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Franchising legal frameworks: a comparative study of the DCFR, US law and Australian law regarding franchise contracts

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1 Introduction

1.1 INTRODUCTION

This doctoral thesis undertakes a comparative study of the franchise legal framework of the European Draft Common Frame of Reference (DCFR), the United States of America (USA), and Australia, regulating franchisor opportunism in a franchise life cycle. This comparative legal study aims to propose guidelines for drafting private law rules in comprehensive franchise law regulating a franchise contractual relationship. The principal purpose of the franchise regulation to be recommended is to provide a weaker franchisee with legal protection against the franchisor's opportunistic conduct during the three stages of a franchise life cycle, from a pre-contractual stage of a franchise relationship to an end of a franchise relationship. Ultimately, this research study intends to offer a source of inspiration for legal systems that aim to introduce franchise-specific legislation regulating a franchise contractual relationship at the national level.

Chapter one is an introductory chapter; it outlines the framework of the doctoral thesis. The structure of the first chapter is as follows. Apart from this section, section 1.2 will acquaint readers with a general understanding of a franchise as the subject matter of this research study. This section will also point out the very nature of a franchise relationship. Then, section 1.3 will identify particular relational problems caused by franchisor opportunism in a franchise life cycle. After that, section 1.4 will set the ultimate research goal based on the problems identified in the preceding section. Section 1.5 will develop an overarching research question and sub-research questions to form a foundation for carrying out the research to achieve the study's prime objective. Section 1.6 will elaborate on the chosen research methodology, research method, and information collection method. In the end, section 1.7 will summarize the structure of this book.

1.2 SUBJECT OF THE RESEARCH

1.2.1 Introduction

In distributing goods or services, producers of the products may employ various marketing strategies. Some business owners may bring their products to the market without intermediaries through face-to-face selling, online selling, and telemarketing, to name a few. Nevertheless, these direct marketing methods may not be a good choice if the producers intend to expand their market extensively. With this marketing concern, many business owners frequently create indirect marketing channels to distribute their goods or

services to the market. Among other indirect channels, some producers choose a franchise model to dispense their products to customers residing in various market areas. Section 1.2.2 will explain how a franchise model functions in a distribution system and why it is increasing a popular model from a business owner's viewpoint. Section 1.2.3 will identify the intrinsic nature of a franchise relationship, which is a source of some relational problems. Section 1.2.4 will sum up the character of a franchise apprehended in this thesis.

1.2.2 Franchise as a contract-based marketing model

From a marketing perspective, a franchise model creates an indirect distribution channel. In the distribution context, producers of goods or services may assign the task of selling or distributing goods or services to some selected channel partners who operate businesses independently from the producers. These channel partners may include retailers, wholesalers, brokers, and agents.¹ In this respect, the role of the channel partners will vary depending upon the types of channel partners and, particularly, the marketing system organized by a business owner. In designing a distributing system, some producers select a vertical marketing system (VMS) to dispense their products to the market. According to Armstrong and others, VMS is a unified marketing system consisting of producers, wholesalers, and retailers. VMS can be divided into three types: corporate, administered, and contractual VMS.²

Of the three VMS types, business owners may choose a franchise model as a distribution system. From a marketing viewpoint, a franchise is a contract-based arrangement in which the producer (franchisor) who owns the right to brand and business model licenses independent partners (franchisees) to use the producer's trademark and operate a franchised business. A franchise model is said to be categorized into three types: (1) a manufacturer-sponsored retailer franchise, (2) a manufacturer-sponsored wholesaler franchise, and (3) a service firm-sponsored retailer franchise.³ In practice, a franchise model has been employed in various industries.⁴ According to Seid, a franchise business model has been adopted by approximately 120 sectors, including restaurants, hotels, education, and medical services.⁵

Nowadays, franchise businesses have increasingly been commonplace. Many countries around the world have seen the growth of businesses employ-

1 Gary Armstrong, Philip Kotler, and Marc Oliver Opresnik, *Marketing: An Introduction* (7th global edn, Pearson Education Limited 2023) 331-32.

2 Ibid 334-35.

3 Ibid 335.

4 William G Nickels, James M McHugh and Susan M McHugh, *Understanding Business* (12th edn, The McGraw-Hill Companies 2018) 134.

5 Michael Seid, 'Product and Trade Name Franchising' *The Balance* (15 August 2019), <<https://bit.ly/3dThSGP>> accessed 17 February 2023.

ing a franchise model. Some businesses enjoy success because of a franchise model. An example of a successful franchise business is McDonald's, the US-based franchise company with over 38,000 franchised outlets worldwide.⁶ From the experiences of many people, therefore, a franchise is seemingly a popular marketing model. However, there should be some justifications for that assumption. Several pieces of literature provide that business owners employ a franchise model to distribute their goods or services because of the following three advantages.⁷

First, the producers can acquire additional capital from selling their franchise business. In joining a franchise organization, business partners or purchasers of a franchise will be required to pay fees in the form of upfront franchise fees and ongoing fees, such as royalties. The collection of these fees would enable the franchise owners to acquire funding for expanding their business without heavily depending upon loans from financial institutions, such as commercial banks.

The second benefit is informational; business owners can obtain information about geographical locations and local communities through the members of a franchise organization. This local information shared by the business partners would help the producers effectively market their products in dispersed areas about which the producers know very little. In this case, the franchise owners can make an informed decision if their goods or services are distributed in particular markets.

The third advantage is concerned with staff management; producers can shift responsibility for labor supply to the members of a franchise system. In the franchising context, thus, franchise partners will be responsible for hiring their employees. In other words, the franchise partners need to employ their staff themselves. The shift in this managerial responsibility would reduce the producers' payroll costs as the producers will not have to recruit employees for their business partners.

However, no business model has 100-percent-advantages. Thus, it should be mentioned that a franchise model may have some drawbacks for business owners. For example, a franchise owner may encounter a loss of control over its brand and system. In particular, the franchise owner may not control the day-to-day operation of its business partners. Moreover, the franchise owner

6 McDonald's, 'Franchising Overview' <<https://bit.ly/3EcMVgE>> accessed 17 February 2023.

7 Warren S Grimes, 'When Do Franchisors Have Market Power – Antitrust Remedies for Franchisor Opportunism' (1996) 65(1) *Antitrust Law Journal* 105, 108; Steven C Michael, 'First mover advantage through franchising' (2003) 18 *Journal of Business Venturing* 61, 64; Rajiv P Dant and Patrick Kaufmann, 'Structural and strategic dynamics in franchising' (2003) 79 *Journal of Retailing* 63, 64-65; Anna Watson and others, 'Retail franchising: an intellectual capital perspective' (2005) 12 *Journal of Retailing and Consumer Services* 25, 25-26; Arto Lindblom and Henriikki Tikkanen, 'Knowledge creation and business format franchising' (2010) 48 *Management Decision* 179, 180.

may not gain a high revenue from franchising as it would have received from the company-owned branches.⁸

1.2.3 Asymmetrical relationship

The preceding section illustrates that a franchise is a marketing model based on a contractual arrangement between a franchisor and a franchisee. A franchise is a business contract because the contract is ordinarily concluded by business persons, who are enterprises that typically aim to make profits in the course of the agreement. One commentator figuratively says that a franchise is a business marriage between a franchisor and a franchisee.⁹ Despite the fact that a franchise is a commercial relationship, many individual franchisees may not confront franchisors on an equal footing.¹⁰ Thus, in many senses, a franchise relationship is normally regarded as an asymmetrical relationship.¹¹ One scholar even claims that franchise asymmetry is a distinguishing nature or *sine qua non* of franchise relationships.¹²

In the franchising context, franchise asymmetries may take the form of information and power asymmetries.¹³ In the former case, it is explained that a prospective franchisee usually lacks balanced and reliable information about a franchise in general and a franchise system in particular. This situation results from the fact that a franchisor exclusively possesses the material information, which is not easily accessible to the prospective franchisee.¹⁴ In the latter case,

8 Dennis E Wieczorek and Max J Schott II, 'Chapter 2: Structuring the Franchise Relationship' in Rupert M Barkoff and others (eds), *Fundamentals of Franchising* (4th edn, American Bar Association 2016) 63.

9 William L Killion, 'Chapter 1: The History of Franchising' in Alexander M Meiklejohn (ed), *Franchising: Cases, Materials, & Problems* (American Bar Association 2013) 2.

10 Paul Steinberg and Gerald Lescatre, 'Beguiling Heresy: Regulating the Franchise Relationship' (2004) 109(1) Penn State Law Review 105, 174.

11 Nirmalya Kumar, Lisa K Scheer, and Jan-Benedict E M Steenkamp, 'The Effects of Supplier Fairness on Vulnerable Resellers' (1995) 32 Journal of Marketing Research 54, 54; Jenny Buchan, 'Deconstructing the Franchise as a Legal Entity: Practice and Research in International Franchise Law' (2014) 21 Journal of Marketing Channels 143, 148; Jennifer L L Gant and Jenny Buchan, 'Moral Hazard, Path Dependency and Failing Franchisors: Mitigating Franchisee Risk Through Participation' (2019) 47(2) Federal Law Review 261, 266.

12 Tibor Tajti, 'Franchise and Contract Asymmetry: A Common Trans-Atlantic Agenda' (2015) 37 Loyola of Los Angeles International and Comparative Law Review 245, 248.

13 Other scholars may categorize franchise asymmetries differently. For example, Buchan divides asymmetries in franchising into information asymmetry, adviser asymmetry, education and regulator asymmetry, risk and reward asymmetry, resource asymmetry, contract asymmetry, and regulatory asymmetry. See Jenny Buchan, *Franchisees as Consumers: Benchmarks, Perspectives and Consequences* (Springer 2013) 85-100.

14 Elizabeth Crawford Spencer, *The Regulation of Franchising in the New Global Economy* (Edward Elgar Publishing Limited 2010) 64-65; Lorelle Frazer and others, 'Pre-contractual Due Diligence by Franchisees and Independent Small Business Buyers' (2018) 46 Australian Business Law Review 157, 159.

a franchisor is commonly more powerful than a franchisee.¹⁵ In particular, the franchisor usually holds greater bargaining power than the franchisee.¹⁶ A vivid example is that the franchisor typically offers a franchise contract as a standard form contract in which the franchisee barely negotiates the terms of the contract.¹⁷ Besides, a franchisor is usually more sophisticated than a franchisee in terms of business experiences.¹⁸ Some empirical studies affirm this phenomenon; they show that a franchisee usually has no prior business experience. Thus, the franchisee typically joins a franchise system to seek assistance, training, and operational manuals from the franchisor. From a franchisor's perspective, these inexperienced franchisees are more preferred as they are easily controllable.¹⁹

1.2.4 Conclusions

This doctoral thesis takes a franchise relationship as the subject matter of the research. In this research study, a franchise is perceived as a marketing relationship created by a franchise contract concluded between a franchisor and a franchisee. More importantly, a franchise relationship, perceived in this research study, is considered an asymmetrical franchise relationship because of the fact that the franchisor exclusively possesses essential information about a franchise system and holds superior bargaining power over the franchisee. As will be seen in the following section, this asymmetrical character of a franchise relationship can be the source of particular relational problems that need a certain degree of regulation by law.

1.3 PROBLEMS IN A FRANCHISE LIFE CYCLE

15 In the marketing context, the term 'power' is understood as the ability to influence perceptions, behaviors, and decision-making of other channel partners. Thus, a person who holds power will have a dominant influence over the channel members. See Erin Anderson, Leonard M Lodish and Barton A Weitz, 'Resource Allocation Behavior in Conventional Channels' (1987) 24(1) *Journal of Marketing Research* 85, 87.

16 David Gurnick and Steve Vieux, 'Case History of the American Business Franchise' (1999) 24 *Oklahoma City University Law Review* 37, 40; Jenny Buchan, 'Challenges that franchisees of insolvent franchisors pose for liquidator' (2008) 16 *Insolvency Law Journal* 26, 30; Ateeque Shaikh, 'Conceptualizing fairness in franchisor-franchisee relationship: Dimensions, definitions and preliminary construction of scale' (2016) 28 *Journal of Retailing and Consumer Services* 28, 28.

17 Buchan, *Franchisees as Consumers: Benchmarks, Perspectives and Consequences* (n 13) 72-75.

18 Gillian K Hadfield, 'Problematic Relations: Franchising and the Law of Incomplete Contracts' (1990) 42(4) *Stanford Law Review* 927, 991.

19 Robert W Emerson and Uri Benoliel, 'Are Franchisees Well-Informed: Revisiting the Debate over Franchise Relationship Laws' (2012) 76 *Albany Law Review* 193, 203-09.

1.3.1 Introduction

There is always the likelihood of franchisor opportunism in an asymmetrical franchise relationship.²⁰ In this kind of relationship, it is likely that a superior franchisor behaves opportunistically towards a franchisee.²¹ In some cases, franchisor opportunism inflicts financial loss or damage to an aggrieved franchisee.²² This doctoral thesis intends to work on the potential relational problems generated by franchisor opportunism. Since the expression 'franchisor opportunism' may sound unclear to several readers, this section will elaborate on this expression in section 1.3.2. Then, this section will identify practices of franchisor opportunism that could manifest in the three stages of a franchise life cycle in sections 1.3.3, 1.3.4, and 1.3.5, respectively. Section 1.3.6 will conclude on the main reason why the problems identified in this section are significant for this research study.

1.3.2 Franchisor opportunism

Explaining how the expression 'franchisor opportunism' is understood in this research study would be wise to clearly illustrate the source of the relational problems in an asymmetric franchise relationship. In this research study, the term 'opportunism' has an economic sense. From an economic perspective, Williamson provides that the word 'opportunism' refers to self-interest seeking with guile. Williamson also elaborates on the word 'guile'; he defines 'guile' as 'lying, stealing, cheating, and calculated efforts to mislead, distort, disguise, obfuscate, or otherwise confuse.'²³ This thesis takes the meaning of 'opportunism' defined by Williamson and understands 'franchisor opportunism' as the franchisor's unfair conduct, practice, and treatment toward a franchisee.

However, defining the term 'fairness' is a daunting task because the notion of fairness is broad and complicated. According to Murphy, the concept of fairness can be perceived differently in different contexts.²⁴ This doctoral thesis agrees with Murphy and anticipates that conceptualizing fairness requires a

20 Kumar, Scheer, and Steenkamp (n 11) 54.

21 Grimes (n 7) 112.

22 It is said that opportunism is the source of business failure. See Courtenay Atwell and Jenny Buchan, 'The Franchise Fulcrum: The Legal System's Contributions to Research about Power and Control in Business Format Franchising' (2014) 21 *Journal of Marketing Channels* 180, 181.

23 Oliver E Williamson, 'The Economics of Organization: The Transaction Cost Approach' (1981) 87 *American Journal of Sociology* 548, 554; Kenneth H Wathne and Jan B Heide, 'Opportunism in Interfirm Relationships: Forms, Outcomes, and Solutions' (2000) 64 *Journal of Marketing* 36, 38, citing Oliver E Williamson, *The Economic Institutions of Capitalism* (The Free Press 1985) 47.

24 Susan P Murphy, 'Fairness' in Deen K Chatterjee (ed), *Encyclopedia of Global Justice* (Springer 2011) 336.

lengthy philosophical discussion. Thus, this thesis will refer to the definition offered by Black Law's Dictionary for the sake of specificity. According to the Dictionary, the term 'fairness' is defined to mean the quality of treating people equally or in a reasonable way and the quality of impartiality and honesty.²⁵ In sum, this research study intends the expression 'franchisor opportunism' to capture any franchisor's unequal, unreasonable, partial, and dishonest conduct towards a franchisee.

Despite the recognition of franchisor opportunism, this doctoral thesis by no means excludes the likelihood of 'franchisee opportunism' in a franchise relationship. In the context of franchisee opportunism, some franchisees may behave opportunistically in the form of free-riding. That is, opportunistic franchisees may increase short-term profitability by failing to observe quality standards, under-investing in advertising, or failing to supervise their staff properly.²⁶ Nevertheless, the scale of franchisee opportunism in franchising is ordinarily trivial. It is argued that a franchisor has the power to limit the risk of franchisee opportunism. According to Spencer, the franchisor may use contractual terms to restrain a franchisee's opportunistic behaviors. Spencer exemplifies that the franchisor may impose reporting and minimum performance requirements on the franchisee. In this case, a breach of duties by a franchisee would allow the franchisor to resort to remedies for the breach.²⁷ This research study agrees with Spencer and, therefore, will not focus on relational problems connected with franchisee opportunism.

1.3.3 Franchisor opportunism in a pre-contractual stage of a franchise relationship

As mentioned in the preceding section, a franchisor usually holds substantial and confidential information pertaining to a franchise, such as information about the franchisor, the franchise system, and the franchise business. When a prospective franchisee approaches a franchisor for a license of a franchise, an opportunistic franchisor may withhold or distort essential information.²⁸ First, the franchisor may not provide the prospective franchisee with material information or select certain informational items to disclose to the franchisee. Second, the franchisor may provide a potential franchisee with modified and

25 Bryan A Garner (ed), *Black's Law Dictionary* (11th edn, Thomson West (US) 2019).

26 Jérôme Barthélemy, 'Agency and institutional influences on franchising decisions' (2011) 26(1) *Journal of Business Venturing* 93, 95.

27 Spencer (n 14) 72.

28 Jakki J Mohr and Ravipreet S Sohi, 'Communication Flows in Distribution Channels: Impact on Assessments of Communication Quality and Satisfaction' (1995) 71(4) *Journal of Retailing* 393, 395-96.

transformed information that turns out to be untrue or inaccurate.²⁹ The franchisor may engage in these unfair practices without legitimate reasons. In other words, the franchisor's conduct may be done opportunistically. For example, the franchisor may not disclose that the franchisor has been involved in civil or criminal lawsuits against it to increase franchise sales for economic incentives, such as collecting up-front franchise fees as much as possible.³⁰ This franchisor's conduct would cause financial harm to a prospective franchisee; a prospective franchisee will be susceptible to making an ill-advised decision because of the lack of substantial and candid information about a franchise. A wrong investment decision would result in the franchisee's business failure soon after opening a franchised business.

1.3.4 Franchisor opportunism in an ongoing franchise relationship

After a franchise contract is concluded, a franchise relationship is established and continues. In this stage of the relationship, however, the practice of franchisor opportunism can be manifold.³¹ According to Grimes, a franchisor's opportunistic behaviors typically include encroachment, misuse of franchisees' money, forcing a franchisee to bear certain risks, and limiting a franchisee's certain marketing discretions.³² For the sake of specificity, a choice of franchisor's opportunistic conduct will be made because it would not be feasible for this doctoral thesis to identify and discuss all the franchisor's potential misbehaviors in the course of an ongoing franchise relationship. In this research study, attention will be paid to franchisor opportunism in the form of franchisor encroachment and failure to provide adequate assistance and support.

1.3.4.1 Franchisor encroachment

Franchisor encroachment is claimed to be a form of franchisor opportunism.³³ During an ongoing relationship, an opportunistic franchisor may encroach upon an existing franchisee's business in three forms: territorial encroachment, product or service encroachment, and trademark encroachment. However, for specificity's sake, this research study will focus on the first form of franchisor encroachment. According to Vincent, territorial encroachment is a situation when

29 See eg *Federal Trade Commission v American Entertainment Distributors Inc* 2012 WL 12964783 (SD Fla, 2012) 8.

30 Grimes (n 7) 123-24.

31 Hadfield (n 18) 952.

32 Grimes (n 7) 125-26.

33 Uri Benoliel and Jenny Buchan, 'Franchisees' Optimism Bias and the Inefficiency of the FTC Franchise Rule' (2015) 13 DePaul Business & Commercial Law Journal 411, 415.

'[a] franchisor approves a new location, whether company-owned or franchised, which is close enough to an existing location so that the new location draws away some of the customers from the existing location, resulting in a reduction of sales for the older location.'³⁴

Besides, the franchisor encroachment can take traditional and non-traditional forms.³⁵

First, a franchisor may engage in traditional encroachment by opening a new company-own franchise unit or authorizing other new franchisees to operate a franchised outlet in close proximity to an incumbent franchisee's store.

Second, a franchisor may engage in non-traditional encroachment by distributing its goods or services through other alternative distribution channels, such as internet sales, which would result in competition with an existing franchisee's business.³⁶ In either case, the franchisor encroachment may contribute to a substantial decrease in the incumbent franchisee's sales volume, leading to the franchisee's business failure.³⁷

1.3.4.2 Failure to provide adequate assistance and support

The second relational issue to be discussed in this thesis is the franchisor's failure to provide assistance and support. In franchising, the viability of a franchised business is said to rely upon the franchisor's assistance, which typically includes site selection, training, provision of operational manuals, provision of ongoing advice, and other specific forms.³⁸ However, a franchisee may not receive proper assistance and support from a franchisor. On the one

34 William Slater Vincent, 'Encroachment: Legal Restrictions on Retail Franchise Expansion' (1998) 13 *Journal of Business Venturing* 29, 30.

35 It is said that an opportunistic franchisor may strategically utilize an encroachment for several purposes. For example, the franchisor may want to maximize sales of a franchise by establishing as many franchised units as possible. In increasing sales, the franchisor can collect more sale-based royalty fees from its franchisees. The franchisor may desire to avoid paying damages to a franchisee upon the termination of a franchise contract. In doing so, the franchisor may encroach upon the franchisee's territory, leading to the franchisee's surrender of operating a franchised business. See Roger D Blair and Francine Lafontaine, *The Economics of Franchising* (2nd edn, Cambridge University Press 2010) 214; Uri Benoliel, 'Criticizing the Economic Analysis of Franchise Encroachment Law' (2011) 75(1) *Albany Law Review* 205, 214.

36 Blair and Lafontaine, *ibid* 202.

37 Marc A Wites, 'The Franchisor as Predator: Encroachment and the Implied Covenant of Good Faith' (1996) 7 *University of Florida Journal of Law and Public Policy* 305, 306; Benoliel (n 35) 215-20.

38 Paul H Rubin, 'The Theory of the Firm and the Structure of the Franchise Contract' (1978) 21(1) *The Journal of Law and Economics* 223, 224; Craig Tractenberg, Jean-Philippe Turgeon, and Stéphanie Destrempes, 'The Franchisor's Duty to Police the Franchise System' (2016) 36 *Franchise Law Journal* 87, 87.

hand, a franchisor may not even commit itself to providing a franchisee with adequate assistance and support.³⁹ On the other hand, a franchisor may retain discretion in providing a franchisee with assistance and support.⁴⁰ In the latter case, the right of retention would open room for the franchisor to behave opportunistically toward the franchisee. For example, an opportunistic franchisor may choose to provide an inferior quality of support with the aim of cutting costs incurred to the franchisor. In either case, the lack of the franchisor's adequate assistance and support could reduce the franchisee's ability to make profits from operating a franchised business.⁴¹

1.3.5 Franchisor opportunism related to an end of a franchise relationship

In franchising, a franchisor may behave opportunistically toward a franchisee when a franchise relationship is approaching cessation of the relationship. Forms of franchisor opportunism related to an end of a franchise relationship may vary. For specificity's sake, this doctoral thesis will focus on the franchisor's opportunistic conduct in relation to transfer, non-renewal, and termination of a franchise contract.

1.3.5.1 *Transfer of a franchise contract*

In the course of a franchise relationship, a franchisee may desire to transfer a franchise to a third person. In general, a transfer of a franchise means a situation in which a franchisee chooses to sell or assign any portion of a franchise contract, ownership interests in the business entity that owns the franchise, the assets of the franchised business and/or the business itself before the expiry of the franchise agreement.⁴² For the sake of specificity, this research study understands a transfer of a franchise as a complete assignment of a franchise agreement, resulting in a transfer of the incumbent franchisee's rights and duties under the current franchise contract to the third person.

In reality, a franchisee may want to transfer a franchise contract for several reasons. For example, a franchisee may have successfully developed local goodwill attached to a franchised store, thereby resorting to redeeming the

39 Rubin (n 38) 224 and 230.

40 W Michael Garner, 'Editor's Column' (1991) 11 Franchise Law Journal 2, 26.

41 Marko Grünhagen, Xu (Vivian) Zheng, and Jeff Jianfeng Wang, 'When the Music Stops Playing: Post-litigation Relationship Dissolution in Franchising' (2017) 2 Journal of Retailing 138, 149.

42 Craig Tractenberg, 'Assignment, Termination, and Renewal' in Kenneth R Costello (ed), *Collateral Issues in Franchising: Beyond Registration and Disclosure* (American Bar Association 2015) 555.

value of goodwill by transferring a franchise contract to other parties.⁴³ In this case, a transfer of a franchise contract is an exit strategy for a transferring franchisee that allows the franchisee to recoup its investment. In transferring a franchise contract, it is said that a franchisor usually controls a franchisee's transfer by requiring the franchisee to obtain the franchisor's prior consent.⁴⁴ In many cases, a franchisor may withhold consent for good reasons. For instance, a franchisor may withhold its consent because a transferee fails to meet the franchisor's standard for recruiting a new franchisee. In some exceptional cases, a franchisor may withhold its consent opportunistically.⁴⁵ For example, a franchisor may withhold its consent to compel the franchisee's concessions or introduce a new franchise contract.⁴⁶ Apparently, these practices are unfair to the franchisee.⁴⁷

1.3.5.2 Non-renewal of a franchise contract

In practice, franchise contracts are typically concluded for a fixed term.⁴⁸ In many cases, a franchisee operates a franchised business until expiration. In this case, some franchisees may expect another successive term of a franchise contract that would permit them to recover the investments and earn profits.⁴⁹ A franchisor may decide not to renew an expiring franchise contract in contrast to the franchisee's expectation. Generally, the franchisor's non-renewal of a franchise contract is allowed since the franchisor customarily has no duty to renew the contract. The franchisor's non-renewal is justified as one of the sanctions that penalize unsatisfactory franchisees.⁵⁰

43 Jerome L Withered, 'The No-Assignment-without-Consent Clause in Franchise Agreements' (1984) 4 Franchise Law Journal 1, 14.

44 Jerrold G Van Cise, 'A Franchise Contract' (1969) 14 Antitrust Bulletin 325, 342; Withered, *ibid* 1; Steinberg and Lescatre (n 10) 210; Ronald K Gardner, Jr and Mary Kellerman DesCombaz, 'Chapter 11: Relationship and Termination Laws' in Alexander M Meiklejohn (ed), *Franchising: Cases, Materials, & Problems* (American Bar Association 2013) 568.

45 This situation normally occurs when a franchise contract provides unlimited or sole discretion to a franchisor, or the contract does not provide any standard for the franchisor to decide. Those contractual arrangements are said to be common in the franchising context. See Terrence M Dunn, 'The Franchisor's Control over the Transfer of a Franchise' (2008) 27 Franchise Law Journal 233, 233.

46 Antony W Dnes, 'A Case-Study Analysis of Franchise Contracts' (1993) 22 Journal of Legal Studies 367, 381, citing Ozanne and Hunt, *The Economic Effects of Franchising, Report Prepared for the United States Senate Small Business Administration* (1971) 272.

47 Peter C Lagarias and Edward Kushell, 'Fair Franchise Agreements from the Franchise Perspective' (2013) 33 Franchise Law Journal 3, 22.

48 Charles S Modell and Genevieve A Beck, 'Franchise Renewals – You Want Me to Do What' (2002) 22 Franchise Law Journal 4, 4; Blair and Lafontaine (n 35) 258.

49 Spencer (n 14) 292.

50 Antony W Dnes, 'Franchise Contracts, Opportunism and the Quality of Law' (2009) 3 Entrepreneurial Business Law Journal 257, 272.

In some cases, the franchisor's non-renewal of a franchise contract may be considered unfair to a franchisee. For example, it may be obvious from circumstances that an extension of the initial term of a franchise contract would allow an existing franchisee to realize the value of its goodwill in a franchised business.⁵¹ However, an opportunistic franchisor may intend to deprive the franchisee's goodwill by deciding not to renew a franchise contract.⁵² In this case, the franchisee will not fairly be compensated for the value of its goodwill.

1.3.5.3 Termination of a franchise contract

In practice, a franchise contract is usually a standardized and non-negotiable contract drafted by a franchisor.⁵³ Ordinarily, a franchisor prepares a franchise contract to reflect its interests. Thus, it is not uncommon that the franchisor reserves the right to terminate a franchise contract unilaterally. In some cases, a franchisor may hold the right to terminate a franchise agreement at any time without any cause.⁵⁴ Generally, a franchisor may terminate a franchise contract for justifiable reasons that a franchisee has to endure. For example, the franchisor may terminate a franchise contract to discontinue a relationship with franchisees whose substandard behaviors harm the entire franchise system.⁵⁵

In several instances, a franchisor may terminate a franchise contract opportunistically.⁵⁶ For instance, a franchisor may engage in 'churning' practices by terminating a franchise contract to appropriate the franchisee's lucrative outlet.⁵⁷ According to Benoliel and Buchan, the franchisor may terminate a franchise contract to sell a successful franchised unit to other franchisees for a higher price. Alternatively, the franchisor may terminate a franchise contract to operate a successful outlet itself.⁵⁸ In either case, the terminated

51 Lewis G Rudnick, 'Structuring a Franchise Relationship' (1980) 1 *Journal of the Forum Committee on Franchising* 9, 11.

52 Caroline B Fichter, Andrew M Malzahn, and Adam Matheson, 'Don't Tread on Me: A Defense of State Franchise Regulation' (2018) 38 *Franchise Law Journal* 23, 37.

53 Jenny Buchan, 'Consumer Protection for Franchisees of Failed Franchisors: Is There a Need for Statutory Intervention?' (2009) 9(2) *Queensland University of Technology Law and Justice Journal* 232, 234; Jenny Buchan and Rob Nicholls, 'The Challenges of Navigating the COVID-19 Pandemic for Australia's Franchise Sector' (2020) *Australian Business Law Review* 126, 127; Jenny Buchan, 'Franchisees as externalities of insolvent franchisors: a windfall gain for employees?' in Paul J Omar and Jennifer L L Gant (eds), *Research Handbook on Corporate Restructuring* (Edward Elgar 2021) 261.

54 Benjamin Klein, 'Transaction Cost Determinants of "Unfair" Contractual Arrangements' (1980) 70(2) *The American Economic Review* 356, 359; Blair and Lafontaine (n 35) 269.

55 Richard A Epstein, 'Unconscionability: A Critical Reappraisal' (1975) 18 *Journal of Law & Economics* 293, 315; Benjamin Klein, 'The economics of franchise contracts' (1995) 2 *Journal of Corporate Finance* 9, 18.

56 Emerson and Benoliel (n 19) 197.

57 Blair and Lafontaine (n 35) 271.

58 Benoliel and Buchan (n 33) 415-16.

franchisee will inevitably suffer financial damage, such as failing to redeem the value of its goodwill.⁵⁹ Additionally, the franchisor may terminate a franchise agreement to claim franchise fees and buy the franchisee's initial investment at a distress price.⁶⁰ Also, the franchisee's economic loss will unavoidably be realized.

1.3.6 Conclusions

An asymmetrical franchise relationship likely opens room for a franchisor to behave opportunistically toward a franchisee. This section shows that certain forms of franchisor opportunism may manifest themselves during the three stages of a franchise relationship, from the pre-contractual stage to the end of the relationship. Undoubtedly, a franchisor's opportunistic behaviors will victimize vulnerable franchisees and cause them economic loss or damage, which is hardly avoidable. In this respect, regulating franchisor opportunism by franchise-specific legislation may be needed to suppress franchisor opportunism in a franchise life cycle. The following section will set the main research goal of this doctoral thesis with regard to the legal regulation of franchisor opportunism.

1.4 RESEARCH OBJECTIVE

1.4.1 Introduction

The likelihood of franchisor opportunism in the three stages of a franchise relationship identified in the preceding section signifies the need to provide a vulnerable franchisee with legal protection against the franchisor's opportunistic conduct. In practice, there are several approaches to preventing a franchisor from utilizing its superior informational and economic power to behave opportunistically toward a franchisee in a franchise life cycle. Some countries may take a regulatory approach; that is to say, they may introduce

59 Hartlief and Baeck examined whether a franchisee can claim reimbursement for the value of goodwill on the basis of unjustified enrichment in seven European countries, namely, Belgium, Estonia, Germany, Ireland and the UK, Italy, and the Netherlands. In the comparative study, the authors concluded that the examined jurisdictions are reluctant to permit the claim for the loss of goodwill. Moreover, no selected country has specific legislation that allows the franchisee to be compensated for goodwill. *See* Ton Hartlief and Joke Baeck, 'Goodwill Compensation after Termination of a Franchise Contract: Comparative Perspective on Cour de Cassation 23 October 2012 (No. 11-21.978)' (2014) 22(6) *European Review of Private Law* 955, 957-58.

60 Klein (n 54) 359.

franchise-specific law regulating the franchisor's opportunistic conduct.⁶¹ This section will set the principal objective of the doctoral thesis that facilitates legal systems with an aim to take this regulatory approach in section 1.4.2. Section 1.4.3 will recapitulate the ultimate goal of this research study.

1.4.2 Formulation of private law rules under franchise-specific law

The main goal of this research study is to offer guidelines for formulating private law rules of franchise-specific law regulating franchisor opportunism in the three stages of a franchise life cycle. The following subsections 1.4.2.1 and 1.4.2.2 will elaborate on the terms 'franchise-specific law' and 'private law rules' for the purpose of this research study.

1.4.2.1 *Franchise-specific law*

This research study presupposes that franchise-specific law better protects a franchisee against franchisor opportunism because of two reasons.

First, this thesis believes that general contract law cannot satisfactorily protect a weaker franchisee. In legal literature, some legal scholars have claimed that a franchisee will not be able to protect itself under the system of contract law. For example, Buchan mentions that contract law is not an appropriate regulatory tool in franchising.⁶² That is, contract law relies on the principle of freedom of contract, which suggests that contracting parties will bargain to protect their own interests. Thus, it is not uncommon that a franchisor will draft a franchise contract to protect its own interests. Buchan also points out that the franchisor will not be interested in protecting the franchisee from the franchisor's damaging conduct.⁶³ In sum, contract law

61 One reason is that contract law, as a general legal framework governing a franchise relationship, may not protect a weaker franchisee appropriately. Some legal scholars have claimed that a franchisee cannot protect itself under the realm of contract law since contract law principles, such as contractual freedom, assume that the parties must bargain to protect their own interests. In reality, the franchisee hardly protects itself because it is inexperienced and has less bargaining power. Moreover, the franchisor will not be interested in protecting the franchisee from the franchisor's unfair conduct. See Tanya Woker, 'Franchising – The Need for legislation' (2005) 17 *South African Mercantile Law Journal* 49, 49-56; Buchan, *Franchisees as Consumers: Benchmarks, Perspectives and Consequences* (n 13) 79-84. Thus, some commentators have argued for the statutory protection of a franchisee under the realm of franchise-specific law because the franchisee may not protect itself. See Caroline B Fitchter, Andrew M Malzahn, and Adam Matheson, 'Don't Tread on Me: A Defense of State Franchise Regulation' (2018) 38(1) *Franchise Law Journal* 23, 34.

62 Buchan, 'Deconstructing the Franchise as a Legal Entity: Practice and Research in International Franchise Law' (n 11) 148, 151-52.

63 Buchan, *Franchisees as Consumers: Benchmarks, Perspectives and Consequences* (n 13) 69-72, 79.

will not allow an inexperienced franchisee with lesser bargaining power to protect itself against an exploitative franchisor.

Second, franchise-specific legislation is regulatory. Some commentators have argued for the legal protection of a franchisee under the realm of franchise-specific law.⁶⁴ According to Emerson and Benoliel, franchise law can correct a perceived inequality in bargaining power between a franchisor and a franchisee and protect franchisees against franchisor opportunism.⁶⁵ By its nature, franchise-specific law contains provisions establishing mandatory rules to provide a franchisee with *ex-ante* and *ex-post* protection. In the former case, franchise-specific law rules can take an action-based approach in requiring a franchisor to act affirmatively or negatively that will not jeopardize the franchisee's legitimate interests. In the latter case, franchise-specific law rules can adopt a sanction-based approach in offering a system of private law remedies that permit an aggrieved franchisee to remedy the actual and anticipated loss or damage arising from the franchisor's damaging conduct. Thus, this research study aims to facilitate the adoption of this regulatory intervention.

It should be noted that this doctoral thesis intends franchise-specific law to be 'comprehensive franchise law'. In this thesis, comprehensive franchise law will be referred to as statutory law containing a set of mandatory rules regulating franchisor opportunism in the whole franchise life cycle, from a pre-contractual to a contractual franchise relationship. Nevertheless, this thesis does not intend comprehensive franchise law to take any specific form. Accordingly, legal systems may propose franchise-specific law, as comprehensive franchise law, in various forms. For example, legal systems may introduce comprehensive franchise law as a piecemeal franchise statute or an administrative franchise regulation. Civil law jurisdictions may include in their civil code a special part of contract law governing a franchise contract. For example, the Netherlands has recently amended Book 7 of the Dutch Civil Code to contain a set of specific contract law provisions establishing rules regulating pre-contractual and contractual franchise relationships.⁶⁶

1.4.2.2 Private law rules

Comprehensive franchise law may contain provisions that offer private and public law rules regulating a franchise relationship. Nevertheless, this doctoral thesis will not deal with public law aspects of comprehensive franchise law. For instance, this thesis will not discuss problems related to registering a franchise business and filling documents, such as filling a disclosure document.

64 Fitchter, Malzahn, and Matheson (n 61) 34.

65 Robert W Emerson and Uri Benoliel, 'Can Franchisee Associations Serve as a Substitute for Franchisee Protection Laws?' (2013) 118(1) Penn State Law Review 99, 105.

66 Book 7, title 16, articles 911-922.

In other words, this research study will focus on suggesting the formation of private law rules as rules regulating the rights and duties of the parties to a contract.⁶⁷

The primary objective of the research study is to develop guidelines for formulating civil law rules regulating the franchisor's opportunistic conduct in a franchise relationship. Strictly speaking, this thesis intends to develop the rules that regulate the rights and duties of the parties to a franchise contract to ensure adequate legal protection of a franchisee. In order to create a complete picture of franchise regulation, this research study also aims to suggest the construction of a remedial system that will redress the franchisee's loss or damage in the case of violation of the franchise regulation under comprehensive franchise law. Nonetheless, this book has a limit in length; it is inevitable to study those two aspects of franchise regulation in detail. Thus, it should be mentioned that this research study will pay more attention to substantive law rules regulating the rights and obligations of the franchisor and the franchisee than the remedial system.

1.4.3 Conclusions

The ultimate goal of this doctoral thesis is practical; it aims to offer a source of inspiration for any legal systems that intend to introduce franchise-specific law to regulate a franchisor's opportunistic conduct to protect a weaker franchisee. Specifically speaking, this thesis will develop guidelines for formulating private law rules under comprehensive franchise law regulating the franchisor's opportunistic conduct in a franchise life cycle and private law remedies for the franchisor's violation of the rules. In this respect, a benchmark for comprehensive franchise law rules is the protection of the franchisee's legitimate interests against the franchisor's opportunistic conduct. Private law rules can be introduced to address several private law aspects of a franchise relationship. The following section will formulate an umbrella research question and sub-research questions to set an analytical framework for the research study that enables the achievement of the main research objective.

1.5 RESEARCH QUESTIONS

1.5.1 Introduction

This section will develop explorative research questions to form the backbone of the research study. These research questions will be divided into one over-

⁶⁷ John C P Goldberg, 'Pragmatism and Private Law' (2012) 125 Harvard Law Review 1640, 1640.

arching research question and sub-research questions. Based on the problems identified in section 1.3 and the main research goal set in section 1.4, this doctoral thesis supposes that comprehensive franchise law is introduced to regulate franchisor opportunism in the three stages of a franchise life cycle in order to protect a franchisee. Then, this thesis formulates an overarching research question: “Which franchise-specific law rules should be formulated to regulate the franchisor’s opportunistic conduct?” In responding to this central research question, this section will develop a series of ten sub-research questions to be answered in this thesis. Ten sub-research questions pertaining to the three stages of a franchise relationship will be formulated in sections 1.5.2, 1.5.3, and 1.5.4, respectively. Section 1.5.5 will conclude on the pivotal role of the formulated overarching research question and ten sub-research questions.

1.5.2 Sub-questions as regards a pre-contractual franchise relationship

Three sub-research questions pertinent to a pre-contractual stage of a franchise life cycle are formulated as follows.

How is a franchisor required to provide the prospective franchisee with material information about a franchise business before the conclusion of a franchise contract? What are the franchise-specific law rules that should be made to establish the franchisor’s pre-disclosure duty?

How is a franchisor required to ensure that pre-contractual information to be disclosed is current and candid? What are the franchise-specific law rules that should be made to constitute the franchisor’s duty of truthfulness?

Can an aggrieved franchisee seek private law remedies to compel the franchisor’s performance, claim monetary compensation, and cancel a franchise contract if a franchisor fails to comply with the franchise rules?

These three sub-research questions will be investigated in chapter three of the book.

1.5.3 Sub-questions as regards an ongoing franchise relationship

Three sub-research questions connected with an ongoing franchise relationship are formulated as follows.

How is a franchisor required to refrain from engaging in traditional and non-traditional encroachment in the vicinity of the franchisee’s marketing area? What are the franchise-specific law rules that should be made to regulate the franchisor encroachment?

How is a franchisor required to assist the franchisee in the opening and operation of a franchise business? What are the franchise-specific law rules that should be made to govern the franchisor's assistance?

Can an aggrieved franchisee seek private law remedies to compel the franchisor's performance, claim monetary compensation, and cancel a franchise contract if a franchisor fails to comply with the franchise rules?

These three sub-research questions will be investigated in chapter four of the book.

1.5.4 Sub-questions as regards an end of a franchise relationship

Four sub-research questions in relation to the end of a franchise relationship are formulated as follows.

How is a franchisor required not to withhold consent to a transfer by the franchisee unreasonably? What are the franchise-specific law rules that should be made to regulate the franchisor's withholding consent to the transfer?

How is a franchisor prevented from refusing to renew an expiring franchise contract for a definite period? What are the franchise-specific law rules that should be made to regulate the franchisor's non-renewal of a franchise contract?

How is a franchisor prevented from terminating a franchise contract for an indefinite and definite period without justifiable grounds? What are the franchise-specific law rules that should be made to regulate the franchisor's termination of a franchise contract?

Can an aggrieved franchisee seek private law remedies to compel the franchisor's performance, claim monetary compensation, and cancel a franchise contract if a franchisor fails to comply with the franchise rules? Can an aggrieved franchisee be reimbursed for the value of tangible and intangible assets upon the cessation of a franchise relationship, and, if it can, what are the assets whose value can be reimbursed?

These four sub-research questions will be investigated in chapter five of the book.

1.5.5 Conclusions

This section sets an overarching research question to be answered in this research study. This central question concerns franchise-specific law rules that should be formulated under comprehensive franchise law to regulate franchisor opportunism in the three stages of a franchise life cycle. Answering this central research question will not be successful unless the core of the research study is formed. Thus, this section also develops the accompanying ten sub-research

questions to form the basis for the research study. Before the developed research questions are investigated later in the book, it is crucial to design methodological aspects of the research study to ensure that all the research questions are answered in a scholarly-sound manner. This designing task will be undertaken in the following section.

1.6 RESEARCH DESIGNS

1.6.1 Introduction

This section is devoted to selecting a research methodology and a research method to be employed in this research study.⁶⁸ The proper selection of the research methodology and method will ensure that this doctoral thesis answers the research questions developed in the preceding section and formulates thesis proposals to achieve the research objective. In terms of methodology, this research study will take the position of a legal doctrinal approach. Concerning the research method, this research will employ a comparative law method to examine the franchise legal framework of the DCFR, the USA, and Australia regulating franchisor opportunism in the three stages of a franchise life cycle. This section will elaborate on a choice of legal doctrinal research and a comparative law method in sections 1.6.2 and 1.6.3, respectively. Section 1.6.4 will conclude on the central theme of this research study.

1.6.2 Doctrinal legal approach as a research methodology

As mentioned in section 1.4, this research study will propose guidelines for formulating private law rules of franchise-specific law regulating franchisor opportunism in the three stages of a franchise life cycle. Thus, it is inevitable that this research study examines 'law' as a normative framework regulating persons' conduct. With this reason in mind, a proper research methodology is normative or doctrinal legal research since this methodology involves the systematic description of legal materials.⁶⁹ This thesis believes that a descript-

⁶⁸ A research methodology and a research method will be addressed separately because this doctoral thesis perceives that the research methodology and research method differ in terms of terminology. According to Mills, a research methodology is understood as a researcher's position concerning a research study. In contrast, a research method is defined as a strategy that the researcher employs to answer the research questions. See Jane Mills, 'Chapter 3: Methodology and Methods' in Jane Mills and Melanie Birks, *Qualitative Methodology: A Practical Guide* (SAGE Publications 2014) 32.

⁶⁹ Jan M Smits, 'What Is Legal Doctrine?: On The Aims and Methods of Legal-Dogmatic Research' in Rob van Gestel, Hans-W Micklitz, and Edward L Rubin (eds), *Rethinking Legal Scholarship: A Transatlantic Dialogue* (Cambridge University Press 2017) 213-21.

ive legal approach will help answer the overarching research question and ten sub-research questions from a legal standpoint to formulate guidelines for enacting comprehensive franchise law rules regulating the franchisor's opportunistic conduct.

This research study will employ doctrinal legal research to study the extent to which the DCFR, the USA, and Australia provide the franchise legal framework to regulate franchisor opportunism in the three stages of a franchise relationship. Apparently, the franchise legal framework of the chosen legal systems will be the object of the study in this thesis. In this respect, it would be wise to explain the meaning of the expression 'franchise legal framework' that is understood in this research study.

For this research study, the franchise legal framework refers to the following two types of legal framework that this thesis considers most relevant to the regulation of franchisor opportunism in a franchise relationship.

The first type of legal framework is the rules of private law. This research study will examine well-established legal rules that lay down normative standards or principles regulating a franchise relationship. It should be noted that these legal rules can be established by franchise-specific law and contract law.

The second type of legal framework is the terms of a franchise contract. This research study perceives the franchise legal framework in the broadest sense to include agreements between the franchisor and the franchisee under a franchise contract. The reason for taking this view is that a franchise contract is a principal instrument outlining a franchise relationship.⁷⁰ In many cases, the terms of a franchise contract articulate minimum requirements that could protect a franchisee against a franchisor's opportunistic practices.

1.6.3 Comparative law as a research method

This doctoral thesis will conduct doctrinal legal research by employing a comparative law method. In comparative law research, a comparison of multiple legal systems is said to be a process of the study. According to Örüçü, the comparison method includes juxtaposing, contrasting, and comparing legal systems.⁷¹ Because of this particular trait, a comparative law method will help extract widely-adopted legal solutions to specific problems. This benefit of a comparative law method will enhance the possibility of widespread adoption of research proposals among legal systems around the globe. Thus,

70 Jenny Buchan, 'Ex ante information and ex post reality for franchisees: The case of franchisor failure' (2008) 36 *Australian Business Law Review* 407, 422; Atwell and Buchan (n 22) 187.

71 Esin Örüçü, 'Methodology of comparative law' in Jan M Smits (ed), *Elgar Encyclopedia of Comparative Law* (2nd edn, Edward Elgar 2012) 573.

this thesis believes that a comparative law method fits the purpose of this research study.

However, a challenging question arises: what legal systems are chosen to compare? For specificity's sake, this doctoral thesis aims to conduct multilateral comparative law research in the sense that more than two legal systems will be chosen to compare. Furthermore, this research study will utilize a multilateral comparative law method to juxtapose the franchise legal framework of the DCFR, the USA, and Australia. This research study aims to extract similarities and differences in the legal approaches adopted by the three legal systems to regulate the franchisor's opportunistic conduct in the three stages of a franchise life cycle. The findings from the comparative examinations will be discussed to propose guidelines for formulating private law rules regulating franchisor opportunism in a franchise life cycle. The following subsections 1.6.3.1 and 1.6.3.2 will elaborate on the selection of the three legal systems and the information collection method to be employed in this comparative law study.

1.6.3.1 Selection of the three legal systems

As mentioned in the preceding section, this doctoral thesis chooses the DCFR, the USA, and Australia as comparison units. These legal systems are chosen because of the comprehensiveness of their franchise legal framework; the DCFR, the USA, and Australia offer the franchise legal framework that regulates a franchise relationship from its birth to its end.⁷² This comprehensiveness will ensure that this research study satisfactorily answers the central question and sub-research questions. Moreover, the comprehensiveness establishes *tertium comparationis* or the common denominator, making a comparative legal analysis in this research study possible. Metaphorically speaking, comparing the franchise legal framework of the DCFR, which is a mere academic text, with those of the USA and Australia will not lead to a comparison between apples and oranges.⁷³

72 Employing the comprehensiveness of the franchise legal framework as a criterion means the choice of legal systems to compare is not based on the Roman root of legal systems. In other words, choosing the DCFR, the USA, and Australia for the research study is not based on the division of civil law and common law legal systems.

73 Nowadays, contemporary comparatists have not confined themselves to comparatively examining the positive laws of nations. In some comparative law research, the researcher may select model law to compare with other national legal systems. For example, in Díaz's doctoral research, the Principles of European Law on Commercial Agency, Franchise and Distribution Contracts (PEL CAFDC) was chosen to compare with French and Spanish legal systems. See Odavia Bueno Díaz, *Franchising in European Contract Law: A comparison between the main obligations of the contracting parties in the Principles of European Law on Commercial Agency, Franchise and Distribution Contracts (PEL CAFDC), French and Spanish law* (seller: european law publisher 2008).

As can be seen, the franchise legal framework of the DCFR, the USA, and Australia is the object of this research study. In this respect, it would be wise to identify main sources of the franchise legal framework of the chosen legal systems. The identification of the legal sources will be made in the following three italicized headings.

– *The Draft Common Frame of Reference (DCFR)*

This doctoral thesis takes the Draft Common Frame of Reference (DCFR) to represent the European legal framework, which is the first comparison unit. In Europe, franchises are claimed to be flourishing businesses that significantly contribute to the GDP of many European countries.⁷⁴ Currently, the European Franchise Association's website has estimated over 14,900 franchise systems operating across the continent.⁷⁵ In this respect, studying the European legal framework regulating franchise relationships would be appealing for this thesis. Unfortunately, European countries have no uniformity in regulating a franchise relationship. In other words, the legal framework regulating a franchise relationship varies from country to country. Some countries, such as Italy, France, Spain, Belgium, and Lithuania, have enacted franchise-specific legislation regulating some aspects of a franchise relationship. Other countries, such as Germany and the UK, utilize general contract law rules to govern a franchise relationship as a contractual relationship. Thus, it would not be viable for this research study to find a single national legal framework that represents the European system in regulating a franchise relationship.

Because of the restraint mentioned above, this research study finds that the DCFR is a perfect choice for representing a European perspective on regulating a franchise relationship. According to the drafters of the DCFR, this instrument is drafted by European scholars. Besides, model rules in the DCFR are derived mainly from thirty legal systems in Europe, as well as the overarching European law.⁷⁶ More importantly, some commentators claim that the DCFR is the first complete set of systematized rules of franchise contracts in Europe.⁷⁷ This thesis agrees with this acclamation because the DCFR makes a franchise contract one of the specific contracts.⁷⁸ The DCFR provides model

74 Mark Abell, *The Law and Regulation of Franchising in the EU* (Edward Elgar Publishing 2013) 1-2.

75 <https://eff-franchise.com/>

76 Christian von Bar and Eric Clive, *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR): Full Edition* (Vol.1, Oxford University Press 2010) 1.

77 Christian von Bar, 'The Draft Common Frame of Reference: Scope and Purpose,' in Vincent Sagar, Matthias Storme and Evelyne Terryn (eds), *The Draft Common Frame of Reference: national and comparative perspectives* (Intersentia 2012) 5; Tajti (n 12) 249-50.

78 It should be noted that the drafters present the DCFR in a civil code-like instrument that covers broad subjects, including specific contracts. See Lucinda Miller, *The Emergence of EU Contract Law: Exploring Europeanization* (Oxford University Press 2011) 132.

rules in Book IV regulating both pre-contractual and contractual franchise relationships.⁷⁹ Unlike other model franchise laws, the DCFR offers a comprehensive franchise legal framework regulating a franchise relationship.⁸⁰ Therefore, it would not be exaggerated to say that the DCFR is the most suitable choice that could represent the European legal framework regulating a franchise relationship.

The selection of the DCFR as a comparison unit may be questioned in the following two aspects.

First, one may argue that this academic text lacks a practical dimension because European countries have not adopted the DCFR as existing law yet. Despite this, the DCFR by no means loses any connection to the real legal world. First, it should be borne in mind that model rules of the DCFR derive from the extensive comparative law studies of existing laws in Europe.⁸¹ Furthermore, some provisions of the DCFR are cited by court decisions. For instance, in Scotland, Lord Malcolm in *Phil Wills v Strategic Procurement (UK) Limited* referred to II. – 7:201(1) of the DCFR when discussing an error issue in contract law.⁸² This Scottish case law demonstrates that the DCFR is not a mere academic text and can really be utilized in courts.

Second, one may argue that the DCFR is incomplete as it does not offer model rules governing some specific areas of law. In remedying this incompleteness, this thesis will examine the rules of other legal frameworks as appurtenances (*cum annexis*). For example, the DCFR does not contain model competition law rules, which are customarily relevant in franchising. In this respect, this thesis will examine the rules of the Treaty on the Functioning of the European Union (TFEU) when it comes to the effects of competition law rules on competition issues in a franchise relationship. This gap-filling solution is not unusual in the view of the drafters of the DCFR since they acknowledge that European competition law rules may affect certain provisions in a franchise agreement.⁸³ Thus, in some parts of the comparative examination, this research study will explore the DCFR *cum annexis*.

79 The DCFR also offers general contract law rules in Book I, II, and III that will be applied to a franchise contract in the absence of special rules in Book IV. These rules primarily deal with private law remedies for a non-performance of an obligation under a franchise agreement.

80 Compared to the UNIDROIT Model Franchise Disclosure Law 2002, this model law contains ten articles focusing on the franchisor's pre-disclosure duty in a franchise relationship. In other words, the instrument does not deal with contractual issues in a franchise relationship, such as franchisor encroachment and franchisor assistance. In this respect, the UNIDROIT model law is a less interesting choice for this thesis because it does not offer comprehensive franchise law rules like the DCFR.

81 Bar and Clive (n 76) 1.

82 *Wills v Strategic Procurement (UK) Ltd*, 2016 SC 367 [10].

83 Christian von Bar and Eric Clive, *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR): Full Edition* (Vol.3, Oxford University Press 2010) 2384.

Since this doctoral thesis will examine the terms of a franchise contract, one may question where to find contract drafting practices when examining the DCFR in this thesis. For the sake of specificity, this research study will utilize the ICC Model International Franchising Contract (the ICC Model Contract) to exemplify a franchise contract's terms representing a European viewpoint. According to the authors of the ICC Model Contract, this publication offers the most commonly encountered clauses in franchise contracts. Those clauses are intended to be adopted domestically and internationally.⁸⁴ In addition, the ICC Model Contract could well represent a European perspective on drafting a franchise contract because of several references to regional and domestic laws of the European Union. For example, the authors of the ICC Model Contract refer to European competition law rules when it comes to antitrust issues. Furthermore, the authors mention German and Austrian laws to demonstrate how the national laws protect a franchisee in a pre-contractual stage through general contract law rules.⁸⁵

– *The United States of America (USA)*⁸⁶

The United States of America (USA) is chosen as the second comparison unit because this legal system has a long history of regulating a franchise.⁸⁷ Nowadays, the USA has regulated franchise relationships through several types of franchise-specific legislation. The US legal system regulates a pre-contractual franchise relationship through franchise sales or disclosure laws. At the national level, the Federal Trade Commission's Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity (FTC Rule) has been legislated to regulate pre-sale disclosures.⁸⁸ At the state level, sixteen US states (franchise sale states) have enacted franchise sale law, which is not

84 International Chamber of Commerce, *ICC Model International Franchising Contract* (ICC Publications 2011) 3-4.

85 Ibid 13-15.

86 In terms of statistics, in 2021, around 774,965 local franchise businesses were operating in the USA. These businesses created around 8.2 million jobs and generated 787.7 billion US dollars for the US economy. In 2022, it is expected that the number of franchise businesses will increase by 2.2% to 792,014 establishments. These stats derive from the report '2022 Franchising Economic Outlook' prepared by FRANData for the International Franchise Association. This report can be accessed at <<https://bit.ly/3l56qh6>>.

87 The USA is said to be the home of modern franchising. A franchise, as a marketing model, is claimed to have been developed in this country. Furthermore, the USA is said to be the first country that introduces franchise-specific legislation to regulate franchise relationships. See Killion (n 9) 8-19; John R F Baer and Susan Grueneberg, 'United States' in Andrew P Loewinger and Michael K Lindsey (eds), *International Franchise Sale Laws* (2nd edn, American Bar Association 2016) 502.

88 The electronic version of the FTC Rule can be found on the Federal Trade Commission's website at <<https://bit.ly/3coWutM>>.

preempted by the FTC Rule, to regulate franchise sales in their jurisdictions.⁸⁹ In the case of concurrence, this thesis will primarily examine the FTC Rule since it is a primary legislative instrument regulating pre-sale disclosures throughout the country. However, this research study will highlight aspects of the state disclosure laws in case of distinct deviations from the FTC Rule.

The USA also regulates contractual franchise relationships through general franchise relationship laws. Nowadays, there is no federal franchise relationship law. According to Emerson and Benoliel, several federal franchise relationship bills were introduced in the past but all the bills were rejected.⁹⁰ Consequently, franchise relationship legislation is a matter of state law.⁹¹ Currently, eighteen US states (relationship states) have enacted franchise relationship statutes to regulate several matters with regard to ongoing franchise relationships.⁹² In this research study, the rules of state franchise relationship law will primarily be examined. In the rest of the country, contract law will be utilized to govern franchise relationships. However, contract law rules are exclusively state law doctrines that may vary from jurisdiction to jurisdiction.⁹³ Thus, this study will not examine state contract law doctrines thoroughly. Instead, this study will focus on examining contract law rules utilized

89 Those states are California, Florida, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Oregon, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin. It should be noted that some other states have their business opportunities law, which may apply to pre-contractual franchise relationships. See *Peltier v Spaghetti Tree, Inc.*, 451 NEn2d 1219, 1221, 6 Ohio St 3d 194, 196 (Ohio, 1983). For example, Alaska has the sale of business opportunities statute that requires the disclosure of pre-contractual information. See AK ST § 45.66.080. Arizona has trade and commerce law requiring the pre-sale disclosure. See AZ ST § 44-1276.01. Nevertheless, this doctoral thesis specifically focuses on the state franchise disclosure statutes.

90 Emerson and Benoliel (n 65) 106-07.

91 It should be noted that a new Bill cited as 'Fair Franchise Act of 2017' has presently been introduced and sponsored by Keith Ellison, the US Representative, since 2017. This Act is to be enacted as federal franchise legislation establishing minimum standards of fair conduct in franchise sales and franchise business relationships. One of the declared purposes of the Act is to protect franchisees against unfair treatment by franchisors, who inherently have superior economic power and bargaining power in the negotiation of the terms and conditions of the franchise relationship. If Congress passes the Bill, pre-contractual and contractual franchise relationships will uniformly be regulated by the Act throughout the USA. The text of the Bill can be retrieved at <<https://bit.ly/3i5xNE0>>.

92 Those relationship states are Arkansas, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, Rhode Island, Virginia, Washington, and Wisconsin. Besides the US states, Virgin Island, an unincorporated US territory, has its franchised businesses law, which governs part of an ongoing franchise relationship. See 12A V.I.C. § 130-139.

93 Alexander M Meiklejohn, 'Chapter 13: Common Law Doctrine' in Alexander M Meiklejohn (ed), *Franchising: Cases, Materials, & Problems* (American Bar Association 2013) 663.

by courts to protect franchisees against franchisor opportunism in a franchise relationship.⁹⁴

Apart from the rules of law, the USA offers contracting practices that enable the collection of a franchise contract's terms to illustrate how a franchise agreement deals with franchisor opportunism. In some states, such as California, samples of a real-life franchise agreement can be searched through the website of California's Department of Financial Protection and Innovation.⁹⁵ However, it would be a burdensome task to collect all samples of a franchise contract to examine its terms. For the sake of exemplification, some sources of the terms of a franchise contract will be referred to in this research study. For example, this thesis will take samples of contractual clauses offered by some national franchise associations, including the American Association of Franchisees and Dealers (AAFD) and the Coalition of Franchisee Associations (CFA). Furthermore, this research study will resort to the book entitled 'the Annotated Franchise Agreement' published by the American Bar Association (ABA) because it offers terms and conditions that are said to be common among typical franchise agreements in the USA.⁹⁶

– *Australia*

Australia is chosen as the third comparison unit. For a general view, franchising set foot in Australia around the 1960s.⁹⁷ Now, it is said to be a flourishing business that forms an essential part of the nation's economy.⁹⁸ According to Buchan, the franchise sector in the country is big, diverse, and complicated.⁹⁹ Accordingly, Australia has a specific legal environment for this business sector; that is to say, it regulates a franchise through several Common-

94 For example, attention will be paid to the implied duty of good faith and fair dealing, which is said to be an important contract law doctrine applicable to franchising. See W Michael Garner, 'Good-faith dealing—In general, 2 Franch & Distr Law & Prac, Westlaw, (November 2019) at § 8:25.

95 The website can be accessed at <<https://docqnet.dfpi.ca.gov/search/>>.

96 Nina Greene, Dawn Newton, and Kerry Olson (eds), *The Annotated Franchise Agreement* (2nd edn, American Bar Association 2021) at xxi-xxvi.

97 Jenny Buchan, 'Australia's Franchising Code of Conduct Review – A Continuation Down the Path of Jamming a Square Peg into a Round Hole?' (2019) 47 *Australian Business Law Review* 393, 393.

98 Kanchana Kariyawasam and Lisa Samarkovski, 'Legal Issues in Franchising in Australia: Is the Current Regulatory Environment for the Franchise Sectoradequate' (2012) 9 *Macquarie Journal of Business Law* 179, 179-181; Michael T Schaper, 'Franchising Regulation in Australia: Recent Trends and Current Issues' (2013) 11(1) *International Journal of Franchising Law* 3, 4.

99 Jenny Buchan, 'The 2018 Review of the Franchising Code of Conduct: Epicentre of a Year of Scrutiny for Australian Franchising' (2019) 47 *Australian Business Law Review* 101, 102.

wealth statutes, including franchise-specific legislation.¹⁰⁰ Furthermore, it is claimed that Australia well regulates franchising businesses.¹⁰¹ The Australian legal system is, therefore, an enticing legal system to compare in this research study.

The principal legislation regulating a franchise relationship is the mandatory industry code established under the Competition and Consumer Act 2010 (CCA), known as the Franchising Code of Conduct (the Code).¹⁰² This Australian Code is attractive because of two reasons. First, the Code is a legislative instrument that systematically and comprehensively regulates the whole life of a franchise relationship, from the initial phase of contracting, the operation of a franchise agreement, to the termination of the agreement.¹⁰³ Second, the Code is one of the most improved franchise-specific laws in the world. This assumption is based on the fact that Australia regularly reviews the effects of the Code on franchise industries.¹⁰⁴ Besides reviewing the Code's effectiveness, Australia has carried out a series of amendments to the Code since its inception so that the Code is an improved version.¹⁰⁵ Therefore, the Code will be the primary object of the study.

This research study will also explore other legal frameworks regulating a franchise relationship.

First, this research study will examine the rules of the CCA as the Code is incomplete; that is to say, the Code does not contain provisions offering remedial rules for any contravention of the Code's provisions. In this case, this research study will have to find applicable rules from other sources. Since the Code is a mandatory industry code enacted under the CCA, any violation of the Code will permit an aggrieved party to resort to the remedies made

100 Robert W Emerson, 'Directing the Disjointed: A Call to Harmonize EU Franchise Law' (2014) 12 *International Journal of Franchising Law* 41, 41; Buchan, *ibid* 102; Stephen Giles, *Annotated Franchising Code of Conduct* (2nd edn, LexisNexis Butterworths 2021) 6.

101 Buchan, 'Ex ante information and ex post reality for franchisees: The case of franchisor failure' (n 70) 407.

102 The Competition and Consumer (Industry Codes- Franchising) Regulation 2014.

103 Schaper (n 98) 6; Natalie Sears, 'Australia's Updated Franchise Code of Conduct: Does an Express Obligation of Good Faith Benefit the Franchisor and Franchisee' (2014) 20 *Law and Business Review of the Americas* 121, 121.

104 The latest review of the Code was done by the Parliamentary Joint Committee on Corporations and Financial Services. In 2019, the Committee inquired into the operation and effectiveness of the Code and published the report to offer recommendations for amending the Code. The electronic version of the report can be downloaded at <<https://bit.ly/2SadgDD>>.

105 For example, Australia has recently amended the Code through Regulation 2021 – the Competition and Consumer (Industrial Codes- Franchising) Amendment (Fairness in Franchising) Regulation 2021. A list of all amendments to the Code can be found at <<https://www.legislation.gov.au/Series/F2014L01472>>

available under that statutory law.¹⁰⁶ Thus, the CCA will also be studied in this thesis.

Second, this research study will examine general contract law rules because contract law is claimed to be one of the legal frameworks applying to a franchise relationship.¹⁰⁷ In Australia, common law, as the body of judge-made law, including equity and admiralty, is the principal source of Australian contract law.¹⁰⁸ However, Australia is a federal country.¹⁰⁹ Thus, it is claimed that there can be different approaches to contract law issues among the Australian states and territories.¹¹⁰ Despite the divergence, this thesis will focus on widely-accepted doctrines or principles in contract law pointed out by some authoritative contract law textbooks.

This research study will also collect a franchise contract's terms to examine how the terms regulate franchisor opportunism. In this thesis, the collection of the terms of a franchise agreement will be selective since it is not feasible to acquire all franchise contracts in the country for examination. In this regard, this research study will collect examples of a franchise contract's terms from accessible sources, including Australian courts' decisions that mention the terms in a franchise agreement under dispute, as well as the Precedent to Franchise agreement (Precedent) that offers model basic franchise agreements.¹¹¹ This research study will also examine guidelines for drafting a franchise contract offered by the Franchise Council of Australia (FCA) to see recommended agreements under the contract.

Other jurisdictions may offer a comprehensive franchise legal framework as the selected legal systems do. In 2012, Sotos pointed out that some jurisdictions, such as Canada, South Africa, South Korea, Malaysia, and Russia, also offer comprehensive franchise regulatory regimes governing franchise relationships.¹¹² Presently, the number of jurisdictions could be multiplied. For example, Thailand has regulated parts of a franchise relationship by the Notification of the Trade Competition Commission prescribed by virtue of

106 Penny Ward, 'Australia' in Andrew P Loewinger and Michael K Lindsey (eds), *International Franchise Sales Laws* (American Bar Association 2016) 4.

107 Tony D'Aloisio, 'Franchising in Australia' (1989) 58 *Antitrust Law Journal* 949, 953.

108 Mark Leeming, 'Theories and Principles Underlying the Development of the Common Law – The Statutory Elephant in the Room' (2013) 36 *University of New South Wales Law Journal* 1002, 1004.

109 It remains debatable whether common law in Australia is primarily state law or federal law. See Leslie Zines, 'The Common Law in Australia: Its Nature and Constitutional Significance' (2004) 32 *Federal Law Review* 337, 337-56; Liam Boyle, 'An Australian August Corpus: Why There Is Only One Common Law in Australia' (2015) 27 *Bond Law Review* 27, 27-56.

110 Dan Svantesson, 'Codifying Australia's Contract Law – Time for a Stocktake in the Common Law Factory' (2008) 20(2) *Bond Law Review* 1, 9.

111 The Precedent is prepared by Perrott, Churley, and Giles and updated by Carkeet and Mitchell. A copy of the Precedent is in the author's storage.

112 John Sotos, 'Recent Trends in Franchise Relationship Laws' (2012) 10(1) *International Journal of Franchising Law* 3, 7.

the Trade Competition Act, B.E. 2560 (2017) since 2019. In this respect, there may be a question of why those jurisdictions are not selected for examination. There are two reasons for the choice of the three legal systems as follows. First, this doctoral dissertation does not intend to conduct comparative law research at a global scale, meaning the franchise legal framework of all legal systems will be taken into account. Instead, it aims to limit the number of legal systems to compare to three legal systems to focus on the actual comparison.¹¹³ Second, as can be seen, the volume of franchise practices in Europe, the USA, and Australia is said to be enormous. The immensity of franchise businesses in these continents would ensure an abundance of cases and legal instruments for the research study.¹¹⁴ In other words, the DCFR, the USA, and Australia offer an example of how to construct comprehensive franchise law rules that other jurisdictions will follow.

1.6.3.2 Documentation as an information collection method

This doctoral thesis is a documentary research study. In this thesis, information about the legal framework of the DCFR, the USA, and Australia, will be collected through documentation. This research study selects documentation as an information collection method for two reasons.

First, a documentary method suits the sources of information. In general, information about the franchise legal framework of the chosen legal systems, such as legal rules, illustrative cases, and text commentaries, will primarily be documentary evidence. In other words, these sources are usually documented. Thus, it is inevitable that this thesis collects documents for the study.

The second reason is that a documentary method removes geographical constraints when collecting the information. As can be seen, this research study chooses to examine three legal systems from different regions. Collecting information through documentation would help reduce traveling costs of the compilation of information at all places in the world. In this case, a documentation method will allow conducting the research study from home, university offices, and libraries.¹¹⁵

In conducting this research study, the information about the franchise legal framework of the DCFR, the USA, and Australia will be collected from physical and online documents. Most physical documents will be taken from books and academic papers, such as articles in academic journals. For example, this research study will resort to the text of the DCFR and its commentaries through

113 Mathias Siems, *Comparative Law* (3rd edn, Cambridge University Press 2022) 17.

114 This assumption does not imply that other countries have a small scale of franchise practices or are not considered worth studying. In any case, the choice of legal systems in this doctoral research is the choice of appropriateness.

115 This freedom is claimed to be one of the advantages of documentary research. See Malcolm Tight, *Documentary Research in the Social Sciences* (SAGE Publications Ltd 2019) 14.

a compilation of the books – Principles, Definitions and Model Rules of European Private Law – edited by Christian von Bar and Eric Clive. These printed materials will be gathered by self-acquisition and through library services. This thesis will collect electronic documents from various reliable legal websites and databases, including Westlaw, HeinOnline, and LexisNexis databases. Using these e-databases will enable the collection of the text of statutes and case law originated from the US and Australian legal systems.

1.6.4 Conclusions

This section affirms that this doctoral thesis will answer the overarching research question and its ten sub-research questions in a scholarly manner. This thesis will conduct the study employing a doctrinal legal approach with a functional comparative law method. This research study will examine and juxtapose the franchise legal framework of the DCFR, the USA, and Australia collected through documentation to extract common and distinct legal solutions to the questions. These extracted legal solutions will be discussed in chapters of the book to formulate guidelines for enacting private law rules regulating franchisor opportunism in the three stages of a franchise life cycle.

1.7 STRUCTURE OF THE BOOK

This doctoral thesis consists of six chapters. Apart from this introductory chapter, chapter two will explore the definition and essential elements of a franchise under the franchise legal framework of the DCFR, the USA, and Australia. This second chapter will also formulate the definition of a franchise for comprehensive franchise law. The reason for incorporating this chapter into the book is practical. In regulating a franchise, a franchise relationship should be defined to exclude other similar relationships. In other words, defining a franchise will help identify a legal relationship that franchise-specific law rules aim to regulate.

Chapter three will answer the three sub-research questions pertinent to a pre-contractual franchise relationship.¹¹⁶ This third chapter will examine the franchise legal framework of the DCFR, the USA, and Australia to explore the extent to which the franchise legal framework of the selected legal systems requires a franchisor to provide a prospective franchisee with essential information about a franchisor and a franchise system before the conclusion of a franchise contract. This chapter will also examine the extent to which the franchise legal framework of the chosen legal systems requires the franchisor to ensure that the pre-contractual information is current, complete, and accu-

¹¹⁶ See section 1.5.2.

rate. The findings will be discussed to propose guidelines for formulating comprehensive franchise law rules regulating the franchisor's pre-contractual information duties. Additionally, chapter three will examine the private law remedies for a breach of the duties to see if an aggrieved franchisee can enforce the franchisor's performance, claim damages, and cancel a franchise contract. The findings will be discussed to suggest the establishment of the remedial system under comprehensive franchise law.

Chapter four will answer the three sub-research questions connected with an ongoing franchise relationship.¹¹⁷ This fourth chapter will describe and juxtapose the franchise legal framework of the DCFR, the USA, and Australia regulating franchisor encroachment and franchisor assistance to examine how the selected legal systems' franchise legal framework requires the franchisor to refrain from engaging in traditional and non-traditional encroachment in the vicinity of the franchisee's marketing area and assist the franchisee in opening and operating a franchised business. The findings will be discussed to propose guidelines for formulating comprehensive franchise law rules regulating the franchisor's duty not to encroach and the duty to assist. This fourth chapter will also examine if an aggrieved franchisee can seek private law remedies to enforce the franchisor's performance, claim damages, and cancel a franchise contract to advise the construction of the remedial regime.

Chapter five will answer the four sub-research questions pertinent to the end of a franchise relationship.¹¹⁸ This fifth chapter will examine the franchise legal framework of the DCFR, the USA, and Australia to explore how the franchise legal frameworks prevent the franchisor from withholding consent to a transfer, refusing to renew a definite franchise contract, and terminating a franchise contract without justifiable grounds. The findings will be discussed to propose guidelines for formulating comprehensive franchise law rules regulating the franchisor's conduct with regard to transfer, non-renewal, and termination of a franchise contract. Chapter five will also explore if an aggrieved franchisee can enforce the franchisor's performance, claim damages, and cancel a franchise contract and if the franchisee can seek special remedies to reimburse for the value of certain assets upon the cessation of a franchise relationship. The findings will be discussed to suggest the establishment of the remedial system under comprehensive franchise law.

Chapter six is the conclusion chapter. This sixth chapter will formulate the thesis proposal by summarizing answers to an overarching research question and its ten sub-research questions. In this chapter, a summary of the answers to the research questions will be given by way of recapitulating the research findings and practical recommendations with the proposed provisions of comprehensive franchise law regulating franchisor opportunism in a franchise life cycle made in chapters two, three, four, and five. Caveats regarding

¹¹⁷ See section 1.5.3.

¹¹⁸ See section 1.5.4.

the recommendations and the proposed provisions will also be mentioned to remind legal systems of limitations when implementing the thesis proposal in reality. In the end, this chapter will offer model provisions of comprehensive franchise law based on the thesis's recommendations and highlight a specific issue for future research on the regulation of franchisor opportunism in a franchise relationship.