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### **The Legal System of The Franchise Contract: Comparative Study and Analysis**

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#### **Abstract**

The franchise contract is a contractual mechanism that has a great commercial impact and is influential in both domestic and international commercial relations. Because it is described as a comprehensive contract in that it contains four important legal dimensions that include production, licensing and agency, as well as the possibility of using it in the transfer of technical knowledge. However, the Iraqi legislator still has not developed a special law regulating the provisions of this contract in a manner commensurate with its nature and the importance of its role in commercial activity, despite the legislation of Commercial Agencies Law No. (79) for the year 1979, which considered this contract among the commercial agency contracts, but this contract has rules in particular.

#### **Keywords**

Franchise Contract, Franchise, Commercial Agency, Unidroit Principles, Douban Law.

#### **Introduction**

##### **1. The Study**

The Franchise contract is one of the most important modern commercial contracts that requires us to explain its concept and legal developments. It is a way to attract investments that bring advanced technology, and a way to develop

the national workforce. Nevertheless, the legal system that determines the nature of this contract has been dispersed because it is one of the contracts that are subject to more than one law or legal regulation at the same time, according to its subject matter. It is primarily subject to the law that governs contracts in general. It must be the satisfaction of both parties, and it is also subject to the laws of distribution contracts, as it is a distribution contract, especially if it includes a clause of exclusivity, and licenses on the trademark and other elements of intellectual property.

## **2. The importance of study**

This study is great importance, especially at the present time in light of the widespread spread of this contract in various fields of life, because this contract represents a useful way to transfer technical knowledge and productive projects in a manner that achieves the objectives of the contracting parties, and then achieves benefits and benefits for the national economy, and consequently There are also many benefits, whether for the grantor or for the grantee, and this research acquires special importance in the legal and practical fields, especially since it is one of the modern topics in which dealing with this contract is still limited.

## **3. The problem of the study**

The problem facing the franchise contract in Iraq is represented in the absence of a special legal system that shows the provisions of this contract and the implications for its parties, despite the consideration of Law No. 79 of 2017 regulating commercial agencies. Likewise, this law did not differentiate between the commercial concession contract and the franchise contract in general, whether the latter focused on the distribution of the grantor's products, their production, or the provision of the same services by the grantee. Is the commercial concession contract a type of franchise contract, which is distribution?

## **4. The Methodology**

To answer this problem, we relied in our research on the descriptive approach, by addressing the concept of the (franchise) contract, its importance and characteristics. The comparative approach will also be used by comparing the position of the principles of UNIDROIT, Iraqi legislation, and Egyptian and French legislation, and indicating whether there is a need for a legal framework for franchising in light of the existence of Commercial Agency Regulation Law No. (79) of 2017 (), and the possibility of applying general rules in civil law.

## **5. The Structure of the Study**

For the purpose of clarifying the legal system of the franchise contract, this research will be divided as follows

- The first requirement: the concept of the franchise contract
- The second requirement: the subjectivity of the franchise contract
- The third requirement: the position of UNIDO principles and national legislation on the franchise contract.

### **1) The first requirement: the concept of the franchise contract**

The franchise contract is an innovative method of recent origin and was widely used in American countries, which was actually applied in the United States of America. And it was a form of commercial dealings, and because of it they achieved great economic development and prosperity that led to the transfer of its concepts and foundations to Europe, where it appeared in France <sup>(1)</sup>.

In order to clarify the concept of the franchise contract, this requirement will be divided into three branches. We devote the first section to explaining the definition of the franchise contract, then we devote the second section to explaining its importance, and we devote the third section to explaining the forms of the franchise contract.

#### **First Section**

##### **Definition of Franchise Contract**

The definitions of the franchise contract varied. The Egyptian Association for Franchise Development defined the franchise contract as (a means of distributing goods and services that takes place between at least two parties in the franchise system, namely the franchise owner: who gives his trademark or trade name, and the licensee: who Pays royalties and initial fees in order to obtain the right to do business (under the name of the franchisor and in accordance with its regulations). In this definition, we note that it focuses on some elements that represent the basis for this type of contract. These elements are represented in the existence of a contractual relationship between at least two parties, the franchisee and the licensee, and considering franchising as a system for marketing goods and services.

Another defined it as (the contract under which one of its parties, who calls the franchisors (the franchisor), grants the other party whom he calls the franchisee (the franchisee) the right to use an intellectual property right (patents or trademarks) or technical know-how to produce goods or distribute goods or services under the mark used by the franchisor). This definition is characterized by the fact that it included all forms of the franchise contract, whether distribution, production, or provision of services. However, this definition was lengthy and lengthy, and if the terms contained therein were rearranged, it would have been a good definition and indicative of what is meant by the franchise contract. On the other hand, many scholars defined it as (that contract under which the first party, who is called the franchisee, allows the second party, who is called the licensee, to benefit from the success achieved by the first in one of the economic activities,

whether commercial, industrial or service, through cooperation in the use of rights Industrial property or technical knowledge that was the reason for the success of the franchise owner <sup>(2)</sup>.

We notice in this definition a focus on the economic aspect of the franchise contract. It appears that this contract is concluded between two establishments or two economic entities, one of which is characterized by achieving success and fame in one of the economic activities, which prompts the other establishment to contract and cooperate with it and benefit from its expertise to achieve the same success and obtain an economic benefit.

There are those who believe that the franchise contract includes basic elements that distinguish it, as it includes:

1. Granting the right to run a business in the same way as the franchise owner, by licensing the use of property rights. Intellectual and technical knowledge possessed by the franchise owner.
2. Selling certain types of products.
3. Licensee's independence.
4. Financial performance provided to the franchise owner, whether directly or indirectly ().

Based on the foregoing, we can define the franchise contract as (a contract between two persons (the grantor and the grantee) whereby the grantee is allowed to carry out work related to the exploitation of industrial property rights for a certain period, provided that the grantor remains to control and monitor those granted works with submission of all What is necessary for the grantee to carry out his work, such as technical and commercial assistance, in return for the grantee paying the financial dues to the donor). In this definition, we have tried to focus on the legal nature of the franchise contract in terms of being a reciprocal contract binding on both sides. This is what we will show in the second requirement section.

## **Second Section**

### **The importance of the franchise contract**

The franchise contract has emerged strongly as a good and effective alternative in reducing the failure rates of traditional projects during the recent period, and has become the best option in terms of investment, as well as improving the competition environment, increasing product quality, and benefiting from technology transfer. Especially with the periods that the global economy went through in terms of crises, and as a result of economic development, which was accompanied by technological development and the openness of the world to each other, and the advent of the era of globalization and the emergence of several systems and contracts, including the franchise contract. Estimates indicate that franchise projects represent (50%) of retail business models in the world, hence the importance of the subject matter of the wide spread of dealing with the franchise system, without meeting it with the legal regulation commensurate with its nature<sup>(3)</sup>.

Hence, the franchise contract provides the donor with a set of advantages, which are represented in the following (-):

1. Rapid expansion in target markets, without incurring high investment costs.
2. Distributing goods or services in a specific and organized manner.
3. The donor's material benefit from the amounts paid to him by the grantee.
4. The managers of its sections are, in fact, the owners of the project and not its employees, which drives them to ensure the success of the project, and to present positive proposals to improve its work. In this way, the grantor overcomes the complexity of the process of managing new branches, the management of which may require a very large capital. Effort, control and great investment risk.

**The advantages that the franchise contract brings to the grantee are as follows**

1. Benefiting the grantee from the donor's name, brand, fame, and experience, which enhances the customers' confidence in the grantee, and their rush to him as soon as his doors are opened, in a way that guarantees him almost certain chances of success.
2. The independence of the grantee in his capacity as an investor and owner of the project, as well as avoiding losses so as to ensure success as a natural result of the technical, administrative and marketing support, and the goodwill he gets from the grantor.
3. Benefiting the grantee from the value of the materials provided by the donor to the grantee, at competitive prices. The grantee benefits from the quality and continuous training provided by the donor, as it avoids mistakes and achieves a greater amount of profits <sup>(4)</sup>.

**The Third section**

**Copies of the franchise contract**

**Copies of the franchise contract can be limited to three main contracts as follows**

**First: Production Contracts (Production Franchise)**

In this form, the concessionaire is considered the owner of a project that produces and manufactures a commodity, by licensing the licensee, allowing the latter to produce the same commodity that the concessionaire produces. However, that commodity and because the trademark of the franchisor and his trade name will be placed on it, the licensee is obligated to follow all instructions, expertise and standard standards related to the commodity in its production, while being constantly subject to technical control by the franchisor, to ensure that he follows the quality standards in the production of the goods in question. The franchise

contract, with emphasis on the production and sale of commodities as well, must be carried out in accordance with the instructions of the franchisor and within the framework of the intellectual property rights of the latter <sup>(5)</sup>.

### **Second / Distribution Contracts (Distribution Franchise)**

According to this type of contract, the agreement is for the licensee to sell certain products in a store that bears the name or trademark of the franchise owner. Then the purpose is determined in this way by distributing a specific commodity that bears the distinctive mark or trade name of the franchisor, so that the licensee sells those commodities in a specific geographical area. The franchisor may be the producer of the commodity that the licensee distributes, or his role may be limited to the role of the distributor. Distribution usually takes place in a store bearing the trade name and trademark of the franchisor <sup>(6)</sup>.

In addition, the role of the licensee differs from the role of the agent in agency contracts. If the contract agent is meant by an independent mediator charged with negotiation to conclude a sale or purchase transaction on an ongoing basis for the account and in the name of the principal without being associated with the principal in a subordinate relationship <sup>(7)</sup>, then the licensee in Distribution franchise has another meaning, as the licensee carries out the distribution activity through an independent activity under the name and trademark of the licensee, and the licensee is obligated to pay a fee to the franchise owner in exchange for his entry into the distribution network, while in agency contracts the principal pays a fee to the agent.

### **Third / Service Contracts (Service Franchise)**

In this type of contract, both the franchisor and the licensee agree to provide a service or several services, and the licensee is committed throughout the period of providing the service to the standard standards, specifications and regulations of the franchisor, and the latter undertakes strict control over the implementation and application of these standards because the service will be provided In its final form under the trademark of the franchisor, and the licensee relies when practicing the service activity on the success and fame that the franchisor has previously achieved in this field <sup>(8)</sup>.

### **The second requirement: Self-concession of the franchise**

After studying what is meant by the franchise contract and its characteristics in the first requirement, the characteristics of the franchise contract and the distinction between it and the commercial franchise contract will be discussed in this requirement, as follows:

## **Section two**

### **Characteristics of the Franchise Contract**

The franchise contract is a special kind of leasing for a specific thing, which is the tangible movable, i.e. technical knowledge and other elements of intellectual property. Therefore, the franchise contract is characterized by certain characteristics as follows:

#### **First: A binding contract for both sides**

The franchise contract entails obligations on both the grantor and the recipient, as it is an exchange contract, so that the bond between the two parties is based on credit and indebtedness at the same time. In other words, the reason for the obligations of each party is the obligations of the other party, and these obligations follow from the conclusion of the franchise contract in the responsibility of both parties, the grantor and the grantee.

#### **Second / netting contract**

because each party in the franchise contract gets compensation for what he offers, so the netting contract is the contract in which the contractor takes in return for what he gave, and in this direction, the grantor is obligated, for example, to transfer technical knowledge to the grantee and obtains compensation for that through the grantee him to fulfill the material return or service.

#### **Third / Continuing Contract**

In the franchise contract, the time factor plays an important and prominent role, so that the obligations of the parties (the grantor and the grantee) are implemented continuously and periodically. Temporality is "contracts in which time is an essential element, so that it has a significant impact on the estimation of the place of the contract. The franchise contract requires, by its nature, to create obligations between its two parties that will continue to be implemented for a period of time, or this implementation will be repeated several times, so it can be said here that the franchise contract is not considered an immediate contract that is executed in one go, so the franchise contract is considered a continuous (consecutive) contract. So that the period is an essential element in its conclusion and implementation <sup>(9)</sup>.

#### **Fourth: The franchise contract is based on personal consideration**

The personality of the contractor is a matter of consideration when concluding a franchise contract. In other words, this contract is based on mutual trust between its two parties (the grantor and the recipient). Therefore, the

continuity of this relationship between its two parties is affected by what may happen to one of the parties or what would disturb and waste the confidence of the other party in it (such as bankruptcy, interdiction, etc.). In this regard, we must mention that the grantor is obligated to transfer technical knowledge to the grantee, which requires that there be a relationship of mutual trust between them.

### **Fifth / indefinite contract**

The franchise contract is an indefinite contract, especially since this contract has not been allocated a legal regulation of its own by the Iraqi legislator, and it can be said in justification that the franchise contract is of relatively recent origin.

### **Sixth: specific contract**

One of the characteristics of the franchise contract is that it is a definite contract, so that each contracting party can determine the amount of his performance in the contract from the moment it is concluded. Therefore, the two parties to the franchise contract (the grantor and the grantee) and from the moment of concluding this contract have the ability to know the amount of performance due on each of them. In other words, the franchise contract is not considered a contingent contract like the insurance contract, for example. He would have received the insurance amount or not, and on the other hand, the insurance company cannot determine its obligation to pay the insurance amount to the insured at the moment of concluding the contract.

### **Seventh: Franchise contract business**

The commerciality of the franchise contract The franchise contract acquires a commercial character, especially since the subject matter of this contract includes the use of the grantee's trade name and trademark of the grantor, and this contract may acquire a commercial character if it is carried out by a merchant for his commercial needs. Commercial contracts <sup>(10)</sup>.

## **Section two**

### **Distinguish between the franchise contract and the commercial concession contract**

In this section, a distinction will be made between the franchise contract and the suspected commercial concession contract, as it is similar to the franchise contract in terms of location and effects. Therefore, a question arises, is there a difference between the franchise contract and the commercial concession contract?

The answer to this question lies in the fact that the distinction between the franchise contract and the commercial concession contract is that the latter is a



contract whereby a trader called the concessionaire or contractor undertakes to limit his activity to the distribution of certain goods produced by another trader called the franchisor in a specific geographical area and for a limited period. Provided that the obligor alone has the right to monopolize the resale of these commodities within the agreed geographical range <sup>(11)</sup>. The commercial concession contract is the most confusing contract with the franchise contract, to the extent that jurisprudence makes the concession contract the translation of the Arabic language agreement Franchise.

Each of the two contracts converges and confusion arises between them if it is related to the distribution franchise contract in which the licensee aims to market the products of the franchisor through a specific distribution system. The franchisor is obligated to supply the products during the term of the contract, and he also provides the licensee with technical assistance in the field of marketing <sup>(12)</sup>. However, despite this, there is a difference between them, which can be summarized as follows:

The element of technical knowledge and the provision of technical assistance and advice must be available in the franchise contract. As for the commercial concession contract, it is devoid of that element, as it is limited only to merely purchasing goods from the franchisor and selling them in a specific geographical area, so that the franchisor is the only one who has the right The sale of that commodity in that region and no one else can compete with it, based on the commercial concession contract that obliges the franchisee to do so.

The obligations arising from each contract are different, so the commercial concession contract, if it arranges some obligations, such as the franchisor's commitment to supply the goods subject of the contract, and his commitment not to compete with the grantee in his geographical area, then the obligations of the franchise owner in the franchise contract vary by providing technical knowledge and providing assistance regarding it and guaranteeing it and transferring improvements Which you receive to the licensee and to allow the licensee to use his trademark, which is not available in the concession contract <sup>(13)</sup>.

### **Third Section**

The position of UNIDO principles and national legislation on the franchise contract In order to stand on the position of UNIDO principles and national legislation, this requirement will be divided into four branches. The third is the position of Egyptian legislation. In the fourth section, we discuss the position of French legislation, as follows:

#### **First Part**

##### **The position of the principles of the Unidroit Franchise Contract**

The principles of Unidroit consider this contract as a long-term contract, as Article (1-11) of the principles of Unidroit defines these contracts as ((a contract

that is implemented over a period of time and usually involves, to a varying degree, the commerciality of the contract and the existence of a commercial relationship between the two parties))<sup>(13)</sup>.

Unidroit's principles compare long contracts with simpler transactions, including one-time sales contracts. Hence, the concession contract can be used in different types of business practices. It is basically close to distribution contracts, although there is no unified definition or description of the distribution contract, neither at the national or international level, and therefore at the national level it is considered a modality or a type of contract for the sale of goods or an independent contract in itself<sup>(14)</sup>.

Hence, from our point of view, the absence of a unified international treaty regulating the franchise contract in this field gives the parties to the international commercial contract the freedom to determine the content of the contract at their will within the limits of the rules that control and regulate this will, far from the existence of peremptory rules that restrict the freedom of contracting in the absence of an agreement.

Hence, the principle of freedom of contract is an essential principle, as it is not only one of the general principles on which the Vienna Convention of 1980 is based, but rather it is the most important principle on which the agreement is based at all, because the agreement made the will of the contracting parties prevail in application over the provisions of the agreement itself. In Article (6) of the Convention an explicit reference to this principle, just as the principle was disclosed by the Convention in many of its provisions. Article (6) of the Convention allowed the contracting parties to choose the legal rules governing the contractual bond, and to exclude the provisions of the Convention from application to the contract until Even if the agreement is applicable according to the criteria it has set.

This means that the provisions of the agreement are not texts that command, but are complementary to the will of the contracting parties, and they may agree to exclude its provisions from application to the contractual bond or to modify some of its effects, or to agree on something that contradicts it completely. Thus, the Convention respects freedom of will to the greatest extent, and takes full sides with it if there is a conflict between the will and the provisions of the Convention (with the exception of what is stipulated in Article 12 of the Convention).

Also, the principle of respecting the will of the contracting parties is superior to all other principles on which the agreement is based, so it will prevail in application if there is a conflict between it and those principles, provided that the freedom of the will of the contracting parties may raise difficulties if the application of this principle conflicts with the principle of good faith. Likewise, we have made it clear in the foregoing that the agreement did not explicitly mention good faith except as one of the principles of interpretation referred to in Paragraph (1) of Article (7) of the Unidora Principles. Its role in the agreement

is at this point. Rather, it is considered a general principle of the principles on which the agreement is based, requiring the parties to the contract to abide by good principles in dealing.

## **Section two**

### **The Iraqi legislation Attitude**

The franchise contract is one of the unnamed contracts that are not subject to legal regulation governed by Iraqi law. Nevertheless, in line with other efforts to facilitate and facilitate trade, the Iraqi legislator enacted Law No. 79 of 2017 regarding the regulation of commercial agencies. We find that the definition of commercial agencies stipulated in Article 1 of this law extends to concession contracts and distribution agreements, in addition to actual agencies.

Paragraph 3 of Article 1 of the Commercial Agencies Law stipulates that ((commercial agency: a contract whereby a natural or legal person is entrusted with selling or distributing goods or products or providing services inside Iraq in his capacity as an agent, distributor or concessionaire on behalf of the principal outside Iraq in return for a profit Or his commission, and he performs after-sales services, maintenance work, and preparing spare parts for the products and commodities that he markets)).

This text defines a commercial agency as an agreement "whereby a natural or legal person is entrusted with selling or distributing goods or products, or providing services inside Iraq as an agent, distributor, or concessionaire for the external manager for profit or commission, in addition to providing after-sales services, maintenance support, and spare parts." Spare parts for products and goods marketed by this person.

This change in the definition of a commercial agency includes distribution and franchising activities that were not previously considered commercial agency activities. This was confirmed by the instructions for implementing the provisions of the Commercial Agencies Regulation Law No. (1) for the year 2020 <sup>(14)</sup> which Paragraph Fourth of Article One of these instructions indicated that: ((Agency of the concessionaire and organized by a contract according to which the first party (the foreign principal) authorizes the second party (the Iraqi concessionaire) the right to work in Iraq in the name of the agent and for the account of the principal and on his terms, including the distribution and marketing of the products of the first party and the provision of services on his behalf in exchange for a commission in the form of a percentage A percentage of the sales or in return for the services provided for a specific period, provided that the products or services of the first party are mentioned in the contract or its appendix or in a duly certified explanatory letter)). This means that the term "commercial agency" now has a number of meanings under Iraqi law, including franchise. This is a clear change in contractual methods, depending on the type of relationship that the parties intend to undertake. Another notable change is

that commercial agents are now allowed to deal with government procurement agencies and contract directly with the government. Finally, the new Commercial Agencies Law contains rules regulating the parallel import of goods, requirements for carrying out commercial agency activities.

## **Second Part**

### **The Egyptian legislation Attitude**

Likewise, the Egyptian legislator did not regulate the franchise contract, but subjected it to the provisions of the new trade law on the basis that the franchise contains the element of technical knowledge within its scope, and then the provisions of technology transfer regulated by the Egyptian Trade Law No. (17) of 1999 as amended in Articles (72-87) apply to it. Especially with regard to the requirement of writing as a condition for concluding the contract, and this makes the (franchise) contract a formal contract like all other contracts that transfer technology.

Therefore, subjecting the franchise to this law faces criticism related to the different provisions of this contract from the technology transfer contract <sup>(15)</sup>, in addition to the requirement of the technology transfer contract in the Egyptian Trade Law to oblige the grantor to provide the necessary information necessary for the exploitation of the technical knowledge subject to the contract, and to provide some information related to the legal and factual conditions for its exploitation. The Egyptian Trade Law granted him was also obligated to preserve the technical knowledge that was transferred to him during the negotiation period <sup>(16)</sup>.

In addition, the right was given to the contracting parties to request the termination of the contract, or the amendment of its conditions within a certain period of time, so that the parties are free to agree on specifying the time period for expiration or the text of Article (86) of the Egyptian Trade Law applies, so the termination occurs after five years if one of the contracting parties requests that, and then the contract ends in two forms: The first is when one of the parties requests that, and the second is when the agreed expiration date comes. The first gives the contracting parties a reconsideration of the contract, while the second expresses the agreed expiration date, which the law did not undertake to determine in the absence of an agreement, based on the assumption of the desire for renewal, taking into account that Each party has the right to request termination after the five years specified in the law, and this, in our view, cannot apply with the (franchise) contract.

However, despite the spread of the franchise system in Egypt, and the dependence of many economic activities on it, this expansion was not matched by the legislature's issuance of a legal regulation that governs and organizes such contracts. I have chosen to use the term franchise as it is without changing or

translating it into Arabic, because some people make its translation into Arabic the franchise, which makes it mixed with commercial franchise contracts <sup>(17)</sup>.

### **Third Part**

#### **The French legislator Attitude**

The emergence of the Franchise contract in France was characterized by its passage through two phases, as the first phase began in 1970 and this phase is called the launch phase, and for this contract they set a system in 1972 known as the Levitan Pronuptia system, and in 1975 a clear idea appeared in France that institutions in The United States of America will make extensive investments in European markets. Then the second phase began after 1980, when this contract began to develop greatly, and its climax was in 1990, when many applicable laws were issued that adopted the franchise contract. This development prompted some Arab countries, especially the Middle East, to adopt this contract, desiring to improve their economic conditions and to push the wheel of growth in their economic field <sup>(18)</sup>.

The French Council of State, which reconsidered in 1999, defined the (franchise) contract as (a cooperative relationship between the two parties of the grantor and the grantee, one of whom is a project of the owner of the mark on the one hand, and a project or several projects for the exploiter on the other hand, in order to perform the works that are the subject of the concession contract) <sup>(19)</sup>. We note in this definition that the grantor has obligations represented by intellectual property and the right to use the mark or trade name other than industrial property rights, technical knowledge and technical assistance, as well as a set of materials, services, and products aimed at cooperation, development and revitalization of contracting projects.

The ministerial decision issued on November 22, 1993 was not far from describing the franchise contract (le Franchisage) <sup>(20)</sup>, as (the contract whereby a company authorizes several other companies independent of it, in return for a fee, the right to use its trade name and trademark to sell some products or services This contract is often accompanied by the provision of technical assistance.

While the French judiciary came to define the (Franchise) contract as (the contract under which the grantor puts at the disposal of the grantee his trade name, as well as the initials, the trade mark, know-how, and a group of goods or services that are produced in original and specific ways, and these elements are exploited by following technical and commercial methods. Unified previously tried, and is constantly being tested and adjusted with the knowledge of the donor and under his supervision) <sup>(22)</sup>.

It is worth mentioning that the legal development of the franchise contract in France was distinguished by its passing through several stages, the first: the period of applicants, where the relationship between the grantee and his donor was

achieved either in the form of a partnership or in the form of a contract. during the second stage. Franchise has become a traditional contractual system, and in 1984 the workers in the field of the franchise decided to develop a system of etiquette that clearly defines the relations between the parties, but this system is not considered legal legislation, but it is up to the courts to refer to it to settle disputes.

This system was reconsidered in 1991, noting that since 1976 the French Federation has put in place a system that it adheres to, but it does not have the force of law, but it can be benefited from. In 1986, the European Court of Justice decided in a dispute over a French emblem in Germany, so the court issued its ruling on January 26, establishing the rules applicable to the franchise contract in France as in other European countries, and this decision recognized and promised the franchise. a successful economic factor<sup>(23)</sup>.

Then the Dubin Law appeared, as the Doubin Loi Law sufficed (Law No. 1008/39 of December 23, 1989) <sup>(24)</sup>, the first article of which imposes the duty of prior notification on the franchisor, and another text that is useful in this field is the decision (February 21, 1991) Related to informing the consumer in the franchise sector, which protects the consumer, obliging the franchisor to inform his status as an independent company <sup>(25)</sup>.

Also, according to the Dupin law, the franchisor is required to give the grantee, in the period preceding the contract, a document that includes information on the commercial value of the name, distinguishing mark and logo. As the first article of the aforementioned law stipulates ((every person ... is obligated to provide an information document to the other party at least 20 days before signing the contract.)) <sup>(26)</sup>.

This information relates to the title of the franchisor, the value of his company's capital, his experience, the main stages of his development, and his commercial activity that he previously developed, and displays the franchise network, the content of the contract, the specific area of activity, the obligations imposed on the grantee, the expenses and investments that must be achieved, and the places of bank payment and registration in the commercial register <sup>(27)</sup> .

This means that the French law states that the grantor is not only obligated to inform the grantee of the previous information, but also to abide by the principles of good faith in informing him as well. According to this law, the grantor is prohibited from accepting the initial price before the end of the legal period that gives him time to think. The aim of this law is to protect the rights of granted to him due to his lack of experience in this field.

The legislator also issued a decree on February 21, 1991 regulating the provision of some information to consumers in the franchise sector. Moving from France as one of the European countries to the European Union as a whole, the interest of the European Community in the Franchise contract is clear after its spread in many European countries. This is evident from the establishment of the European Union (EFF) for Franchise in 1972, which aimed from its inception to define and describe the meaning and mechanisms of the franchise system, which

is often referred to as "coordination of franchise business", as well as to define the ethical standards on which the relationship between the parties is based. Franchise, whether in the pre-contractual or post-contractual stage, as well as the promotion and protection of the rights arising from the franchise contract through coordination between European institutions, national authorities and other international entities whose legislative actions can affect franchise contracts, and the unification of rules and provisions applicable to franchise contracts through Adopting a collective and common position for the member states.

Hence, the French legislator dealt with the franchise contract and the elements regulating this contract through the grantor placing his trade name, trade mark, industrial or service mark, or his technical knowledge at the disposal of the grantee in return for a fee in order to exploit it exclusively <sup>(27)</sup>.

In conclusion, we call on the Iraqi legislator to intervene to regulate the franchise contract in the absence of any legal regulation for it, by issuing special legislation for this contract due to its importance in commercial life, especially with the massive spread of these contracts, as the contract is still the only legal framework that Defines its scope and implications. And to deal with the following:

- 1- Providing the obligation of the franchise owner to provide sufficient information to the licensee that allows him to enter into a contract with knowledge and evidence, and to specify in the legislation all the information that must be disclosed, following the example of the French legislator.
- 2- Obliging the franchise owner to guarantee the technical knowledge that he provides to the licensee and subject it to the provisions related to delivery in the civil law.
- 3- Considering the obligation to provide assistance to the licensee to benefit from technical knowledge is an obligation to achieve a result and not to exercise care, based on the nature of the contract that imposes that.

## **Conclusion**

### **First: the results**

- 1- The franchise contract is a contract between two persons (the grantor and the grantee under which the grantee is allowed to carry out work related to the exploitation of industrial property rights for a specific period, provided that the grantor remains in control and oversight of those granted works while providing everything necessary for the grantee to carry out his work such as assistance Technical and commercial, in exchange for the grantee paying the financial dues to the donor.
- 2- The franchise contract is a special type of leasing for a specific thing, which is the tangible movable, i.e. technical knowledge and other elements of intellectual property.
- 3- There is an absence of a unified international treaty that regulates the franchise contract.

- 4- We find that the definition of commercial agencies stipulated in Article 1 of the Iraqi Commercial Agencies Law extends to franchise contracts and distribution agreements.
- 5- The Egyptian legislator did not regulate the franchise contract, but the Egyptian legislator subjected that in the provisions of the new trade law to every contract that includes the transfer of technology, in whole or in part, to the provisions of Egyptian law, on the basis that the franchise contains the element of technical knowledge.
- 6- The French legislator dealt with the franchise contract and the elements regulating this contract through the grantor putting his trade name, trade mark, industrial or service mark, or his technical know-how at the disposal of the grantee in exchange for a fee earned in order to exploit it exclusively.

### **Second / suggestions**

- 1- We call on the Iraqi legislator to intervene to regulate the franchise contract (franchise) by issuing special legislation for this contract due to its importance in commercial life, especially with the massive spread of these contracts. The contract is still the only legal framework that defines its scope and effects. Especially since the rules governing commercial agencies in the Iraqi commercial agencies law cannot logically be applied to the franchise contract.
- 2- We call on the Iraqi legislator to include in the law a text obligating the franchise owner to provide sufficient information to the licensee that allows him to enter into a contract with knowledge and evidence, and to specify in the legislation all the information that must be disclosed, in addition to obligating the franchise owner to guarantee the technical knowledge that he provides to the licensee and subject it to the relevant provisions By extradition in civil law.
- 3- Concerted international efforts must be made to support this type of contract in order to gain its multiple advantages, in light of the freedom of trade and the lifting of customs restrictions.

### **Margins**

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Arrêté du 21 février 1991 relatif à l'information du consommateur dans le secteur de la franchise. *JORF n°52 du 1 mars 1991 page 2963.* The European Franchise Federation

It is an independent, non-profit organization that represents all franchise unions in its member states. It currently includes 19 franchise unions in various European countries, including the unions located in Austria, Belgium, Britain, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, Slovenia, Sweden, Switzerland and Turkey. It is based in Belgium.

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