

Franchisee Protection under China's Franchising Regulations: A Comparative Study

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Abstract

Franchising has played a pivotal role in driving China's economic growth in recent years. With the prominent problem of franchise asymmetry, the protection of franchisees has emerged as a significant concern. This paper conducts a comparative study of franchisee protection practices under franchising regulation in China and certain jurisdictions such as the United States, Australia, and Malaysia. This paper aims to analyze three aspects of franchisee protection, including information disclosure, registration, liability, and relief for violations. To this end, the researchers adopted library data collection methods. Franchising-related laws, regulations, rules, and cases are the primary data sources, while journals, books, industry reports, and network resources are the secondary data sources. The results of this study show that although China's franchisee protection is generally in line with international practice, there is still room for further improvement. The authors proposed recommendations such as strictly implementing registration requirements, introducing a disclosure exemption system, specifying the exact duration of the cooling-off period, and diversifying dispute resolution. The contribution of this paper is to learn from the advanced experience of foreign franchisee protection and improve the current franchisee protection system in China.

Keywords: Franchising regulations, franchisee protection, China, disclosure, registration.

Introduction

Franchising is a pivotal business model in the contemporary market economy, enabling swift expansion of business territory at a minimal cost while leveraging scale and intelligence. It is widely regarded as the most triumphant business model since the 20th century (Crawford, 2013). Since the 1980s, franchising was introduced to China by the United States fast food pioneers KFC and McDonald's. China's booming market economy, coupled with a relatively stable political environment, has driven the rapid expansion of franchising (Wang

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& Terry, 2008). The latest statistics from the Ministry of Commerce reveal that as of July 12, 2023, the total number of registered franchise enterprises in China has surged to 9,955, representing an impressive twofold increase compared to the figures recorded in 2017. Nowadays, China has the largest franchise system and the most innovative digital economic ecosystem in the world (Pei, 2018).

In this win-win business model, franchisors rapidly expand their business territory by authorizing franchise resources, while franchisees realize their entrepreneurial dreams by relying on the franchisor's goodwill, market, and experience. However, this supposedly win-win business model may become a tool for franchisors to oppress franchisees. The inequality and imbalance between the franchisor and the franchisee make the franchisee in a weak position. In a franchise relationship, the franchisee is in a weaker position in terms of operational capability, business experience, and market assessment (Yao & Wang, 2008).

Looking at international franchise practices, the regulation of franchising seems to have contributed to the development of franchising (Spencer, 2010). Disclosure and registration regulations have been adopted by countries with well-developed franchises to promote their franchise industry. Franchise registration and disclosure requirements are driven by the need for market transparency and special protection for franchisees as the weaker party. Moreover, franchising regulation in most countries is designed to protect vulnerable franchisees due to the information asymmetry and power imbalance in the franchise relationship (Emerson, 2021).

The State Council of China adopted the Commercial Franchising Administration Regulation (CFAR), which plays an important role in the healthy development of franchising. To further implement and enforce the CFAR, the Ministry of Commerce issued the Commercial Franchise Registration Administrative Measures (CFRAM) and Commercial Franchise Information Disclosure Administrative Measures (CFIDAM). These three documents constitute the special legislation of franchising in China, mainly related to information disclosure and registration. As a civil law country, franchising in China is also governed by the Civil Code. Franchise business in China must follow the general principles of contract law such as fair dealing and good faith. The violation of the provisions about information disclosure requirements also violates the principle of good faith in the Civil Code.

This paper aims to analyze the franchisee protection system under China's franchising regulation. It is also compared with franchising regulations in the United States, Australia, and Malaysia to seek the best practices that can be referenced in China. The research questions of this paper are as follows: (1) What

are the specific practices of franchisee protection under franchise supervision in China? (2) How do other jurisdictions provide franchisee protection? (3) How can China's franchisee protection system be improved? This paper proposes the following three research objectives: (1) To review the franchisee protection system under franchise supervision in China. (2) To compare the franchisee protection experience in the United States, Australia, and Malaysia to provide reference for China. (3) To propose solutions to improve China's franchisee protection system.

Methodology

This research is qualitative research that applies both analytical method and comparative method. The researchers adopted library data collection methods and used relevant laws, regulations, rules, and cases as the primary data sources, journals, books, industry reports and online resources as the secondary data sources. The analytical and comparative approaches were used to compare and analyze key regulations regarding franchisee protection issued by the governments in selected jurisdictions. This paper uses purposive sampling to select three sample jurisdictions in the United States, Australia, and Malaysia for comparative study. Both the United States and Australia have well-established franchise regulatory systems centered on information disclosure (Dada & Watson, 2015). Malaysian franchising is known for its strict registration system, in contrast to China's lax registration. In addition, Malaysia is an emerging economy with rapid franchise growth as China (Haruna & Mart, 2017).

Findings

Definition of Franchising

There is no universal definition of franchising. The Federal Trade Commission (FTC) states that a franchise relationship is ongoing and describes three characteristics of the relationship and the rights and obligations of the parties (Webber, 2017). As well as, California, the first state in the United States to enact a franchise law, defines a franchise as a contractual relationship that contains three elements: (1) the franchisor's authorization to operate products or services, (2) the franchisor's trademark and other symbols, (3) the payment of fees by the franchisee (Root, 1998). In addition, the International Franchise Association (IFA) defines a commercial franchise as a contractual relationship in which the franchisor offers a unique business franchise to the franchisee and provides certain guidance and assistance to the franchisee for which the franchisee makes an investment or pays a corresponding fee (Spencer, 2013).

China seems to follow the definition of international practice. According to Art. 3 of the China's CFAR, franchising refers to:

"The business activities in which an enterprise (franchisor) with registered trademarks, corporate logos, patents, proprietary technologies, and other business resources licenses its business resources to other operators (franchisee) in the form of a contract, and the franchisee operates under a unified business model by the contract and pays franchise fees to the franchisor".

Franchisee Protection in China

In China, the franchise registration requirement, derived from the CFAR and CFRAM, serves to reduce investment failures by providing potential franchisees with basic information about franchisors. Both the CFAR and the CFRAM stipulate that the franchisor shall submit specific documents to the competent department of commerce within 15 days after signing the first franchise contract. The application should include the basic information and supporting documents of the franchisor, the sample franchise contract, the catalog of operation manuals, and the market plan (the CFAR, Art. 8).

It is worth noting that the registration requirement is to check whether the franchisor has a mature business model or business resources. Failure to register does not mean that the franchisor does not meet the foregoing conditions (Fang & Liu, 2021). The Beijing High Court held that the franchisor's failure to register with the competent commercial department in time generally does not affect the validity of the franchise contract (The Beijing High Court, 2011). In judgment No. 113 of the Henan Provincial High Court, the court held that the franchisor's obligation to register its franchising activities is a requirement imposed by competent commercial authorities for effective management. It clarifies that the absence of such registration does not impact the establishment and performance of contracts between parties involved in this case.

Franchise disclosures are outlined in Chapter 3 of CFAR, which states that the franchisor must provide specific material information about the franchise to potential franchisees. 12 items should be disclosed, including the basic information of franchisors, business resources, and information for opening a store (Huang, 2012). Specifically, mandatory written disclosure by franchisor to franchisee at least 30 days before the execution date of the commercial franchise contract (The CFAR, Art. 22). It also imposes requirements on the quality of the information disclosed, while granting the franchisee the opportunity to rescind the contract (The CFAR, Art. 23). The disclosed franchise information must be true, complete, accurate, easy to understand and timely (Li, 2011). In addition, the

franchisee can unconditionally terminate the franchise contract within a certain period, which is called the cooling-off period system (The CFAR, Art. 12).

In China, the liability for noncompliance involves both administrative penalties and civil liability, which are stipulated in Chapter four of the CFAR and the Contract Part of the Civil Code respectively. The liability for breach of franchise contract generally includes compensation for damages, payment of liquidated damages, compulsory performance, and termination of the contract (the Civil Code, Art. 566). If the franchise contract is determined to be invalid or revoked, the franchisor shall return the property (the Civil Code, Art. 157). If the franchisor triggers the liquidated damages clause in the franchise contract, the franchisee may request payment of certain liquidated damages. If the franchisor's non-compliance results in a loss to the franchisee, the franchisee may (the Civil Code, Art. 585) request compensation for the loss (the Civil Code, Art. 583).

Franchisee Protection in the United States

At present, the United States has established a sound legal system for franchising, including both federal and state franchise regulations. Federal law in the United States is essentially disclosure law, while state law includes both disclosure and registration laws (Fox, 2009).

At the federal level, in 1979, the FTC established Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, known as the FTC Rule. It is designed to provide a minimum level of protection for franchisees, allowing state laws to impose stricter disclosure obligations. To address the application of information disclosure in different states, the FTC approved The Uniform Franchise Offering Circular (UFOC) Guidelines provide a uniform disclosure requirement but can be modified by state franchise legislation. Therefore, the franchisor may use a disclosure document in one of the two disclosure formats above. In practice, most franchisors in the United States adopt the UFOC format, and less than 10% use the FTC format (Abell, 2019). To harmonize the FTC Rule with state franchise disclosure laws, the FTC amended the FTC Rule in 2007 in a way that was substantially consistent with the disclosure format and content of the UFOC Guidelines.

The current provisions of the FTC Rule require franchisors to register their trademarks in the U.S. and focus on regulating the franchisor's disclosure obligations (the FTC Rule, Art. 436), which mainly include:

1. the franchisor must issue a formal Franchise Disclosure Document (FDD) containing 23 items of information.
2. the franchisor must complete the disclosure of information at least 14 days before the formal signing of the franchise contract.

3. the content of the disclosure involves all aspects of the franchisor and the franchised brand.
4. the franchisor needs to disclose the main rights and obligations of both parties.
5. Certain situations that do not require information disclosure for franchisors.

At the state level, 14 states have specialized legislation, which require franchisors to complete a registration with the competent authority in their respective states before launching a local franchise business. It also requires franchisors to file a Franchise Seller Disclosure form, costs and source of funds and advertising materials in their respective states. For example, the California Franchise Investment Act provides franchise definitions, FDD registration requirements, and renewal requirements. The California Franchise Relations Act sets out the requirements relating to the termination, non-renewal, and transfer of concessions between franchisors, sub-franchisees, and franchisees (Hurwitz, 2020).

In the United States, a violation of disclosure requirements is a violation of the Federal Trade Commission Act Under the FTC Rule. The liability for noncompliance mainly involves civil liability under the FTC. Notably, it does not give aggrieved franchisees a private right of action. Only the FTC can take enforcement action against a franchisor who violates the FTC rules. However, state laws give franchisees the right to Sue the franchisor for rescission of the franchise agreement or compensation for damages. In California, the legal liability for noncompliance with franchise state laws can range from injunctions, rescissions, or cancellations of contracts to fines, damages, and even criminal penalties (Cal. Corp. Code § 31410.). In addition, state administrators also have the power to investigate and prosecute franchisors who violate disclosure or registration requirements (Center, 2020).

Franchisee Protection in Australia

In Australia, the government has conducted a series of reviews around franchising. The regulatory environment in Australia offers a favorable testing ground for franchisee protection regulation. Since 1998, Australia has adopted a model of mandatory specialized legislation. Franchising in Australia is regulated by the Competition and Consumer Regulation 2014 better known as the Franchising Code. In addition, the franchisors in Australia must comply with the Australian Consumer Law and other general principles of good faith, integrity, and fairness in the contractual relationship (Spencer, 2007).

The current provisions of the Franchising Code focus on the protection of franchisees, including mandatory disclosure, pre-entry advice, cooling-off period, remedies, and dispute resolution:

1. The franchisor shall produce and update a Key Fact Sheet and Disclosure Document annually.
2. The franchisor shall disclose 25 essential pre-contractual information at least 14 days before signing a franchise agreement or making a non-refundable payment.
3. The franchisee must be provided with professional advice and a 14-day cooling-off period before entering into a franchise agreement.
4. The franchisee shall have freedom of association with other franchisees.
5. Notice and compensation of contract transfer and termination.
6. Retroactive and unilateral changes to franchise agreements are prohibited.
7. The franchisor shall provide audited information relating to marketing expenses or other cooperative funds.
8. Mandatory dispute resolution procedure and priority of mediation.

In the event of franchisor noncompliance, the Franchising Code and the Australian Consumer Law provide the following remedies for an injured franchisee: (1) seeking injunctive relief ordering the franchisor's action and inaction, (2) revoking the franchise contract, (3) claiming statutory damages.

The Australian Competition and Consumer Commission (ACCC), a regulatory body responsible for protecting all small and medium-sized businesses, including franchisees, has established a special department to regulate franchising matters. The ACCC has the authority to act in court on behalf of the party whose interests have been harmed. In other words, if the franchisor violates the FCC, the franchisee can appeal to the ACCC and ask the ACCC to apply for compensation in the court on their behalf. The ACCC can also negotiate with a party deemed to have breached the FCC through administrative channels and require it to sign an enforceable undertaking containing damages (Schaper, 2016). Although the ACCC is not a dispute resolution agency, it can directly apply to the court to enforce the undertaking. In addition, the Australian Small Business and Family Business Ombudsman (ASBFEO), under the provisions of the Franchising Code, supports small and medium franchise enterprises to resolve franchise disputes through mandatory dispute resolution procedures (Hardy & Kelly, 2022).

Franchisee Protection in Malaysia

The Franchise Act 1998, representative franchise legislation in developing countries, has played an important role in the development of the franchise industry in Malaysia. The Franchising Amendment Act 2020 makes some changes to the legal framework of the Franchising Act 1998. It imposes stricter requirements for the regulation of franchising in Malaysia. The government agency responsible for regulating franchising activities is the Franchise Development and Direct Sales headed by the Registrar of Franchises (ROF). Under Section 6 of the Franchising Act 1998, the franchisor should register with ROF before operating a store.

In addition, the franchisee is required to register with ROF within 14 days prior to signing in Malaysia. Both franchisor and franchisee must present a certificate of Franchise registration, which is valid for at least 5 years. Domestic franchisors are required to pay RM1,000 and foreign franchisors are required to pay RM5,000 for renewal. It is worth noting that the registration requirements of franchisors at home and abroad have been unified. Anyone operating a franchise business in Malaysia must strictly comply with the mandatory registration requirements, and violators face heavy fines or imprisonment.

The Franchise Act attach great importance to the legal protection of franchisees. In addition to the mandatory registration requirements, it also involves:

1. The franchisor shall provide the disclosure documents consistent with the franchise agreement at least 10 days prior to signing.
2. The franchisee has a cooling-off period of not less than 7 working days.
3. The term of the franchise contract shall not be less than 5 years.
4. The franchisor must have good cause to terminate the franchise contract within the validity period.
5. The franchisor shall not unreasonably withhold the renewal or extension of the franchise contract; otherwise, they must provide compensation to the franchisee.

In addition, it provides for very severe sanctions for violations. For example, fraud, misrepresentation, failure to disclose or register, and obstruction of law enforcement all amount to an offense. Depending on the circumstances, civil sanctions available to aggrieved franchisees may include the nullification or rescission of franchise contracts, refund of any fees, or damages.

Discussion

This section specifically examines and compares the countries' approaches toward franchise registration systems, legal requirements for the disclosure of

franchise information, as well as liability and remedies for illicit franchising activities.

Figure 1: Comparison of Registration Requirements in Selected Jurisdictions

	Nature of Registration	Registration application	Remedies
China	administrative filings	basic information of commercial franchise, store information of all franchisees in China market plan, business license, registration certificate of trademarks, patents, and other business resources, etc.	fines, public notification restraining orders
U. S	administrative filings	FDD, Franchise Seller Disclosure form, costs and source of funds and advertising materials, etc.	fines, public notification restraining orders
Australia	administrative filings	franchisor key information, industry segmentation code, other non-personal information required by the government, etc.	fines, restraining orders
Malaysia	mandatory advance registration	information disclosure documents, model franchise contracts, franchise operation manuals, franchise training manuals, latest audited accounts, financial statements, audits, etc.	avoidance of contract, fines, imprisonment

Sources: Researchers

Figure 1 reflects the requirements for franchise registration in the selected jurisdictions, with all four countries requiring the registration of important franchise-related information. However, only Malaysia has a mandatory registration requirement. Franchise laws in the United States and Australia focus on the disclosure of information in the regulatory model, and there is no mandatory requirement for early registration of franchises. It can be found that there are two types of registration. One is a mandatory advance registration, which can be interpreted as an industry entry license, such as in Malaysia. The other is an administrative filing requirement, such as in China. The liability for violations of franchise registration in China is much lighter than in Malaysia. It is an external administrative filing matter, and failure to comply with the registration

requirements will generally not result in the invalidation or revocation of the franchise contract (Peter, 2015).

In practice, the lax regulatory requirements in China make the regulation of franchise registration a mere formality. The authors logged on to the franchise registration publicity website and found that only the franchisor's name and date of registration were publicized, while other information was not displayed under the CFRAM. The Ministry of Commerce, in collaboration with the Franchising Industry Association, released the Franchising Best Practice Casebook, which aims to increase the rectification of the commercial franchising market order and improve the franchise filing rate.

Figure 2: Comparison of Disclosure Requirements in Selected Jurisdictions

	Time	Cooling off period	Exemption of disclosure	Item	Liability & Remedies
China	30 days	reasonable period	none	12 items	cancellation, damages, return property, administrative penalties, etc.
U. S	14 days	5 or 10 days	minimum payment, fractional franchise, large investment, oral contracts, etc.	23 items	injunctions, rescission, reformation, damages, civil penalties, etc.
Australia	14 days	7 days	single franchise	25 items	injunctions, rescission, damages, penalties, etc.
Malaysia	10 days	7 days	petroleum industry	not listed	rescission, damages, return fees, fines, imprisonment, etc.

Sources: Researchers

Figure 2 compares the similarities and differences in the elements of information disclosure under franchise supervision in selected jurisdictions. Franchise regulations in China, the United States, Australia, and Malaysia all require the franchisor's pre-contract information disclosure obligation. In their respective franchise laws, franchisors must provide franchisees with a specific list of pre-contract information. The franchise regulations in the four selected jurisdictions necessitate advanced disclosure periods and cooling-off durations. In cases of non-compliant disclosure, legal liability must be assumed from franchising regulatory, civil, and even criminal perspectives. While specific provisions may vary across

countries, they all place significant emphasis on information disclosure in franchise regulation.

In terms of liability and remedies for non-compliance, Malaysia has the most stringent franchise compliance requirements, with remedies involving criminal proceedings in addition to civil law actions. Both the United States and Australia provide for an injunction system to safeguard franchising. In terms of cooling-off period provisions, other selected jurisdictions have clear periods, while China only provides a reasonable period. The term "reasonable" is too general and uncertain, which in practice reduces the effectiveness of this provision for franchisee protection. In addition, contrary to the mature information disclosure exemption system in the United States, China's information disclosure law has no exemption clause, which is a major defect (Li, 2011).

Although the 30-day disclosure requirement in China is longer than in other selected jurisdictions, the authors believe it is in line with the reality of franchising in China. Due to the late development of franchising in China, the public is still unfamiliar with its business model and related rules. Therefore, giving franchisees a longer time to digest information will help protect vulnerable groups.

China, as a civil law country, has made mandatory disclosure requirements, but only general information is provided. The United States, Australia, and Malaysia, as common law countries, provide many detailed disclosure requirements. Information disclosure can help to reverse the disadvantaged position of potential franchisees in terms of access to information (Eydt, 2013). However, some commentators have criticized that Australia's lengthy and burdensome disclosure requirements would make Australia unattractive to competition in the franchise market (Buberis, 2020). Indeed, overly burdensome disclosures can cause identification and judgmental problems for franchisees, leading to the omission of information that is truly useful to franchisees. Therefore, the authors believe that the information disclosed by franchisors should be limited to material information related to franchising.

Recommendations

Franchise registration should be given high priority as an important initiative for government departments to monitor and regulate franchising activities. China should seek regulatory inspiration from the Malaysian franchise registration system, which has comprehensive and detailed legislative and practical experience. Although the information disclosure requirements under China's franchising regulations are in line with international standards, only general disclosure provisions are provided, which are not as comprehensive and

specific as common law countries. In terms of cooling-off period provisions, the Chinese government should provide further explanations within a reasonable period to clarify its application.

To better protect franchisees, China's franchise regulations can be improved from the following aspects:

1. It is recommended that the registration authority strictly enforce the franchising regulations and implement regulatory responsibilities. Drawing on the requirement of public display of franchise registration in Malaysia and implement it strictly by publicly displaying the complete information of the franchisor, to facilitate the supervision of the franchisor.
2. Establishment of a comprehensive information disclosure system. First, introduce a disclosure exemption system. Drawing on the mature disclosure exemption experience in the United States, franchisors should be exempted from the disclosure obligation under certain circumstances, to reduce the disclosure cost and facilitate the expansion of China's segmented franchise market. Second, the specific length of the cooling-off period should be clarified to reduce ambiguity. The authors believe that the legislative experience in selected jurisdictions can be drawn upon and that a seven-day cooling-off period would be appropriate.
3. Establishment of Franchise Dispute Mediation or Public Interest Litigation System. Australia's judicial practice of mandatory mediation and litigation by the ACCC on behalf of franchisees provides a reference for China's franchise dispute resolution. The U.S. FTC also has a similar practice, to improve the efficiency of dispute resolution and reduce the cost of litigation for franchisees.

Conclusions

This paper compares and evaluates franchisee protections under franchise regulation in China with examples from the United States, Australia, and Malaysia. By analyzing the key aspects of franchisee protection, the authors draw the following conclusions. The selected countries adopt the regulatory model of franchise registration and information disclosure to protect franchisees. However, the specific approach to protecting vulnerable franchisees varies from region to region. Compared to Malaysia, China has adopted loose registration requirements to stimulate the potential of the franchise market. In addition, China's information disclosure system is less comprehensive and specific than that of the United States and Australia. Therefore, this paper puts forward the following suggestions: (1)

Strengthen the pre-administrative review and strictly fulfill the registration requirements; (2) Learn from the experience of the United States and add an exemption clause for information disclosure; (3) Clarify the cooling period to reduce ambiguity; (4) Enrich relief channels for franchisees.

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