

Brief Overview of Franchising, Identifying Georgian Perspective**Davit Gvenetadze** Master of Law

Mediators Association of Georgia, Dispute Resolution Centre

DOI: <https://doi.org/10.52340/spectri.2025.11.01.01>**აბსტრაქტი**

მრავალი უპირატესობის შეთავაზების გზით ფრენშიაინგი მნიშვნელოვან როლს ასრულებს საერთაშორისო ეკონომიკურ და ბიზნეს სფეროებში. ის საშუალებას იძლევა მეწარმეები ეფექტურად შევიდნენ ახალ ბაზრებზე ადგილობრივი ფრენშიაინგის მიმღებები ცოდნისა და ქსელების გამოყენებით; ხელს უწყობს პროდუქტების, სერვისების და კომერციული პრაქტიკის მიმოცვლას საზღვრებს მიღმა; აძლიერებს საერთაშორისო კავშირებსა და ინოვაციებს; ხელს უწყობს სამუშაო ადგილების შექმნას, ინფრასტრუქტურის განვითარებასა და ეკონომიკურ აქტივობას სამიზნე ქვეყნებში, აწვითარებს ადგილობრივ მომწოდებლებსა და სხვადასხვა ინდუსტრიებს; ეხმარება ბრენდებს საერთაშორისო აღიარების მიღწევასა და სტაბილურობის შენარჩუნებაში, რითაც ამტკიცებს მომხმარებელთა ნდობასა და დადებით დამოკიდებულებას სხვადასხვა ბაზრების მიმართ. ფრენშიაინგი საშუალებას აძლევს საწარმოებს გადაანაწილონ რისკები სხვადასხვა ტერიტორიებზე და შეამცირონ ცალკეულ ბაზარზე დამოკიდებულება; ის აგრეთვე ხელს უწყობს მმართველობითი პრაქტიკისა და მომხმარებელთა მომსახურების სტანდარტების განვითარებას, რითაც უმჯობესდება ბიზნეს გარემო განვითარებად რეგიონებში. ფრანშიაინგი საერთაშორისო ვაჭრობისა და ინვესტიციების ერთ-ერთი მძლავრი ინსტრუმენტია.

ფრანშიაინგის მზარდი გავლენის გათვალისწინებით, წინამდებარე ნაშრომის მიზანია მოკლედ მიმოიხილოს მისი ძირეული ასპექტები სხვადასხვა კონტექსტის გათვალისწინებით. კვლევა აფასებს აყალიბებს თუ არა ფრენშიაინგი წარმატებული სამეწარმეო თანამშრომლობის ეფექტურ მოდელს, შეაჯერებს ეროვნული და ევროპის მართლმსაჯულების სასამართლოების მნიშვნელოვან განმარტებებს, გამოავლენს საქართველოში ფრენშიაინგის განვითარებასთან დაკავშირებულ გამოწვევებს და წარმოადგენს კონკრეტულ ზომებს არსებული პრობლემის გადასაჭრელად. საკითხების განხილვისას გამოიყენება კვლევის ანალიტიკური, შედარებითი და სტატისტიკური მეთოდები.

შესავალი (პირველი) თავი მიმოიხილავს ფრენშიაინგის უპირატესობებს და ხსენებული ბიზნეს მოდელის განვითარების ცალკეულ ისტორიულ ეტაპებს ქვეყანებში; მეორე თავი მოიცავს ფრენშიაინგის ცნებას და იურიდიულ განმარტებას, მის მახასიათებლებს, ძირითად ტიპებსა და ფაზებს; მესამე თავი მოკლედ შეეხება ფრენშიაინგთან დაკავშირებულ ეროვნულ კანონებსა და რეგულაციებს; მეოთხე თავი კონცენტრირებულია სასამართლო პრაქტიკაზე (ეროვნული და ევროპის მართლმსაჯულების სასამართლოს გადაწყვეტილებები); მეხუთე (დასკვნითი) თავი შეაჯამებს კვლევის ძირითად მიგნებებს, შეაფასებს ფრანშიაინგის გარემოს საქართველოში და წარმოადგენს ავტორისეულ

რეკომენდაციებს ქვეყანაში ფრანშიზინგის სისტემის შემდგომი განვითარებისთვის.

საკვანძო სიტყვები: ფრანშიზინგი, ფრენშიზის მიმცემი, ფრენშიზის მიმღები, საქართველოს სამოქალაქო კოდექსი, ფრენშიზის ასოციაცია, ფრენშიზინგთან დაკავშირებული რეგულაციები/სასამართლო პრაქტიკა.

Abstract

Franchising plays a critical role in international economic and business spheres by offering multiple advantages. It allows businesses to enter new markets efficiently by using local franchisees' knowledge and networks; supports the exchange of products, services, and commercial practices across borders; fosters global connections and innovation; contributes to job creation, infrastructure development, and economic activity in host countries; supports local suppliers and various industries; helps brands achieve global recognition and a consistent presence which enhances consumer trust and loyalty on various markets. Franchising enables entities to spread risks on various territories and reduce dependence on a single market; it also promotes the transfer of management practices and customer service standards which improves business landscapes in developing regions. Franchising is one of the powerful instruments for international trade and investment.

Considering the increasing impact of franchising, the present paper aims to overview its crucial aspects from various contexts briefly. The research will examine whether franchising offers a flexible model for successful business partnerships, assess some key findings from national and ECJ's case law, identify challenges that confront to flourishing of franchising in Georgia, and propose certain measures to withstand this problem. Given issues will be covered through applying analytical, comparative, and statistical methods of research.

The introductory, first chapter overviews the advantages of franchising, and certain historical developments of the said business model in different states; the second chapter covers the concept and legal definition of franchising, its characteristics, basic types and phases; the third chapter briefly refers to franchise-related national laws and regulations; fourth chapter concentrates on case-law (national and ECJ rulings); fifth, concluding chapter summarizes main findings of the research, assesses environment of franchising in Georgia, and proposes authors recommendations for further development of franchising system in the country.

Keywords: Franchising, franchisor, franchisee, Civil Code of Georgia, franchise association, franchise-related regulations/case law.

I. Introduction

Franchising is unique among many other forms of business activity since it contains symbiotic and different economic, and legal forms; has a complex structure, and best meets the rapidly growing requirements of trade and economic relations.¹ The franchising system

¹ Kokiashvili M., Franchising and its Legal Regulation, Meridiani, Tbilisi, 2009, 7, (In Georgian).

provides numerous benefits for franchisee, such as operations manual, policies, and procedures, replicable methods and processes, business measurement tools (key performance indicators/KPIs), standardized equipment, site design, field coaching, start-up training and site selection assistance, branding, marketing support, and a community of other franchisees sharing best practices.² The below-presented brief figures show the immense economic influence of franchising on national/international markets across diverse industries, highlight the widespread presence of franchising in many regions, illustrate its massive employment opportunities, highlight the crucial role of franchising in the business landscape:

- UK fast-food franchise industry revenue is expected to grow from £12.1 billion to £12.7 billion by 2024-25, with a 3.8% increase in the final year.³
- Canada's franchising GDP grew from \$100 billion in 2019 to \$120 billion in 2024. Canada's franchise industry is the 12th largest sector in the country and the second largest globally, contributing significantly to the nation's economy.⁴
- France has over 1,965 franchise networks, 79,134 sales locations, 795,441 employees, and a total turnover of €68.8 billion.⁵
- Australia has 1,344 franchise systems with approximately 98,000 units, generating \$184 billion in revenue and employing over 598,000 people.⁶
- China has over 4,000 franchise brands and 500,000 franchise outlets.⁷
- The market size for sports franchises is \$34 billion. There are 969 businesses in the sports franchise industry.⁸
- The franchise market size is forecast to increase by USD 1967.1 billion at a CAGR (compound annual growth rate) of 10.41% between 2024 and 2028. The market is experiencing significant growth due to several key drivers. The rise in the number of restaurants and hotels worldwide is a major factor fueling market expansion.⁹
- According to 2021 data, the following franchising entities were among the 100 largest companies by revenue (In Georgian currency/GEL) in Georgia: Wissol Petroleum Georgia - 530,092,000, Lukoil Georgia - 473,960,000, Coca-Cola Bottlers Georgia - 283,676,000, Spar Georgia - 388,309,000.¹⁰

² Big Money in Franchising, Scaling Your Enterprise in the Era of Private Equity, Miller A., Figure 1 Publishing, Canada, 2024, 23.

³ Fast-Food Franchises in the UK - Market Research Report (2014-2029), <<https://www.ibisworld.com/united-kingdom/market-research-reports/fast-food-franchises-industry/>> [23.09.2024].

⁴ Canadian Franchising: A 2023 Industry Overview, 2023, <<https://cfa.ca/franchisecanada/canadian-franchising-an-industry-overview/>> [23.09.2024].

⁵ Kirsch M., (Ed.), Franchise, France, Lexology GTDT - Franchise, 2022, 5.

⁶ Giles s., Kerry M., Doing business in Australia - Franchising issues, Australia, 2022, <<https://www.nortonrosefulbright.com/en/knowledge/publications/18b08952/doing-business-in-australia-franchising-issues>> [23.09.2024].

⁷ Overview of the Thriving Franchising Industry in Asia 2023 and Beyond, <<https://thailandfranchising.com/overview-of-the-thriving-franchising-industry-in-asia-2023-and-beyond/>> [23.09.2024].

⁸ Other franchising statistics, <<https://www.webfx.com/industries/franchises/statistics/#general>> [23.09.2024].

⁹ Franchise Market Analysis North America, Europe, APAC, South America, Middle East and Africa - US, China, UK, Germany, Canada - Size and Forecast 2024-2028, 2024, <<https://www.technavio.com/report/franchise-market-analysis>> [23.09.2024].

¹⁰ The 100 Largest Georgian Companies by Revenue, <<https://forbes.ge/en/the-100-largest-georgian-companies-by-revenue/>> [23.09.2024].

Many people striving to run their own business are capable investors, leaders, and managers. But there are few true inventors in the world. And for inventors, building significant scale is traditionally very challenging and capital intensive. The franchise model was designed with this reality in mind. Non-inventors can adopt franchise processes to go into business. To succeed, they must be self-starters and sales-and operations-focused, but they need not start from scratch. Meanwhile, inventors can benefit from the scale that can be created using the franchise model to attract franchisees as expansion partners.¹¹

It is considered that the primary advantages for most companies entering the realm of franchising are capital, speed of growth, motivated management, and risk reduction.¹² The advantages of franchising can be considered in terms of both the franchisor and the franchisee. For the franchisor, these include expansion with lower capital investment, controlled expansion, multiple sources of revenue, and quantity purchasing. In turn, the franchisee benefits from a proven business model, brand reputation, advertising and marketing, professional guidance, financial assistance, and growth potential.¹³

There has been a diversification of franchise concepts and industries in the international franchising landscape. Traditionally dominated by food and beverage franchises, the industry now encompasses a wide range of sectors such as retail, healthcare, education, and services. This diversification allows franchisors to explore new markets and reach a broader audience, catering to different consumer needs and preferences. The adoption of technology for franchise management and operations has become a key trend in international franchising. Franchisors are leveraging technology solutions such as cloud-based software, mobile apps, and data analytics to streamline processes, improve communication with franchisees, and enhance customer experiences. Technology has also enabled franchisors to monitor performance, track key metrics, and make data-driven decisions to drive growth and profitability.¹⁴

Even though the USA is thought to be the home of franchising, it has a long history stretching back to ancient China. The roots of franchising can also be traced to feudal times and Middle Ages.¹⁵ In the United States,¹⁶ the wide distribution of products led companies to create networks for connecting them to other entrepreneurs and enabling joint business

Website of National Statistics Office of Georgia does not contain any information/statistics on the leading franchisor employers in the country, therefore, we tried to clarify if the Office was working on such statistics, or if appropriate research was planned. As the Office's representative explained, the Office does not have data of entities annual incomes and number of employees, since the Office mainly relies on publicly available sources, and not on confidential information. Phone communication with the representative of the National Statistics Office of Georgia, 25.09.2024.

¹¹ Big Money in Franchising, Scaling Your Enterprise in the Era of Private Equity, Miller A., Figure 1 Publishing, Canada, 2024, 22.

¹² Siebert, M., Franchise Your Business, The Guide to Employing the Greatest Growth Strategy Ever (2nd ed), Entrepreneur Media Inc/Entrepreneur Press, 2024, 11.

¹³ Gupta, V. K., Small Business: Creating Value Through Entrepreneurship, 1st Edition, Wiley Publishers, 2021, 84-85.

¹⁴ The Evolution of International Franchising: Trends and Future Outlook, <<https://michaelward.uk/the-evolution-of-international-franchising-trends-and-future-outlook/>> [26.09.2024].

¹⁵ Beere R., The Role of Franchising on Industry Evolution, Assessing the Emergence of Franchising and its Impact on Structural Change, Palgrave Macmillan, Ireland 2017, 8.

¹⁶ According to 2024 data American companies: the UPS Store, Budget Blinds, Kitchen Tune-UP, Ace Handyman Services, Anago Cleaning Systems, Five Star Bath Solutions, PuroClean, Visiting Angels, AAMCO, Griswold Home Care are among the top ten of the world's leading 100 franchising companies. Top 100 Franchises 2024, Franchise Direct, <<https://www.franchisedirect.com/top100globalfranchises/rankings>> [23.09.2024].

activities. Coca-Cola, 7-Up, and Dr. Pepper's Root Beer had a significant influence on the development of franchising because their products were overly expensive to send to particular markets. Consequently, these entities decided to produce and sell products in customers' countries to retain savings.¹⁷ From time to time, many entrepreneurs copied this method to reduce costs. The franchise entrepreneurial spirit in the United States has never been more alive than today. More than 4,500 franchise businesses with 600,000 outlets populate the marketplace, and these businesses make up to 36 percent of all retail sales nationwide.

Internationally, franchising represents as much as 10 per cent of retailing in the United Kingdom, France, and Australia. The belief that franchising can be an exciting entrepreneurial venture is supported by the continued success of established franchise systems, the proliferation of new franchises, and the profitability reported by franchisees and franchisors. The process of wealth creation through franchising continues to evolve as we witness an increase in the number of multiple-outlet franchisors and franchisees operating multiple outlets in different franchise systems.¹⁸ Evidence of the success of franchising as an entrepreneurial opportunity and creating a vehicle comes from one of the largest franchisors in the world, British conglomerate Allied Domecq, which owns Dunkin' Donuts, Baskin Robbins, and Togo's restaurants. Bob Rosenberg, son of Dunkin' Donuts founder Bill Rosenberg, grew the Dunkin' Donuts system from a few hundred to more than 3,000 outlets before selling to Allied Domecq. Another company that signalled the prevalence of franchising in contemporary business is Jiffy Lube International.¹⁹

Although franchising is mentioned in historical texts dating back to the Middle Ages and the "tied house system" was widely used by brewers in the UK from the mid-18th until the mid-1980s, it only really came of age and became a popular form of doing business in the EU in early 1970. Despite its rapid growth, for a long time, there remained much suspicion of franchising in the European establishment. Nevertheless, franchising continued to grow. In 2010 the estimated turnover of franchised business in the EU was 300 billion USD.^{20 21} The Potential for franchising to help make the EU's single market dream a reality for small and medium-sized enterprises (SMEs) that might otherwise find entering other member states too daunting a prospect, has clearly been identified by the movers and shakers in the EU

¹⁷ Webber R., *An Introduction to Franchising*, Palgrave Macmillan, 2013, Leicester Business School, De Montfort University, UK, 7-8.

¹⁸ Spinelli S. JR., Adams R. J. JR, *New Venture Creation Entrepreneurship for the 21st Century*, The McGraw-Hill Companies, Inc., Tenth Edition, Boston, 2016, 257.

¹⁹ Ibid, 258.

²⁰ Abell M., *The Law and Regulation of Franchising in the EU*, Edward Elgar Publishing Limited, UK, 2013, 15-16.

²¹ While it can be argued, that to a certain extent, the growth of franchising in Europe is due to the development of US franchising abroad, the increasing number of franchises in Europe comes mostly from the creation of non-American franchise networks. In this respect, the example of France is significant: in 1994, some 450 franchise networks and 25,700 franchises accounted for eleven percent of the total turnover of French retailing. This phenomenal growth is shared by several countries of the European Community.

See, Gamet-Pol F. J., *Franchise Agreements within the European Community*, Transnational Publishers, Inc., New York, 1997, 5-6.

See also, Williams L., *Trademarks and Related Rights in Franchise Agreements in Germany: A comparison with U.S Law*, 14 Int'l Rev. Indus. Prop. Copyright L. 624, 625 (1983). In this article which focuses on Germany, the author indicates that "business format franchising remained relatively unknown... until 1970". However, "in 1974, there were approximately 60 franchise systems," and "by mid-1982, it was estimated that the total number of franchises had increased to about 200."

Commission. The International Chamber of Commerce considers that franchising has proved over many years to be an extremely successful commercial vehicle for the distribution of products and services, making a considerable contribution to growth in business sectors that use this type of distribution channel;²² for example, in Germany, the concept of franchising was almost unknown until the 1960s. With the foundation of the German Franchise Association (GFA) in 1978 the franchising market finally established itself in Germany, and has been developing rapidly ever since. According to statistics from the GFA the German franchise industry has been recording a turnover increase for years. Compared to 2021, the turnover of all franchise systems grew by 4.6 per cent to €142.2 billion in 2022. Nationwide, there are currently 930 franchise systems with 186.028 franchise businesses (1.5 per cent more than in 2021) and more than 814.304 employees (2.8 per cent more than in 2021).²³

Similar to other post-Soviet countries, in Georgia franchising is relatively new; it appeared at the end of the twentieth century and was relatively underdeveloped by the 2000s. By that time only a few companies operated in the market, including the local Coca-Cola Bottling Company and its related entity, T&K Restaurants, which had two McDonald's restaurants in Tbilisi, as well as Baskin-Robbins which owned two outlets in the capital city.²⁴ Today doing business under a franchising system is growing rapidly²⁵ covering various industries and regions of Georgia; Sheraton, Wissol, Lukoil, Haiti, Yves-Rocher, Isi-Pari, Voulez-Vous can be named as some of the most successful franchisors in the country.²⁶

II. Definition, Features, Types and Phases of Franchising

2.1. Definition of Franchising

Generally franchise can be explained as a commercial relationship between two entities in which one of the entities, the franchisor, grants the other entity, the franchisee, the right to use its commercial and intellectual assets for some time in return for fees and royalties.²⁷ The nature of the relationship between the franchisor and the franchisee is determined by the institutions that govern franchising – franchise law, as well as the personal and commercial relations developed between the franchisee and the franchisor. Because franchising is often defined by the legal environment, multiple variations exist.²⁸ In the US, the Federal Trade Commission Rule (FTC Rule) defines a "franchise" as a continuing commercial relationship created by any arrangement where: the franchisee obtains a license to operate a business identified or associated with the franchisor's trademark or to offer, to sell, or distribute goods, services or commodities that are identified or associated with the franchisor's trademark or that must meet the franchisor's quality standards. The franchisor exercises, or has the right to exercise,

²² Abell M., *The Law and Regulation of Franchising in the EU*, Edward Elgar Publishing Limited, UK, 2013, 16.

²³ In Review: Key Franchise Laws in Germany, <<https://www.lexology.com/library/detail.aspx?g=5a368858-6ff3-44b4-bdfa-a466be4a9dc6>> [25.09.2024].

²⁴ Georgia Business Law Handbook Volume 1 Strategic Information and Basic Laws. (2013). United States: International Business Publications, USA, 64.

²⁵ Kokiasvili M., *Franchising and its Legal Regulation*, Meridiani, Tbilisi, 2009, 5, (In Georgian).

²⁶ Franchising, <<https://www.myadvokat.ge/ka/blog/674>> [22.08.2024], (In Georgian).

²⁷ Alon, I., *Global Franchising Operations Management: Cases in International and Emerging Markets Operations*, Pearson Education Inc., 2012, 1.

²⁸ Ibid, 1.

significant control over, or gives the franchisee significant assistance in, the franchisee's method of operation. While there is no single uniform definition of a "franchise" on the state level, the various state definitions largely resemble the FTC Rule's definition of a franchise.²⁹

According to International Franchise Association (IFA), "franchise (or franchising) is a method of distributing products or services involving a franchisor, who establishes the brand's trademark or trade name and a business system, and a franchisee, who pays a royalty and often an initial fee for the right to do business under the franchisor's name and system. Technically, the contract binding the two parties is the "franchise," but that term more commonly refers to the actual business that the franchisee operates."³⁰

Georgian legislators have considered foreign perceptions of given commercial vehicle and transposed the legal definition of franchising in article 607 of the Civil Code of Georgia³¹ as follows: "Franchising is a long-term obligatory relationship, through which the contracting parties promote each other during producing/realizing goods and providing services".³² Since franchising is a type of mixed contract, article 340 of the Civil Code also applies to it, under which "when interpreting a mixed contract, account shall be taken of the legal regulations that apply to those contracts that most closely accord with and correspond to the essence of the performance".

2.2.Characteristics of Franchising

Franchising can be considered as a form of business organization under which, one of the entrepreneurs develops a business model, and sells the right to do business through this model to another entrepreneur. Generally, franchising is organized in the following way: 1) the franchisee uses the business reputation and commercial experience of the franchisor to a certain extent, in a concrete territory, in a particular field, be it selling goods, performing work or providing services; 2) the franchisor, transfers to the franchisee a set of special rights, including the brand name and/or commercial information; 3) the franchisee pays the franchisor remuneration in the form of one-time fixed (flat rate) or periodic (royalty) payments, a percentage of profits or a fee from the wholesale price of goods. Franchising helps the franchisor to rapidly expand the business by raising capital and human resources from others while allowing the franchisee to become an independent entrepreneur and develop the business with the help of the franchisor's expertise.³³

Franchise systems are a distribution type which allows establishing a uniform network for the distribution of goods or services with a marginal investment, as the franchisee bears the entrepreneurial risk. The franchisor not only makes use of the franchisee's entrepreneurial

²⁹ United States: Franchise & Licensing, The Legal 500, <<https://www.legal500.com/guides/chapter/united-states-franchise-licensing/>> [16.06.2024].

³⁰ International Franchise Association (IFA), <<https://www.franchise.org/faqs/basics/what-is-a-franchise-rankings>> [18.06.2024].

³¹ "Franchising" has originated from the French word and means privilege. According to the English-language literature, "Franchising" comes from the English word "Franchising" and means right to privilege in English. Foreign Companies in Georgia, Their Status and Employees, Analysis of the Issue and Recommendation Proposals, NNLE "Young Lawyers", Tbilisi, 2015, 3, (In Georgian).

³² Civil Code of Georgia, Article 607, Parliamentary Gazette, 31, 24/07/1997, <<https://matsne.gov.ge/en/document/view/31702>> [15.09.2024], (In Georgian).

³³ Kokiashvili M., Franchising and its Legal Regulation, Meridiani, Tbilisi, 2009, 6-7, (In Georgian).

energy, his willingness to invest his local know-how and his motivation to increase his own business, but also receives a remuneration, often calculated as a share of the franchisee's income or turnover.³⁴ Regardless of any regulation and definition, franchise agreements usually merge the following elements of various types of contracts, such as agency and supply contracts, contracts providing the right of use against payment (e.g. lease of premises, trademarks, concepts), purchase contracts, service contracts, license contracts. Franchisors and franchisees act each in their name and for their account, usually on different levels of the distribution chain. They thus stand in a vertical relationship to each other.³⁵

2.3.Main Types of Franchising

There are many types of franchises, that can be categorized according to different factors, including, investment level, franchisor's strategy, operations, marketing and relationship models, etc. Generally, major types of franchises include the following: product franchise, business format franchise, investment franchise and conversion franchise.³⁶

Product (or Distribution) Franchise is based on supplier-dealer relationships, where the franchisee distributes the franchisor's products. The franchisor licenses its trademark but usually does not provide franchisees with an entire system for running their business. Product franchises deal mainly with large products, such as cars and car repair parts, vending machines, computers, bicycles, appliances, etc. Product distribution franchising represents the highest percentage of total retail sales. Some well-known product distribution franchises are Exxon, Texaco, Goodyear Tires, Ford, Chrysler, John Deere and other automobile producers.³⁷ The benefit to the franchisors using this type of franchising is that they can penetrate an unknown market. This type of franchising was previously referred to as selective franchising; in fact, for a long period, franchising was treated as a method of distribution.³⁸

Business Format Franchising is defined as "the granting a license for a predetermined financial return by a franchisor to its franchisees, entitling them to make use of a complete business package, including training, support, and the corporate name, thus enabling them to operate their own businesses to exactly the same standards and format as the other units in the franchised chain". Business format franchising includes not only the product, service, and trademark but also the entire business concept itself: a marketing strategy and plan, operating manuals and standards, quality control, group purchasing power, research and development, and continuous process of training, assistance and guidance. Examples of business format franchising include restaurants, hotels, motels, campgrounds, recreation, entertainment, and travel, automotive products and services, business aids and services, construction, home improvements, maintenance, and cleaning services, etc.³⁹

³⁴ Rohrsen B., VBER 2022: EU Competition Law for Vertical Agreements, Digital, Dual, Exclusive and Selective Distribution Plus Franchising, Springer, 2022, 154-155.

³⁵ Ibid, 155.

³⁶ Types of Franchises, < <https://francity.com/about-franchising/types-of-franchises/> > [25.09.2024].

³⁷ Ibid.

³⁸ Mahmood A. K., Restaurant Franchising, Concepts, Regulations, and Practices, Third Edition, Revised and Updated, Apple Academic Press, Canada, 2015, 13.

³⁹ Ibid, 14.

Investment Franchises typically include large scale projects which require a large capital investment, such as hotels and the larger restaurants. The franchisees usually invest money and engage either their management team or franchisor to operate the business and produce a return on their investment and capital gain on exit.⁴⁰ The franchisee is likely to be a corporate investor and to have significant commercial experience in the same or similar sector. They may already own other franchises within the same industry.⁴¹

Conversion Franchising is a modification of standard franchise relationships. Many franchise systems grow by converting independent businesses in the same industry into franchise units. The franchisees adopt trademarks, marketing and advertising programs, training systems and critical client service standards. They also usually increase procurement savings. The franchisor in this model has the potential for very rapid growth in terms of units and royalty fee income. Conversion franchising is extensively used by real-estate brokers, florists, professional services companies, and home service providers.⁴²

2.4. Basic Phases of Franchising

The International Franchise Association distinguishes four basic phases in a franchisor-franchisee relationship which approximately depicts common scenarios and trends of the mentioned correlation. Phase 1: Recruitment - the franchise relationship begins when the prospective franchisee is first recruited. During the recruitment process, the franchisor's and franchisee's expectations of each other are established. Each party is trying to show the other party why they need each other. It is during this stage that each party will develop trust in the other along, with a shared desire for success and profitability. Through all of this contact, both parties will develop rapport, trust and confidence in each other leading to the signing of a franchise agreement.⁴³

Phase 2: Growth - from the signing of the franchise agreement through the opening of the franchise and until the end of the first three years of operation, the franchisee's need for the franchisor's support services is at its greatest. The "growth stage" of the franchise relationship begins once the franchise agreement is signed. At this point, everything is new to the franchisee and he is on a steep learning curve. During this period, the franchisee will go through an extensive training program that should build a strong, close relationship between the franchisor and the franchisee. After the comprehensive initial training program and the grand opening, the support services provided are just as important. The franchisor will also provide ongoing training. During this phase there will also be a lot of contact between the franchisee and the franchisor. If things have been going as planned, the franchisee will have learned a lot that has led to a successful opening and operation of his franchised business. During this period, the franchisee will have stayed in regular contact with the franchisor. On the other hand, this phase can also evoke negative traits. For example, maybe the training was not as comprehensive as the franchisee expected. Or, perhaps the franchisee has not received support materials,

⁴⁰ Types of Franchises, < <https://francity.com/about-franchising/types-of-franchises/> > [25.09.2024].

⁴¹ The Five Different Types of Franchise, Forbes, <<https://www.forbes.com/sites/fionasimpson1/2022/10/17/the-five-different-types-of-franchise/>> [25.09.2024].

⁴² Types of Franchises, < <https://francity.com/about-franchising/types-of-franchises/> > [25.09.2024].

⁴³ The Basics of Franchising: the Relationship, <<https://www.franchise.org/franchise-information/the-basics-of-franchising-the-relationship>> [25.09.2024].

accounting aids, marketing suggestions, promotional and advertising support, or other items as regularly as expected.⁴⁴

Phase 3: Maturity - during this phase, the franchisor and franchisee know what to expect from each other. If all has gone according to plan, the franchisor and the franchisee have developed a mutual understanding and friendship. The franchisee has come to expect and rely on the franchisor to provide comprehensive and ongoing training, effective marketing aids and advertisements, new products, and other support services to further enhance the relationship. In return, the franchisor has come to expect an ever-increasing sales volume with the corresponding royalty increases along with the franchisee following closely the terms and conditions of the franchise agreement and operations manual. The danger of the maturity stage is that the franchisee may feel that he is no longer receiving continuing value from the franchisor. During the first two phases of the franchise relationship, the franchisee has a tremendous amount to learn. Now that the franchisee has been operating for several years he may feel that he is no longer receiving his money's worth from the franchisor. If things have not gone well then the franchisee will become disenchanted with the franchisor. This could result for several reasons. For example, the franchisor might not have kept up the infrastructure to support all of the franchisees. The franchisor might have diverted some of their resources into the recruitment of new franchisees.⁴⁵

Phase 4: The End or a New Beginning - the final phase will go in one of two directions. On one hand, the franchisee may be disenchanted with the franchisor. At this point, the franchisee may seek to terminate his franchise agreement. The franchisee may have already decided that he will not renew his franchise because he feels there is a lack of support from the franchisor. Additionally, his business could be declining. As a result of the franchisor not maintaining the growth of his infrastructure, the franchisee may find that his business is falling further and further behind the competition. As a result, the franchisee becomes less and less concerned with adhering to its franchise agreement and operations manual. At this point the relationship's decline could begin to quicken.⁴⁶

On the other hand, the franchisee may have decided to renew his franchise agreement and continue with the relationship. The franchisee's relationship with the franchisor could be stronger than ever. The reason for this is that the franchisor has not only continued to give plenty of support to the franchisee but has continually updated its support services to meet and exceed any competitive challenges. As a result, the franchisee has been provided with, on a regular basis, new products and services, marketing and advertising strategies, and current research and development concepts. For this reason, the franchisee's business has continued to thrive and grow. Therefore, the franchisee is very happy with his relationship with the franchisor and wants to continue with it.⁴⁷

III. Franchising Regulations

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

Even though franchising is a widely-used commercial tool, no comprehensive international legislation exists that would introduce a unified international standard towards it. Despite the attempts of the International Institute for the Unification of Private Law (UNIDROIT),⁴⁸ no common will exists to regulate franchising at the international level. Navigating legal and regulatory frameworks in different countries can be a complex and challenging task for businesses. Each country has its own set of laws and regulations governing various aspects of business operations, such as company formation, employment practices, data protection, and intellectual property rights. Failure to comply with these regulations can result in legal penalties, fines, and reputational damage. Therefore, companies must carefully study and understand the legal requirements in each country where they operate to ensure compliance and mitigate risks.⁴⁹ The said warning is especially important for franchising businesses, therefore, franchisors and franchisees should carefully consider appropriate consequences.

Laws of **Romania, Brazil, Canada, Italy, France, Austria, Finland, the Czech Republic, Denmark, Russia, Argentina, the UK, the United States, Switzerland, Hungary, Ukraine, Germany, Turkey, Georgia, Azerbaijan, Armenia, and China**⁵⁰ are briefly overviewed below which underlines that economic developments necessitate most regions of the world to regulate franchising on a legislative level. In **Romania**, franchising is ruled by the Civil, Entrepreneurial, and Procedure Codes, also, by the Franchising Law of 1997.⁵¹ In conjunction, these acts are core regulations governing a wide spectrum of issues of franchising in the country.⁵² Special legislation: Brazilian Franchise Law (BFL), and the secondary act - Franchise Offer Circular operate in **Brazil**.⁵³ **Canada** has enacted specialized franchising acts in its separate territories (including, Alberta, Ontario, PEI, New Brunswick, and Manitoba).⁵⁴ **Italy** operates Franchising Act, the contract is also ruled by Civil Code and Antitrust Law.⁵⁵ As for **France**, Civil Code and Code of Commerce applies to franchising.⁵⁶ Similar to France, neither **Austria** uses specific rules for franchising, but relies on General Principles of Austrian private law, Antitrust Law and the Unfair Competition Act of 2005.⁵⁷ **Finland** has a similar

⁴⁸ International Institute for the Unification of Private Law (UNIDROIT) - an independent, intergovernmental organization aiming to study the methods of development, harmonization, and coordination of private law to develop uniform legal principles and rules among the Member States. Its members are 63 countries from Europe, Africa, America, Asia, and the Pacific Ocean. International Institute for the Unification of Private Law, <<http://www.unidroit.org/about-unidroit/overview>> [21.09.2024].

⁴⁹ The Evolution of International Franchising: Trends and Future Outlook, <<https://michaelledwards.uk/the-evolution-of-international-franchising-trends-and-future-outlook/>> [23.09.2024].

⁵⁰ Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Law Business Research Ltd, London, UK, 2015, 2.

⁵¹ Hammond N., Simon S., Franchising in Romania, Hammond Bogaru and Associates, Bucharest, 2011, 2.

⁵² Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Romania, Roseti A., and Filatov A., Drakopoulos Law Firm, Law Business Research Ltd, London UK, 2015, 144.

⁵³ Ibid, Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Brasil, Gelman R., and Avila Mariano R. D', Law Business Research Ltd, London UK, 2015, 25.

⁵⁴ Ibid, Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Canada, Floriani B., and Liebman M., Lapointe Rosenstein Marchand Melancon LLP, Law Business Research Ltd, London UK, 2015, 33.

⁵⁵ Ibid, Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Italy, Pera R., and Maria F., Catenacci Rödl & Partner, Law Business Research Ltd, London UK, 2015, 86.

⁵⁶ Ibid, Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, France, Schulte E., Bersay & Associates, Law Business Research Ltd, London UK, 2015, 59.

⁵⁷ Franchise 2018 - Austria, International Comparative Legal Guides (ICLG), <<http://www.iclg.co.uk/practice-areas/franchise/franchise-2016/austria#chaptercontent1>> [24.09.2024].

approach, since franchising is administered by legal acts that generally define contractual terms, control trademarks, and restrict competition.⁵⁸

Like France, Austria, and Finland, neither the **Czech Republic, Denmark, Russia, Argentina** nor **the UK** rule franchising with specific acts. In **the Czech Republic** Civil Code⁵⁹ applies to franchising; in **Denmark**, Danish Contract Act, Danish Companies Act, Code of Ethics of Danish Franchise Association and other rules are used.⁶⁰ In **Russia**, franchising-related provisions are given in different chapters of the Civil Code, Trademark Law, Federal Law on State Registration of Legal Entities and Individual Entrepreneurs, and in rules on limited liability companies (LLCs).⁶¹ In **Argentina**, the Civil Code and Code of Entrepreneurial Societies⁶² are used for the same purpose, while in **the UK**, the Data Protection Act, Unfair Contract Terms Act, regulations of the Sales Agency and the Code of Ethics of the British Franchise Association (BFA) manage franchising.⁶³ It should be mentioned that the Code of Ethics was adopted by the BFA (not by the British Parliament) and is binding only for the BFA members.⁶⁴

The **United States** operates special legislation on franchising. It is settled by the Federal Trade Commission (FTC) and different State Agencies. Besides, the US also has specific state franchising laws (including, in Washington, California, Illinois, Indiana, Maryland, North Dakota, Oregon, etc.).⁶⁵ The State Laws are only used if an Offer or a Receipt (or a contractual action) is completed in the state territory or if a franchisee is a resident of the state.⁶⁶ **Switzerland, Hungary, Ukraine, Germany, and Turkey** are regulating franchising on a general-legislative level. In **Switzerland**, the general principles of the Swiss Civil code, Employment Law and the Ethics Code⁶⁷ of the Swiss Franchising Association operate towards franchising; In **Hungary**, the Civil Code of Hungary⁶⁸, Hungarian Competition Act and Directive IX.18/20021 of the Franchising Association are used.⁶⁹

⁵⁸ Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Finland, Lindgren P., Advocare Law Office, Law Business Research Ltd, London UK, 2015, 53.

⁵⁹ Ibid, Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, the Czech Republic, Kusak B., and Pavlíková H., Noerr Sro, Law Business Research Ltd, London UK, 2015, 55.

⁶⁰ Federspiel G., Franchising in Denmark 2012, Sondergaard Christensen Partner, Copenhagen, 2012, pp. 6, 32.

⁶¹ Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Russia, Biriulin V., and Medvedev S., Gorodissky and Partners, Law Business Research Ltd, London UK, 2015, 113.

⁶² Ibid, Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Argentina, Bunge D. C., Bunge-Bunge E., Smith & Luchia Puig Abogados, Law Business Research Ltd, London UK, 2015, 8.

⁶³ Legalities of Franchising in the UK: what international franchisors need to know, WhichFranchise.com, 2018, <https://www.whichfranchise.com/feature_template.cfm?FeatureID=371> [25.07.2024].

⁶⁴ Franchising Code of Ethics, British Franchise Association (BFA), 2017, <<https://www.barkingmad.uk.com/blog/franchising/british-franchise-association-bfa-franchising-code-of-ethics/>> [19.08.2024].

⁶⁵ What are the franchise laws? <<https://www.franchiselawsolutions.com/franchising/franchise-laws>> [03.09.2024].

⁶⁶ Ibid, [03.09.2024].

⁶⁷ Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Switzerland, Ammann M., and Rapin C., Meyerlustenberger Lachenal, Law Business Research Ltd, London UK, 2015, 131-133.

⁶⁸ Ibid, Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Germany, Metzlauff K., and Billing T., Noerr LLP, Law Business Research Ltd, London UK, 2015, 65.

⁶⁹ Ibid, Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Hungary, Lukácsi P., and Borbás M., SBGK Patent and Law Offices, Law Business Research Ltd, London UK, 2015, 89.

In **Ukraine**, franchising is settled by the Civil and Entrepreneurship Codes⁷⁰; in **Germany** the Civil Code of Germany, Consumer Law, Entrepreneurship Law, Competition and Antitrust Laws jointly define the terms of concluding franchising, contractual obligations and rights.⁷¹ In **Turkey**, franchising is managed by the Code on Entrepreneurship. If one of the franchising parties is a foreign company, the law on Foreign Direct Investment applies.⁷² In Georgian legislation, franchising is regulated only by the Civil Code (articles 607-614), no additional separate rules refer to this contract directly.⁷³ In the neighboring Azerbaijan, the term franchising was introduced with the adoption of the Civil Code in 2000. The Civil Code defines franchising and contains few provisions governing different aspects of a franchise agreement.⁷⁴ Likewise, another neighbour of Georgia, the Republic of Armenia has no specific law on franchising, instead, it assigns a separate chapter in the Civil Code to regulate this transaction.⁷⁵ As for **China**, it regulates franchising with the Civil Code, Anti-Monopoly Law and various other rules.⁷⁶

Based on the brief overview above, two main directions can be identified; some of the listed countries (**France, Austria, Finland, the Czech Republic, Denmark, Russia, the UK, Argentina, Switzerland, Ukraine, Germany, Hungary, Turkey, Georgia, Azerbaijan, Armenia**) regulate franchising with general legislation; such as Civil and Civil Procedure Codes, Entrepreneurial and Competition Laws; while another group of countries (**Romania, Italy, Canada, Brazil, the United States, and China**) additionally apply separate laws to franchising. Such contrast is inter alia conditioned by differences among legal systems (including, diverse territorial arrangement; hierarchy, competencies and jurisdiction of legislative bodies), and by individual features of market development in reviewed countries (including, market segmentation/expansion indicators, levels of infrastructural and technical development, etc.)

IV. Franchising Case-law

The complexity of franchising disputes depends on the specifics of the existing business relationship between parties, the structure of franchising and its territorial coverage, the volume of damage, existing financial risks, and many other factors. These preconditions in each case diversify or complicate the dispute process. Accordingly, reviewing certain aspects of

⁷⁰ Franchise 2019-Ukraine, International Comparative Legal Guides (ICLG), 2018, <https://www.acc.com/sites/default/files/resources/vl/membersonly/Article/1470786_1.pdf> [04.08.2024].

⁷¹ Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Germany, Metzlaiff K., and Billing T., Noerr LLP, Law Business Research Ltd, London UK, 2015, 61-65.

⁷² Ibid, Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Turkey, Koyuncuoglu H., Koyuncuoglu & Koksall Law Firm, Law Business Research Ltd, London UK, 2015, 140.

⁷³ Civil Code of Georgia, Parliamentary Gazette, 31, 24/07/1997, <<https://matsne.gov.ge/en/document/view/31702>> [15.09.2024], (In Georgian).

⁷⁴ Entering Azerbaijani Market: Franchising and Distribution, <<https://www.hg.org/legal-articles/entering-azerbaijani-market-franchising-and-distribution-32784>> [26.07.2024].

⁷⁵ Haig Ghazarian Z., The Armenian Franchise Registration Requirement and the Application Form, 7, <<https://dspace.aua.am/xmlui/bitstream/handle/123456789/2062/Zohrab%20Ghazaryan.docx.pdf?sequence=1&isAllowed=y>> [15.09.2024].

⁷⁶ Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, China, Ren Y., Tian Yuan Law Firm, Law Business Research Ltd, London UK, 42.

franchise-related cases will help the reader to see a broader spectrum of the addressed topic and understand existing trends established based on court rulings.

In the US, state courts frequently “push” disputing parties to apply to the mediator or arbitration at the initial stage (considering following advantages: faster proceedings, confidentiality, last instance award/decision, no jury interference in hearings, lower expenses, greater opportunity for parties to continue business relationship).⁷⁷ Besides, parties also frequently include ADR clauses in franchising contracts while starting their relationship. Despite ADR’s diverse advantages, legal doctrine considers its probable side-effects on parties’ procedural rights and illustrates appropriate case-law; a requirement to mediate prior to arbitration or litigation may undercut and defeat a motion for a preliminary injunction. For example, in World of Beer Franchising, Inc. v. MWB Development, LLC⁷⁸, the franchise agreement required the parties to mediate before arbitrating but provided an exception to arbitration for preliminary injunctive relief in court. The agreement also required that a party seeking such relief would “immediately and contemporaneously submit the dispute for non-binding mediation.” The district court had denied the franchisor’s motion for a preliminary injunction against the terminated franchisee’s continuing use of its marks because the franchisor had failed to mediate. On appeal, the Eleventh Circuit affirmed. Significantly, neither the district court nor the appeals court had any difficulty enforcing the contractual requirement for mediation before consideration of a motion for emergency relief, even though, in practice, requiring mediation might considerably delay or even destroy the opportunity for emergency relief. The result likely would have been avoided if the agreement had provided an exception to the mandatory mediation provision for emergency relief.⁷⁹

The court reached a different result on Auntie Anne’s, Inc. v. Wang.⁸⁰ In that case, the franchise agreement’s dispute resolution provisions collided: one section stated that all disputes first had to be mediated and then arbitrated; another provision, which did not reference the mediation and arbitration sections, stated that nothing in the agreement prevented the franchisor from obtaining “injunctive relief” in any court having jurisdiction. The franchisor had terminated the franchisee and then filed suit, without seeking mediation or arbitration, against the franchisee to obtain possession of the premises and enjoin the franchisee’s continued use of the marks. Although the franchisor apparently requested this injunctive relief in the complaint, it did not move for a preliminary injunction. The franchisee, however, counterclaimed for wrongful termination and breach of contract and moved to enjoin the termination and the franchisor’s cutting off of the franchisee’s sources of authorized supplies.⁸¹

The court denied the franchisee’s motion for a preliminary injunction on termination and sources, but granted it with respect to mediation and arbitration. Noting that there was little

⁷⁷ Ibid, Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, the United States, Brennan M. G., and Zeidman P. F., DLA Piper LLP (US), Law Business Research Ltd, London UK, 2015, 157.

⁷⁸ JUSTIA, US Law, World of Beer Franchising, Inc. v. MWB Development I, LLC, et al, No. 17-12870 (11th Cir. 2017), <<https://law.justia.com/cases/federal/appellate-courts/ca11/17-12870/17-12870-2017-10-16.html>> [26.07.2024].

⁷⁹ Garner W. M., Dispute Resolution in the Twenty-First Century: The Challenge to Get ADR Right, Franchise Law Journal, Vol. 40, No. 1, 2020, 34.

⁸⁰ Auntie Anne’s, Inc. v. Wang, 2014 WL 11728722, at *11 (C.D. Cal. July 16, 2014).

⁸¹ Garner W. M., Dispute Resolution in the Twenty-First Century: The Challenge to Get ADR Right, Franchise Law Journal, Vol. 40, No. 1, 2020, 35.

evidence of the intent of the parties on how the conflicting provisions should be construed, the court rejected the franchisor's interpretation that the exception for all actions seeking injunctive relief excused it from the prerequisites. Without pausing for citation of authority, the court observed that "the majority of disputes arising under franchise agreements . . . involve decisions by the franchisor to terminate the franchisee," which in turn led to both sides seeking injunctive relief. In this context, the agreement's exception from arbitration for injunctive relief, if read literally to encompass any complaint calling for any type of injunctive relief, could "vitiating the arbitration provision entirely." The court concluded that the exception permitted a party to obtain "limited relief" in court, but only pending arbitration. Accordingly, the court denied the motion, directed the parties to mediation, and, if it was unsuccessful, to arbitration. The cases on requests for emergency relief point up some practical lessons. First, courts uniformly uphold clearly written contractual provisions. But, in the relatively new world of ADR, it is not surprising that many agreements do not spell out the role of each dispute-resolution mechanism. The courts in both Auntie Anne's and World of Beer struggled with clauses that were less than clear. If the agreement has conflicting or ambiguous provisions, the most prudent course is to seek mediation and arbitration at the same time that a suit is filed for emergency relief and to advise the court that its work will be done when the request for relief is decided.⁸²

In Canada, franchise disputes are widely discussed by mediation and arbitration, three Canadian provinces: Ontario, British Columbia, and Saskatchewan operate Elective Pre-trial Mediation.⁸³ It should be noted that, while Ontario franchise legislation (the Arthur Wishart Act (Franchise Disclosure), 2000) does not include a mediation process, the Ontario Rules of Civil Procedure now include a program of mandatory mediation in case-managed cases in various areas of Ontario, including Ottawa-Carleton, the City of Toronto and the County of Essex. Certain actions are exempted from this procedure, including actions placed on the Commercial List in the Toronto region, and actions certified as class proceedings under the Class Proceedings Act, 2002. For all other actions in Ontario, the Rules of Procedure stipulate that a mediation session shall take place within 180 days after the first defence has been filed unless the court orders otherwise.⁸⁴ Most of the provinces have enacted arbitral legislation.⁸⁵ Provincial arbitration legislation allows a party to stay court proceedings brought by another party and allows an arbitrator to rule on jurisdiction which will prevent the parties from resorting to a court.⁸⁶

The Ontario Court of Appeal's decision in MDG Kingston Inc. v. MDG Computers Canada Inc. ("MDG") provides some useful guidance regarding the fact that arbitration is increasingly displacing traditional litigation as the dispute resolution mechanism of choice for many businesses, including franchisors and franchisees. The Franchise Act provides franchisees with

⁸² Ibid, 34.

⁸³ Zeidman P. F., *Franchise in 25 Jurisdictions Worldwide*, Canada, Floriani B., and Liebman Lapointe M., Rosenstein Marchand Melançon LLP, Law Business Research Ltd, London UK, 2015, 36-37.

⁸⁴ The Case for Mediation and Arbitration of Franchise Disputes, <<https://adrchambers.com/news-articles/commentary/case-mediation-arbitration-franchise-disputes/>> [02.09.2024].

⁸⁵ Zeidman P. F., *Franchise in 25 Jurisdictions Worldwide*, Canada, Floriani B., and Liebman Lapointe M., Rosenstein Marchand Melançon LLP, Law Business Research Ltd, London UK, 2015, 36-37.

⁸⁶ Advanced Procedures for Mediation and Arbitration of Franchise Disputes to Save Time, Costs and Disruption, <<https://cfa.ca/blog/advanced-procedures-for-mediation-and-arbitration-of-franchise-disputes-to-save-time-costs-and-disruption/>> [02.09.2024].

certain “rights of action” and various remedies against franchisors, including the right to rescind or annul a franchise agreement. The MDG decision considers how such remedies can be enforced procedurally – and whether they may be resolved by arbitration. The plaintiff was a franchisee who had operated a retail computer store under the MDG franchise since 2000 (prior to the enactment of the Franchise Act). In February of 2005, the parties replaced their initial franchise agreement with a new franchise agreement. The franchisor did not provide the disclosure document required by the Franchise Act when the new franchise agreement was entered. Both franchise agreements contained mandatory arbitration clauses. Business did not go well after the parties entered into the new franchise agreement. By February 2007, the franchisee purported to rescind the franchise agreement, relying on an allegation that the franchisor failed to provide the disclosure required by the Franchise Act.⁸⁷

The franchisor took the position that the dispute should be referred to arbitration, as provided by the language of the franchise agreement. As the court noted, the issue raised by the appeal is a classic one: does an arbitration clause become inoperative when the agreement containing that clause is rescinded or terminated? Before this case, no Ontario court had considered this issue in the franchising context. The Court of Appeal analyzed the relevant provisions of both the Ontario Arbitration Act, 1991 (the “Arbitration Act”) and the Franchise Act, as well as the arbitration clause in the franchise agreement itself, in addressing this question. The court noted that section 7 of the Arbitration Act requires it to stay all actions in favour of arbitration, subject only to certain exceptions (section 7(2) permits the court to refuse a stay in certain circumstances, such as where the arbitration agreement is “invalid”). The court also noted that section 17 of the Arbitration Act gives arbitrators the authority to rule on their jurisdiction and whether an arbitration clause survives termination of the main agreement in which it is found.⁸⁸

The court then made the following observations: the franchisee was not alleging fraud or that the franchise agreement was void from the very beginning. It concluded, therefore, that the franchise agreement was not “invalid”; The rescission remedy provided for in the Franchise Act would not, if granted, make the franchise agreement “invalid” from the very beginning; Nothing in the Franchise Act suggested that an arbitration clause in a franchise agreement could not survive rescission of the rest of the agreement; and finally, the Franchise Act does not limit or restrict the right of parties to agree to resolve disputes by arbitration (instead of in court). The court found that the arbitration clause was not “invalid” simply because the franchise agreement might ultimately be rescinded for want of proper disclosure. The court therefore stayed the action in favor of arbitration. According to the Court of Appeal’s decision, arbitration is the proper forum for determining both the limits of the arbitrator’s jurisdiction and the merits of the franchisee’s claim for rescission. The MDG case stands for the proposition that the normal rules regarding arbitration clauses apply, even in disputes between parties under the Franchise Act. The decision also confirms a continuing judicial trend to endorse the use of alternate dispute resolution mechanisms.⁸⁹

⁸⁷ Ontario Court of Appeal Clears the Way for Arbitration of Franchise Disputes, McMillan, Litigation Group Bulletin, 2008, <https://mcmillan.ca/wp-content/uploads/2020/07/FranchiseDisputes_1108.pdf> [10.09.2024].

⁸⁸ Ibid.

⁸⁹ Ibid.

Considering the above-illustrated approach and cases, it can be assumed that legislators and the judiciary have been steadily supporting arbitration and mediation. Such a decision can be justified by reasonable grounds (namely, a necessity to maintain franchising ties, continually meet consumer needs, keep stable market turnover, avoid elapsed dispute processes, and facilitate effective domestic and international trade/service).

In common law countries parties choose themselves which documents to submit, which witnesses and experts to invite, what factual circumstances to prove by represented evidence, the court is rather passive in this regard. Interestingly in the past, the English courts rarely referred to the parties on obtaining and submitting evidence. This tendency is still maintained, despite operating the so-called "Active Procedural Management" principle in a court today. If we consider title of the principle, it should highlight the active role of a court in the proof process. However, the English court still passively instructs on submitting evidence.⁹⁰ Unlike England, in the civil law system state, Germany, judges are active in obtaining evidence. They often give instructions to the parties and directly contact the experts to clarify various technical issues.⁹¹

Pronuptia de Paris v. Schillgalis (Case 161/84) is one of the critical franchise-related cases reviewed by the European Court of Justice (ECJ). The franchisor was a French sewing enterprise (Pronuptia de Paris, "The Claimant"), and the franchisee was an individual (Mr. Schillgalis, "The Respondent") who produced clothes in Germany. The claimant argued for non-payment of the contractual taxes, while the respondent argued that the franchisor had not provided him with the necessary commercial information and technical support. The claimant initially filed a lawsuit in a German court and demanded payment of taxes, which was satisfied by the court; as a result, the respondent appealed to the German Court of Appeal and based his request on Article 85 (1)⁹² of the Treaty Establishing the European Community and on the violation of 67/67 Regulation On the Application of Article 85 (3) of the Treaty to Certain Categories of Exclusive Dealing Agreements.⁹³ The court of appeal upheld the respondent's complaint and annulled a decision of the first instance. According to the appeal court's interpretation, restrictions envisaged between the parties under the franchise were anti-competitive and did not comply with Article 85 of The Treaty Establishing the European Community. Dispute continued in the Supreme Court of Germany. The latter stayed the proceedings and referred to the European Court of Justice (ECJ) with questions on the Treaty Establishing the European Community. The ECJ explained that a franchise is a special agreement by which the contractors use one trademark, integrated commercial system, and

⁹⁰ Blake S., A Practical Approach to Effective Litigation (8th Ed.), Oxford University Press, Oxford, 2015, p. 332.

⁹¹ Trittman R., Kasolowsky B., Taking Evidence in Arbitration Proceedings Between Common Law And Civil Law Traditions - the Development of a European Hybrid Standard for Arbitration Proceedings, UNSW Law Journal Volume 31(1), Sydney, 2008, 334.

⁹² The Treaty Establishing the European Community (2002/c 325/01), Official Journal of the European Communities, c325/1, 24.12.2002, Article 81 (Ex article 85),
<<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:C2002/325/01&from=FR>> [01.08.2024].

⁹³ Regulation No 67/67/EEC of the Commission of 22 March 1967 on the Application of Article 85 (3) of the Treaty to Certain Categories of Exclusive Dealing Agreements, Official Journal of the European Communities, 20.11.2016, <<https://publications.europa.eu/en/publication-detail/-/publication/9c582d9e-77be-403b-8371-b4e820193a70/language-en>> [01.08.2024].

methodology. Accordingly, the franchisee may be subject to various restrictions.⁹⁴ With regards to the Supreme court's questions, the ECJ ruled that the franchise agreement terms on protecting commercial secrets did not contradict article 85 of the Treaty Establishing the European Community. Besides, the franchisor's recommendations to the franchisee on trading price did not violate article 85, and the 67/67 regulation did not apply to this agreement.⁹⁵ It can be assumed that three instances of the German court could not properly handle this dispute because of the complexity of the franchising system. Involvement of the ECJ was inevitable to thoroughly identify the correlation between franchising terms and the parties' factual relationship from the EU legislation context and to ensure proper reasoning of the decision.

An interesting example of providing evidence and court's active role in their examination is the ruling of the Federal Court of Australia (Australian Competition and Consumer Commission vs. LTD Seal-A-Fridge Pty Can). The Australian Competition and Consumer Commission ("The Claimant") claimed that Seal-A-Fridge Pty Can ("The Respondent") introduced an unjustifiable high tax for telephone services to franchisees. The claimant explained that the increase in telephone service tax contradicted the franchising terms and caused material loss. The respondent denied the infringement of the contract. During proceedings, the court ordered parties to submit materials which depicted details of negotiations on the franchising. The parties submitted most of the requested information as witness hearsay. However, the court referred to the Australian Competition and Consumer Commission and ordered them to submit additional relevant materials important to the case; the request was satisfied. After examining all the evidence, the court concluded that the respondent had set additional taxes on the service without a legal basis.⁹⁶

The court mainly relied on evidence provided by the Commission; therefore, the reader might question why said evidence prevailed over the parties' evidence. It so happened because, unlike the parties, the Commission had more resources to obtain credible evidence, systematize it, and give reliable explanations to the court regarding essential topics raised. Parties' evidence was examined in the same manner, but in practice acquired less value because of parties' superficial procedural competence.

The Illinois District Court reviewed the admissibility of evidence on franchising disputes in cases: 1) Popeye's Inc. v. Shapiro, and 2) Kutner Buick Inc. v. American Motors Corporation. In the first case, the franchisor claimed that disclosure of information (containing special data) from the Franchise Offering Circular⁹⁷ caused damage. The franchisor requested the General Envoy of Illinois to submit a Fact Affirmative Certificate to strengthen his position. With regards to the evidentiary value of this certificate, the Regional Court explained that under

⁹⁴ Hurley E. R., *Pronuptia de Paris v. Schillgallis*, Permissible Restraints of Trade on Franchising in the EEC, *Northwestern Journal of International Law & Business*, Volume 8, Issue 2, 1987, 479, 481, 485, 489, 492-497, 499-501.

⁹⁵ *Pronuptia de Paris GmbH v Pronuptia de Paris Irmgard Schillgallis*, Case 161/84, European Court of Justice, Judgment of the Court of 28 January 1986, <<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-161/84>>; <<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1479642402947&uri=CELEX:61984CJ0161>> [20.08.2024].

⁹⁶ *Australian Competition and Consumer Commission v Seal-A-Fridge Pty Ltd (No 2)*, FCA 681, 2010, Federal Court of Australia, <<http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2010/2010fca0681>> [17.08.2024].

⁹⁷ Franchise Offering Circular-document, which informs the franchisor of the standard terms of the franchising agreement.

Illinois legislation obtaining the certificate as evidence is not mandatory, besides, the certificate did not provide additional information on the franchise circular, and therefore it was deemed as inadmissible under article 403 of the Federal Rules On Evidences.⁹⁸

In the second case, the franchisee - Kutner Buick Inc. ("The Claimant") claimed that the franchisor - American Motors Corporation ("The Respondent") had violated the competition rules in its operating area; accordingly, it demanded to prohibit unfair competition. In the appeal application the claimant referred to the internal memorandum, and stated that under this document, and based on Pennsylvania state legislation, auto dealers could restrict transfer of the franchising to the third parties within an 8-mile radius from their operating area. Claimant believed that the said provision also applied to the respondent, because the latter was located five miles away from the claimant. The appeal court investigated the internal memorandum deemed it as case-related evidence and explained that the first instance court should have accepted it as admissible evidence.⁹⁹ The case highlights that when the court superficially investigates presented evidence it renders an ungrounded decision and also restricts the party's procedural right to defend its position. The latter negatively affects the party's material right as well (in this case depriving the claimant of an opportunity to request fulfilment of contractual obligations from the franchisee), can lead to the degradation of the court's image, and its reliability in business circles. In contrast, the appellate court thoroughly studied the presented evidence and rendered a well-grounded and legitimate decision.

Generally, proper attention should be paid to the joint assessment of the evidence, because separate consideration of evidence can mislead the court, weaken its focus and lead to a wrongful decision. This approach is especially important when a contract unites many parties and the court has to examine plenty of documents. The Superior Court of Ontario made a significant ruling in this context on the case Trillium Motor World Ltd. v. General Motors of Canada Limited. The process was so voluminous and complex that it lasted for 41 days; 25 witnesses (including eight experts) were interrogated; 96 material evidence and written explanations of a volume of 1500 pages were submitted; a three-day summary session was held. According to a case, one of the automakers in the franchising scheme – GMCL decided to reduce its dealerships to avoid the expected financial crisis. It drafted termination agreements and sent them to franchisees for confirmation. In response, one of the dealers - Trillium Motor World Ltd. filed a joint suit that contained demands of 181 auto-dealers. Claimant stated that GMCL breached the franchising rules when it ordered franchisees to accept contract termination within 6 days, while the Canadian legislation ascertains 14 days for termination of the agreement. The claimant also stated that GMCL did not provide dealers with identifying information of other dealers involved in the contract and accordingly damaged them. The claimant clarified that this information was needed to jointly discuss the termination terms of the contract and reimbursement issues.

While considering the necessity of informing the dealers about market risks, the court shared the claimant's position and found that risks were significant. This was proved by

⁹⁸ Federal Rules of Evidence of the United States, 1975, Legal Information Institute, Cornell Law School, Article IV, Rule 403, <https://www.law.cornell.edu/rules/fre/rule_403> [20.08.2024].

⁹⁹ Caruso C. D., Evidentiary & Trial Issues in Franchise Cases, The Implied Covenant of Good Faith and Fair Dealing Common Law Fraud, Presented to American Bar Association Forum on Franchising, 2008, <https://cdcaruso.com/wp-content/uploads/2017/06/cdc-final-aba-2008-evidence.v1_new.pdf> [20.08.2024], 4-8.

GMCL's application to the Canadian government for financial aid and its plan to reduce the dealer network. The court explained that GMCL should have provided relevant information to dealers. The applicant had additionally submitted specialists' testimonies to the court for providing the claim.¹⁰⁰ The judge explained that despite the conscientiousness of the witnesses and relevance of submitted documentation, the court had the advantage of jointly examining evidence. Consequently, unlike experts, the court was thoroughly acquainted with each piece of evidence and assessed them jointly. Finally, the claimant's suit was partially satisfied. The defendant was obliged to pay 45 million dollars in favour of the claimant for termination of the franchise agreement and professional negligence.¹⁰¹

This case reconfirms how important a joint assessment of evidence is for the proper understanding and interpretation of the legal and financial aspects of the case and how can it affect decision-making. Despite the experts' opinions and witnesses' testimonies, many materials, and electronic evidence presented by the parties, it turned out that the arguing parties were not familiar with all the factual circumstances of the case and could not evaluate them jointly. A narrow assessment of evidence by parties caused the formation of an inadequate claim and a weak response. In the end, the court ordered the defendant to pay an amount 88% less than initially requested by the claim.

Up to date, only two cases (№2B/3536-17, №AS-1502-2023) have been considered by Georgian courts that essentially and directly relate to franchising. It can be assumed that one reason for such a scarcity of case law is that franchisors operating in the Georgian market traditionally include their states' legislation as applicable law on disputes in contracts. In turn, such a situation hinders the establishment, development and proper analysis of franchising-related case law. In case №2B/3536-17, the dispute arose from a franchising agreement signed between the two LLCs in 2014, under which the franchisor accepted the franchisee into its franchising network and received an order worth € 454 246, but the franchisee only delivered goods worth € 347 115.33 (the order was not fully completed). The subject matter of a dispute was the annulment of the contract, the restoration of the original condition, and the imposition of the amount; the court of the first instance partially satisfied the claim. The appellant requested in the appellate instance to annul the decision. The claimant explained that the 2014 franchising agreement was void because it was signed by an unauthorized person (manager) on behalf of the respondent. The Court of Appeals did not share the plaintiff's opinion; moreover, it agreed with the respondent's explanation that the agreement fully complied with the requirements of Article 607 of the Civil Code of Georgia. As a result, the Court of Appeals deemed this part of the claim unfounded.

Since the claimant initially requested the restoration of the original status that existed before the conclusion of the contract and the imposition of the amount, the court also considered the basics of termination of the contract by the franchisor. It did not share the respondent's explication that the imposition of € 107 130.67 was not the subject of a dispute, as the claimant did not demand to pay it independently but sought the annulment of the contract and the attainment of that result by restoring the original condition. Under this agreement, the

¹⁰⁰ Companies' Creditors Arrangement Act of Canada (CCA) 1985, C-36, <<https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-36/latest/rsc-1985-c-c-36.html>> [19.08.2024].

¹⁰¹ Trillium Motor World Ltd. v. General Motors of Canada Limited, ONSC 3824, 2015, Canada, Superior Court of Justice, <<http://www.canlii.org/en/on/onsc/doc/2015/2015onsc3824/2015onsc3824.html>> [17.08.2024].

franchisor (the respondent) received an order worth € 454 246, while the franchisee (the claimant in the first instance court) received only goods worth € 347 115.33. In connection with this fact, the Court of Appeals referred to the first section of article 352 of the Civil Code of Georgia, under which if one of the parties renounces the contract under the conditions provided for in article 405, then the performance and benefits are returned to the parties. According to the first section of article 405 of the same code, if one of the parties violates the obligation arising from the bilateral agreement, then the other party may refuse to fulfill the obligation after the ineffective expiration of the period specified by him.

In the Appellate Court's view, the central inaccuracy in the present dispute was the determination of the subject matter of the dispute, i.e., the misinterpretation of the claim. The plaintiff reduced the claim by a statement during the preparatory sitting but did not claim payment of € 107 11.67 (i.e., compensation for damages received from the franchisor). The court indicated article 248 of the Code of Civil Procedure of Georgia, which sets out the scope of a court decision and stipulates that the court has no right to attribute to a party by its decision what it did not ask for, or more than it requested. According to article 83.3 of the same code, after preparing the case for a pre-trial hearing, the basis or subject matter of the lawsuit may be changed only with the prior consent of the respondent. The court also noted that article 178 (T) of the Civil Procedure Code of Georgia obliges the claimant to indicate the legal grounds on which he/she bases claims, however not making such an indication or incorrect legal assessment of the factual circumstances may not be grounds for dismissal.

The Court of Appeals explained in-depth and unequivocally that "the principle of disposition is, in essence, a prohibition on the judge against invading the autonomy of the parties, which at the same time involves a significant shift of the burden of responsibility on the disputing parties. However, the principles of disposition and competitiveness cannot be interpreted in such a way that the role of the judge in the administration of justice becomes completely insignificant. It is inadmissible for the court to examine and evaluate the facts presented by the parties only in that section and in the manner presented by the party." The court also heard the defendant's explanation and, consequently, the factual circumstances were established through the full realization of the principle of competitiveness. In particular, under the 2014 contract, the franchisor received an order worth € 454 246, while the franchisee obtained only € 347 115.33 worth of goods. Considering all these circumstances, the Court of Appeals held that the Tbilisi City Court had correctly applied articles 352, 400, and 405 of the Civil Code of Georgia and ordered the respondent to pay the sum in favour of the claimant.¹⁰²

The discussed case once again reiterates the problem of parties' procedural unawareness derived from the complex nature of franchising. As seen, the franchisee erroneously formulated a request in the statement of claim that in turn raised the risk of losing remuneration opportunity on significant financial loss. However, first-instance and appellate courts thoroughly evaluated circumstances, did not leave parties alone in the realm of their limited legal competence and rendered reasoned judgments.

Supreme Court's ruling on case №AS-1502-2023 focuses on intellectual property aspects connected to franchising; The claimant considered that the contractor ("the Respondent") was illegally using his trademark, and a similar trademark in the territory of Georgia. Accordingly,

¹⁰² Case №2B /3536-17, <<https://ecd.court.ge/Decision#!>> [22.08.2024], (In Georgian).

the claimant requested a ban on the use of his trademark or confusingly similar signs on the territory of Georgia (a ban on the use of the trademark M-O.KR as a store name and on the internet; a ban on the use of the M-O.KR trademark on goods, including goods in the 03,09,14,18,21,25,28 classes of the Nice International Classifier of Goods and Services (NCL); a ban on trademark M-O.KR as signs on stores located in certain addresses in Tbilisi city and Batumi city; prohibition of using the trademark M-O.KR as the name of web-page and for advertising on Facebook; prohibition of placement and use of the trademark M-O.KR on concrete websites in any form. According to the claimant, his and the defendant's trademarks are visually very similar, and have a similar sound. Besides, the claimant's trademark has a good reputation in Georgia, which significantly increases the scope of its protection.

In turn, the respondent stated that the trademark "M-O.KR" is the intellectual property of M-O.KR Co., LTD, a company registered in South Korea, to which the company's right was registered in the World Intellectual Property Organization in 2017. The franchising agreement signed between this company and the respondent mandated the latter to use the trademark owned by M-O.KR Co LTD in the territory of Georgia. The claimant considered that the court should have evaluated the trademarks based on Article 6, section 2, subsection C of the Law of Georgia On Trademarks according to the degrees of similarity between the marks and the goods and/or services, based on the comparison of which the level of similarity of the marks would be determined. If there is at least some level of similarity between the marks and the relevant goods/services are similar, it is necessary to assess the likelihood of confusion, according to Trademark Guidelines of the European Union Intellectual Property Office (EUIPO). However, the court has not considered the said issue.

Besides the claimant stated, that all three conditions of Article 6, section 1, subsection D of the Law of Georgia On Trademarks are met: 1. The respondent undeservedly benefits from favourable conditions, which is manifested by the connection created by the similarity with the claimant's trademark, therefore, the opposing party undeservedly benefits from the claimant's image and reputation, by creating an association with the claimant's name, the respondent establishes a place in the market and unlawfully gains notoriety. 2. The damage occurs to the distinctiveness of the trademark owned by the claimant which is manifested by "weakening", "diminishing" or "obscuring" the trademark. The respondent's trademark causes the claimant's trademark to lose its identity, uniqueness, and distinctiveness. 3. The reputation of the claimant's trademark is damaged. The parties operate in the relevant market by selling similar products, therefore, they are competitors, due to which, in the consumer's perception, the claimant receives direct damage in connection with these two trademarks, which means that the respondent appropriates the reputation of the claimant.

The Supreme Court considered that the cassation appeal did not meet the requirements of Article 391.5 of the Code of Civil Procedure, therefore, it was considered inadmissible. Following articles 6.1, 6.2 (sections A and D) of the Law of Georgia On Trademarks; articles 15, 16.1 of the International Agreement of April 14, 1994 On Trade-Related Aspects of Intellectual Property Rights and articles 2, 6, 10bis of the Paris Convention for the Protection of Industrial Property, the court explained that the main purpose of a trademark is to distinguish goods from other goods or services or to distinguish one entrepreneur from another entity. The court noted, that the main legal issue in the present case is the legality of the prohibition of the respondent's trademark if the existence of similarity between the trademarks is established.

Under section 5 of Article 15 of the Instruction On Procedures Related to the Submission and Registration of a Trademark Application approved by order №05 of the Chairman of the National Intellectual Property Center of Georgia (IPCG), during the comparison provided for in section 4 of this article, the main criterion for determining the similarity of symbols can be auditory (phonetics, musical sound), visual (graphics, colour combination), conceptual (semantics, essence) similarity of symbols. When comparing characters, the overall impression prevails.

The evidence presented in the case (expert's report, photographs, the decision of the appeals chamber in IPCG) proved that the comparable trademarks are not characterized by such a similarity that led to misleading the consumer. According to the definition of the Chamber of Cassation, it is true that there may be a low level of similarity between the words, but not in such a way that in the eyes of an objective observer, the signs would be confused. A partial phonetic similarity of this degree is quite possible between the other two words, otherwise, it turns out that, even for such slight similarities, the possibility of unfounded lawsuits is created. Concerning visual similarity, the Cassation Chamber shared the reasoning of the Appeals Chamber, under which in the case of a combined mark, the verbal element usually bears the burden of the distinctiveness of the mark. The trademark used by the respondent is a word mark executed in stylized Latin letters. The dominant element of the claimant's trademark and the sign used by the defendant consists of six letters and is written in Latin letters, the first, fifth and sixth letters being identical. Nevertheless, the claimant's trademark is significantly different from the trademark used by the respondent. With regards to the claimant's position on good reputation, the Supreme Court explained that the mentioned issue becomes the subject of research only after establishing a similarity between the contested marks, which confirms the similarity before confusion, and there is a basis for the prohibition of the trademark. The precondition which is connected to the potential of misleading the consumer due to the lack of sufficient similarity between the marks, is unfounded, therefore, damage to reputation cannot be a relevant basis for the present claim.¹⁰³

The presented ruling establishes a solid foundation of in-depth understanding and interpretation of intellectual property (namely, trademark) on franchising disputes within Georgian jurisdiction, and even in a broader context as the court has elucidated not only national but international legislation and standards related to intellectual property and trademark. Besides, the decision highlights certain preconditions under which the usage of a trademark can be restricted.

V. Conclusion

Figures, facts, historical context, tendencies, conceptual/organizational and legal characteristics of franchising reviewed in the paper show the utmost importance and necessity for continuous research and extended discourse of the matter. Today franchising industry covers a broad range of economic sectors of numerous developing and developed states; it enables entrepreneurs to discover and reach new markets and consumers, establish new partnerships and alliances; develop commercial infrastructure, methods, and technologies;

¹⁰³ Case №AS-1502-2023, <<https://www.supremecourt.ge/ka/fullcase/72271/1>> [03.10.2024], (In Georgian).

benefit from necessary resources for the smooth operation of businesses (including, material, financial, intellectual, organizational); gain competitive advantage.

Despite a few attempts a unified legal framework of franchising does not exist internationally, but reviewed laws of 22 countries of almost every continent enable us to assume that franchising is extensively regulated on national levels. This fact underlines countries endeavors for legally providing franchising systems in order to advance/increase internal markets, further integrate on international markets, attract highly-competitive investors, develop technologies and infrastructure, boost various sectors of economy, strengthen international ties, etc.

Franchising-related case law is developed in leading states having a long history of this business system, therefore, volumes of court rulings can be found including a broader picture of various aspects of franchising dispute tactics, elements, or trends within a particular jurisdiction or beyond it. In parallel to case-law extension, franchise-related disputes are gradually referred to arbitration and mediation, thus, these mechanisms are acquiring broader recognition both in common law and civil law states. In certain states, judges have a passive role in franchising disputes in terms of competing on hearings (e.g., Australia, Canada, the US, the UK), while in others (including, Germany, and Georgia) judges actively engage in the process, often obtain evidence and help parties to correctly and fully realize their procedural rights. Case law presented in the paper shows that the adequate evaluation of a franchising contract, and its peculiarities primarily determines the volume of the claim, accents of response, nature and duration of the dispute, and content of the decision.

As for Georgia, despite promising rulings and courts' rational approaches to franchising disputes, this factor cannot fully overcome existing challenges, including legislative ones. The Civil Code of Georgia regulates franchising on a general basis, not giving details on key issues such as parties' guarantees, particular rights and responsibilities, or appropriate legislative measures. One explanation for such a situation is that when the Civil Code was adopted in 1997, the franchising system was not spread in the country and legislative amendments were not as important as today (especially after huge advancements in international trade, digital transformation, electronic commerce, artificial intelligence, etc.) Since the Civil Code does not consider said factors, its seventh chapter (franchise) should be amended and extended. In addition, separate specialized act on franchising can be adopted similar to many jurisdictions (including, Romania, Italy, Canada, Brazil, the United States, and China). This requires complex research, analysis, and large-scale cooperation between public and private sectors, academic/expert circles, and legislative bodies. The Ministry of Justice can organize and lead such cooperation just as it did successfully while reforming the law of entrepreneurs of Georgia back in 2021.

As noted earlier, the importance of franchising is increasing in Georgia, nevertheless, public authorities/organizations (including, the Government of Georgia, Ministry of Economy and Sustainable Development of Georgia, LEPL Enterprise Georgia, National Statistics Office of Georgia, Georgian Chamber of Commerce and Industry¹⁰⁴) have not conducted an in-depth

¹⁰⁴ The Chamber's official representative explained that considering the Chamber's competence, it does not possess information related to franchising. Email correspondence to Georgian Chamber of Commerce and Industry of 17.10.2024.

analysis of the said commercial model in the country, have not properly reviewed its business and legal aspects, or related challenges. Recently the non-profit organization - Georgian Entrepreneurs Alliance has been created which established a Franchising Department. The latter aims to create a more favourable legal and economic environment for the expansion of franchising in Georgia, to serve as a centre for popularizing franchising. The Franchising Department plans to bring together leading experts of franchising and establish a working relationship with key international franchise associations and franchise associations of various countries.¹⁰⁵ However, according to the organization's explanation, since the Alliance was formed just recently, the Franchising Department has not started working on aimed objectives and has not launched a cooperation platform with various stakeholders neither within Georgia nor in the neighbouring countries and internationally.¹⁰⁶

Probably, the mentioned set goals will be extremely hard to achieve for non-profit organization, without appropriate financial, intellectual and organizational support. Without the latter, a quick and efficient extension of franchising throughout the country (especially, in less and under-developed regions) cannot be achieved, which in turn delays the economic development of industries. To overcome the said difficulty, at the initial stage, a state can launch a funding scheme for authorities/organizations aiming to work on franchising issues, fully or partially finance private initiatives or public-private partnerships (PPPs) and facilitate these organizations to extend their cooperation with foreign peers, create and update thematic statistics, analytical evaluations and predictions, publish periodic reports.

As a next step - the Georgian government can create a unit (for instance, a legal entity under public law, or separate sub-department, permanent working group within one of the ministries) or help third parties in setting up an independent body specializing in franchising (for instance, Franchising Center, or Georgian Franchise Association).¹⁰⁷ Franchise associations operate in various states, including Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, China, Croatia, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Finland, France, Germany, Greece, Great Britain, Hungary, Iceland, India, Indonesia, Italy, Japan, Kazakhstan, South Korea, Lithuania, Malaysia, Mexico, Morocco, Netherlands, Norway, Poland, Portugal, Romania, Russia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, US, Ukraine, Venezuela.¹⁰⁸ They are in charge of providing franchisors, franchisees, or any interested third parties (including state authorities, private organizations, legal entities or individuals) with legal, administrative, financial and other services. The mentioned organizational structure is a common practice internationally, so, Georgia can also establish an association considering the country's necessities and available resources.

Competent body specializing in franchising matters would identify challenges and necessities of local entrepreneurs operating under the franchising scheme in Georgia; assist in rising awareness on legal and business aspects of franchising systems; participate in legislative

¹⁰⁵ Georgian Entrepreneurs Alliance, Franchise Division, <<https://www.aeg.ge/index.php/en/24-04-2021>> [24.09.2024].

¹⁰⁶ Phone communication with the head of Georgian Entrepreneurs Alliance, 24.09.24.

¹⁰⁷ Franchise association has been functioning in neighboring Azerbaijan, See <<https://www.franchise.az/en>> [24.09.2024].

¹⁰⁸ A directory of the world's franchise associations, <https://www.franchiseassociations.org/index.php?pageNum_rsNext6=3&totalRows_rsNext6=61> [17.10.2024].

proceedings (draft, evaluate and analyze legislative amendments in Georgian administrative, civil, commercial, intellectual property laws and other regulations affecting franchising); create network of qualified franchise specialists; constantly study historical context as well as current trends in franchising business, analyze economic indicators/statistics and case-law on franchising disputes; create training modules; host and attend conferences on latest developments of franchising worldwide; cooperate with national franchise associations, International Franchise Association (IFA), and World Franchise Council (WFA) on cutting-edge issues, support in attracting leading franchisors from developed markets and in this way increase volume of foreign investments.

References

- A directory of the world's franchise associations,
<https://www.franchiseassociations.org/index.php?pageNum_rsNext6=3&totalRows_rsNext6=61> [17.10.2024].
- Australian Competition and Consumer Commission v Seal-A-Fridge Pty Ltd (No 2), FCA 681, 2010, Federal Court of Australia,
<<http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2010/2010fca0681>> [17.08.2024].
- Auntie Anne's, Inc. v. Wang, 2014 WL 11728722, at *11 (C.D. Cal. July 16, 2014).
- Alon, I., Global Franchising Operations Management: Cases in International and Emerging Markets Operations, Pearson Education Inc., 2012.
- Abell M., The Law and Regulation of Franchising in the EU, Edward Elgar Publishing Limited, UK, 2013.
- Advanced Procedures for Mediation and Arbitration of Franchise Disputes to Save Time, Costs and Disruption, <<https://cfa.ca/blog/advanced-procedures-for-mediation-and-arbitration-of-franchise-disputes-to-save-time-costs-and-disruption/>> [02.09.2024].
- Big Money in Franchising, Scaling Your Enterprise in the Era of Private Equity, Miller A., Figure 1 Publishing, Canada, 2024.
- Blake S., A Practical Approach to Effective Litigation (8th Ed.), Oxford University Press, Oxford, 2015.
- Beere R., The Role of Franchising on Industry Evolution, Assessing the Emergence of Franchising and its Impact on Structural Change, Palgrave Macmillan, Ireland 2017.

Canadian Franchising: A 2023 Industry Overview, 2023,
<<https://cfa.ca/franchisecanada/canadian-franchising-an-industry-overview/>> [23.09.2024].

Civil Code of Georgia, Article 607, Parliamentary Gazette, 31, 24/07/1997,
<<https://matsne.gov.ge/en/document/view/31702>> [15.09.2024], (In Georgian).

Caruso C. D., Evidentiary & Trial Issues in Franchise Cases, The Implied Covenant of Good Faith and Fair Dealing Common Law Fraud, Presented to American Bar Association Forum on Franchising, 2008, <https://cdcaruso.com/wp-content/uploads/2017/06/cdc-final-aba-2008-evidence.v1_new.pdf> [20.08.2024].

Companies' Creditors Arrangement Act of Canada (CCA) 1985, C-36,
<<https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-36/latest/rsc-1985-c-c-36.html>> [19.08.2024].

Case №2B /3536-17, <<https://ecd.court.ge/Decision#!>>, [22.08.2024], (In Georgian).

Case №AS-1502-2023, <<https://www.supremecourt.ge/ka/fullcase/72271/1>> [03.10.2024], (In Georgian).

Entering Azerbaijani Market: Franchising and Distribution, <<https://www.hg.org/legal-articles/entering-azerbaijani-market-franchising-and-distribution-32784>> [26.07.2024].

Email correspondence to Georgian Chamber of Commerce and Industry of 17.10.2024.

Franchise 2018 - Austria, International Comparative Legal Guides (ICLG),
<<http://www.iclg.co.uk/practice-areas/franchise/franchise-2016/austria#chaptercontent1>> [24.09.2024].

Franchise Association of Azerbaijan, <<https://www.franchise.az/en>> [24.09.2024]

Federal Rules of Evidence of the United States, 1975, Legal Information Institute, Cornell Law School, Article IV, Rule 403, <https://www.law.cornell.edu/rules/fre/rule_403> [20.08.2024].

Franchise 2019-Ukraine, International Comparative Legal Guides (ICLG), 2018,
<https://www.acc.com/sites/default/files/resources/vl/membersonly/Article/1470786_1.pdf> [04.08.2024].

Franchising Code of Ethics, British Franchise Association (BFA), 2017,
<<https://www.barkingmad.uk.com/blog/franchising/british-franchise-association-bfa-franchising-code-of-ethics/>> [19.08.2024].

Fast-Food Franchises in the UK - Market Research Report (2014-2029),
<<https://www.ibisworld.com/united-kingdom/market-research-reports/fast-food-franchises-industry/>> [23.09.2024].

Franchise Market Analysis North America, Europe, APAC, South America, Middle East and Africa - US, China, UK, Germany, Canada - Size and Forecast 2024-2028, 2024,
<<https://www.technavio.com/report/franchise-market-analysis>> [23.09.2024].

Franchising, <<https://www.myadvokat.ge/ka/blog/674>> [22.08.2024], (In Georgian).

Foreign Companies in Georgia, their Status and Employees, Analysis of the Issue and Recommendation Proposals, NNLE "Young Lawyers", Tbilisi, 2015, . (In Georgian).

Federspiel G., Franchising in Denmark 2012, Sondergaard Christensen Partner, Copenhagen, 2012.

Garner W. M., Dispute Resolution in the Twenty-First Century: The Challenge to Get ADR Right, Franchise Law Journal, Vol. 40, No. 1, 2020.

Giles S., Kerry M., Doing business in Australia - Franchising issues, Australia, 2022, <<https://www.nortonrosefulbright.com/en/knowledge/publications/18b08952/doing-business-in-australia-franchising-issues>> [23.09.2024].

Gupta, V. K., Small Business: Creating Value Through Entrepreneurship, 1st Edition, Wiley Publishers, 2021.

Gamet-Pol F. J., Franchise Agreements within the European Community, Transnational Publishers, Inc., New York, 1997.

Georgia Business Law Handbook Volume 1 Strategic Information and Basic Laws. (2013). United States: International Business Publications, USA.

Georgian Entrepreneurs Alliance, Franchise Division, <Franchise Division (aeg.ge)> [24.09.2024].

Haig Ghazarian Z., The Armenian Franchise Registration Requirement and the Application Form, <<https://dspace.aua.am/xmlui/bitstream/handle/123456789/2062/Zohrab%20Ghazaryan.docx.pdf?sequence=1&isAllowed=y>> [15.09.2024].

Hammond N., Simon S., Franchising in Romania, Hammond Bogaru and Associates, Bucharest, 2011.

Hurley E. R., Pronuptia de Paris v. Schillgalis, Permissible Restraints of Trade on Franchising in the EEC, Northwestern Journal of International Law & Business, Volume 8, Issue 2, 1987.

International Institute for the Unification of Private Law, <<http://www.unidroit.org/about-unidroit/overview>> [21.09.2024].

International Franchise Association (IFA), <<https://www.franchise.org/faqs/basics/what-is-a-franchise-rankings>> [18.06.2024].

In Review: Key Franchise Laws in Germany, <<https://www.lexology.com/library/detail.aspx?g=5a368858-6ff3-44b4-bdfa-a466be4a9dc6>> [25.09.2024].

JUSTIA, US Law, World of Beer Franchising, Inc. v. MWB Development I, LLC, et al, No. 17-12870 (11th Cir. 2017), <<https://law.justia.com/cases/federal/appellate-courts/ca11/17-12870/17-12870-2017-10-16.html>> [26.07.2024].

Kokiashvili M., Franchising and its Legal Regulation, Meridiani, Tbilisi, 2009, (In Georgian).

Kirsch M., (Ed.), Franchise, France, Lexology GTDT - Franchise, 2022.

Legalities of Franchising in the UK: what international franchisors need to know, WhichFranchise.com, 2018, <https://www.whichfranchise.com/feature_template.cfm?FeatureID=371> [25.07.2024].

Mahmood A. K., Restaurant Franchising, Concepts, Regulations, and Practices, Third Edition, Revised and Updated, Apple Academic Press, Canada, 2015.

Overview of the Thriving Franchising Industry in Asia 2023 and Beyond, <<https://thailandfranchising.com/overview-of-the-thriving-franchising-industry-in-asia-2023-and-beyond/>> [23.09.2024].

Other franchising statistics, <<https://www.webfx.com/industries/franchises/statistics/#general>> [23.09.2024].

Ontario Court of Appeal Clears the Way for Arbitration of Franchise Disputes, McMillan, Litigation Group Bulletin, 2008, <https://mcmillan.ca/wp-content/uploads/2020/07/FranchiseDisputes_1108.pdf> [10.09.2024].

Phone communication with the representative of the National Statistics Office of Georgia, 25.09.2024.

Phone communication with the head of Georgian Entrepreneurs Alliance, 24.09.24.

Pronuptia de Paris GmbH v Pronuptia de Paris Irmgard Schillgallis, Case 161/84, European Court of Justice, Judgment of the Court of 28 January 1986, <<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-161/84>>; <<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1479642402947&uri=CELEX:61984CJ0161>> [20.08.2024].

Rohrssen B., VBER 2022: EU Competition Law for Vertical Agreements, Digital, Dual, Exclusive and Selective Distribution Plus Franchising, Springer, 2022.

Regulation No 67/67/EEC of the Commission of 22 March 1967 on the Application of Article 85 (3) of the Treaty to Certain Categories of Exclusive Dealing Agreements, Official Journal of the European Communities, 20.11.2016, <<https://publications.europa.eu/en/publication-detail/-/publication/9c582d9e-77be-403b-8371-b4e820193a70/language-en>> [01.08.2024].

Siebert, M., Franchise Your Business, The Guide to Employing the Greatest Growth Strategy Ever (2nd ed)., Entrepreneur Media Inc/Entrepreneur Press, 2024..

Spinelli S. JR., Adams R. J. JR, New Venture Creation Entrepreneurship for the 21st Century, The McGraw-Hill Companies, Inc., Tenth Edition, Boston, 2016.

The 100 Largest Georgian Companies by Revenue, <<https://forbes.ge/en/the-100-largest-georgian-companies-by-revenue/>> [23.09.2024].

The Evolution of International Franchising: Trends and Future Outlook, <<https://michaedwards.uk/the-evolution-of-international-franchising-trends-and-future-outlook/>> [26.09.2024].

Top 100 Franchises 2024, Franchise Direct, <<https://www.franchisedirect.com/top100globalfranchises/rankings>> [23.09.2024].

Types of Franchises, <<https://francity.com/about-franchising/types-of-franchises/>> [25.09.2024].

The Five Different Types of Franchise, Forbes, <<https://www.forbes.com/sites/fionasimpson1/2022/10/17/the-five-different-types-of-franchise/>> [25.09.2024].

The Basics of Franchising: the Relationship, <<https://www.franchise.org/franchise-information/the-basics-of-franchising-the-relationship>> [25.09.2024].

The Case for Mediation and Arbitration of Franchise Disputes, <<https://adrchambers.com/news-articles/commentary/case-mediation-arbitration-franchise-disputes/>> [02.09.2024].

Trittmann R., Kasolowsky B., Taking Evidence in Arbitration Proceedings Between Common Law and Civil Law Traditions - the Development of a European Hybrid Standard for Arbitration Proceedings, UNSW Law Journal Volume 31(1), Sydney, 2008.

The Treaty Establishing the European Community (2002/c 325/01), Official Journal of the European Communities, c325/1, 24.12.2002, Article 81 (Ex article 85), <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:C2002/325/01&from=FR>> [01.08.2024].

Trillium Motor World Ltd. v. General Motors of Canada Limited, ONSC 3824, 2015, Canada, Superior Court of Justice, <<http://www.canlii.org/en/on/onsc/doc/2015/2015onsc3824/2015onsc3824.html>> [17.08.2024].

United States: Franchise & Licensing, The Legal 500, <<https://www.legal500.com/guides/chapter/united-states-franchise-licensing/>> [16.06.2024].

Webber R., An Introduction to Franchising, Palgrave Macmillan, 2013, Leicester Business School, De Montfort University, UK.

Williams L., Trademarks and Related Rights in Franchise Agreements in Germany: A comparison with U.S Law, 14 Int'l Rev. Indus. Prop. Copyright L. 624, 625 (1983).

What are the franchise laws?

<<https://www.franchiselawsolutions.com/franchising/franchise-laws>> [03.09.2024].

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Law Business Research Ltd, London, UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Romania, Roseti A., and Filatov A., Drakopoulos Law Firm, Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Brasil, Gelman R., and Avila Mariano R. D', Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Canada, Floriani B., and Liebman M., Lapointe Rosenstein Marchand Melancon LLP, Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Italy, Pera R., and Maria F., Catenacci Rödl & Partner, Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, France, Schulte E., Bersay & Associes, Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Finland, Lindgren P., Advocare Law Office, Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, the Czech Republic, Kusak B., and Pavlíková H., Noerr Sro, Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Russia, Biriulin V., and Medvedev S., Gorodissky & Partners, Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Argentina, Bunge D. C., Bunge-Bunge E., Smith & Luchia Puig Abogados, Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Switzerland, Ammann M., and Rapin C., Meyerlustenberger Lachenal, Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Germany, Metzloff K., and Billing T., Noerr LLP, Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Hungary, Lukácsi P., and Borbás M., SBGK Patent and Law Offices, Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, China, Ren Y., Tian Yuan Law Firm, Law Business Research Ltd, London UK 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Germany, Metzloff K., and Billing T., Noerr LLP, Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Turkey, Koyuncuoglu H., Koyuncuoglu & Koksall Law Firm, Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, the United States, Brennan M. G., and Zeidman P. F., DLA Piper LLP (US), Law Business Research Ltd, London UK, 2015.

Zeidman P. F., Franchise in 25 Jurisdictions Worldwide, Canada, Floriani B., and Liebman Lapointe M., Rosenstein Marchand Melançon LLP, Law Business Research Ltd, London UK, 2015.