



# LEGAL REGULATION OF FRANCHISING IN THE LEGISLATION OF FOREIGN COUNTRIES

**Mamadaliyev Avvolbek Ziyoidtinovich**

Independent researcher of the Higher School of Judges

Article history:	Abstract:
<b>Received:</b> October 24 <sup>th</sup> 2023 <b>Accepted:</b> November 24 <sup>th</sup> 2023 <b>Published:</b> December 28 <sup>th</sup> 2023	The article discusses the concept and definition of a franchising agreement, its international legal regulation by various authoritative and popular organizations, as well as international legal acts. The international acts that exist today, the purpose of which is the legal regulation of franchising relations, are entirely advisory in nature, not having binding force for the subjects of these relations. Thus, at this time there is a need for unified international legal regulation of franchising relations, in other words, the creation of uniform rules for conducting franchising business.
<b>Keywords:</b> master franchise, franchisee affiliate, development agreement, disclosure document, franchise enterprise, subfranchise agreement.	

Despite the widespread prevalence of franchising throughout the world, there is still no unified international legal regulation of franchising relations. Attempts to define an international franchising agreement and its regulation have been made by various international organizations, in particular, the World Intellectual Property Organization, the International Institute for the Unification of Private Law (UNIDROIT), the ICC International Chamber of Commerce), the European Franchising Federation and others [1].

At the moment, the international regulation of franchising relations is represented by the following documents: The WIPO Guide on Franchising, 1994; European Code of Ethics of the European Franchising Federation; Guide to International Master Franchise Arrangements (Guideto International MasterFranchise Arrangements, 1998) and the Model Law on Disclosure of Information under a Franchise Agreement (The Model Franchise Disclosure Law, 2002); The ICC Model International Franchising Contract, 2000, ICC publication No. 557.

Let us analyze the definitions of an international franchising agreement and its regulation by popular and authoritative international organizations.

In 1994, the World Intellectual Property Organization (WIPO) prepared The WIPO Guide on Franchising. It defines a franchise agreement as an agreement under which one person (the franchisor), who has developed a system for conducting a certain business (franchise system), allows another party (the franchisee) to apply the provided system in accordance with the instructions of the franchisor for a specified fee. According to paragraph 19 of the Guide, the franchising system is a set of intellectual property rights that includes one or more brands, trade names, industrial designs,

inventions and copyrights, as well as know-how and trade secrets that are used to sell goods or provide services to end users [1].

A significant definition of franchising for the countries of the European Community is contained in the European Code of Ethics for Franchising adopted by the European Franchising Federation. The European Franchise Federation (EFF) was founded in 1972 in Brussels, is a non-profit international association whose members are National Franchise Associations from 20 European countries: Britain, Austria, Belgium, Greece, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, Serbia, Slovenia, Sweden, Switzerland and Turkey. Its mission and main goals:

- 1) assistance in the formation of franchising in Europe;
- 2) represent the interests of franchising in international organizations (European Commission, European Parliament, etc.);
- 3) promote and represent the European franchise and its members on the international stage;
- 4) exchange information and documentation between national franchising associations of European countries and other continents [2].

This association has adopted the European Code of Ethics for Franchising, which sets out the main provisions on franchising. The Code provides a definition of franchising: "Franchising is a system for promoting goods and/or services and/or technology on the market; based on close and long-term cooperation between legally and financially independent enterprises; Franchisor and Franchisee; with the help of which the Franchisor grants the Franchisee the right and entrusts the obligation to carry out business activities in accordance with the concept and strategy of the Franchisor. This right authorizes and obliges the



Franchisee, in exchange for direct or indirect financial consideration, to apply the company name and/or trademark and/or service mark, know-how, business and technological methods, production processes and other industrial and/or intellectual property rights the franchisor, which are supported by the provision of business and technical assistance, within the framework and during the validity period of the franchise agreement, which is concluded by the parties" (Article 1) [3]. The Code explains that the Franchisor is the founder of a franchise network, which consists of himself and Individual Franchisees, for whom the Franchisor is a long-term mentor. (Art. 2.). According to the code, the Franchisor must: successfully develop the business concept within a reasonable period of time and in at least one pilot unit before starting its franchise network; be the owner or have the legal right to use a trade name, trademark or other distinctive designation of its network; shall provide the individual Individual Franchisee with initial training and ongoing commercial and/or technical assistance throughout the term of the agreement. An individual Franchisee must: make every effort to develop the franchise business and to maintain the overall unity and reputation of the franchise network; provide the Franchisor with proven current information to facilitate the determination of performance and financial condition, which are necessary for effective administrative management, and provide the Franchisor and/or its agents with access to the premises of the Individual Franchisee and documents at the request of the Franchisor and within a reasonable time; not to disclose to third parties the know-how transferred by the Franchisor, either during the validity period or after termination of the agreement. (Article 2.3.) [3].

The Code defines a franchise agreement. The franchise agreement must comply with national legislation, the law of the European Community and this Code of Ethics. (Article 5.1.) The agreement must reflect the interests of the members of the franchise network in protecting the industrial and intellectual property rights of the Franchisor and in maintaining the general unity and reputation of the franchise network. Each of the agreements and all contractual terms that are associated with the franchising relationship must be written or translated by a sworn translator into the official language of the country where the Individual Franchisee is located, and the signed agreement must be handed over to the Individual Franchisee. (Article 5.2.).

Within the framework of international organizations, work is being carried out to unify franchising standards. From 1985 to 2002 The International Institute for the

Unification of Private Law (UNIDROIT) conducted a comprehensive analysis of the development of franchising and the existing laws of various countries. In 1998, UNIDROIT developed the Guide to International Master Franchise Arrangements (Guideto International MasterFranchise Arrangements, 1998) and in 2002 the Model Franchise Disclosure Law (2002) [1].

The 1998 Guide to International Master Franchising Agreements provides a variety of master franchising relationships that are based on the formation of an agreement between the franchisor and the sub-franchisor, which allows the latter to enter into franchising agreements with the sub-franchisee. The sub-franchisor acts as a franchisor on the territory of a foreign state where he is given the specified right. The Model Law on Disclosure of Information under a Franchising Agreement of 2002 analyzes pre-contractual relations regarding the disclosure of information by the franchisor. This Law can be applied to both domestic and international franchising, to various types of franchising agreement (single franchising agreement, master franchising, development agreement) and to new forms

The Model Disclosure Law uses the term "franchise." A franchise is a right that is granted by one party (the franchisor), which authorizes and obliges the other party (the franchisee), in exchange for direct or indirect financial compensation, to carry out business activities for the sale of goods or the provision of services on its own behalf, but according to a system that developed by the franchisor. Such a system includes the know-how and assistance of the franchisor, prescribes the basic techniques and ways in which the activity should be carried out, provides for ongoing control by the franchisor and the use of a trademark, service mark, company or logo that belongs to the franchisor. The concept of franchise also includes the rights that are granted by the franchisor to the subfranchisor in accordance with the master franchising agreement; rights granted by the subfranchisor to the subfranchisee in accordance with the subfranchising agreement; rights granted by the franchisor to another party under a development agreement. Article 1 of the Model Law specifies the scope of application of the Law: "This Law applies to franchises that will be again granted or restored within the framework of one or more franchised enterprises in a certain territory." Let us note that Russian legislators are fully capable of using this model for its adoption, using international franchising experience. This will contribute to the maximum extent to the future development of franchising in Russia.



The UNIDROIT Law examines the following definitions in the field of franchising [4]:

- 1) affiliate of the franchisee - an individual or legal entity that directly or indirectly manages or is controlled by the franchisee or is under the control of another entity that manages the franchisee;
- 2) affiliate of the franchisor - an individual or legal entity that directly or indirectly manages or is controlled by the franchisor or another entity that manages the franchisor;
- 3) development agreement - an agreement under which, in exchange for direct or indirect financial compensation, the franchisor gives the other party the right to purchase more than one franchise within the same franchise system;
- 4) disclosure document - a document storing information, the disclosure of which is mandatory in accordance with the requirements of the law;
- 5) franchise - a right granted by one party (the franchisor), giving authority and obliging the other party (franchisee) to carry out, in exchange for direct or indirect financial compensation, entrepreneurial activities for the sale of goods or provision of services on its own behalf, but according to a system that has been developed by the franchisor, and includes "know-how" and assistance on the part of the franchisor, prescribing the basic techniques and methods by which the activity must be implemented, exercises ongoing control on the part of the franchisor and the use of a trademark, service mark, company or logo that belongs to the franchisor. The concept of a franchise also includes the rights that are granted by the franchisor to the subfranchisor in accordance with the master franchise agreement; rights granted by the subfranchisor to the subfranchisee in accordance with the subfranchising agreement; rights given by the franchisor to the second party in accordance with the development agreement.
- 6) franchise agreement - an agreement under which a franchise is granted;
- 7) franchise enterprise - an enterprise controlled by a franchisee under the terms of a franchise agreement;
- 8) master franchise - the right given by the franchisor to a second party (subfranchisor) to give the franchise to third parties (subfranchisees);
- 9) subfranchise agreement - a franchise agreement that is concluded by a subfranchisor with a subfranchisor in accordance with the terms of the master franchise agreement [4].

The UNIDROIT Act contains specific "conditions for the provision of a disclosure document". The franchisor must provide each potential franchisee with a disclosure document, which must be accompanied by a draft

franchise agreement, at least 14 days before the first of the following events occurs:

- a) signing by the potential franchisee of any agreement that relates to the franchise (except for agreements on the confidentiality of the information provided);
- b) payment to the franchisor or an affiliate of the franchisor; the disclosure document must be updated within 10 days from the end of the franchisor's financial year. Franchise disclosures must be made in writing. The franchisor is able to use any format for the disclosure document, provided that the information contained therein is presented simultaneously in a single document and complies with the requirements set forth in this law

If requested by the franchisor, a potential franchisee must attest in writing to receipt of the disclosure document. Article 8 of the Law deals with "restoration of the violated rights of franchisees." In the event that a disclosure document or notice of a significant change in information was not provided within the period established in Art. 3, or contains incorrect information about essential facts, or lacks information about essential facts, then the franchisee has the right to terminate the franchise agreement with written notice to the franchisor 30 days before the date of termination. The franchisee has the right to demand compensation for losses caused by acts provided for in this article, except in cases where the franchisee received this information from other sources, or did not rely on unreliable information, or if termination of the contract would be a disproportionate measure under the circumstances.

The law applies both to newly concluded franchise agreements and to agreements renewed after its entry into force. The Law examines the impermissibility of restricting the rights of a franchisee, and any restriction of the rights of a franchisee in comparison with the rights provided for by this Law (including with the consent of the franchisee himself) is void. Similarly, the Model Law on Disclosure of Information under a Franchise Agreement is a model that is not binding on countries. Its norms are advisory in nature for states that have decided to adopt special legislation on franchising [4]

In 2000, the International Chamber of Commerce (ICC) developed the Model International Franchising Contract (The ICC Model International Franchising Contract, 2000, ICC publication No. 557) [4]. The model international franchising contract contains guidance on the applicable law, including a reference to the UNIDROIT Principles of International Commercial Contracts. The parties are offered two options for agreeing on the applicable law:



1. This agreement is governed by universally recognized rules and principles of law in international trade, including the Principles of International Commercial Agreements UNID RUA.

2. This agreement is governed by the laws of any country. If the parties agree that their contract will be governed by more specific rules, they have the right to choose the law of a particular country.

Traditional for all ICC Model Contracts, the recommendations of the following arbitration clause can be considered, which provides for the resolution of disputes in the ICC Arbitration Court: any disputes that arise from or in connection with this agreement must be ultimately settled in accordance with the Arbitration Rules of the International Chamber of Commerce by one or more arbitrators appointed in accordance with these Rules. The parties are free to determine the place of arbitration and the language of the arbitration proceedings. The document itself - the Standard Franchising Contract - contains uniform rules that are recommended by the ICC to participants in the provided legal relations. When compiling a standard contract, the drafters sought to concentrate in it the main rights and obligations of the parties and avoid the application of the national law of any country. The most important reason for drawing up the provided contract can be considered the lack of international unification in franchising and the need to turn to national law, which has serious drawbacks, since the law of individual countries does not take into account the needs and specifics of international trade and its requirements vary significantly in individual countries [5].

The standard MTP international franchising contract is defined for international distribution relationships that are implemented through the conclusion of distribution franchise agreements, and is not inapplicable to other types of franchising agreements, including master franchising agreements. It includes two main sections: the first section is devoted to defining the basic rights and obligations of the parties under the franchising agreement; the second is about the supply of goods that are sold under this agreement. The franchising agreement establishes a system for resolving disputes between both parties, including the procedure for reporting deficiencies and ways to eliminate them. The Model Contract provided is based on the presumption that it is governed by the provisions of the contract itself and by generally accepted principles of law in international trade. The purpose of such a decision is to avoid, on the basis of conflict of laws, the application of any national law and to use the provisions of the Model Contract in relations between franchisors and franchisees from different countries, without providing

advantages to one party and without prejudice to the other when applying the law of one of the parties, which should ensure the parties to the franchising contract have greater legal security. This makes significant sense, since the variety of different national laws can rarely help in solving problems that are associated with the import and international distribution of goods or the provision of services [5].

In different countries, franchising agreements are not controlled by national laws, and case law that relates to franchising usually affects the contractual relationship between the franchisee and the local franchisor.

#### **USED LITERATURES**

1. Васильева И.В. Особенности международного регулирования франчайзинговых отношений. // Экономика, социология и право. - 2016. - №11. - С. 99-103.
2. Европейская Федерация Франчайзинга (EuropeanFranchiseFederation). [Электронный ресурс]. – Режим доступа: <http://www.eff-franchise.com/>
3. Европейский этический кодекс франчайзинга // Сосна С.А., Васильева Е.Н. Франчайзинг. Коммерческая концессия. - М.: ИКЦ «Академкнига». 2005. – С. 347-352
4. Модельный закон УНИДРУА о раскрытии информации 2002 года // Багдасарян А.Ф. Договор коммерческой концессии (франчайзинг). Гражданско-правовые проблемы заключения договора. М., 2009.
5. Типовой контракт международного франчайзинга МТП. Публикация N 557. Серия: "Издания Международной торговой палаты". На рус.и англ. яз. М., 2002.