EAC-PM Working Paper Series

Need for Franchising Laws in India

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January 2024

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Executive Summary

The term 'Franchise' is not explicitly defined within the Indian Legal framework. However, its interpretation can be deduced from the Finance Act of 1999, which stipulates that a 'Franchise' refers to an agreement granting the authorized entity the right to sell, manufacture goods, provide services, or engage in business activities associated with the Franchisor (Shrivastava & Jacob, 2023). India's growing middle class and rising entrepreneurial culture make the nation fertile ground for emergent franchising opportunities. However, certain lacunas need to be addressed before realizing this ambition, notably the lack of franchise-specific laws. In contrast to many other countries - the United States, where the Federal Trade Commission (FTC) oversees franchising through the Franchise Rule, the European Union, where member states regulate franchising in their national laws, Australia, which has specific disclosure laws pertaining to franchises and the Australian Competition and Consumer Commission (ACCC) that regulates the code - India does not possess a centralized regulatory body or comprehensive franchise law at the national level. The landscape of franchisor-franchisee relationships is marked by diverse arrangements and contracts, giving rise to various forms of exploitation and disputes, particularly impacting smaller local vendors serving as franchisees due to the inherent information asymmetry. The franchisor, as the source of the business opportunity, has access to enhanced knowledge about the business as well as typically exercises greater control over the terms of the franchise contract, elucidating skewed power dynamics within the industry structure.

To address these challenges, a robust regulatory framework is essential and should be implemented in India, providing effective mechanisms for fair agreement and dispute resolution and as a safeguard against the exploitation of the smaller players and the disproportionate imposition of risk-taking on them. The salient feature of such a franchise-specific law may be twofold – disclosure and registration requirements. It may include the mandatory disclosure of terms of trade and profit-sharing structures within franchise agreements, compulsory implementation of Franchise Disclosure Documents (FDD) and specifications for renewal, termination, and dispute resolution mechanisms. Registration mandates can help track trends in the franchising industry and thus lead to enhanced policy and strategy formulation for both the private and public sectors. The aim of enforcing these two criteria, rather than applying rigid and inflexible rules to franchising agreements, is to act as a guide for creating better contracts. The franchisee and franchisor can have access to all the relevant information needed to make informed investment decisions, and the legal safeguards can reduce hesitancy to franchising in the long term while levelling the playing field between the enterprise and the smaller vendor.

Background

In today's globalized world, franchising has emerged as a viable and highly successful business model. The International Franchise Association defines a franchise as a business model involving the distribution of products or services, where a franchisor establishes a brand's trademark or trade name and a business system, and the franchisee pays a royalty, often along with an initial fee, for the right to conduct business under the franchisor's name and system. The contractual agreement

between these parties is technically known as the 'franchise', but the term most commonly refers to the actual business operated by the franchisee. The broader process of developing and disseminating the brand and franchise system is commonly referred to as franchising (International Franchise Association, n.d.-b).

Franchise models manifest in various forms and structures. Broadly, there are five broad types of franchise models (Simpson, 2022);

- Job Franchise: A job franchise is a business model meant for individual ownership or minimal staff involvement, requiring low investment and often operated from the franchisee's home or on a mobile basis. The franchisee creates a job and income by delivering services or selling products, such as cleaning services, lawn care, etc.

- Investment Franchise: An investment franchise is a large-scale venture that demands substantial capital investment and is typically managed by a professional team, with the franchisee often being a corporate investor with significant industry experience. Unlike a job franchise, the franchisee is not involved in day-to-day operations. Examples include hotel chains, large restaurant franchises, retail franchises, and gym brands.

- Distribution Franchise: In a distribution franchise, the franchisor allows the franchisee to sell or distribute their products using the franchisee's own identity rather than adopting the franchisor's name and systems. Examples of distribution franchises include car dealerships and electrical appliance retailers, where the franchisee sells the franchisor's products under their own branding.

- Business Format Franchise: The business format franchise is a model where the franchisor provides the franchisee with all necessary elements to establish and run the business, including equipment, training, operational systems, supplier contracts, marketing tools, and ongoing support. This widely recognised franchise type spans various industries, from fast-food and coffee shops to business services and personal care.

- Conversion Franchise: The conversion franchise model involves a franchisee integrating their independent business into the franchisor's network within the same industry, rapidly expanding the franchisor's reach. This approach provides the franchisee with the advantages of a recognised brand, operational support, and training. Common in industries like real estate, dental and medical clinics, and hairdressing, conversion franchises leverage existing businesses to join established networks.

In addition, some of the prevalent franchise ownership structures (Heitzman, 2023) are:

- Company-owned, company-operated (COCO): In the COCO model, the franchisor manages outlets directly without involving independent franchisees, serving as a testing ground to refine business concepts and best practices. Once proven successful, franchisors may explore opportunities for traditional franchising.

- Company-owned, franchise-operated (COFO): The COFO model has a more collaborative approach that involves franchisors retaining ownership of franchise units but entrusting day-to-day operations to franchisees. While providing guidelines, training, and support, franchisors rely on franchisees for routine functions such as staffing, inventory management, and customer service.

- Franchise-owned, franchise-operated (FOFO): In the FOFO model, franchisees own and operate individual units under the franchisor's brand. While maintaining control over operations like staffing and local marketing, franchisees must adhere to the franchisor's guidelines and brand standards to ensure consistency across the franchise network.

- Franchise-owned, company-operated (FOCO): In the FOCO model, franchisees own the units, but the franchisor assumes responsibility for day-to-day operations. This strategy is often chosen by franchisors to uphold strict control over brand image, operational uniformity, and customer experience.

There are mutual benefits to entering a franchising contract for both parties, which makes franchising an attractive business expansion strategy. The franchisee gains access to an already-established brand and viable business system, benefiting from the franchisor's accumulated experience in various markets, which serves as a trial-and-error process to identify and rectify mistakes over time. The risks associated with establishing a new business from the ground up are significantly reduced (Anand, 2023). With the rise of globalisation and consumerism, the brand may already possess recognisable visibility, attracting a substantial customer base from the outset. Depending on the arrangement, the franchisee can also receive ongoing support from the franchisor in the form of marketing, training, and expertise (Anand, 2023). Additionally, the franchisor can gain easier access to a variety of markets without having to be entirely involved in the day-to-day operations and management of the business (Sharma & Srivastav, 2023). This expansion requires lesser capital investments on their part, as the franchisee also contributes in the form of initial fees and periodic licensing payments. Franchisors benefit immensely from the local knowledge and talent of their franchisees, increasing their chances of success in the market. For instance, McDonald's adapted its products and marketing strategy in India to suit local tastes and sensibilities, which led to their sustained competitiveness in the market (Panwar & Patra, 2017). This was inevitably possible through collaboration with local partners who could advise on such strategies. A franchisor-franchisee relationship provides several benefits to both parties and leads to a transfer of knowledge, entrepreneurial skills, and technical expertise. It provides innovative avenues for franchisors to grow their business and yield quick returns on their investment. However, establishing a sustainable relationship requires overcoming the several silos in the industry.

The benefits and gains generated by both parties warrants the development of a certain level of equity within the franchise contract in regards to profit sharing and adequate compensation for franchisees. The franchisee, despite being seen as a smaller player in the arrangement, inevitably makes valuable contributions to the success of the franchise in the form of intangible local market expertise and ongoing investments. The collective effort of the several franchisees of a franchise

builds the brand over the years but they lack the creative agency to make brand decisions. They receive limited recognition and often face exploitation by the larger entity i.e franchisor .

Challenges: Global Cases

While the franchise model offers innovative resolutions to business challenges, it has not been exempt from controversies surrounding issues of exploitation; recently, over 100 workers at McDonald's in the UK have levelled accusations of a toxic work environment involving bullying, harassment, abuse, and assault (Bergman, 2023). Several workers claimed that their managers were the perpetrators, and others held the opinion that nothing came out of reporting the issues. These complaints were complicated by the McDonald's franchise structure - many of the McDonald's restaurants were owned by third-party business owners who had paid the brand to use their name, sell their products, and rent their premises, but franchisor involvement in operations was limited (Bergman, 2023). In other recent news, a construction franchise in New Zealand is being investigated by the Labour Inspectorate after accusations of exploitation of migrant workers. David Serville, Chief executive of CC workforce, established the company as a lawn mowing business in 1991 and eventually grew it into a franchise network. Many carpenters claimed that after signing contracts with CC Workforce Ltd and arriving in New Zealand - having already quit their jobs back home and making moving arrangements – they were told that they owed the company $7,450 in bonds (Kilgallon, 2023).

In 2021, Subway was accused of labour exploitation and victimising its franchisees. The litigation alleged that Subway imposes a $15,000 fee for the initiation of a new store, a notably reduced amount in comparison to the $45,000 fee levied by competitors such as McDonald's and Burger King (Manfredi, 2021). This lower fee was an incentive, enabling Subway to attract operators lacking prior experience. As indicated in the suit, approximately 50% of Subway establishments at the time were owned by immigrants, contrasting with the broader franchise landscape where immigrants accounted for 30%, as per figures cited from the International Franchise Association. The claim filed in Nevada state court by former Subway franchisee Raj Mehta asserted that Subway employed 'business development agents' (BDAs) – oftentimes themselves larger franchisees given the managerial power to oversee several locations in a specified territory - who took away the locations of smaller operators by subjecting them to substantial fees for violating the company's regulations (Manfredi, 2021). Mehta's former BDA, Chirayu Patel, was an Indian American, and so were most of his victims, as he would exploit the relationship and trust built with others coming from similar cultural circumstances. Patel, Mehta claims, would use "hit men" to write up new franchisees for alleged violations and force locations to purchase ingredients from pre-selected suppliers at fixed prices. Consequently, some locations were pushed to the verge of bankruptcy, enabling Patel to acquire distressed properties at a discounted rate. Mehta asserts that his financial losses exceed $4 million, encompassing missed opportunities, investments, and foregone profits (Manfredi, 2021).

All these instances show how franchise models can cause deferment of responsibility and inequitable sharing of profits and losses. There is scope for a breach of trust, leaving the ill-informed and marginalised communities most vulnerable. Nonetheless, notwithstanding the asymmetrical information problem, there is a remedial process that can be enacted when there are

franchise-specific laws. Such adverse circumstances are further exacerbated in the absence of a regulatory framework or franchising laws.

The Indian Franchising Landscape

Franchising in India invokes optimism and caution alike. The nation is currently a hotbed of growing aspirations and a rising entrepreneurial culture, evidencing the potential for growth within the franchise model. In India, the practice of franchising is prevalent within the food and beverages, hotels, healthcare and wellness, and education sectors (Kumar, Anup & Das, 2023). The franchise market in India is forecasted to grow to USD 140-150 billion over the next five years, mainly driven by the rise in the availability of franchise opportunities and an upsurge in consumer spending (The Economic Times, 2023b). The middle class, experiencing the swiftest expansion among the major segments of the Indian population in both relative and absolute terms, has grown at a rate of 6.3 per cent annually from 1995 to 2021. Currently constituting 31 per cent of the population, the middle class is projected to reach 38 per cent by 2031 and is anticipated to further increase to 60 percent by 2047 (The Economic Times, 2023a). Increased disposable incomes and a rising middle-class position India favourably to become a consumption powerhouse in the coming years. Gaurav Marya, Founder and Chairman of the franchise solutions firm Franchise India, stated that the industry currently contributes nearly 4 per cent to the Indian GDP and employs over 1.5 million people (Marya, 2023). There are approximately 4,600 franchisors operating close to 2 lakh stores across the country (The Economic Times, 2023b). Some of the challenges of the franchise industry in India include a fragmented Indian market, leading to intense competition between numerous small businesses for customers. This hinders the ability of franchisors to find suitable partners and expand rapidly. Additionally, franchising is still an unfamiliar concept for many Indians, which lends to hesitation while signing up for franchise agreements (Marya, 2023).

Legal Framework

One major caveat of the franchising industry in India is the lack of franchise-specific laws. There are no specified bodies to regulate franchise businesses, and the agreements are mostly contractual in nature (Kumar, Anup & Das, 2023). Franchisors are not required by law to be registered with any professional or regulatory body before setting up a Franchise network (Obhan & Patodia, 2020). Franchisors entering India fall under the ambit of a number of varied statutes and codes as opposed to one comprehensive framework. A multiplicity of laws governs franchising agreements, some of which include The Indian Contracts Act 1872, the Foreign Exchange Management Act 1999, and the Income-tax Act 1961. For Franchise agreements to be valid and binding, it is important to ensure that key elements outlined in the Indian Contract Act 1872, including lawful consideration, free consent, lawful object and purpose, and the capacity of the involved parties, are duly present (Obhan & Patodia, 2020). Invest India gives an indicative list of the different legislations that come into play in franchises in India (Invest India, 2023).

> Indian Contract Act, 1872 - It governs the contractual aspects of a franchise agreement relating to offer, acceptance, indemnity, termination, breach of contract among other clauses inserted in the agreement. Intellectual Property Laws - The Trade Marks Act 1999, the Copyright Act 1957, the Patents Act 1970 and the Design Act 2000 governs and regulates the intellectual property aspects involved in a franchise agreement which would

include brand names (owner), logos, designs, trademarks among others. Competition Act, 2002 – The competition law will check on the anticompetitive element of the franchise agreement, which is a vertical agreement (governed by Section 3(4) of the Act) and also on abuse of dominance by the franchisor. Foreign Exchange Management Act - It will govern payments and guarantees issued by Indian franchisees to foreign franchisors depending upon the franchising arrangement. The FDI Policy will also come into action to govern the investment aspect. Consumer Protection Act, 2019 - It will be applicable to remedy the consumers and hold the franchisee or the franchisor or both of them jointly liable in case of defective goods or unsatisfactory service. Other laws which will also become applicable include the Tax related Laws in India, Labour Laws, The Arbitration and Conciliation Act, 1996, Information Technology Act, 2000, Transfer of Property Act 1882, Indian Stamp Act 1899, Registration Act 1908.

Various nations have enacted legislation to regulate franchising. In the United States, prospective franchisee owners are required to comply with the Federal Trade Commission's (FTC) revised version of the FTC Franchise Rule, mandating the inclusion of twenty-three specific disclosures in the regularly updated Franchise Disclosure Document (FDD)[3]. Additionally, fifteen states in the U.S. have their own disclosure regulations for aspiring franchisee owners. The FDD is a comprehensive document provided by the franchisor, offering detailed information about various aspects of a particular franchise (LegalKart, 2023). Formerly known as the Uniform Franchise Offering Circular (UFOC), the FDD plays a crucial role in franchise disclosure and compliance. It provides protection to both parties, preventing any unexpected fees for the franchisees later in the process and detailing the franchisor's liability and returns in case of investment failure. Franchise models, as discussed previously, come in all shapes and sizes, and a Franchise Disclosure Document ensures that both parties are aware of the terms of trade before entering into a contract. Since February 2020, 34 jurisdictions have introduced franchise-specific legislation or regulations mandating the provision of a disclosure document to prospective franchisees even before the actual purchase of the franchise (LegalKart, 2023). In contrast, Indian law does not impose pre-sale disclosure requirements on franchisors or statutory obligations to furnish information to potential franchisees. There are also no obligations to make continuing disclosures to existing franchisees. In the absence of explicit statutes regulating franchising and pre-sale disclosure obligations, any non-compliance would be adjudicated under the common law doctrine of equity (Shrivastava & Jacob, 2023). A general rule and common practice exist where parties are obligated to act in good faith and deal fairly. While the Indian Contract Act 1872 does not explicitly include the doctrine of good faith, certain courts, such as the Gauhati High Court in the case of *The Food Corporation of India and others v M/s Anup Trade And Transport (P) Limited and others* (Case No. WA 36/2020), have expressed the view that the concept of good faith is inherently part of every contract (Kumar, Anup & Das, 2023). Nonetheless, the burden of conducting due diligence falls on both parties in the absence of franchise-specific regulations. The good faith doctrine also leaves room for ambiguity and disputes, with the judicial difficulty that comes with defining what good faith or its absence can entail.

[3] A list of the 23 specific disclosures can be found in Appendix I.

Challenges – Indian Cases

The lack of a legal framework opens up both parties to risks by offering limited protection in case of a dispute. It also opens up the set-up to exploitative practices. In the absence of regulation, the terms of trade regarding conditions such as franchise fees and redressal mechanisms for breach of contract can be dictated by the franchisor. In 2012, Reebok India's Franchisees accused the parent Adidas Group of forcing them to shut down shop in just 15 days if they did not agree to the new terms of agreement (The Economic Times, 2012). The franchisees, hired by the company under the Minimum Guarantee (MG) basis where they were to get fixed returns on investments irrespective of sales, claimed that their contract stipulated that if a franchisee wanted to cease operations, a three-month period would be given to liquidate the stock and that any unsold products would be repurchased by the company at their initial purchase price. However, a spokesperson of the Delhi Reebok Franchisee Association said - "Now they are asking us to close the shop in just 15 days. They are saying that once the goods are transferred, it is our responsibility" (The Economic Times, 2012).

Beyond fraud, many times, this asymmetry of power is reflected in the business model followed; for instance, Titan has reduced incentives for the Tanishq store franchisees from Q1 FY24 in an attempt to increase the profitability of its business and protect profits if competition increases. For L2 or company-owned-franchise-operated (COFO) stores – which make up 40-45 per cent of Tanishq's sales - incentives have been cut by 50-60 basis points from 5 per cent levels, while that for L3 or franchise-owned franchise-operated (FOFO) stores, commissions will be reduced by close to 100 basis points from 10-11 per cent levels (Moneycontrol, 2023). By reducing the incentives for L2/L3 franchisees, the franchisor is increasing its share in the operating leverage benefit, in that it is retaining a larger portion of the additional profits generated which would've otherwise passed on to the franchisees. This trend can also be seen at Hindustan Unilever Limited (HUL), as they decreased their fixed margin by 60 basis points and increased variable margins by 100 or 130 basis points, a decision that Fast-Moving Consumer Goods (FMCG) distributors called a 'draconian agenda' (The Economic Times, 2023c). These skewed profit-sharing arrangements exemplify a situation wherein local franchisees may be unfairly compensated for their efforts and investment in the franchise with little bargaining power.

Foreign Franchisors can enter the Indian franchise business in different forms. These structures include granting a single franchise to an individual, granting master franchise rights to one person, or creating a franchise agreement on an area-by-area basis (Obhan & Patodia, 2020). Though not mandatory for a foreign franchisor to incorporate an entity in India, many prefer to establish a presence through a subsidiary or joint venture to exert greater control over the franchised business. However, these joint venture structures are not without their challenges, exacerbated by the lack of pre-agreed exit terms; a significant legal dispute spanning several years ensued between McDonald's and the Managing Director of its joint venture partner in India - Connaught Plaza Restaurants Private Limited (CPRL) - regarding termination of the franchise agreement. Vikram Bakshi and McDonald's association began in 1995 when they set up the 50:50 joint venture company. This partnership was formed under a 25-year agreement, aiming to establish McDonald's outlets in North and East India using a franchisee model (The Economic Times, 2019). The dispute traces its origins back to 2008 when McDonald's India Pvt. Ltd (MIPL) initially expressed its desire to buy out Bakshi from the joint venture. Initially, it proposed a sum of $5 million,

equivalent to Bakshi's investment in 1996, and subsequently increased the offer to $7 million. "After 13 years and 70 restaurants, they wanted to buy me out at my initial investment," Bakshi said. "I was shocked" (Ahluwalia, 2017). After a valuation done by Grant Thornton, the Joint Venture was evaluated at a much higher value of $331 million, and Bakshi's share was assessed to be $100 million. In 2013, the nominee directors of MIPL on the CPRL board voted against Bakshi's re-election as Managing Director of CPRL and alleged financial bungling and misconduct on his part. Bakshi challenged his removal at the Company Law Board – now the National Company Law Tribunal (NCLT) - seeking reinstatement. In July 2017, the NCLT restored Bakshi as the Managing Director of CPRL and prohibited McDonald's Corp. from interfering in Connaught Plaza's operations (The Economic Times, 2019). The judgement stated - "The proceedings of the meeting of the Board of Directors held on 06.08.2013 relating to re-election of Mr Vikram Bakshi as the Managing Director of the Company are set aside and declared illegal, unjust and mala fide" (Banerji, 2017). In August 2017, McDonald's terminated Bakshi's franchise rights, alleging non-payment of royalties. Following the notice of termination, Connaught Plaza outlets were prohibited from utilizing the McDonald's brand name, trademark, recipes, and marketing techniques after September 5, 2017 (The Economic Times, 2019). Bakshi had expressed that the termination places the livelihoods of 6,500 employees at risk across the 169 restaurants (Ahluwalia, 2017). The dispute ended in an out-of-court settlement between the two parties in May 2019, where the US fast food chain bought out Bakshi's shares in the joint venture for an undisclosed amount.

A significant case of franchise contracts under Indian Law, the McDonald's case against Vikram Bakshi raises some important concerns about the lack of franchising regulation in India. Gaurav Marya, chairman of Franchise India, expressing his views on the dispute, stated - "The lesson in this fight is that both parties should define a pre-agreed structure for exit so that there is no ambiguity later. If the exit terms are open, it's bound to get bad. There is no perpetual factor in franchise agreements" (Ahluwalia, 2017). After terminating the franchising contract, MIPL said that they would be open to working with CPRL to mitigate the adverse effects of the move on the affected employees, however, CPRL is "ultimately responsible to its own stakeholders" (Ahluwalia, 2017). This reflects the non-accountability of the foreign franchisors in case of a dispute and the absence of shared interests with the employees handling day-to-day operations. In such a scenario, the welfare of the workers becomes contingent on the 'goodwill' of the franchisor rather than concrete legal remedies that they can avail. In most cases, the franchisor retains exclusive ownership rights over intangible assets, and the franchisee possesses neither ownership nor the flexibility to execute operations autonomously. In the Vikram Bakshi case, several suppliers refused to transact with CRPL in the wake of the McDonald's notice and the brand packaging had to be replaced with generic white packaging.

At the same time, the franchisor also suffers a hit to their reputation in the event of such a long-drawn legal battle; Santosh Desai, chief executive and MD of Future Brands Ltd. commented on the situation and how it will affect the image of McDonald's in North and East India – "Usually, ownership and management issues don't travel down to the consumers but when there is uncertainty about the quality and reputation of the brand itself, it creates consumer anxiety" (Ahluwalia, 2017). In a recent case in April 2023, the Delhi High Court ruled in favour of Burger King Corp. in their rectification suit against 'Burger King New Delhi', alleging consumer confusion and a dilution of the brand's distinctiveness due to the family business's usage of the trademark

(Yadav, 2023). Citing Section 124 of the Trademarks Act, 1999, the Delhi High Court emphasized that Burger King had consistently employed the trademark for five years without any intention of abandoning it. The inaugural Burger King restaurant in India commenced operations in 2014, and the number has since expanded to over 300 across the country. This case demonstrates how a strong reputation and extensive use of a trademark can offer legal safeguarding against competitors (European Commission - European Innovation Council and SMEs Executive Agency, 2023). However, it also illuminates the disadvantages a nascent franchisor with limited resources will have to encounter, if there is weak IP protection. Additionally, franchisors can find themselves disadvantaged in several post-termination scenarios; after the termination of a franchise contract, the negative covenant rule – that prevents the franchisee from establishing or being involved in a similar business as the franchisor - is more difficult to enforce, for it may be seen as violative of section 27 of the Indian Contract Act and constitute a restriction on trade (Jhingan, 2022). Therefore, franchise-specific laws that set out the terms of trade and termination more clearly can protect both the franchisees and franchisors from potential conflicts and mismatched expectations, allowing them to flourish in the long term.

The Franchise Industry: An Analysis through Porter's Five Forces Framework

The Five Forces framework developed by Michael Porter serves as a tool to understand the competitive dynamics within an industry, which ultimately influence the distribution of economic value among industry actors (Institute For Strategy And Competitiveness - Harvard Business School, n.d.). The franchise industry, a significant segment of the business landscape in India, operates within a structure driven by varied motives and rationale. This section utilizes Michael Porter's Five Forces framework to delve into the motives - often times exploitative - within the franchise value chain, shedding light on the unequal dynamics that underpin the relationships between franchisors and franchisees.

High entry barriers and unfair contract terms: One of the primary drivers of exploitation lies in the high entry barriers prevalent in the industry. Franchisors, often motivated by rent-seeking motives, seek local partners with suitable spaces to circumvent high rental costs. Asymmetrical information about the business further tilts the balance in favour of franchisors during the formulation of agreements and trade terms, potentially leading to exploitative practices. After entering the arrangement, franchisees may fear losing their property and subsequent long-drawn legal proceedings. This may disincentivize their exit despite low profits or even losses. In the Subway case, for instance, the cost of initiation of a new store was low, however, Chirayu Patel could write up the franchisees on alleged violations which pushed the stores to bankruptcy and allowed him to acquire the property at a lower rate.

Bargaining power of buyers (Franchisees): Franchisees, constituting the buyers in this ecosystem, hold meagre bargaining power due to heavy dependence on the franchisor for brand recognition and often times operational support. Franchisees have limited identity of their own despite investing heavily in the franchise and contributing to its brand-building. The franchisor's ability to cease operations at will and push accountability of the employees on the franchisee, as observed in cases like Vikram Bakshi and McDonalds, underscores the vulnerability of franchisees. A call for collective bargaining power, unionization, and mechanisms to hold franchisors accountable is imperative.

Bargaining power of sellers (Franchisors): Established franchisors with high brand recognition may exploit franchisees through the imposition of high fees, royalties, and financial obligations. The dependent nature of franchisees on the franchisor's brand weakens their negotiating power, emphasizing the need for a balance that safeguards the interests of both parties. Franchisors, as the original owners of the business, also hold an advantage of information and experience. In the absence of regulations and legal recourse, the terms and conditions especially in the case of potential breach of contract can be arbitrarily dictated by the franchisor, as seen in the Reebok India case.

Threat of substitute products or services: India's realization of intellectual property laws and trademark rights has not been very robust, as we see many copycat brands such as 'Sardarbuksh' Coffee and 'Burger Singh' cropping up regularly (Kumar, 2022). These entities can disadvantage the franchisor, acting as cheaper substitutes of their products and diluting their brand. The absence of stringent protection mechanisms especially disadvantages new and smaller franchises and franchisors. The importance of safeguarding brand names and know-how through enhanced legal protection emerges as a critical aspect.

Intensity of competitive rivalry: While the level of competition varies from franchise sector to sector, the motivation of franchisors to enhance company profits sometimes comes at the expense of franchisees. In highly competitive markets, franchisors attempt to maximize their profits by passing over the financial burdens to the several franchisees, by reducing their fixed income and increasing the variable margin, for instance. The pressure to outperform competitors might result in franchisees facing unfavourable terms, as exemplified by cases like Titan reducing incentives for its Tanishq store franchisees and increasing its own profit margins. Titan Company Limited has been a joint venture between the Tamil Nadu government and the Tata Group that was formed in the pre-liberalisation era (Vijayakumar, 2023); a partly government entity should rather bear more responsibility to ensure just profit distribution between players in the value chain and act as a model to other franchisors.

Limited exit routes for franchisees, entangled in legal battles and non-compete clauses, create a monopolistic structure reliant on franchisor goodwill. Regulation and legal frameworks can offer a structured way forward, ensuring a more predictable system for franchisees.

Global Franchising Laws and Regulations

Given the vast variety of franchise agreements and arrangements, there are different facets of franchising laws and regulatory requirements all around the world. Australia has comprehensive and specific disclosure laws; The *Competition and Consumer (Industry Codes – Franchising) Regulation 2014* (Cth) (the Code), made under the *Competition and Consumer Act 2010* (Cth) (CCA), is a mandatory industry code applying to all franchises operating in Australia (Furse, 2023). The Australian Competition and Consumer Commission (ACCC), as the regulator of the Code, has the option to initiate enforcement measures against the franchisor if they fail to comply with the disclosure obligations outlined in the Code. France also mandates the franchisor to provide the franchisee with a 'pre-contractual Information Document' pursuant to article L.330-3 of the French Commercial Code, which must be provided a minimum of 20 days before entering into a franchise agreement and at least 20 days before making any payment or investment related to the franchise arrangement (Peskine & Casanova, 2023). On the other hand, German law does not

obligate a pre-contractual disclosure, but a general principle of '*culpa in contrahendo*' is applied that requires the franchisor to ensure that all relevant facts have been presented in a clear manner to the potential franchisee. There is also a significant expectation of 'good faith', which allows the court to tailor decisions based on the particulars of a case (Billing & Schulzweida, 2023).

The United States has one of the most comprehensive franchising regulations in the world. As of 2022, estimates indicated the presence of approximately 792,000 franchise establishments in the United States, contributing to an economic output of around 827 billion U.S. dollars. The collective workforce employed by these establishments was estimated to comprise nearly 8.5 million individuals (Statista Research Department, 2023). At the federal level, franchising in the U.S. is governed by the Federal Trade Commission's ("FTC") "New Rule" (Elsaman, 2023). Furthermore, disclosure standards are outlined in the Federal Disclosure Documents. Beyond federal requirements, several states have registration laws and pre-sale disclosure. State laws serve as complements to federal regulations, often aligning with federal law but with variations in the definition and components of a franchise, disclosure obligations, and exemptions. While federal franchise rules primarily focus on disclosure and registration, certain state laws extend their scope to regulate the relationship between the parties involved in franchising, in addition to disclosure. Failure to comply with the disclosure requirements outlined in the FTC Franchise Rule constitutes a breach of the U.S. Federal Trade Commission Act. This breach empowers the FTC to initiate legal action against franchisors in federal court. The FTC has the authority to pursue various remedies, including (i) imposing civil penalties of up to $11,000 per violation; (ii) securing injunctive relief for violations of the FTC Franchise Rule, which may involve prohibiting franchise sales in the U.S.; and (iii) seeking restitution, rescission, or damages on behalf of franchisees adversely affected by the violation (Rosen et al., 2023). The United States Franchising industry benefits from comprehensive laws that stipulate all organisational aspects of disclosure (including even the use of a cover page, language, and structure), and give an in-depth list of information to be included (Elsaman, 2023). Federal and state regulations strike a balance between safeguarding franchisees and granting franchisors operational flexibility.

The Need for Franchising Laws in India

Franchise-specific laws and regulations can provide distinct advantages to the franchising industry in India; they simplify legal governance, providing guidance to both the government and the private sector to determine the best policy and strategy measures for the future. It alleviates hesitation on the part of both the franchisor and franchisee by providing a comprehensive legal framework that assures them of transparent dealings and includes a remedial process in the event of disputes. The particulars of the relationship between the franchisor and the franchisee – whether it's principal-to-principal or principal-to-agent – can be fleshed out in the beginning to remove ambiguity regarding the franchisor's vicarious liability in the daily operations of the franchise. In short, a franchise-specific law allows the franchisee and franchisor to know more clearly what they are getting into. The presence of such laws also simplifies future processes of expansion and legal evolution.

Due to the inherent nature of the franchise business, the franchisor has the upper hand when it comes to information about the franchise. This information asymmetry can leave the franchisee

vulnerable in the franchise agreement (Nguyen & Wisuttisak, 2023). Obligating a franchise disclosure document, like the one existing in the United States, can safeguard the rights of the local franchisees and set out established terms of trade, thereby reducing the possibility of disputes later in the process. A 2013 study of 75 franchise systems found that registration laws mandating disclosure by the franchisors led to a reduction in serious conflicts – like litigation – between franchisors and franchisees by inducing transparency and reducing miscommunications and unmet expectations, thus cultivating harmonious relationships (Antia et al., 2013). Furthermore, a streamlined framework can also prove advantageous for the franchisor if it includes strong provisions for the protection of intellectual property –standardised non-disclosure agreements and confidentiality clauses could be incorporated, and the trade secrets and know-how of the franchisor can be clearly defined and consequently, their misuse unambiguously dealt with. Thus, it can propagate a culture of fair dealing that does not rely exclusively on the 'good faith' doctrine.

While India has some private-run franchise associations – for instance, the Indian Franchise Association and Franchising Association of India – membership to these forums is entirely voluntary (Kumar, Anup & Das, 2023). They are not regulated or associated with any government entity. Establishing centralised franchise regulatory bodies and mandating registration offers the benefit of allowing the government to oversee and regulate the franchise sector through registration controls, ensuring a record of franchise systems. In the absence of such systems, the government would lack the ability to monitor or control developments in franchise businesses. Furthermore, the absence of accurate data, resulting from the lack of registration, would make it challenging for both private and public sectors to formulate policy developments for the franchise sector (Nguyen & Wisuttisak, 2023). The absence of data further obfuscates the understanding of the true causes behind franchise deaths and the identification of parties more vulnerable to exploitation within the establishment, along with the specific circumstances under which such occurrences transpire.

The Competition Commission of India (CCI) is a statutory body within the Ministry of Corporate Affairs. It was set up to enforce The Competition Act 2002 and came into effect on October 14, 2003. The Commission bears the responsibility of eradicating practices that negatively impact competition, fostering and sustaining competition, safeguarding consumer interests, and upholding the freedom of trade within the markets of India. Additionally, the Commission is required to provide its viewpoint on competition-related matters upon receiving a referral from a statutory authority established under any law. It is also tasked with engaging in competition advocacy, raising public awareness, and providing training on issues related to competition (Competition Commission of India, n.d.). A franchise-specific law could empower the CCI to take Suo Moto cognisance of cases relating to franchise exploitation.

Vertical agreements, covered under section 3(4) of the Competition Act, are defined as "[4][Any other agreement amongst enterprises or persons including but not restricted to agreement amongst enterprises or persons] at different stages or levels of the production chain in different markets in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including--

[4] Subs. by Act 9 of 2023, s. 4, for "Any agreement amongst enterprises or persons" (w.e.f. 18-5-2023).

(a) tie-in arrangement;
(b) exclusive [5][dealing] agreement;
(c) exclusive distribution agreement;
(d) refusal to deal;
(e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.'[6] (Muthappa & Dikshit, 2022) (India Code, n.d.) (The Competition Act, 2002, 3(4)). In other words, the CCI can assess a vertical agreement, and if meets the condition of causing appreciable adverse effect on competition (AAEC) in India, it can be deemed anticompetitive and thus void. The vertical agreement is analysed based on the 'rule of reason' framework, where both the anti-competitive and pro-competitive effects are considered, and only the cases where AAEC is established are penalised (Muthappa & Dikshit, 2022). Vertical agreements, when properly regulated, can lead to positive economic outcomes like preventing free-riding, protecting the brand, and enhancing quality. Economic theories posit that in the presence of high inter-brand competition, limitations within a single brand shouldn't harm overall competition. In fact, these limitations may enhance efficiency and benefits, outweighing potential risks (Raychaudhuri, 2011) (Pandey & Lakhanpal, 2019). There has even been recent judicial acknowledgement of vertical restraints in vertical agreements being beneficial for the end user and pro-competitive (Rajain et al., 2019).[7] Thus, vertical agreements and their benefits or lack thereof are context-dependent. India borrows from the United States's 'rule of reason', which comes with certain caveats; it is open-ended and opens itself up to inconsistent application (Pandey & Lakhanpal, 2019). A franchise-specific law can overcome these challenges by providing comprehensive guidelines for dealing with different types of vertical restraints. India can learn from international jurisprudence and their past experience, such as the European Communities (EC) competition policy, and establish uniform guidelines that strike the right balance between competition and regulation, specifically tailored to suit the preferences and needs of the Indian market (Pandey & Lakhanpal, 2019). It can establish minimum exemptions (*de minimis exemptions*) to exempt activities with negligible impact from scrutiny or regulation, thereby reducing the burden of the CCI (Raychaudhuri, 2011).

Caveats of a franchising-specific law

While advocating for a franchise-specific law, it is crucial to recognise the practical challenges associated with implementing such legislation. Franchising is a mode of business, and several different industries and sectors can be in the business of franchising. The terms of trade for the franchising of a food brand would be vastly different from the legal needs of a franchising offering healthcare services. Franchises can be organised in different business models and relationships, differ in investment and distribution structure, and sell diverse products with opposing mandates. In such a case where franchising spans several different industries, a standardised franchise law

[5] Subs. by Act 9 of 2023, s. 4, for "supply" (w.e.f. 18-5-2023).
[6] For details and definitions, see Appendix II
[7] See Jasper v. Kaff (2014 SCC Online CCI 150)

becomes difficult to formulate. With divergent ways of operation, what encompasses know-how and trade secrets escape a homogenous definition, thereby making resolution measures difficult to craft. A very rigid legal framework could also hamper innovation potential and defeat the very characteristic that makes franchising attractive – the flexibility to devise innovative business models. One way around this issue could be to append franchise-specific clauses to the overarching legislation that already governs franchising in India. For instance, by adding clauses to existing Intellectual Property protection laws on the scope of the existing law, governance of the know-how and trade secrets, and post-termination obligations can act as a deterrent to misuse and facilitate more straightforward recourse in case of infringement (Das & Titus, 2023).

Conclusion

India should have a franchise-specific law that ideally has two principal dimensions: disclosure and registration requirements. A salient feature of the disclosure mandate could be the requirement of a Franchise Disclosure Document before the sale of the franchise that gives comprehensive details about the franchise's operations and associations, initial investment and periodic licensing fees, franchisee's obligations and franchisor's liability and duties, what constitutes proprietary information and trade secrets, and renewal, termination, dispute resolution mechanisms.[8] Registration requisites could provide the government as well as the private sector with access to better data that can, in turn, allow for better policy decisions, enhanced understanding of the national franchising landscape, and encourage reduced hesitancy and longer-term investments in the industry. Given the constraints in formulating a comprehensive franchising law that covers all possible industries, these two requirements would rather act as a guide to creating better contracts; the principal aim would be to provide the franchisee with all the necessary and relevant information to make the investment decision, and impartially protect the interests of both parties in case of a dispute, without compromising on the flexibility and innovation potential that the franchising business provides. In addition, steps can be taken to integrate franchisee representatives into the board of directors of the franchise, to enhance their decision-making influence at the managerial level and give them a seat at the table. The collective bargaining power of the many franchisees should be fostered and protected, and a regulatory body and unionization can mitigate exploitation. Addressing the oversight of franchisee operational costs in return on investment (RoI) calculations and providing a distinct identity for franchisees are integral components of a fair and balanced franchise ecosystem.

Franchising has the potential to positively contribute to India's growth, especially keeping in mind the nation's burgeoning young population and expanding middle class. There is substantial opportunity for franchising expansion in tier 2 and tier 3 cities. Involving local vendors and franchisees in this process is crucial for the franchise's success - as seen in McDonald's success in India due to its localisation strategy. Implementing franchise-specific laws can alleviate initial hesitancy and offer better legal safeguards for both parties involved. To ensure the sustained success of the franchise contract, particularly in less globalised regions where reluctance to enter the arrangement may be greater, it is essential for both parties to have a comprehensive

[8] These features are drawn from the stipulations outlined in the Franchisor Disclosure Document requirements (see Appendix I)

understanding of the arrangement they are entering into, which can be facilitated by pre-sale and periodic disclosure requirements.

References

Ahluwalia, H. (2017, December 29). *Inside the McDonald's-Vikram Bakshi controversy*. Mint. https://www.livemint.com/Companies/Jxj8A0RLE0CkpWOoboaJ6J/Inside-the-McDonalds-Vikram-Bakshi-controversy.html

Anand, G. (2023, November 28). *Franchise Industry in India: Opportunities & Challenges - ET Retail*. ETRetail.Com. https://retail.economictimes.indiatimes.com/blog/franchise-industry-in-india-opportunities-challenges/105565816

Antia, K. D., Zheng, X. (Vivian), & Frazier, G. L. (2013). Conflict Management and Outcomes in Franchise Relationships: The Role of Regulation. *Journal of Marketing Research*, *50*(5), 577–589.

Banerji, S. (2017, August 13). *McDonald's fight with 62-year-old Indian businessman: What's it really about?* Business Today. https://www.businesstoday.in/magazine/features/story/the-national-company-law-tribunals-strongly-worded-judgement-gives-vikram-bakshi-the-edge-in-his-battle-with-mcdonalds-85543-2017-07-27

Bergman, S. (2023, July 19). *McDonald's workers said they faced a toxic environment of bullying and abuse. It's bad news for a business model that keeps fast food profitable*. Business Insider India. https://www.businessinsider.in/retail/news/mcdonalds-workers-said-they-faced-a-toxic-environment-of-bullying-and-abuse-its-bad-news-for-a-business-model-that-keeps-fast-food-profitable-/articleshow/101952611.cms

Billing, D. T., & Schulzweida, D. J. (2023, October 31). *International Comparative Legal Guides: Franchise Laws and Regulations Germany*. International Comparative Legal Guides International Business Reports. https://iclg.com/practice-areas/franchise-laws-and-regulations/germany

Competition Commission of India. (n.d.). *About Us*. Competition Commission of India, Government of India. Retrieved December 19, 2023, from https://www.cci.gov.in/about-us

Das, S., & Titus, D. (2023, July 5). *Intellectual Property Protection In India – The Key To Robust Commercial Agreements*. Mondaq.Com. https://www.mondaq.com/india/trademark/1337416/intellectual-property-protection-in-india--the-key-to-robust-commercial-agreements-

Elsaman, R. (2023). *Disclosure and Registration Requirements in Franchising: Common Law or Civil Perspective? 58*, 279–294.

European Commission - European Innovation Council and SMEs Executive Agency. (2023, April 19). *Trademark Infringement case in India: Burger King*. https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/trademark-infringement-case-india-burger-king-2023-04-19_en

Furse, B. (2023, October 31). *International Comparative Legal Guides: Franchise Laws and Regulations Australia* (United Kingdom). International Comparative Legal Guides International Business Reports; Global Legal Group. https://iclg.com/practice-areas/franchise-laws-and-regulations/australia

Heitzman, A. (2023, September 14). *Types of Franchise Models Explained*. https://www.highervisibility.com/industries/franchise/learn/franchise-models-explained/

India Code. (n.d.). *India Code: Section Details*. Www.Indiacode.Nic.In. Retrieved December 20, 2023, from https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00005_200312_1517807324781§ionId=641§ionno=4&orderno=4

Institute For Strategy And Competitiveness - Harvard Business School. (n.d.). *The Five Forces*. Harvard Business School. Retrieved January 13, 2024, from https://www.isc.hbs.edu/strategy/business-strategy/Pages/the-five-forces.aspx

International Franchise Association. (n.d.-a). *What Information Does a Franchise Disclosure Document (FDD) Contain?* Retrieved December 12, 2023, from https://www.franchise.org/faqs/what-information-does-a-franchise-disclosure-document-fdd-contain

International Franchise Association. (n.d.-b). *What is a Franchise? | International Franchise Association*. Retrieved December 4, 2023, from https://www.franchise.org/faqs/basics/what-is-a-franchise

Invest India. (2023). *FAQs—Retail and E-commerce*. Invest India. https://www.investindia.gov.in/faq-pdf/86/en

Jhingan, S. (2022, September 2). *India: Legal Aspects to be Considered*. Mondaq.Com. https://www.mondaq.com/india/franchising/1226822/legal-aspects-to-be-considered

Kilgallon, S. (2023, November 11). *Successful construction franchise under investigation over exploitation of Filipino workers*. Stuff.Co.Nz. https://www.stuff.co.nz/national/immigration/133233195/successful-construction-franchise-under-investigation-over-exploitation-of-filipino-workers

Kumar, Anup, & Das, S. (2023). *Getting the Deal Through: Franchise—India*. G&W Legal. https://gnwlegal.com/publications/getting-the-deal-through-franchise-2024/

Kumar, B. (2022, July 18). *The curious case of copycat brand names in India*. Business Standard. https://www.business-standard.com/podcast/companies/the-curious-case-of-copycat-brand-names-in-india-122071800083_1.html

LegalKart. (2023, November 6). *Franchise Disclosure Document*. https://www.legalkart.com/legal-blog/franchise-disclosure-document

Manfredi, L. (2021, December 22). *Lawsuit accuses Subway of exploiting immigrants, victimizing franchisees* [Text.Article]. FOXBusiness; Fox Business. https://www.foxbusiness.com/lifestyle/lawsuit-subway-immigrants-franchisees

Marya, G. (2023, January 2). *Why the franchise business could be the shining star of India's economy?* The Times of India. https://timesofindia.indiatimes.com/blogs/voices/why-the-franchise-business-could-be-the-shining-star-of-indias-economy/

Moneycontrol. (2023, April 19). *Titan reduces franchisee incentives to expand jewellery margins*. Moneycontrol. https://www.moneycontrol.com/news/business/stocks/titan-reduces-franchisee-incentives-to-expand-jewellery-margins-10437011.html

Muthappa, D., & Dikshit, D. (2022, March 25). *India: Vertical Restraints*. Global Competition Review. https://globalcompetitionreview.com/review/the-asia-pacific-antitrust-review/2022/article/india-vertical-restraints

Nguyen, B. B., & Wisuttisak, P. (2023). Vietnam's Franchising Law: Critical Assessment and Comparisons with the Legal Framework of Franchising in the Republic of Korea and Thailand. *Social Sciences*, *12*(5), Article 5. https://doi.org/10.3390/socsci12050258

Obhan, A., & Patodia, V. (2020, September 2). Franchising in India—Why Aren't We Loving It? *Obhan & Associates*. https://www.obhanandassociates.com/blog/franchising-in-india-why-arent-we-loving-it/

Pandey, S., & Lakhanpal, A. (2019, November 19). *India—The Importance Of Vertical Restraint In Franchising Agreements*. Mondaq.Com. https://www.mondaq.com/india/franchising/865602/the-importance-of-vertical-restraint-in-franchising-agreements

Panwar, D., & Patra, S. (2017). LOCALIZATION IN FAST FOOD INDUSTRY: A CASE STUDY ON MCDONALD'S STRATEGY IN INDIA. *Researchers World - Journal of Arts, Science & Commerce*, *8*, 70–74.

Peskine, C., & Casanova, C. (2023, October 31). *International Comparative Legal Guides: Franchise Laws and Regulations France* (United Kingdom). International Comparative Legal Guides International Business Reports; Global Legal Group. https://iclg.com/practice-areas/franchise-laws-and-regulations/france

Rajain, D., Pahari, N., & Mohanty, S. (2019, August 8). Vertical Restraints in the Indian E-Commerce Sector: The New-Age Competition Issues. *SCC Blog*. https://www.scconline.com/blog/post/2019/08/08/vertical-restraints-in-the-indian-e-commerce-sector-the-new-age-competition-issues/

Raychaudhuri, T. (2011). Vertical Restraints in Competition Law: The Need to Strike the Right Balance Between Regulation and Competition – NUJS Law Review. *NUJS Law Review*. http://nujslawreview.org/2016/12/05/vertical-restraints-in-competition-law-the-need-to-strike-the-right-balance-between-regulation-and-competition/

Rosen, R. L., Salis, L. S., & Karol, J. A. (2023, October 31). *International Comparative Legal Guides: Franchise Laws and Regulations USA* (United Kingdom). International Comparative Legal Guides International Business Reports; Global Legal Group. https://iclg.com/practice-areas/franchise-laws-and-regulations/usa

Sharma, R., & Srivastav, D. R. (2023). Analysis of Franchise as a Cornerstone of Success in Indian Market. *IRE Journals*, *6*(12), 1151–1161.

Shrivastava, D. S., & Jacob, C. R. (2023, October 31). *International Comparative Legal Guides: Franchise Laws and Regulations India* (United Kingdom). International Comparative Legal Guides International Business Reports; Global Legal Group. https://iclg.com/practice-areas/franchise-laws-and-regulations/india

Simpson, F. (2022, October 17). *The Five Different Types Of Franchise*. Forbes. https://www.forbes.com/sites/fionasimpson1/2022/10/17/the-five-different-types-of-franchise/

Statista Research Department. (2023, December 18). *Franchising in the U.S.* Statista. https://www.statista.com/topics/5048/franchising-in-the-us/

The Competition Act, 2002, § 3(4) (2003). https://www.mca.gov.in/Ministry/actsbills/pdf/The_competition_Act_2002.pdf

The Economic Times. (2012, August 27). Reebok's Delhi franchisees cry foul over notice to close shop. *The Economic Times*. https://economictimes.indiatimes.com/industry/cons-products/garments-/-textiles/reeboks-delhi-franchisees-cry-foul-over-notice-to-close-shop/articleshow/15740635.cms

The Economic Times. (2019, May 14). Vikram Bakshi is finally out, and McDonald's India is lovin' it. *The Economic Times*. https://economictimes.indiatimes.com/industry/services/hotels-/-restaurants/vikram-bakshi-is-finally-out-and-mcdonalds-india-is-lovin-it/articleshow/69309704.cms

The Economic Times. (2023a, July 9). How the middle class will play the hero in India's rise as world power. *The Economic Times*. https://economictimes.indiatimes.com/news/economy/indicators/how-the-middle-class-will-play-the-hero-in-indias-rise-as-world-power/articleshow/101608682.cms

The Economic Times. (2023b, July 16). *India franchise industry to touch USD 140-150 billion in next 5 years, says report*. ETRetail. https://retail.economictimes.indiatimes.com/news/industry/india-franchise-industry-to-touch-usd-140-150-billion-in-next-5-years-says-report/101796346

The Economic Times. (2023c, December 30). HUL: FMCG distributors oppose HUL's margin structure changes, call it "draconian agenda." *The Economic Times*. https://economictimes.indiatimes.com/industry/cons-products/fmcg/fmcg-

distributors-oppose-huls-decision-to-change-margin-structure/articleshow/106385536.cms
Vijayakumar, S. (2023, January 6). Keeping with the times: Titan's roaring success as a public-private partnership. *The Hindu*. https://www.thehindu.com/news/national/tamil-nadu/keeping-with-the-times-titans-roaring-success-as-a-public-private-partnership/article66343539.ece
Yadav, K. (2023, August 14). *Delhi restaurant cannot use Burger King in its name: SC*. Mint. https://www.livemint.com/companies/news/delhi-restaurant-cannot-use-burger-king-in-its-name-sc-11692004188400.html

Appendix I

The 23 specific disclosures that must be included in every Franchise Disclosure Document (FDD) are listed below (LegalKart, 2023) (International Franchise Association, n.d.-a):

1. The franchisor and any parents, predecessors, and affiliates
2. Business experience
3. Litigation
4. Bankruptcy
5. Initial fees
6. Other fees
7. Estimated initial investment
8. Restrictions on sources of products and services
9. Franchisee's obligations
10. Financing
11. Franchisor's assistance, advertising, computer systems, and training
12. Territory
13. Trademarks
14. Patents, copyrights, and proprietary information
15. Obligation to participate in the actual operation of the franchise business
16. Restrictions on what the franchisee may sell
17. Renewal, termination, transfer, and dispute resolution
18. Public figures
19. Financial performance representations
20. Outlets and franchisee information
21. Financial statements
22. Contracts
23. Receipts

Appendix II

The following details section 3(4) of The Competition Act 2002 that deals with vertical agreements (India Code, n.d.)**:**

(4) [9][[Any other agreement amongst enterprises or persons including but not restricted to agreement amongst enterprises or persons] at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including--

(a) tie-in arrangement;

(b) exclusive [10][dealing] agreement;

(c) exclusive distribution agreement;

(d) refusal to deal;

(e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

[11][Provided that nothing contained in this sub-section shall apply to an agreement entered into between an enterprise and an end consumer.]

Explanation.--For the purposes of this sub-section,--

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[9] Subs. by Act 9 of 2023, s. 4, for "Any agreement amongst enterprises or persons" (w.e.f. 18-5-2023).
[10] Subs. by Act 9 of 2023, s. 4, for "supply" (w.e.f. 18-5-2023).
[11] Ins. by s. 4, ibid (w.e.f. 18-5-2023).

[12][(a) "tie-in arrangement" includes any agreement requiring a purchaser of goods or services, as a condition of such purchase, to purchase some other distinct goods or services;

(b) "exclusive dealing agreement" includes any agreement restricting in any manner the purchaser or the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be;]

(c) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods [13][or services] or allocate any area or market for the disposal or sale of the goods [14][or services];

(d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods [15][or services]; are sold or from whom goods [16][or services] are bought;

(e) "resale price maintenance" [17][includes, in case of any agreement to sell goods or provide services, any direct or indirect restriction] that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

[12] Subs. by s. 4, ibid, for clauses (a) and (b) (w.e.f. 18-5-2023).
[13] Ins. by s. 4, ibid. (w.e.f. 18-5-2023).
[14] Ins. by s. 4, ibid. (w.e.f. 18-5-2023).
[15] Ins. by s. 4, *ibid.* (w.e.f. 18-5-2023).
[16] Ins. by s. 4, ibid. (w.e.f. 18-5-2023).
[17] Subs. by s. 4, ibid., for "includes any agreement to sell goods on condition" (w.e.f. 18-5-2023