Mongolia's franchise regulations.

### **Methods**

The dissertation employs historical, comparative, synthetic, analytical, and sociological research methods. The historical method traces the origins of franchising, the timeframes, and the factors that have influenced its development.

Understanding the selected countries in the research provides valuable insights into the existing franchise regulatory environment. The comparative method plays a key role in this study, analyzing the legal frameworks of countries with similar legal systems and examining relevant case law.

Research continuously aims to develop legal approaches within Mongolian contract

law by identifying best practices in well-developed franchising jurisdictions.

“I also reviewed case laws alongside the issues discussed in each chapter. This means relevant cases are analyzed as thoroughly as possible to illustrate the research issues addressed in each section. All Case law summaries are made in the same format.”

### Research Importance

This research holds theoretical significance for developing and refining Mongolian contract law, particularly franchise agreements. It clarifies the distinctions between franchise agreements and other types of contracts, aligning them with the contractual frameworks of countries with well-established franchise regulations. Additionally, the findings contribute to the broader field of legal science by offering insights into improving franchise legislation.

This study is also likely helpful as a valuable resource for legal professionals specializing in contract and franchise law, increasing their understanding and support for future legislative amendments.

### Structure

The dissertation is structured into an introduction, six chapters, 51 sections, case law summaries, conclusions, an appendix, and a bibliography.

*Chapter 1* explores the concept, categories, and types of franchising.

*Chapter 2* examines the historical development of franchising.

*Chapter 3* analyzes the legal framework of contracts in Mongolia and the status of franchise agreements.

*Chapter 4* provides an in-depth study of Mongolian franchise regulations.

*Chapter 5* reviews international documents related to franchise regulation.

*Chapter 6* presents a comparative analysis of franchise laws across different jurisdictions.

### THESIS CONCLUSION

I have reached the following conclusions based on a study titled ‘A Comparative Survey for Developing and Harmonizing the Legal Framework for Franchising in Mongolia.’ It includes:

1. *Hypothesis that the Civil Code of Mongolia regulates franchise agreements in an overly general manner and lacks sufficient legal provisions*

My study’s findings support the hypothesis that Mongolia’s Civil Code generally addresses franchise agreements and lacks sufficient legal provisions for effectiveness.

While Chapter 29 of the Civil Code acknowledges franchise agreements within contract law, its framework remains underdeveloped, failing to provide the necessary specificity to address the complexities of franchising relationships.

One of the most significant shortcomings is the absence of a comprehensive definition of franchising and a precise categorization of franchise types. This regulatory gap creates uncertainty in legal interpretation, particularly in disputes involving undefined terms such as “franchise

distributor,” “franchise appurtenant to the land,” and “master franchise.” Similarly, the undefined legal status of franchisors and franchisees further complicates the ability of individuals and entities to engage in franchise systems with legal certainty. This conclusion is supported by an in-depth analysis of the Civil Code’s franchise regulations, case study findings, and insights from interviews with legal experts specializing in contract law.

Another critical deficiency is the lack of differentiated regulations based on the nature of franchise agreements. While standard provisions are essential, the Civil Code does not account for variations in franchise relationships. Franchise agreements in Mongolia often contain strict contractual terms imposed by franchisors, yet the Civil Code does not provide adequate safeguards to establish fairness

Moreover, the study highlights the inadequate legal safeguards protecting franchisees from potentially exploitative contract terms. The general fairness regulation requiring parties to act reasonably toward each other is insufficient to prevent exploitative contract terms. Likewise, the broad and vague obligations imposed on franchisors and franchisees, such as the duty to exchange “mutually necessary documents,” lack clarity, leading to difficulties in compliance and enforcement.

The most concerning regulatory gap is the absence of mandatory pre-contractual disclosure requirements. The Civil Code does not specify the material facts franchisors must disclose to prospective franchisees or establish a timeline for such disclosures. Given the role of transparency

in franchise relationships, this omission represents a fundamental weakness in Mongolia’s franchise regulation. To address this issue, it is probably essential to establish a mandatory disclosure framework, including a requirement for franchisors to provide relevant documents at least 14 days before the conclusion of a franchise agreement.

Additionally, incorporating a specific list of mandatory disclosure items into the Civil Code would enhance legal certainty and validate prospective franchisees’ ability to access information before making contractual commitments. Addressing these deficiencies through legislative reform, such as introducing more precise definitions, enhancing disclosure requirements, and strengthening franchisee protections, would contribute to a more comprehensive legal framework for franchising.

## *2. Hypothesis that examining comparative franchise regulation and conducting comparative studies can identify this regulatory gap*

A comparative analysis of franchise regulations in various jurisdictions confirms that Mongolia’s Civil Code’s legal framework governing franchise agreements is insufficient and lacks the necessary safeguards to establish fair franchise relationships.

Unlike Mongolia, countries such as Germany and France have well-defined contractual principles that explicitly regulate the rights and obligations of franchisors and franchisees, reinforced by judicial interpretation. Similarly, France, Italy, and Spain supplement their civil



codes with specialized regulations that prevent exploitative practices.

These jurisdictions also establish clear pre-contractual disclosure obligations, requiring franchisors to provide essential information within a specified timeframe, typically 14 to 30 days before finalizing the agreement.

Furthermore, franchise regulations in Canada and the United States impose stringent transparency requirements on franchisors, mandating a detailed list of disclosure documents and enforcing a 14-day disclosure period. Comparative research on English and Australian legal frameworks further underscores the advantages of regulations that prevent unfair contract terms, ensuring an excellent balance in franchise relationships.

Finally, my study demonstrates that Mongolia's franchise regulations, as currently outlined in the Civil Code, fall short of providing comprehensive protections for franchisees. The absence of precise disclosure requirements, insufficient safeguards against unfair contract terms, and the lack of explicit rights and obligations for franchisors and franchisees create legal uncertainty and potential vulnerabilities in franchise relationships. Based on these findings, this thesis proposes amendments to the Civil Code to enhance franchise regulations and align Mongolia's legal framework with international best practices.

## PROPOSAL

Amendment to the Franchise Chapter of the Mongolian Civil Code

## *“Chapter XXIX*

### **338<sup>2</sup>. Franchise Definition**

(i) Franchise means a commercial arrangement where a franchisor or the franchisor's associate grants a franchisee the right to operate a business using the brand, trademarks, business model, and support services in exchange for fees or royalties.

(ii) Franchise System means the standardized method of operating a business, including trademarks, business practices, operational guidelines, and support provided by the franchisor to franchisees.

(iii) Franchise Agreement means a legal contract between the franchisor and franchisee that outlines the franchise relationship's rights, obligations, and terms, including fees, territories, and operational procedures.

(iv) Franchisor means the party that owns the franchise system and grants the right to operate a business using its brand, trademarks, and business model in exchange for fees or royalties.

(v) Franchisee means the party that operates a business under the franchisor's system, using the brand, trademarks, and support services and paying fees or royalties in return.

(vi) A Master Franchise agreement is a franchise agreement in which the franchisor grants a franchisee (the master franchisee) the right to sub-franchise the business and manage other franchisees within a specific territory or region.

(vii) Material Change means any significant modification in the franchise system's terms, conditions, or operations that

could substantially affect the franchisee's rights, obligations, or value.

(viii) **Material Fact** means any information or fact that is significant enough to influence the decision-making of a prospective franchisee, including financial details, business performance, or operational requirements.

(ix) **Misrepresentation** means an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

### **338<sup>3</sup>. Right of the Franchisor**

(i) The franchisor or the franchisor's associate has the right to exercise or exercises significant control over or has the right to provide or provide significant assistance in the franchisee's method of operation, including building design and furnishings, locations, business organization, marketing techniques, or training.

### **338<sup>4</sup>. Duty of the Franchisor**

(i) Franchisors must provide franchisees with detailed and accurate information about the franchise items before entering into the franchise agreement. These disclosures must be written 14 days before the franchise agreement is signed. This includes:

(a) Financial information such as estimated initial costs, ongoing fees, and the financial condition.

(b) Business performance data and any relevant risks associated with the franchise.

(c) The franchise system and support services offered by the franchisor.

(d) Information about territory, supply chain arrangements, and any restrictions that apply to the franchisee.

### **338<sup>5</sup>. Right of the Franchisee**

(i) If a franchisee believes a franchise agreement term is unfair, they can challenge it in court or a tribunal. If the term is unfair, it will be declared void, meaning it cannot be enforced.

(ii) Franchisees have the right to resolve disputes with the franchisor through mediation or arbitration before resorting to court action. The franchise agreement may require mediation as a first step before formal legal proceedings are pursued.

### **338<sup>6</sup>. Duty of the Franchisee**

Franchisees must obey the terms and conditions outlined in the franchise agreement, including:

(i) Compliance with the franchisor's operational procedures, guidelines, and marketing standards.

(ii) Payment of any royalties, fees, and other financial obligations under the agreement.

(iii) Operating the franchise within the designated territory and following territorial restrictions if applicable.

### **338<sup>7</sup>. Term and Termination of the Franchisee**

(i) The duration of the franchise agreement shall be for an initial term of at least 2 years, beginning from the date of

execution of this agreement, unless earlier terminated according to the terms of this agreement.

(ii) The franchisee may request to renew the agreement for an additional term of years at least 6 months before the expiration of the initial term, subject to the franchisor's approval. Renewal shall be granted unless substantial reasons, such as a material breach of contract or failure to meet the franchisor's standards, justify the denial of renewal.

(iii) Upon termination of the agreement, the franchisee's right to use the franchisor's intellectual property, brand, and any proprietary business processes shall cease immediately, and the franchisee shall comply with the post-termination obligations outlined in the agreement."

## THESIS RELATED PUBLICATIONS

1. Comparative Legal and Economic Analysis of Franchising, in: *Essays of faculty of law University of Pécs yearbook*, Hungary, (2061-8824), 2021-2022, 97-120.
2. Some Issues of E-Commerce and Franchising, in: *Journal of Law Enforcement*, Mongolia, (2312-0797), 2021, Volume 03, Issue 27, 138-144.
3. Judicial and Arbitration Practice Regarding Franchise Disputes: Balancing of Dispute Resolution, in: *Journal of Supreme Court Law Review*, Mongolia (2788-7960) 2023, Volume 105, Issue 3, 87-96.
4. Mongolian laws regarding franchising questions: Critical thinking on domestic statutes, in:

*Journal of Supreme Court Law Review*, Mongolia (2788-7960) 2023, Volume 104, Issue 2, 36-48.

5. Comparative Franchising Issues, in: *Journal of Education. Science. Scientific Personnel / Образование. Наука. Научные Кадры*, Russia (2073-3305), 2024, Volume 2, 96-105.
6. The hypothesis of balancing franchise dispute resolution: Court and arbitration matters, in: *Book of proceedings on the International doctoral and postdoctoral conference*, Croatia (3043-9906), 2024, 123-147.