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THE PRECONTRACTUAL DISCLOSURE AS THE EMANATION OF THE GOOD FAITH PRINCIPLE IN THE FRANCHISING AGREEMENTS / SERBIA DE LEGE FERENDA

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Abstract. *Despite the enormous success of franchising, there is a widespread lack of knowledge of the real nature of franchising as a legal instrument, as well as of the legal and practical issues which arise in any attempt to use franchising as a way of doing business. The main problem is the lack of a single, uniform and adopted definition that could be applicable to all situations and to all the forms which are covered under the notion of franchising, which is a business concept rater than a separate commercial contract. The spread of franchising in the business practices is in collision with the legislative activities in the domain of franchising as an instrument of the national and international contract law. At the international level there is no uniform convention law which legislates complex legal relationships of the franchising agreements, and in the past, it was only International Institute for the Unification of Private Law (UNIDROIT) which took action at international level to harmonize the legal aspects of this commercial vehicle. These autonomous legislative activities of the UNIDROIT have had an enormous influence at the national level of legislation and prompted more than 30 countries to introduce the franchise-specific legislation based on the example of the US disclosure law which requires the franchisor to provide the prospective franchisee with information on different and numerous points in order to help the franchisee to avoid many obstacles and potential traps in franchised business. Different legislative methods which are used by the various countries are examined in the article together with the prospective intention of the Serbian Government to legislate franchising activities.*

Key Words: *franchise agreements, disclosure law, contract law, legislation*

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INTRODUCTION

The law on franchising is developing nowadays. Legal modalities of these new autonomous contracts are developing simultaneously. The distinctive features of franchising contractual mechanism are continual legal relationship, franchisor right of control over franchisee's activities as well as franchisee's commitment to follow advice and directives of the franchisor. Inherent contractual disequilibrium is an obvious feature of all franchising agreements. Asymmetry in the franchising relationship is caused by one goal – it is a virtual identity between legally independent but economically interconnected and mutually related contractual partners - franchisor and franchisee. This gap between the legal and factual reality in franchising agreements is the fertile soil for various abuse and traps in the franchising obligation relationship.

In the last 15 years (the period which corresponds to the past activity of UNIDROIT in the area of franchising) an increased number of countries (especially developing countries and countries with economies in transition) have regulated franchising. Nowadays approximately 30 states have incorporated rules on franchising into domestic regulations.[1] There are different methods which could be used as a guide through the national legislation (type of provisions, type of law to be adopted - disclosure, relationship or registration law, type of legislative technique, etc). The method chosen in this article is the method of legislative technique which regulates franchising in national jurisdiction. The instruments which are used in those regulations vary from the specific franchising law legislations – lex specialis, enactment the provision related on franchising in national Civil Code, franchising regulation in other different areas of law (for example the law which regulates intellectual property) and a limited number of countries regulated franchising through governmental regulation. The most numerous are the countries which adopted specific franchising regulation. The first law on franchising was adopted in the USA in 1979, where franchising originated from and the US federal law on franchising was adopted in 1979 as Federal Trade Commission (FTC) Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures. It was the first law which regulates the information a franchisor is required to supply the prospective franchisee with (the so called *franchising disclosure law*) in order to provide them with all the elements necessary to evaluate the franchise they are proposing to acquire. It is a federal law and FTC Rule applies in all fifty states and it is indented to provide a minimum pre-contractual protection of the franchisee. Therefore, it applies wherever states have not adopted more stringent requirements. This law is still in force although an amended Rule has been adopted and is effective as from July 2007.

The autonomous regulation made by the most important franchising association International Franchise Association and European Franchise Association provides the pre-contractual duty of disclosure in their Code of Ethics for Franchising.

[1] The author spent a two month research period at the UNIDROIT Library in Rome working on project "Enacting Franchising Disclosure Law in Serbia" in 2005. The Report on Research Project has been adopted from the Governing Council of UNIDROIT in May 2005. The opinion and attitudes in this articles are author's and do not represent the official opinions of UNIDROIT.

Through the proposed clauses relating to franchising in the future, the Serbian Civil Code Commission offered a set of open remarks and questions which need to be answered before any definite solution is accepted.

LEGISLATIVE ACTIVITIES IN THE FIELD OF FRANCHISING AT THE INTERNATIONAL LEVEL

The regulation which is important for franchising agreement, in spite of the fact that it is out of force from 31 May 2000 and limited only to the field of competition law is the European Union Commission Regulation (adopted after the famous "Pronuptia" case) No.4087/88 the most important part of which, in the matter of disclosure, is the definition of franchising which is broadly adopted in the franchising legal literature as well as in legislation process.

The most important legal instruments regarding franchising are UNIDROIT (International Institute for the Unification of Private Law) "*Guide to International Master Franchise Arrangements*" (Rome 1988, rev. 2007) contenting high–level information on all problems in different stages of conclusion and implementation of franchising agreement not limited to legal issues only, and the chronologically second instrument, but of the greatest importance for topic of the enactment disclosure law project in Serbia is UNIDROIT "*Model Franchise Disclosure Law*" devoted to the franchisor's duties to disclose material information to franchise, which is together with its Explanatory Report clearly addressed to national legislators, as the "soft law" instrument of the new "lex mercatoria".

The North American Securities Administrators Association (NASAA) has adopted a Uniform Offering Circular (UFOC) that indicates 22 types of information which should be furnished to a prospective franchisee. Canada has the longest experience with franchising legislation as the provinces of Alberta, Ontario and Prince Edward Island have franchise specific regulation from 1995. France was the first European state which enacted franchising specific disclosure law in 1989 (Loi Doubin). The following countries also adopted specific franchising regulation in the form of a law: Brazil in 1994, Malaysia in 1998, Kazakhstan and Korea in 2002, Italy in 2004, Belgium in 2006, Sweden in 2006. Other countries that regulate franchising enacted the provision on franchising in their Civil Code. After Albania in 1994, this method has been used by the Russian Federation in 1996, Georgia in 1997, Belarus in 1998, Lithuania in 2000, Kazakhstan in 2002, Moldova in 2003, and Ukraine in 2004. Each mentioned legislation uses the method enacted in Russian Civil Code (Part 2, Articles 1027-1040) (UNIDROIT Guide on International Master Franchise Arrangements, Rome, rev. 2007, Annex 3, pp. 296) which doesn't deal with disclosure in any detailed manner, but instead regulate certain aspects of the relationship between the parties. They *inter alia* deal with the form and registration of the contract, sub-concessions, the obligation of the parties and the consequences of the termination of the exclusive right granted in the agreement.

NATIONAL LEGISLATIONS RELEVANT TO FRANCHISING INSPIRED BY THE PAST ACTIVITIES OF UNIDROIT

A number of countries have included provisions related to the franchising in the existing or new law which regulates aspects of economic life other than franchising (Mexico in 1991,

Croatia in 1994, Spain in 1996). Finally, countries like Indonesia and Romania (1997), China (2004) and Vietnam (2006) enacted detailed franchising regulation in the form of Decree which regulates legal regime applicable to franchising in a very detailed manner.

There are significant trends in the adopted legislation: a very limited number of countries has not even mentioned disclosure requirements but provides very rigid and restricted provisions regulating contractual relationship between franchisor and franchisee (Russia, followed by the Kazakhstan, Lithuania and Belarus); some legislations only mention disclosure without any details but at the same time regulate in a very detailed way questions concerning contract specification, such as the obligation and liability of each of the parties, renewal of the franchising agreement (Malaysia, Albania, China, Romania). A number of countries have registration requirements with different object to be registered (Spain, Russian Federation) and the main feature of Malaysian and Indonesian regulations is the existence of very stringent, detailed and burdensome provisions on registration, the purpose of which is not only informational, but the registration requirements start to be specific procedure for the approval of the franchise business which, along with the protectionist and domestic party highly protective provisions contained in both acts, is very discouraging for franchisors and burdens them heavily. For the same reasons registration requirements have been nullified in some legislations (Canada-Alberta). Most of the franchise laws contain the disclosure requirements which obligate franchisor to disclose different categories of information, and the amount of detail is different in each national legislation. The U.S. and Australian legislation contain the longest lists (their experience with the abuse being the longest) which is in accordance with the common law legal technique of providing big number of clauses in order to cover all specific situations – the method of *numerus clausus*, and the civil law countries and those which followed the method of providing more general provisions which will be made concrete within the case law, have a shorter list of information which the franchisor is mandatory to provide a prospective franchisee with. The new Italian franchising legislation represents this civil law method, containing general provisions with the broader definitions of franchising, its varieties, and obligations of the parties as well as the limited number of disclosure requirements. In the German and Austrian Law there is a general duty of information in accordance with the general principles of contract law, and despite the fact that there is no specific franchising law in both countries, the case law is at a very sophisticated level, treating in many cases the consequences of infringements of the franchisor's duty to inform the franchisee in pre-contractual period.

Italian experience with franchising caused the new legislation to be passed in 2004, together with the commentary in the legal literature that the law is a compromise of interests of all subjects involved in franchising, and it especially reflected on the role of Franchising Association in the process of law drafting and implementation (LG Hanover, 11April 1995-140267/94 and BGH NJW 1987, pp. 41-42). In spite of the fact that neither German nor Austrian legislation provide any specific franchising legislation, there has been some forward movement in the last years. To avoid the problem of unamortized investments of franchisee after the termination of the franchising agreements Austria enacted the new §454 in the Austrian Commercial Code (came into force on August 21, 2003) which is applicable to all kinds of vertical agreements including franchising agreements in which the commitment of the investment has been agreed on after this provision came into force. The new provision provides that entrepreneurs have the right

to compensation with respect to their investment after the termination of a distribution contract with the binding entrepreneur, according to some conditions provided by this article for investment and for the termination of the contract. Furthermore, there is the provision in the German HGB art.89(b) regulating that mandatory compensation has to be paid to a commercial agent for his loss of "goodwill" (after EC Directive on Commercial Agents such compensation has to be paid in all EU member states), and this provision applied from the German courts by analogy to franchising agreements. Besides, the reform of German BGB made in 2002 in the sphere of the breach of contract is also of significant importance for franchising agreements.

THE NECESSITY FOR ENACTMENT OF FRANCHISING LAW IN SERBIA

The comparison with other countries' regulations and experiences in franchising business show that in Serbia, the development of franchising in the economic life and the role of franchise associations such as the mentioned Centre for Franchising is in its beginnings. Insufficient franchising practice has caused economic subjects in Serbia to lack the needed knowledge as well as experience with the pattern of abusive conducts. Furthermore, the Code of Obligations provides the duty of information of the other contractual party on contract's important facts only with its general norms. Besides, the duty of information provided in Art. 268 seems to be applied in post contractual phase, after the contract is concluded, and it should be difficult to embrace its mandatory rule on pre-contractual phase of the contract. Also, the sanction which is provided by the mentioned article of Code of Obligations is only in the party's duty to compensate loss suffered by the uninformed contractual party, without any consequences on legal destiny of the contract itself. The Serbian experience with the adoption of the Law on Financial Leasing shows that this specific legislation has introduced the concept of leasing and has encouraged potential investors to engage in leasing operation, and the legislation was promotional for this legal instrument. Enacting the franchising disclosure obligations of the franchisor in future Serbian Civil Code will not have mandatory effects for relationships of the contractual parties which could be created through registration requirements.

The first question is whether Serbia needs a franchise law at all. There are different arguments in an attempt to try to find an answer and many different arguments for opposite answers. The comparative legislation experiences show that legal creators might wish to have a franchise law without recognizing any impairment to be addressed. The actual lack of experience with franchising might cause unnecessary regulation where law comes up even before there are significant franchise networks to be governed. Enactment of burdensome regulation without prior finding of the harm to be eliminated could prevent the development of franchising instead of promoting it. Even if there are problems to be solved legally, it is not always appropriate to enact a law specifically regulating franchising arrangements. Many of the problems are best addressed by laws of a more general nature, such as the general contract law or competition law. Sometimes instead of unnecessary regulation it could be useful to apply an existing legal doctrine applicable to franchise agreements in resolving contractual or practical problems (Kozuka, S, 2002).

However, many reasons inspired Serbian Commission to offer clauses *de lege ferenda* which will regulate the so called new contracts in business law such as franchising agreement, factoring and leasing contracts. The most relevant among numerous arguments of the Commission are the arguments of applicable law which is a weak point of any franchising contract where domestic regulation lacks as well as the complex nature of franchising contracts. This complexity can not be overcome with the application of the law of general nature (general rule of the Law of Obligation, Competition Law, etc) or with clauses deriving from other contracts (sale contract, licence contract). There is a very significant reason which prevails in the decision whether franchising regulation is effective. It is the argument of the protection of the economic position of the domestic franchisee which is traditionally the economically weaker party in the franchising contract. The experience of many countries which decided to regulate franchising shows that the existing franchisees were so pervasively exploited that no sensible business person is encouraged to enter a franchise relationship. Then, the regulation of franchising, which even entails a burden on franchisors, will bring benefits to the franchise industry as a whole, including franchisors as well as franchisees which are protected with the obligation norm of the franchising regulation. The role of regulation in this case is to create the equilibrium of contractual party interests in the franchising agreement.

Another important reason in favour of franchising regulation in future Serbia's codification is an applicable law in the franchising agreements with foreign elements. In most of the agreements the choice of applicable law clauses are at disposal of the party autonomy principle which practically means that the choice of law will be selected by the franchisor as an economically stronger contractual partner who always imposes their domestic law as the law which will govern the contract. As applicable law could also became the source of unequal status of the contractual parties in franchising contract it could be the prevalent reason which inspired the legislator to provide domestic norms which will govern franchising contract in Serbia.

All these questions are open in Serbian legal doctrine and in the future legislative activities and in the case where the "franchise law" is found to be effective bringing benefits to the franchise industry as a whole, including franchisors as well as franchisees, the model of possible regulation is proposed.

THE CONTENT OF THE MODEL FOR THE REGULATION OF FRANCHISING CONTRACT IN THE FUTURE SERBIAN CODE CIVIL

What is the content of the proposed regulation on franchising contract in Serbian legislation *de lege ferenda*?

The intention of the legislator is to define franchising contract in accordance with the modern notion of franchising which embraces only integrative franchising systems such as business format franchising. The traditional industrial or distributive franchising contracts are no longer treated as franchising systems in Europe but rather as forms of licence and exclusive distribution contracts.

The definition, content and essential elements as well as the rule of mandatory written form of franchising contract are relevant for regulation of franchising in future Serbian codification.

There is also proposed rule on registration of franchising contract in Business Registers Agency which should not have constitutional rather than evidential effects. A number of countries have registration requirements (Spain, Russian Civil Code, Indonesia, Malaysia ...). There are differences between countries as to what must be registered. The author of the article is of the opinion that the registration norm should be burdensome for franchisor without any significant effect because franchising contract does not contain significant propriety law effects as leasing contract, registration of which is already provided in Serbian positive law. The Work Group of Serbian Chamber of Commerce has proposed to the Codification Commission that instead of a registration norm it is more urgent to enact the norms which provide pre-contractual responsibility of the franchisor to provide the franchisee with the information relevant to make rational decision to enter the franchising system. This initiative as well as its arguments presented by the author of the article will be considered by the Commission and if accepted, they will be enacted to the prospective franchising regulation.

Besides the notion, elements, form and registration of the franchising contract Serbian legislator provided a set of norms which regulate most controversial questions in the life of a franchising contract such as sub-franchise contract (capacity of the franchisee prescribed by the contract to transfer rights and obligations to a third person, connections between master franchise contract and sub-franchise contract, annulment of master contract causes annulment of the sub-franchise contract), rights and duties of the parties in franchising contract, limitation of the party autonomy (restrictive clauses in the sphere of goods, territory and consumers, post-contract competition clauses). Those clauses included in-term as a post-term covenant against competition to protect against unauthorized use of the franchisor's intellectual property, either during or for some period following the termination of the franchising agreement.

It prescribed the responsibility of the franchisor for the demand of the third person in the case of inconformity of goods or services provided by the franchisee. Termination and conditions for the renewal of the franchising contract are prescribed as the rules of minimum protection for the party as well as termination of the contract in case of liquidation or bankruptcy of the franchisor or the franchisee, as well as in case of the termination of the exclusive rights of the franchisor. Obligation of the loyal competition during and after termination of the contract is provided together with maximum one year post-contract competition clauses. Obligation of confidentiality on the side of the franchisee during and after termination of the contract is also provided.

It is proposed by the Working Group of the Serbian Chamber of Commerce to prescribe disclosure obligation of the franchisor to provide franchisee with the set of information before entering the franchising contract. The scope of information depends on the goal of disclosure requirements as well as the relative nature of the norms contended in future Civil Code. Enacting of disclosure franchising clauses in the future Code could have as an effect an increase of common economic and legal understanding of franchising concept.

THE SCOPE AND SOLUTIONS OF THE PROPOSED REGULATION OF FRANCHISING DISCLOSURE REQUIREMENT IN FUTURE SERBIA'S CIVIL CODE

During the two month research period at UNIDROIT in Rome in 2005, the author of this article prepared the Draft Franchising Disclosure Law for Serbia which was created considering definitions from UNIDROIT Model Franchise Disclosure Law as well as EU Commission Regulation NO 4087/88. This Draft was the inspiration for the proposal of enactment disclosure requirements in the franchising regulation in the prospective Serbian Civil Code defined by Working Group for Franchising Regulation of Serbian Chamber of Commerce.

Furthermore, the proposal also contains language requirements which provided that the disclosure document as well as the proposed franchise contract have to be in the language which is officially used in the prospective franchisee's principal place of business or place of activity, which is not contained in the UNIDROIT Model Law, because this requirement could be of big importance for domestic economic subjects whose foreign language skills are traditionally not well developed, as well as because of the fact that duty of responsible franchisor in international franchising is to translate the disclosure documents, contract, etc. into the franchisee's mother language (in this case, into Serbian). The time period when the disclosure document has to be given to the prospective franchisee is prolonged to 30 days (instead of the fourteen day time period in Model Law) within which the franchisee could examine the document and obtain expert legal and other type of advice. The number of days within which the disclosure document needs to be updated is fixed to 30 days, and in the situation when material changes (defined in Art. 3(5)) occurred, it is the obligation of the franchisor to inform the prospective franchisee in writing as soon as possible and the disclosure document has to be updated 15 days after material changes occurred.

The type of the information which franchisor has to obtain are not as extensive as in the UNIDROIT Model Law. In the author`s Draft, it should contain before anything else the information on the franchisor. The information should contain the following:

a) registered legal name, legal form and registered place of business of the franchisor, and the address of the principal place of business of the franchisor;

b) trade mark, registered trade name, business name or similar name, under which the franchisor carries or intends to carry on business in the territory of the Republic of Serbia;

c) the address of the principal place of business in the Republic of Serbia;

d) the amount of the registered capital of the franchisor and the amount of the registered capital of the affiliate of the franchisors;

e) a description and summary of the activities and the operations characterising the franchise to be operated by the prospective franchisee.

f) the description of the business experience of the franchisor and their affiliates granting franchises under the same trade name, including mandatory information of the length of time which franchisor has run a business of the type to be operated by the prospective franchisee, as well as the information on the length of time during franchisor has granted franchises for the same type of business as that to be operated by the prospective franchisee.

g) information of any criminal convictions or any liability in a civil action or arbitration procedure involving franchise or other businesses relating to fraud, mispresentations or similar act of the franchisor, affiliate of the franchisor or any of senior man-

ager or director of the franchisor in the previous five years, together with the summary of any court or arbitral decision taken in mentioned proceedings.

h) information on any bankruptcy, insolvency, reorganizations and the comparable proceedings involving the franchisor and their affiliates in the previous five years and the court citation thereof.

The information on the franchisor's business system is the information on the franchisee in the business system, including information on the total number of franchisees and company-owned outlets of the franchisor and their affiliates of the franchisor granting franchises under substantially the same trade name, and information on the trade and/or personal names, business addresses and business phone numbers of the franchisees whose outlets are located nearest to the proposed outlet of the prospective franchisee in the Republic of Serbia, then in the contiguous States, or, if there are no such outlets, outlets in the State of franchisor but in any event of not more than 15 franchisee.

Those data are to be followed by the list of other franchisees together with the data on changes in number of the franchisee in the last three years which consider information (trade and/or personal name, business place, business phone number) on the franchisees of the franchisor and about franchisee of affiliates of the franchisor that have entered out from the business system during the three years prior to the year during which the franchisee agreement is entered into, with an indication of the reasons for the termination of the contractual relationship (contracts terminated or not renewed by the franchisee, contracts terminated or not renewed by the franchisor or by the affiliate of the franchisor, contracts terminated due to the bankruptcy or insolvency, voluntary terminated or not renewed contracts);

The status of the intellectual property rights are of the high importance so the document should contain the data of status if franchisor's trade marks and other intellectual property rights, such as information on the status of the franchisors intellectual property rights on the territory of the Republic of Serbia, which are to be licensed to the franchisee as the part of the franchise (trade marks, patents, copyrights, utility models, design, software etc.) with the mandatory information on the registration or on the application for registration, the trade or/and personal name of the owner of the intellectual property rights or the trade or/and personally name of the applicant, the date when the registration of the intellectual property rights licensed expires, and the limitation of that intellectual property rights form third parties, and litigation or other legal proceedings, if any, which could have a material effect on the prospective franchisee's legal right, exclusive or non-exclusive, to use the intellectual property under proposed franchise contract.

The financial matters are among the last but not the least important data which the document has to contain, among which the most important is an estimate of the amount of the prospective franchisee's total initial investment; financing offered or arranged by the franchisor, if any; the financial statements which show financial position of the franchisor verified from the legal empowered and independent auditor, including balance sheets, and balance of profit and looses for the previous three year, or from the beginning of the franchisors business activity

The disclosure document has to contain the most important information which refers to franchise agreements if it is not already contained in the proposed franchising contract. If the following information is contained in the proposed franchising contract, the disclosure

document will contain reference to the relevant section of the franchise agreement, and if that information is not contained in the proposed franchising agreement, that fact shall be clearly stated in the disclosure document. Those contractual clauses which are crucial in order to avoid the main trap of franchising, which is making a uniformed decision about entering the agreement, are as follows:

a) the term and conditions of the renewal of the franchise contract;

b) a description of the initial and on-going training programs of the potential franchisor and/or its employees, regarding the trainer and the subject who bears the expenses of the training program, and the duration and the expenses of the training program;

c) the nature and extent of exclusive rights if they are to be granted to the prospective franchisee relating to the territory and/or customers, and the information on any reservation by the franchisor of the right to use or to license to use the trademarks covered by the franchising contract, and if franchisor reserves the right to sell or distribute the goods and services under the same or other trademark which will be transferred to the prospective franchisee;

d) conditions under which the franchisor could terminate the franchising contract and effects of such termination;

e) conditions under which the franchisee could terminate the franchising contract and effects of such termination;

f) the limitations which, if any, are imposed on the franchisee, in relation to the territory and/or to customers;

g) non-competition clauses imposed during and/or after termination of the franchising contract;

h) the initial franchisee fee (in the manner of the system entrance fee) and the royalty, and other fees and payments;

i) the conditions for the assignment of other transfer of the franchise to third parties;

j) any choice of law and choice of forum clauses and the method of dispute resolutions.

The required information which disclosure documents shall contain depends on the fact whether it is already included in the proposed franchising contract, there are some addition in some of the paragraph, such as description of the training program, the personality of the trainer, the duration, expanses as well as the clear signification of the fact who bears the expenses of the training programs.

The legal remedy for the omission of the franchisor to obtain the disclosure document should be the right of the franchisee to ask the court for the annulment of the concluded contract under Article 112 Code of Obligations and/or to claim against the franchisor for the damages suffered because of the omission of the franchisor (disclosure document or notice on material change are not delivered at all, contain misrepresentations, or fraud, or make an omission of material fact).

CONCLUSION

The comparative analyses of the provisions of franchise laws adopted in the recent period lead to the observation that with the exception of the Russian Civil Code (and legislation which are inspired by Russian legislation) all franchise laws in different ways

and to a different extent deal with disclosure requirement. Other norms are inspired by domestic conditions and the intent of the legislator to protect domestic franchisee and domestic products or industry. All legislations are indented to avoid the main obstacle in the franchised business realized by entering an agreement without making an informed decision by the franchisee on the numerous aspects of the contract and legal surroundings of franchising as well as in preventing possibilities of abuse of the position of the franchisor as the economically dominant contracting party.

The intent of Serbian legislator to promote franchising throughout franchising law contained in the prospective Civil Code is inspired by the idea to protect the interests of the parties in the franchising contract relationship. Obligation norms which regulate contractual aspects of franchising contract together with disclosure requirements which protect parties in the pre-contractual stage of the relationship will be an important method in the process of creating legal security as well as a healthy commercial law environment for future development of franchising in Serbia.

By analyzing legislative activities at national and international level together with Serbian prospective activities *de lege ferenda,* the following conclusions can be drawn:

(1) A prevalent number of countries accepted the method of franchising regulations which is embodied in the disclosure law,

(2) The main goal of that regulation is enabling the franchisor to create an informed decision to enter into franchising contracts, the goal of which is to decrease directly the transactional costs of the franchised arrangement;

(3) Serbia's legislators accept for the prospective regulation the method of combining both obligation and disclosure law in order to protect legal security, contractual equilibrium, the position of economically weaker contractual party embodied in franchisee. The main intention is to enable the principle of good faith in contractual relationship of franchising.

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PREDUGOVORNO OBAVEŠTAVANJE KOD UGOVORA O FRANŠIZINGU KAO OSTVARENJE NAČELA SAVESNOSTI I POŠTENJA /SRPSKA REGULATIVA DE LEGE FERENDA

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Uprkos činjenici da je franšizing postao globalni fenomen i jezik pomoću koga poslovni subjekti komuniciraju na svetskom tržištu, nepoznavanje pravnih aspekata i efekata, kao i pravne prirode ovog načina poslovanja takođe je veoma rašireno. Jedan od najvećih problema u poimanju pravne prirode ugovora o franšizingu je i nedostatak jedinstvenog, jednoobraznog a opštepihvaćenog pojma ovog pravnog posla koji bi bio primenljiv na sve oblike koje franšizing u poslovnoj praksi može da dobije, prevashodno kao poslovni koncept koji može uzeti obličje mnogih odvojenih pravnih instrumenata. Rasprostranjenost ugovora o franšizingu je u opoziciji sa aktivnošću nacionalnih legislativa na polju zakonskog uobličavanja ovog instrumenta trgovinskog prava. Ni na širokom polju prava međunarodne trgovine ne postoji konvencijska regulativa ovog posla kako od organizacija koje se bave unifikacijom prava tako ni od onih strukovnih organizacija koje se bave unifikacijom običajne poslovne prakse savremene lex mercatoria. Stoga je aktivnost UNIDROIT (Međunarodnog instituta za unifikaciju privatnog prava) iz Rima za sada jedina na polju međunarodne legislative ugovora o franšizingu. Iako usamljena, ova je aktivnost Instituta imala u proteklih petnaestak godina veliki uticaj na nacionalna zakonodavstva, tako da je do sada već tridesetak zemalja donelo specifičnu franšizing regulativu. Ovo je specifično zakonodavstvo oslonjeno kako na instrumente UNIDROIT, tako i na američku lex specialis praksu koja od davaoca franšizinga zahteva predugovorno informisanje budućih korisnika franšizinga o svim aspektima ovog posla, kako bi na osnovu njih doneli utemeljenu odluku o ulasku u franšizing sistem. Pored ovog modusa regulative u radu su obrađeni i drugi mogući modeli regulisanja franšiznog ugovora, kao što je pružen pregled aktivnosti srpskog zakonodavca de lege ferenda.

Ključne reči: *ugovor o franšizingu, pravo predugovornog obaveštavanja, ugovorno pravo, zakonodavstvo.*