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Franchise Contract in International Business Law

Contrato de franquia em Direito Internacional dos Negócios

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Abstract

A franchise contract is one of the contracts that are usually important after the emergence and registration of property rights and, in particular, after the development of trademark rights. A franchise contract is a contract concluded between the franchisor as the owner of intellectual property rights and franchisee. In other words, the franchisee usually uses trademark rights and sometimes intellectual property rights owned by franchiser that are limited in time. In the franchise contract, there is a right to implement a franchising business that runs within the network (this method includes allowing for the use of intellectual property rights and technical know-how). The contract has detailed terms and is closely related to intellectual property rights and competition rights. The franchise must be distinguished from the distribution agreement, the commercial representation and the license. According to this agreement, the franchisee enters the franchise network and is committed to using the franchisor business methods and substitute payment, royalties and other periodic payments.

Keywords: franchise contract, franchisor, franchisee, franchise network, trademark, intellectual property rights

Resumo

Um contrato de franquia é um dos contratos que geralmente são importantes após o surgimento e o registro dos direitos de propriedade e, em particular, após o desenvolvimento dos direitos de marca registrada. Um contrato de franquia é um contrato celebrado entre o franqueador como proprietário de direitos de propriedade intelectual e franqueado. Em outras palavras, o franqueado geralmente usa direitos

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de marca registrada e, às vezes, direitos de propriedade intelectual de propriedade do franqueador com tempo limitado. No contrato de franquia, existe o direito de implementar um negócio de franquia executado na rede (esse método inclui permitir o uso de direitos de propriedade intelectual e conhecimento técnico). O contrato possui termos detalhados e está intimamente relacionado aos direitos de propriedade intelectual e direitos de concorrência. A franquia deve ser diferenciada do contrato de distribuição, da representação comercial e da licença. De acordo com este contrato, o franqueado entra na rede de franquias e se compromete a usar os métodos de negócios do franqueador e a substituir pagamentos, royalties e outros pagamentos periódicos.

Palavras-chave: contrato de franquia, franqueador, franqueado, rede de franquia, marca comercial, direitos de propriedade intelectual

Introduction

1) Problem statement

Maintaining a position in the market, especially among consumers, and staying ahead of commercial competitors requires the supply of high quality or low-cost goods or services. These factors are also attracting customers. The quality and the specific shape of the goods and services is the product of the benefit of the new technology. This product or service is provided with a special mark or name that customers get familiar with and this recognition may be the result of many years of experience and effort. As a rule, firms, if firms have all of these facilities, will not compete for their activities. But the development and growth of this activity is not in conflict with competition. On the other hand, traders need tools in order to work simultaneously in different places. Franchise is a way of developing business and increasing the scope and volume of activity and, ultimately, profit, which takes place in the form of a contract, that is, one of the parties, as the owner of the trade mark that is active in the field of goods, services and production activities, has gained a lot of customers by utilizing the technical knowledge and trade secrets in his field of activity by providing high quality and customers know him, gives the privilege of using this system with the condition of the right to monitor implementation, observance of uniformity by the franchisee, insertion of the trademark on goods and services, and payment of a financial change and the franchisee, who seeks

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investment through those who have capital and reputation, enters a network of franchisees, which is under the support of franchiser, combining his capital with franchisor reputation and will start a successful business and will continue and manage a thriving business in the shortest possible time, thereby allowing access to the markets that were previously unreachable due to lack of familiarity with the site. But that's not always the case. Using franchise for investment with all its benefits may have disadvantages and put the system at risk and lead to a decline in fame and prosperity. It is true that the use of the trademark in franchise is important and at first glance may sound like a trademark license, but this is not the case, and with technical knowledge and trade secrets, it links the franchise to technology and intellectual property rights. In fact, contracts are usually concluded on the three axes of goods, services, and intellectual property. The expectations of the proposed contracts around the intellectual property axis are usually threefold: 1-Transferring these rights 2- Providing the possibility of using by retaining ownership 3- Providing the possibility to use by retaining ownership with the provision that it has previously been used and has succeeded. The third type of this category is known as the franchise contract and, in particular, has become prevalent after appearing and becoming important of rights related to trade marks. Technology transfer agreements are divided into legal and commercial categories, and franchising is one of commercial contracts, in which business is a priority, primarily concluded for marketing purposes, and technology transfer is proposed in addition to the business issues, and if so, will be take in the firm level. In recent years, there have been new ideas about contracts that franchise is one of the contracts that is the venue for the implementation of these ideas, including goodwill and cooperation, which franchise, in fact, would be futile without them, and from them a pre-contractual commitment will be loaded on franchisor to provide the information on his business to the applicant for entry into the network.

First topic: The concept of franchise contract

First chapter: The concept and history of franchise contract

First clause: Franchise contract definition

The word "franchise", which is pronounced in English as /'fran-ˌchīz/ and is used in other work in the same way, is essentially a Latin and French word, pronounced /'fran-ˌshiz/ in French. Therefore, its use as /'fran-ˌshīz/ is not correct. Literally, both in English and in French, it means privilege, frankness, freedom and right to vote, and in the dictionary of commerce, it has been interpreted as the right to use the trademark. It has two uses in the legal term: The first application is in insurance law, and it is paid in the form of damage that policy holder is liable to it and the insurer is not obligated to it, and the latter is in contract law, and is a type of agreement on intellectual property rights that is the subject of this research.

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In the Black law dictionary franchise is defined as "a license granted by the owner of a trademark or brand to another person to permit the sale of products or services under that name or mark in wider areas than the place". Franchise contracts are used in order to expand the geographical scope of the business domain. In this way, the parties to the contract agree to cooperate with each other to continuously carry out the sale of goods or services in the form of a pre-designed system, containing a package of intellectual property rights. In fact, the franchise entity is the commercial-contractual arrangement by which one party (the franchisor) allows another (the franchisee) to conduct his business (the sale of goods or services) from his trading system, which is a set of trademark, commercial credit, trade secrets and technical and training services. In contrast, the franchisee commits to use his business in accordance with the commercial system of franchising and maintain and extend the reputation and trademark of the franchisor and also pay the agreed royalty. In short, this particular type of contract can be regarded as the relative exchange of "reputation" and "capital" in the form of the aforementioned system.

Each of the international institutions have provided a definition of this contract, each of which deals with aspects of the contract. However, they do not mention all the pillars and features of the franchise. According to the International Franchise Association, franchising is a continuous connection, in which the franchisor provides licensed privilege, plus the assistance for training the experiences and management for a business in exchange to a franchisee. Indeed, the franchise is the basis for trading and providing a small business by the franchisee using the tools of a large business provided by the franchisor. The Institute for the Unification of Private Law in its exemplary law on the disclosure of information in franchise contracts provides this definition of franchise: "The rights granted by one competent party to another, against direct or indirect payment, which authorizes and obligates him to enter into the sale of goods or services in accordance with the system designed by the franchisor.

Second clause: The legal nature of the franchise contract

Legal nature means the nature of a legal institution, and in law, one can examine nature in several respects. In international private law, the determination of the legal nature of the subject, which is contentious in terms of governing law, is called description, that is, the subject is in what relational category of contract, legal event, personal status, or property. There may also be a description in the court, which means that the judge determines the legal nature of the subject in question in order to load special sentences on it. According to this explanation, the description of the private international law cannot be called nature determination, although it is not false, and it is considered to be a step before the determination of nature, since it merely identifies relational category and, for example, stipulates the

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contentious subject is a kind of contract and that is enough. However, given the definitions presented before the franchise, here, there is no need to define it. Franchise is a kind of contract, because one party assign a license to use and exploit a system that has been able to gain a reputation through activities and having the technical know-how of the day and providing high quality goods and services, and customers recognize their goods with a specific sign, to the other party, and the other party pays a fee as royalty, which accurately depicts a commutative contract.

The contract itself is a communication category and legal form, and it has a general concept that other facilities can also be included in this format. For example, attorney is a credit establishment established to achieve a particular purpose, and this can be the subject of the contract and can be effective in the form of a contract.

Given the definition of franchise, it is necessary to see what the nature of franchising is. In the description given by the court, it names the subject raised and loads the sentences of establishment that it gives its name to the subject, which requires that the establishment has a certain name in the law. In this case, its rulings are also clear. In other words, the establishment has a certain legal nature, for example, a lease, the nature of which is intended to benefit, which does not have access to other establishments. However, the subjects raised are not always subjects that have predetermined rules and have a certain specific name and nature, and may be new phenomenon. And franchise as a legal entity, which is valid in the form of a contract, is of this type and does not conform to any establishment. So, it's a new establishment that we seek for its nature.

Second chapter: Compare franchise contract with similar contracts

First clause: exploitation allowance agreement (license)

A: Comparing in the terms of the nature

"License" is a contract in which the permission (privilege) of the use of industrial property is granted to another, without the transfer of ownership. In our legal literature, there are different equivalents for the term "license". Some of them have chosen the equivalent of "permit". Others have used the term "privilege" as well as the word "allowance". The Black legal dictionary in the explanation of the license of patent reads as follows: "The written permission of the owner of the patent to another, which enables him to produce or sell the product with the invention within a given time period or domain; A transition that does not affect the owner's monopoly, except that it precludes him from exercising his right to forbid."

Some lawyers in Iran have provided this definition of a license contract: "The permission to use or license is a contract, according to which the right holder of a mark allows another person to use in return

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for payment of the price called royalty; so, such a treaty is very similar to the rental agreement. On the other hand, this contract can be called the coexistence treaty (or the setting of the use of the mark), whereby the owners of the marks, that may conflict with each other, determine the extent of each other's use within the framework of the contract. "

License agreements for intellectual property rights may be exclusively for trademark or technical know-how and inventions, or as a combination of them, in so far as the license agreement also entitles to the use of technical knowledge or trade secrets or a patent, and at the same time, sometimes a license giver's mark may also be used by license receiver. Although the franchise contract implies the permission to exploit a trademark or brand, and may in addition permit the use of industrial property rights, such as patents or other types of intellectual property rights. However, this license will be awarded with a franchise contract. In fact, franchise may have several license contract in it, and the permission to use the trademark may be as a stand-alone contract or as part of a larger contract, such as a franchise contract or a business transfer agreement.

Second clause: distribution contract

A distribution contract is a contract that a party (supplier) agrees to provide to the other party (distributor) with the products, and the distributor also agrees to buy and then sell them under his name. A franchise type is a distributive franchise, but it must be distinguished from distribution contracts. Although the franchise is also for the purpose of distribution, it is not always the case, and just one kind of it is distribution and it differs from the distribution contract in terms nature.

Distribution like franchise can be exclusive, meaning that in the exclusive distribution, the distributor in the specified domain cannot contract with anyone else. On the contrary, we will have exclusive purchases that the distributor is required to sell only to the products of opposite party and cannot conclude distribution contract with the manufacturing competitors of the distribution agreement. Contract continuity and transaction with name of himself are similar characteristics of the two contracts.

With the franchise, a right is crated for performing franchisor's commercial methods, which includes the assignment and use of intellectual property rights and technical know-how, for the franchisee at the time of the contract. In distributive franchise, the franchisee runs the franchisor's marketing and distribution methods and distributes under the name and the mark of franchisor. In fact, one pillar of the franchise is being under the name or mark. But the distributor performs the operation of the subject of the contract under his name and mark, and customers understand his independence.

Third clause: Segmentation based on franchising forms

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A) Combined and unit

As stated above, franchise is divided into production, service, distribution, and industry according to the nature of the subject of trade. If franchise is awarded for one of the franchise types, franchise is called a unit franchise. A franchise contract may be a combination of franchising contracts for production, service, and distribution, and the franchisee, in a contract, receives a privilege and earns a license for a combination of three or more types, , which is called a combined franchise.

B) Exclusive, non-exclusive, single franchise

Exclusive franchise should not be confused with the monopoly rights deriving from the law, which may result from industrial or artistic ownership from which the franchisor benefits. This monopoly gives the holder the right to prevent the use of others from artistic or industrial ownership and its source is the law. Therefore, its offender violates the law. Of course, having a monopoly status can also be the source of a special franchising technology, which may not have legal support, in which case, it is not prosecutable, assuming the use of others of this technology.

The exclusive franchise is a state of the contract that the franchisor does not have the right to use the franchise system and awarding franchise in the franchisee's domain, and according to the contract, the monopoly of establishment of the commercial unit is created for the franchisee and even the franchisor does not have the right to establish a commercial unit in that territory. In an exclusive franchise, the franchisor has the right to grant franchise outside the franchisee territory. On the other hand, the franchisee is limited to one territory under this state of monopoly and does not have the right to create a business unit in another territory, which may be subject to certain goods or certain customers or a specified period of time. This monopoly is the result of the contract and the offender breaches the contract. With this explanation, the concept of the exclusive right to the subject of the franchise contract is distinguished from exclusive franchising. Exclusive franchise is placed against non-exclusive franchise, in which the franchisor has the right to grant franchise to others and the right to use the franchise subject. In addition to these two types, we also have single franchise, in which the franchisor is only the competitor of the franchisee in a particular domain, but does not have the right to transfer franchises to others.

2. Franchise contract in international trade

International trade law is a set of rules and regulations governing international trade relations, which are of the essence of private law and are relevant to various countries. In general, trade activities

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that can take the form of international business relations are divided into six categories: the first group, the purchase and sale of goods, the second group, the purchase and sale of services, the third group, insurance transportation, the fourth group, financial activities, fifth group, contracts related to grant the privilege of using intellectual property rights, and sixth group, investment and partnerships. Intellectual property contracts either transfer ownership of these rights or, by retaining the ownership of the holder, provide for the use of these rights to the license receiver, the latter being known as license contracts or exploitation license. Franchise usually includes a license contract, but this license is about intellectual property rights, which its subject has been used and succeeded. One of the objectives of receiver of intellectual property rights to conclude these contracts could be technology transfer. Therefore, he is the weaker side of these contracts and giver may make him face constraints that are contrary to legitimate competition. So, in this discussion, we will first study the relationship between franchising and intellectual property rights, then transferring technology with franchising, and ultimately influencing the franchise of competition law.

First chapter: The relationship between franchise and intellectual property rights

Intellectual property rights refer to those privileges and authorities that a person claims in relation to the results of his intellectual activity in the various fields of industry, trade, science, literature and art. Intellectual property is divided into two categories: industrial and commercial property, and literary and artistic property. Literary and artistic property creates the right for the creator as soon as the work is created, but industrial and commercial property does not arise with the emergence of the work, but is created after registration by public authorities and granting of state certificates.

First clause: The rights of intellectual property

A) Exclusive right to exploit and right to prosecute

Intellectual property rights grant two kinds of rights to the holder after the creation. The first is the moral or ethical right, which is non-transferable, and the second is the material right. The moral right is related to the creator's personality and protects the right that he has on the work. The material right is related to the material and economic benefits that creates the monopoly for the holder, and it is referred to as monopoly rights. Material rights can be privative and affirmative. Privative means that it allows the owner to prohibit the exploitation of others, which can be interpreted as the right to prosecute the violating person of these rights (Clause B, Article 15 and clause B of the Article 40 of the Law of Patents, Trademarks and Industrial Designs). Affirmative means that it allows him to use exclusively during its credit period (Clause A, Article 15). For example, in the case of a trademark, the owner has the exclusive right to insert the mark on the goods and package and use the mark to advertise the products.

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B) Right to transfer and grant permission to exploit intellectual property rights.

Intellectual property has opened its place to economic and legal life, and its significance is to the extent that it is commonly referred to as the currency and the money of modern economy, and it is transferable under the contract as an financial right having economic value, in accordance with the ability to transfer financial rights. Contracts are usually concluded on the three axes of goods, services, and capital, which intellectual property, given its role in development, can be considered as goods or capital. The expectations of the intellectual property-based contracts are usually fourfold: 1.Transferring these rights 2. Providing the possibility of use by retaining ownership (granting the license to exploit these rights) 3. Providing the possibility of using the property with the preservation of the condition that previously has been used and succeeded (franchise contract).

Second chapter: Franchise and competition rights

Licensing contracts for the exploitation of intellectual property rights, in addition to complying with the general conditions governing contracts, must also comply with the rules of competition law. Competition law is a set of rules aimed at increasing consumer welfare through increased economic efficiency in business and industry, and by legal instruments, combats with monopolies and illegitimate competitions that favors the interests of firms.

Full competition is a form of business competition, which means a form of market, in which none of the economic factors dominate the market, and the pricing is determined by the interaction of many vendors who compete freely. In this case, firms are priced. In the full competition, the best products are at the lowest prices available to customers. The existence of such a market is ideal and, in practice, there is not. In contrast, there is an incomplete competition. In the case of incomplete competition, firms control the price of the product to some extent. The most extreme is the monopoly, in which there is only manufacturer or supplier of goods or services, and ensures the highest profit. It is not possible to enter this market.

One of the factors that causes the formation of a monopoly is the legal factor. This means that sometimes legal privileges are granted to some firms, which enjoy exclusive rights. One of them is intellectual property rights. Providing the benefits of the holder of technology and encouraging firms to invest in technology and its dissemination requires to prescribe some restrictions. For this purpose, the legislator grants such an exclusive right to the holder. So, at the outset, it seems that there is a conflict between the competition law, which aims to control the trading power of firms and monopolies for the

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benefit of the public and increase the economic efficiency and consumer welfare and intellectual property rights that protect the owner of the work against others through granting exclusive rights. However, the goal of competition law is not the total denial of monopoly, and in some cases, is to control monopoly to prevent misuse. The Article 1 of the Competition Facilitation Regulations and the Rules for the Control and Prevention of the Formation of Monopolies to state the purpose stipulates: "The purpose of this Act is to remove or control monopoly in commercial activities. In fact, granting a patent right to the holder of intellectual property right by the legislator does not mean the exclusion from the scope of the competition law."

Second chapter: The disadvantages of franchising for franchisor

First clause: The disadvantages of franchising for franchisor

1. Continuous relationship with customers in determining the flow of market movement, innovations, and quality promotion plays an important role. When a firm franchises in order to implement a trading method in its activity domain, it may lose its connection with final customers, which are the best source of competitive ideas and customers' comments on the needs, shortcomings and defects of the changes may be transferred to franchisees and may not reach the franchisor.

2. In the franchise network, franchisees are engaged in the supply and distribution of products and services with the name and mark representing the network. Therefore, inappropriate performance of one of the franchisees has a negative impact on the network due to the common interests of franchisor and other franchisees. Therefore, franchisor with franchising increases the risk of system destruction. In addition, disclosure of secrets by franchisees is a risk to business.

3. In consumer protection laws, there is a special responsibility for the manufacturer, which may make franchisor responsible for the acts of franchisee. In that way, since the franchisee delivers products and services with the name and mark of the franchisor, so, the franchisor may be held liable in the event of damage caused by defects.

Second clause: The disadvantages of franchising for franchisee

1. The high cost of starting a franchise for a franchisee is considered an unfavorable situation. The franchisee must pay fees, such as the franchise fee, the license fee, the percentage of advertising revenue, as well as the cost of human resources training, which are monthly or weekly, to the franchisor. The royalty, which is paid to the franchisor, may be a sum of transactions. Therefore, franchisees who have a lot of

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activities, are forced to pay more royalties by increasing their income. And this is more in favor of the franchisor, because the wage of more labor of franchisee goes to the franchise bag.

2. The limits imposed by the franchisor on the franchisee have their own disadvantages and limit the franchisee freedom. Including the fact that he is obliged to observe the franchising orders, even on decorations and consumables, pricing, etc.

3. The franchisee must operate on a franchisor-determined basis and not be free to operate a personal business. On the other hand, franchising is for a limited period usually five years. A successful franchisee, who has been profitable, will sometimes have to pay more for a franchisor request to retain it. Of course, for the franchise, one can consider the right to renew the contract.

The termination of the franchise contract

First chapter: Termination

The franchise is usually concluded for a period of five years, and the parties can renew it, and if this period is completed and the contract is not renewed, the contract will be terminated and the relationship between the parties end.

Second chapter: Dissolution

Apart from several countries that have special provisions for franchising and may have specific rules for the dissolution of franchises, in other cases, the dissolution of the franchise is subject to the general rules of contracts. The dissolution of any contract may be involuntary or voluntary. Involuntary dissolution might be duo to cancellation by the law. Voluntary dissolution may, however, take place by one will, that is, by dissolution, or by an agreement between the parties which is in the form of cancellation, which may dissolve a contract as definite, or its dissolution may subject to the occurrence of something, that, in this case, is called conditional cancellation and it is also a kind of voluntary dissolution that their concept and effects should be sought in the general rules. The only thing that seems necessary here is that the parties can bet in the contract if they do not fulfill any of the obligations, the contract will be cancelled, or that the obligee has the right to terminate.

Second section: The effects of franchise contract

The effect of the contract is obligations made between the parties to the contract and the parties are required to enforce the content of the obligations. We should search for a discussion of the concept of obligation in public law, but we know that there is a difference between the subject of the contract and the subject of the obligation. The subject of the contract is a set of operations and legal developments that are

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compromised to their occurrence and the commitment is the result of an agreement on these subjects that arises for the parties and this commitment itself has a separate subject. In a franchise contract, the subject of which is the assignment (authorization) of a privilege for utilizing a particular trading system by entering the network in exchange for a fixed exchange, obligations arise that the subject of these obligations is not necessarily the subject of the contract. The franchise contract is diverse in nature and it does not have a proposed model that can be said that the obligations of the parties are fixed in all contracts, but each contract has its own conditions and the obligations of the parties to each contract may differ from those of other contracts. The domestic, regional and international laws have helped to establish the obligations of the parties. But, the freedom of the will of the parties is the last word, and it governs, provided that there are no conflicts with the economic order and the other laws. The obligations under this section are necessarily imposed on the parties with respect to the franchise elements, while others are binding on one party in the form of a clause. In examining the analysis, it is observed that goodwill, maintaining network reputation, and the independence of the parties, at the same time their cooperation with them, have shadowed the commitments of the parties and shape their existential philosophy. The obligations of the parties, including the franchisor and the franchisee, in general, shall be reviewed at three intervals prior to the conclusion of the contract, at the time of execution of the contract and after its dissolution. Accordingly, we divide this part into two sections; in the first section, the franchisor obligations and in the second section, the franchisee obligations are examined. However, with careful consideration of the obligations and duties of the parties, we realize that the franchisor obligations are much more than the franchisee and has more effective performance guarantee and this is due to the bargaining power and discriminatory caution of the franchisor to make the franchisee more thorough and more accurate in doing business.

The obligations of the franchisee

The franchisee obligations, like the franchisor obligations, can be examined in both pre-contractual and contractual topics.

Chapter 1: pre-contractual obligation

First clause: Giving information

This commitment, as stated above, is imposed on the basis of good will and, in fact, is of its consequences. On the basis of this principle, the franchisee, at the time of the conclusion of the contract, must give the necessary information about the case to the franchisor. Information delivering in the pre-contractual period will bring about stability and security. In fact, if the parties conclude a contract, and after

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a while, one of them finds that he was not aware of the information that was effective in his decision and willingness to conclude the contract, maybe he will put it as an excuse to break the contract. The Article 1: 201 of the Principles of O.H.H.N.T.F, as reference to this obligation, stipulates that: (1) Each party is obligated to provide the other party with sufficient information in the normal course of time before concluding the contract. 2) Sufficient information means information that enables the other party to enter into and conclude a contract.

Clause 2: Confidentiality, a commitment to information from the other party.

The good will requires that if the information provided by one of the parties involves professional secrets, the other party will not have the right to use this information for personal purposes or to disclose it. The Article 2-16 of the principles of commercial contracts stipulates: "Each party is required not to disclose the information provided to him by the other party during the negotiation process and not use it inappropriately, whether or not the contract is concluded ..." Today, confidentiality in introductory talks is considered as one of the principles governing pre-contractual relations.

But as previously mentioned, information can be divided into two categories. Each side is usually free to decide which material about the negotiated transaction can be disclosed. Information that, if the contract is not concluded, can be disclosed to third parties, of course, should be considered non-confidential. However, where the party declares that the information is confidential, the other party, by receiving the information implicitly, agrees to consider that information to be confidential. In respect of the guarantee of the fulfillment of this obligation, the continuation of the Article 2-1-16 of the principle of Commercial Co provides: "If appropriate, one way of compensating for the breach of this duty shall be compensation, the amount of which shall be determined on the basis of the obtained benefits to the other party. It is possible to consider another criterion for compensation, which is that the compensation shall be equivalent to the loss incurred as a result of the disclosure of information.

Second chapter: Obligations arising from the contract

A. Obligations on trademarks and industrial designs

1) Affirmative obligations

Affirmative obligations that refer to the use of trademarks, brand names and industrial designs, in accordance with the terms of the contract, can be studied in internal and international franchise contracts.

1-1) in internal franchise contracts

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Franchise, in general, is a contract with the intellectual property axis. Because the brand (trade name) is traded with a trademark or logo, usually the core of the contract is brand or mark. As we know, the trade name means the name or title that identifies and determines the actual or legal person. According to the Article 31 of the Patents and Industrial Designs and Trademarks Act, trademarks must be registered to be protected by the law. And in the case of a trade name or brand, there is no need to be registered. The Article 55 of the Commercial Code considers the registration of a trade name optional, unless the Ministry of Justice deems necessary and in accordance with Article 578, no one can use the registered trade name in the same place. Thus, a franchisor registers this mark and uses it and presents his goods and services with this mark within his own territory, and if in accordance with the franchise contract, he authorizes the use of the mark within its territory, the franchisee may also use the mark. In this case, as if the register (franchisor) temporarily surrenders his material rights, and the franchisee receives, firstly, a kind of litigation immunity from a franchisor, and, secondly, uses the monopoly of the registration of the mark. There is the same discussion about the franchisor's industrial design that has been registered, and he is required to authorize the license to exploit the industrial design.

1-2) in international franchise contracts

One of the principles governing intellectual property rights is the principle of territoriality. This means that the exclusive support provided by the law goes on in a country or region where the mark is registered there and outside of that range is not supported, except for famous marks. In fact, the owner of a well-known internationally trademark is under legal protection. Therefore, the reputation of a trademark is an exception to the principle of territoriality. The nature of the franchised network is the uniformity of products, in appearance, and presentation with a single trademark or trade name.

A franchisor may, with the conclusion of an international contract, expand his business beyond the territorial boundaries. Therefore, for other persons in the new territory not to use the trademark or name, and not distort the trade reputation of the network and the desirable quality of the system by supplying poor quality products or services, this mark or name must be registered or be a part of the famous trademarks to be internationally supported. The franchisor may, in the context of the Madrid treaty, before authorizing franchise, register the mark in certain countries where his business has the capacity to grow. Therefore, at the time of concluding, there is no concern in this regard. In the case of industrial design, it is also relevant where the subject matter of the franchise sale of goods is concerned. This means that the holder of the license of the mark or name requires the franchisee to comply with his quality standards in

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order to preserve the unity of the quality. In this regard, the industrial design, which represents the appearance of the product or the packaging of the goods, should be unit.

Conclusion:

Franchise is a method for business development, which is done in the form of a commutative contract and by creating a network, in which the franchisor, who owns the privilege of a particular trading system, authorizes the license for utilizing the system in return for receiving an exchange from the franchisee by agreement. This system is based on technical knowledge and trademark for goods and services, which, in total, has the reputation of its origin that is the firm or the owner of the license, due to good performance. Therefore, having the privilege of exploiting such a system has its own value and economic utility, and does not allow for any discussion of the value of the transaction case that is being discussed in Iran's law. On the other hand, due to the fact that the basis of the franchising system is technical knowledge, which may exist independently or invention, as well as the trademark and industrial design, it closely relates to intellectual property rights and, basically, is considered an intellectual property-oriented contract. Given the fact that the mere existence of a contract for the transfer of know-how or the use of a trademark does not characterize the franchise contract, but the existence of the transfer of technical knowledge and the existence of a permanent support itself is of necessary conditions for the existence of this contract. The importance of this system in developing enterprise business and its growth globally, and the existence of various procedures for this system and its contract, have led some international organizations to develop codes to align existing rules and procedures. Even some institutions have been established just for activities in this area, and there are also institutes and associations active at the national level, and some countries, which are not few, have special rules on franchising. Contrary to what has been in mind, franchising is not just for distribution, but as we have seen, this system is also used to deliver both services and production. This contract should not be considered a mixture of elements of other contracts or made in accordance with traditional contracts, but it has entirely different nature and characteristics, and its principles and rules are completely different from the interpretative rules of the general contracts, because it is not an aleatory or negligence-based contract so that each party thinks its interests. Of course, each party takes step for his own advantage. But eventually he cannot ignore the other party and essentially the network, in which he works and profits. Therefore, the co-operation of the parties is required and, for further success, the contract should be managed and implemented in good will. In this regard, the franchisor must provide the franchisee with basic information about the business before the contract. What is traded in franchise is the privilege of a well-known business, and any firm is interested in

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having network customers. This good reputation is the result of providing service and goods with up to date technology and high quality that is desirable for the customer. So this question that whether this knowledge and technology is in accordance with the general rules of financial value to be traded, has no place, and it is not correct to resort to the opinions of the jurisprudents and the ancients, who have always examined the dynamic subjects with fixed and static concepts. The industrial and economic progress, which has been remarkably fast, affects concepts and values every day. Globalization has changed everything and even forced the rules to align. The obligations of this contract are a bit complicated and the number is high for the parties. The reason is the nature of the contract and business that runs. Because a little negligence, cause damage to the system and reduced profits and reputation that is the backbone of business. Franchise is a continuous contract that, due to the flow of the technology element and the technical knowledge in the implementation of the trade, the franchisee, even after the expiration of the contract period, is also bound to observe the obligation and remain committed. One of these is confidentiality. Of course, the main obligations of the parties are about intellectual and industrial property, for example, the use of other mark and industrial property rights that, if any, make them both committed in any way. The franchisor commits to arrange the contract of the assignment of the permission and franchisee commits to use. The franchise contract is a commutative contract and, basically, in today's trade, which is based on profits and competition, there is no free and gratuitous contract. For a franchisor, at first, the entrance-fee to network is paid and at the same time he will receive a royalty. However, these do not actually replace the permission to use the system. In today's trade, the customer is incapable of checking the quality of goods or services because of the cost and time. So he looks for good fame. And the franchisor, who has a good reputation, eliminates the difficulty of the competition due to the inability to identify the goods or services with an unknown name and mark for the franchisee. Therefore, his income, which is based on the preservation of quality and the imposition of goods and supplies, should not be objected. Moreover, the imposition of goods and supplies, as it seems at first glance, is not anti-competitive, and it is also useful for the uniformity of the system. But, if a franchisor has a dominant position in the market and abuse it, in principle, in contracts that run at the time, after the expiration of the contract, there is no reason to continue with the parties. But with regard to the way of the implementation of the contract and the attempt of franchisor who first has tried to benefit himself and then indirectly for the network, and considering the fact that he has understood the trick of work during the implementation of business, so this contract should have a preference for extending the contract for franchisee, and the franchisor cannot easily pass through such a franchisee.

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