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Global Practice Guides

Franchising

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Chambers Global Practice Guides

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INTRODUCTION

Contributed by: Babette Märzheuser-Wood, **Dentons**

Dentons is a multinational law firm operating in more than 80 countries with more than 160 offices worldwide. The firm provides a wide range of legal services. Its franchise group, founded by Babette Märzheuser-Wood, has extensive experience in all aspects of franchising and related distribution models across industry sectors including restaurant, fitness, retail, services, hospitality, entertainment, healthcare, education and automotive. Dentons provides high-level strategic advice to both new franchisors and existing franchise clients, drawing on its experience of working with more than 100 different franchise systems in over 50 countries and its extensive international network of franchising experts worldwide.

Contributing Editor

Babette Märzheuser-Wood is the founding partner of the Dentons global franchise group. Ranked in Band 1 for Franchising by Chambers Global and Chambers UK, she has 30 years of franchise industry experience, helping clients expand their franchise businesses in Europe and around the world. Multilingual and qualified in Germany and England, she has transactional experience in over 100 countries. She lectures regularly on franchise law and advised the Russian government on using franchising to kick-start small businesses. Babette advises on master franchise and area development, agreements, unit franchising, franchise disclosure and registration, franchise disputes, taxes, dispute resolution, customer data management and loyalty schemes, anti-trust and competition, law compliance, regulatory compliance and litigation.

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INTRODUCTION

Contributed by: Babette Märzheuser-Wood, **Dentons**

It is the author's great pleasure to introduce the new Chambers Global Guide to Franchising. In this guide, the aim is to provide clear and practical guidance on the most important international franchise laws that will impact the international expansion of a company using the franchise business model. In this introduction, an overview of key aspects of international franchising is provided.

Because franchising is first and foremost a business system, legal regulation varies greatly by jurisdiction. It should not be assumed that a legal structure or solution that has worked in one country can be translated without modification to another jurisdiction. For example, franchise disclosure documents in the United States of America are extremely detailed, running to many hundreds of pages, whereas in Europe the expectation is that a summary is given. In some countries, franchise registration can be a formality whilst in others the authorities examine the documentation and raise queries. Withholding taxes continue to impact financial models, and new franchise laws are being enacted by more and more countries – most recently, the Kingdom of Saudi Arabia and the Netherlands. After 30 years of working in international franchising, the author still comes across new aspects every year.

Why Franchise?

Franchising offers businesses a sophisticated business tool for international expansion. The estimated turnover of franchise companies in the United States now exceeds USD930 billion. As globalisation continues at an unprecedented pace, more companies are looking to expand into the lucrative Middle Eastern, African, Asian and Latin American markets. The costs and risks associated with expansion into new markets can be prohibitive for small and medium-sized companies. Barriers to market entry for foreign investors can be considerable. Franchising in its different forms offers companies a unique opportunity for profitable international growth at a modest cost. John Y Brown Jr grew KFC from 600 stores to 3,500 stores through franchising by accessing the capital of third parties to drive fast growth. Companies do not need significant capital or a large head count to expand globally through franchising. According to a survey of members of the International Franchise Association, 52% of US-based franchise firms had units outside the United States in 2006, rising to 68.74% in 2024. It has been suggested that franchising creates enterprise value faster than traditional business growth. Because internationalisation is inherently risky, firms favour low-resource-commitment modes of entry into foreign markets, such as distribution and franchising. As a result, franchising continues to be a popular alternative to equity funded expansion. The franchisee gains access to a tried and tested business model, backed by a strong global brand. The franchisor relies on the local market knowledge, infrastructure and capital of the franchisee, thereby reducing the foreign market risk. A well-run franchise system creates a win-win partnership.

Definition of Franchising

There is no uniform definition of franchising. Each jurisdiction has a different approach. However, a uniform characteristic of franchising appears to be the existence of a "system". This typically takes the form of an operations and marketing plan controlled by the franchisor. This principle originates in the United States of America. At the federal level, the Federal Trade Commission (FTC) Franchise Rule uses the concept of "control", where "…the franchisor has the right to exert a significant degree of control over the franchisee's method of operation". Various US states follow the FTC Franchise Rule's definition but add the concept of a marketing plan for further clarification, referring to a "marketing plan or system prescribed or suggested in substantial part by a franchisor".

The US definition has influenced the approach to defining franchising in a number of international jurisdictions, such as Australia (where the Trade Practices (Industry Code – Franchising) Regulation states that "the right to carry on the business of offering or supplying goods or services in Australia, under a system or a marketing plan substantially determine controlled, is suggested by the franchiser or an associate of the franchiser") and Canada (Alberta uses the concepts of "a marketing or business plan prescribed by the franchisor" and "significant operational control"), but other countries have taken their own unique route. One of the broadest definitions is found in France, where the Doubin Law on pre-contractual disclosure (Article L330-3 of the French Commercial Code) applies to any person who makes a trade name, trade

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mark or commercial sign available to another person and requires that other person to operate with an exclusive or quasi-exclusive commitment. In Indonesia, a franchise is defined more narrowly as a special right to use a proven, successful business system (where the system must be documented and distinct, with written standards and proven profitability for at least three consecutive years – supported by audited accounts for the past two years showing a profit – and registered intellectual property) for marketing goods and/or services, supported by an intellectual property agreement. Most definitions also include the payment of a fee and the licensing of intellectual property. The common elements of a franchise definition therefore appear to be that there is an agreement between the franchisor and franchisee, pursuant to which the franchisee is authorised to use the intellectual property of the franchisor and the business system of the franchisor in return for making a payment.

It is important to pay close attention to the precise definition of franchising in the target market, to avoid creating an "accidental franchise". Equally, it is possible that a business system that is considered a franchise in one country may not be permitted to start franchising in another country, until it has met the profitability or pilot operations requirement. For example, in China the 2 + 1 rule requires that a company cannot to be registered as a franchisor until they have operated two outlets for one year.

Why is Franchising Regulated?

There are more than 30 countries in the world with specific franchise laws. These laws seek to protect local franchisees from entering into a long-term commitment to invest in a franchise business without full and frank disclosure of all material facts. A successful franchise agreement requires long-term collaboration based on mutual trust. In view of the significant investment and long-term commitment required from the franchisee, many countries in the world recognise the need to regulate the formation and content of the franchise agreement. The sale of a franchise can be compared to the sale of securities or investments, and the disclosure document can be viewed as taking the function of a mandatory prospectus.

Franchise regulation takes three principal forms.

- Disclosure obligation: A large number of countries impose a legal obligation on the franchisor to make full and frank disclosure of key commercial and legal information about the franchised business.
- Registration: An obligation to register the franchise exists in the USA and certain Asia-Pacific (APAC) countries. Australia has recently introduced a simple form. Some registration processes are complex and require translation into the local language, so franchisors need to factor the time required to satisfy these requests into their timetables.
- Relationship laws: Legislation designed to blacklist unfair terms in franchise agreements is on the increase. It is important to ensure that the franchise agreement is reviewed for compliance with these relationship laws.

Franchise Disclosure Obligations

The most important legal obligation of the franchisor is that of disclosure. More than 30 countries in the world have formal franchise disclosure laws. Most civil law countries recognise a general obligation of disclosure based on the principle of good faith but do not specify what is to be disclosed. The franchise disclosure document typically contains two elements. Firstly, information about the business opportunity (including financial information) must be given. Secondly, disclosure of the franchise agreement is required, highlighting important obligations of the franchisee.

Typical franchise disclosure items

Typical franchise disclosure items include:

- information about the business, including its history and the franchise opportunity;
- financial information about the franchisor, such as audited accounts;
- details about disputes;
- information about the fees and other charges payable by the franchisee;
- details of intellectual property licensed; and
- an overview of important contractual obligations such as restrictions on competition, renewal and termination provisions, and buyout options.

Some countries require a market study – for example, France and Belgium. This can be time-consuming to prepare if the business has never traded in the terri-

tory. It is important to carefully check the full list of required disclosure items applicable to the target country. It is not recommended to provide a franchisee in one country with financial data based on experience gained in another country.

Timing of franchise disclosure

Franchise disclosure must generally be made a certain number of days before entering into the franchise agreement or paying money – typically between 10 and 30 days. Some countries allow a deposit to be paid – for example, Canada (Ontario; CAD50,000). Most countries do not permit the making of any payment. Spain even prohibits the entry into a pre-contract.

Remedies available to the franchisee if no disclosure has been made

It is important to understand the rights and remedies available to the franchisee if there has been a failure to make the required disclosure. Typically, failure to disclose gives the franchisee the right to rescind the agreement and ask for both a refund of payments and damages. Some countries specify for time period for the exercise of these rights. For example, in Canada the period is two years. In other jurisdictions, such as France, it can be a defence that the franchisee was an experienced operator and did not rely on the disclosure information. Some countries, such as China and Korea, impose administrative fines.

Franchise Registration

Outside the USA, the registration of a franchise agreement is less common. Franchise registration should not be confused with the obligation to register the trade mark licence or the requirement to own a registered trade mark. Some jurisdictions have followed the example of the USA and require the franchise agreement to be registered with a government body before franchises can be offered for sale. Occasionally, registration is made after the franchise agreement has been concluded – for example, in Russia and China. In Indonesia, it is the obligation of the franchisee to register. It is generally in the best interest of both parties to comply with franchise registration obligations to ensure that the franchise agreement cannot be invalidated. Without a registered franchise, some government bodies can take the view that foreign exchange payments cannot be processed.

Relationship Laws

An increasing number of countries require a franchise agreement to have a certain minimum amount of content. Typically, these are commonsense requirements, obligating the parties to clearly document the most important rights and obligations that arise between them – such as, for example, the territory of operation, the duration of the agreement and the dispute resolution mechanism. Some countries will reject the registration if these terms are not present.

Blacklisting unfair terms in franchise agreements is a relatively new trend. Countries such as France, Germany and Italy use fair trading laws to ensure that the franchise agreement is fair and balanced. In Germany, any provision in a franchise agreement that deviates from the German Civil Code can be challenged and requires justification. In France and Italy, the competition authorities have the power to investigate whether the franchise agreement is fair and balanced. Franchisees can raise a complaint and require unfair provisions to be struck out. The leading case in France is that of Subway, where the French competition authorities struck out an arbitration clause that would have required the franchisee to arbitrate in New York. In Italy, a group of franchisees filed a complaint against McDonald's for unfair practices. McDonald gave undertakings to the authorities to discontinue certain practices.

Other countries, such as Saudi Arabia, the Netherland and Malaysia, require specific rights and obligations to be included in the franchise agreement, such as approval rights for the franchisee, protection against termination for minor breaches and protection against non-renewal without good cause. In the Netherlands, significant system changes are subject to consent requirements if the costs exceed an agreed threshold.

Franchising and Competition Laws

Franchise agreements invariably include restrictions on competition. In a typical international franchise relationship, the franchisor would grant an exclusive territory, and the franchisee would undertake not to operate a competing business. In addition, most fran-

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chisors impose nominated suppliers for critical goods and services, or nominate an affiliate as the sole supplier for certain contract goods and services.

In the United States of America, the authorities apply the "rule of reason", whereby the practical impact of the restrictions on competition contained in the franchise agreement determines if the restrictions are permitted or not. In the European Union, restrictions on competition contained in vertical agreements, such as franchise agreements, are prohibited and require an exemption to subsist. Most franchise systems fall below the market size threshold of 15% where the authorities intervene. Even large franchisors, such as Burger King and Subway, have not reached that market share. This protection does not apply to so-called hardcore restrictions. Those are restrictions on competition, such as price fixing, that are deemed inherently detrimental to consumers and are therefore prohibited regardless of market share. The EU vertical restraints block exemption (VBER) sets out in detail permitted and prohibited restrictions.

A common question concerns the maximum permitted duration of purchase ties and other exclusivity obligations in franchise agreements. Under the VBER, these are permitted for five years. However, pursuant to the case law of the European Court of Justice in its landmark decision in Pronuptia of Paris, it has been clarified that longer restrictions are permitted to the extent that they are necessary to safeguard the uniform quality standards and appearance of those operating in a franchise system. Therefore, the requirement that franchisees purchase certain distinctive goods only from approved sources can often be justified for more than five years.

Duration, Minimum Term and Renewal

Franchise agreements are typically long-term contracts. They often have a duration of between 10 and 20 years. Termination rights are therefore important from the point of view of both parties. Many franchisors reserve to themselves extensive rights of termination for breach by the franchisee, but will deny to the franchisee the right of early termination. A number of countries, such as Germany, impose a statutory requirement that both parties must be permitted to terminate the franchise agreement for material breach.

Some jurisdictions require a minimum or maximum term for a franchise agreement – for example, France (ten years maximum) and Korea (ten years minimum). Other jurisdictions, such as Saudi Arabia, prohibit termination of the franchise agreement without good cause. This follows the tradition of the commercial agency laws, protecting local companies from termination without compensation.

Getting Paid

It is important to verify whether the target territory has foreign exchange regulations that may prevent the franchisee from paying franchise fees in a foreign currency. Countries such as South Africa and Azerbaijan continue to regulate currency outflows, and permits may be required to pay franchise fees. Some countries impose a maximum permitted amount that can be paid by way of royalties to foreign licensors – for example, Nigeria and Pakistan.

Withholding Taxes

Withholding taxes can significantly impact payment flows. Most countries impose a withholding tax on royalty and technical service fee payments to foreign recipients. The tax amount can range from 5% to 25%. Franchisors will typically seek to impose on the franchisee an obligation to gross up payments, thereby increasing the amounts payable by the amount of the tax. Where withholding taxes are high, this can be onerous on the franchisee. Arguably, the franchisee should not pay a tax that is intended to be paid by the franchisor. The franchisee may not be able to receive a tax credit for this payment, and it may not be able to deduct it as an expense. The franchisor should typically be able to receive a tax credit if it is a profitable business.

Some countries have an excellent network of double tax treaties enabling franchisors to reduce the amount of withholding taxes that they have to pay. For companies that franchise internationally on a broad basis, it is therefore important to consider where the franchisor entity should be based.

Conclusion

No guidebook can replace due diligence and advice from specialist local counsel with experience in franchising.

AUSTRALIA

Law and Practice

Contributed by:
Warren Scott, Stewart Levitt, Erik Purcell and Lachlan Speirs
ARCHER SCOTT Lawyers

Contents

ARCHER SCOTT Lawyers is a full-service, globally connected, Australian law firm. Internationally recognised franchising law expert Warren Scott is the national managing partner of this fast-growing law firm, which has offices in Melbourne, Adelaide and Sydney (via its association with Levitt Robinson Lawyers), and provides premium national support and service to national and international clients. Lawyers now at ARCHER SCOTT have advised leading Australian and international franchise brands – including Formula 1, Boost Juice, Silk Laser Clinics, Jetts Fitness, Back in Motion Physiotherapy, Laser Plumbing & Electrical, Priceline Pharmacy, and Price Attack – on the development, structuring, and expansion of their franchise networks, as well as on network sales. Lawyers at ARCHER SCOTT and its associated firm Levitt Robinson have also acted in significant litigation matters, including a class action on behalf of 7-Eleven franchisees and litigation involving the Link Business Broking franchise.

Authors

Warren Scott is an internationally recognised expert in franchising law and M&A, with a Master's in Commercial Law from the University of Melbourne. He has worked on some of the most prominent franchising M&A, including the sale of Jetts' Fitness to private equity-backed Fitness First/Goodlife, the sale of Back in Motion Physiotherapy group to an ASX-listed purchaser, and the sale of Laser Plumbing & Electrical to O'Brien. Warren advises on all aspects of setting up a franchise, growing it and selling the entire network, and clients value his long-term approach to building value.

Stewart Levitt is a leader in commercial litigation, including franchising-related matters. He commenced a class action proceeding in early 2018, and a settlement was negotiated in mid-2021 for AUD98 million, the first class action "win" against 7-Eleven anywhere in the world. Stewart continues to represent the interests of franchisees across the spectrum of franchised goods and services, and consulted with the Morrison government in relation to Franchising Code reform.

Erik Purcell is an associate at ARCHER SCOTT and has been involved in a range of franchise advisory work, as well as franchising litigation. Having started his own wine bar at age 21, Erik has an interest in entrepreneurship and the hospitality industry, having signed a lease himself and employed people in his business. This gives him a unique perspective for a mid-level lawyer. He still owns his wine bar, which operates under management.

Lachlan Speirs is a graduate lawyer at ARCHER SCOTT. The son of third-generation dairy farmers, he grew up working in his family's business. This background gives him a practical, grounded perspective on commercial operations and business relationships. Lachlan's legal experience to date has included franchising advice and litigation.

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1. An Introduction to Franchising

1.1 Franchise Market Overview

The franchising business segment in Australia represents AUD174 billion in economic activity. This includes over 1,200 franchise networks, with more than 94,000 individual franchised outlets, employing over 565,500 Australians across the country.

Key brands in the Australian market include McDonald's, Harvey Norman, Boost Juice, 7-Eleven, Priceline Pharmacy, Laser Clinics Australia and Jim's Group, covering food and beverage, furniture retail, health, beauty and a range of services.

1.2 Franchise Regulation

Australia is home to arguably the highest level of franchising regulation in the world.

Over the past decade, franchising protection for franchisees has become highly politicised, with the Labor party and the Liberal and National parties competing to position themselves as offering the strongest protections for franchisees.

The Regulator

The regulator of franchising in Australia is the Australian Competition and Consumer Commission (ACCC).

Franchising Code

The key regulatory document is the Franchising Code of Conduct, which is a regulation under the federal Competition and Consumer Act 2010 (the Act).

A new version of the Franchising Code came into effect on 1 April 2025, under which new rules apply to franchise agreements that are entered into, extended, renewed or transferred from 1 April 2025. For these agreements, new rules apply from 1 April 2025 and from 1 November 2025. Previous versions of the Code remain applicable to franchising agreements entered into before these dates, depending on their terms.

Australian Consumer Law

The Act also contains the Australian Consumer Law, which sets out consumer protections. While not specific to franchise businesses, many provisions have application in a franchising context.

Other Relevant Laws

Franchisors and franchisees may have obligations under other legislation, such as:

- the Fair Work Act 2009;
- the Australian Securities and Investments Act 2001;
- Australia's tax laws; and
- state and territory licensing schemes.

Federal, State and Territory Laws

Australia has both State and Territory laws, as well as federal laws, so when doing business across more than one State or Territory in Australia, it should not be assumed that there is consistency of laws.

When the Franchising Code Does Not Apply

All or some parts of the Franchising Code may not apply to a franchising agreement or the specific circumstances, with the following examples.

New vehicle dealership agreements
There are specific parts of the Code that only apply to new vehicle dealership agreements. These are agreements where one party is a motor vehicle dealership that deals mostly in new passenger vehicles or new light goods vehicles, or both.

When another mandatory industry code applies
The Franchising Code does not apply to a franchise agreement that is covered under another mandatory industry code, such as the Oil Code of Conduct.

Exceptions are the Unit Pricing Code and the Food and Grocery Code.

If sales covered by the agreement are less than 20% of turnover
The Franchising Code does not apply if the agreement is for goods or services that are:

- substantially the same as those supplied by the franchisee for at least two years immediately before entering the franchise agreement; and
- likely to provide no more than 20% of the franchisee's gross turnover for goods or services in the first year of the franchise.

Co-operatives registered under a State or Territory law
The Franchising Code does not apply to franchise agreements that form part of arrangements under which the franchisee is a member of a co-operative registered under the Co-operatives National Law or the Co-operatives Act 2009 (WA).

Mutual entities
The Franchising Code does not apply to franchise agreements that form part of arrangements under which the franchisee is a member with voting rights of a mutual entity.

1.3 Definition of a Franchise Agreement
The definition of a franchise agreement is set out in Section 5 (1) of the Franchising Code of Conduct, as an agreement:

- that takes the form, in whole or part, of any of the following:
  (a) a written agreement;
  (b) an oral agreement;
  (c) an implied agreement; and
- in which a person (the franchisor) grants to another person (the franchisee) the right to carry on the business of offering, supplying or distributing goods or services in Australia under a system or marketing plan substantially determined, controlled or suggested by the franchisor or an associate of the franchisor; and
- under which the operation of the business will be substantially or materially associated with a trade mark, advertising or a commercial symbol:
  (a) owned, used or licensed by the franchisor or an associate of the franchisor; or
  (b) specified by the franchisor or an associate of the franchisor; and
- under which, before starting or continuing the business, the franchisee must pay or agree to pay to the franchisor or an associate of the franchisor an amount including, for example:
  (a) an initial capital investment fee;
  (b) a payment for goods or services;
  (c) a fee based on a percentage of gross or net income, whether or not called a royalty or franchise service fee; or
  (d) a training fee or training school fee;
- but excluding:
  (a) payment for goods and services supplied on a genuine wholesale basis;
  (b) repayment by the franchisee of a loan from the franchisor or an associate of the franchisor;
  (c) payment for goods taken on consignment and supplied on a genuine wholesale basis; or
  (d) payment of market value for purchase or lease of real property, fixtures, equipment or supplies needed to start business or to continue business under the franchise agreement.

A motor vehicle dealership agreement is taken to be a franchise agreement regardless of whether the elements of the definition set out above are satisfied.

2. Franchise Disclosure

2.1 Mandatory Disclosure

The provision of a disclosure document is mandatory when granting or extending a franchise agreement.

The form of the disclosure document is mandated in the Franchising Code of Conduct.

In addition to the disclosure document itself, the following are mandatory:

- the franchisor must give certain information and documents to a potential franchisee before a franchise agreement is signed;
- the franchisor must give the franchisee specific information and documents during the franchise agreement;
- franchisees can back out of new franchise agreements within a certain timeframe, known as the cooling-off period;
- franchisors and franchisees must act in good faith towards each other;
- franchisors and franchisees can resolve a franchising dispute without going to court;
- specific steps must be followed if either the franchisor or franchisee wants to end the franchise agreement early; and
- franchisors must create a franchise profile and publish key disclosure information on the franchise disclosure register.

2.2 Consequences of a Failure to Disclose

Where a franchisor fails to provide a disclosure document at all, the franchise agreement is voidable (rather than being void). The franchisee can apply to the court for termination of the agreement and for damages to be awarded.

Where a franchisor provides a disclosure document but it omits some required information, the remedies available to the franchisee will depend on the nature and extent of the shortcomings. Termination will only be ordered where the omissions or shortcomings are sufficiently material to justify that outcome; otherwise, damages may be awarded with or without termination.

Monetary penalties can be imposed by the ACCC where the franchisor fails to provide a disclosure document or where the disclosure is found to be deficient.

2.3 Franchise Disclosure Exemptions

There are no exemptions from the requirement to provide disclosure documents on the basis that a franchisee is considered sophisticated.

Historically, there was an exemption for the grant of a single franchise, intended to allow an international franchisor to enter into a master franchise agreement for Australia without the need to comply with the Franchising Code. This exemption has now been abolished.

2.4 Franchise Disclosure Language/ Translation Requirements

In Australia, disclosure documents should be prepared in English, which is the national language of Australia. There is no requirement for translation into any other languages.

3. Franchise Registration

3.1 Mandatory Registration

Pursuant to Chapter 2, Part 7, Division 2 of the Franchising Code, most franchisors are required to register on the ACCC Register and to provide certain information about the franchise offer.

3.2 Franchise Registration Process

The registration process requires certain franchisors to create a franchise profile on the ACCC Register.

Each year, those franchisors who are required to be on the Register also need to confirm or update their franchise profile before the 14th day of the fifth month following the end of the franchisor's financial year.

3.3 Consequences of a Failure to Register

Financial penalties apply for a failure to obtain and maintain the registration.

4. Other Requirements

4.1 Past-Profitability Requirements

There is no obligation for the franchisor to demonstrate that the business offered under a franchise agreement has operated profitability for any prior period of time, nor is there any requirement for the franchisor to have had other locations in operation prior to the franchise being granted.

5. Duration, Renewal and Termination

5.1 Duration of a Franchise Agreement

There is no minimum or maximum duration for a franchise agreement in Australia. The only requirements for duration relate to the termination process (see **5.3 Termination of the Franchise Agreement**).

5.2 Franchise Renewal

Franchisees do not have a statutory right to renewal nor to compensation.

However, where a franchisor does not offer a renewal of the franchise agreement, the franchisee is relieved of their non-compete and restraint obligations. This means the franchisee can de-brand and continue to trade, provided they do not use any intellectual property or confidential information belonging to the franchisor.

5.3 Termination of the Franchise Agreement

The circumstances in which a franchisor can terminate a franchise agreement are highly regulated. Typically, a breach notice and rectification opportunity is the starting point, and a franchisor can only safely terminate if the relevant breach is not rectified in that period.

The Franchising Code sets out limited circumstances in which a franchisor can terminate on a more truncated basis, including solvency issues, criminal convictions and other similarly serious matters.

Franchisees have relatively few termination rights after the initial cooling-off period, which applies immediately after signing the agreement.

6. Restrictions on Competition in Franchise Agreements

6.1 Treatment of Competition Restrictions in Franchise Agreements

Territory restrictions are permitted in Australia, provided they do not lead to a substantial lessening of competition in an overall market (not just the franchise network).

Purchase ties are also permitted in Australia, provided they do not lead to a substantial lessening of competition in an overall market (not just the franchise network). There is also a restriction on resale price maintenance, meaning that a franchisor cannot require a franchisee to purchase a product and then require them to resell it above a particular amount.

Non-compete/restraints are enforceable in Australia, provided they are no more broad than is necessary to protect the franchisor's legitimate business interests. This is assessed on a case-by-case basis. In some States of Australia, non-compete clauses must be drafted in a cascading manner, as unenforceable aspects must be severable and the balance must be an enforceable restraint. In other States of Australia, there are laws allowing a court to rewrite an otherwise unenforceable clause.

6.2 Exclusive Territories and Competing Businesses

Exclusive territories are permitted, subject to compliance with Australia's competition laws.

Furthermore, the franchisor is normally entitled to a reasonable restraint that would apply during the term of the franchise agreement and for a period afterwards; this period depends on each particular factual matrix.

6.3 Requiring Franchisees to Purchase Specific Goods and Services

Franchisees can be required to purchase specific goods and services from the franchisor or its nominated suppliers, provided that in doing so the franchisor complies with Australian competition laws.

6.4 Channel Reservation
Franchisors are permitted to reserve channels, such as the internet, to themselves, but must clearly describe this in the disclosure document provided before the franchise agreement is entered into.

6.5 Vertical Agreement Block Exemptions
Vertical agreement blocks are considered in the context of competition laws generally, and do not generally require exemption.

7. Choice of Governing Law

7.1 Possibility of a Franchisor Stipulating Non-Local Law
The franchisor in Australia may choose any relevant law they prefer, including an overseas law. Notwithstanding this choice, the Franchising Code of Conduct and the Act and various other laws in Australia will apply, as they are focused on the conduct occurring in Australia.

7.2 Local Law Requirements
There is no requirement for franchise agreements in Australia to be governed by local law.

7.3 Mandatory Content
There are no mandatory content requirements under Australian law.

7.4 Prohibited Provisions in Local Law
Several provisions are prohibited in Australian franchise agreements.

Some provisions are contained in the Franchising Code, such as a provision that the franchisee pays the legal costs of the entry into the franchise agreement.

However, the more extensive prohibitions on contractual provisions currently arise as a result of the general laws against unfair contract terms in standard form contracts.

8. Dispute Resolution

8.1 Enforcement of Foreign Judgments
Australia is party to the New York Convention. If it is likely that an overseas award will need to be enforced in Australia, it is recommended that an arbitral award is provided for as it is the easiest path to enforcement in Australia.

9. Payment and Taxes

9.1 Restrictions or Limits on Franchisee Fees and Royalties
Australian law does not prohibit any particular types of fees under a franchise agreement. However, under Australian laws, if an amount is a penalty rather than a pre-estimate of loss, it will not be enforceable and certain third-party costs are only to be charged on a pass-through basis, such as credit card fees. These issues are not franchise-specific, and each business should consider any relevant applicable laws that relate generally to their business model.

9.2 Withholding Tax
Withholding tax applies to royalties and other payments where payments are exiting Australia. Tax advice should be obtained.

9.3 Foreign Currency Controls
Relatively few foreign currency controls exist, but certain arrangements apply in relation to jurisdictions based on relevant international considerations from time to time.

10. Execution Formalities

10.1 Authentication, Notarisation, Witnessing, Etc
If the franchisor or franchisee is a company, the Corporations Act 2001 (Cth) sets out rebuttable presumptions about the proper execution of documents. Where a company has more than one director or a company secretary, execution should be carried out by two officers; this can be either two directors or one director and one company secretary.

Deeds should be signed, sealed, delivered and witnessed by adult witnesses who have no relationship to the signatory.

10.2 Electronic Signatures

Electronic signatures are valid in Australia. The laws in relation to electronic signing need to be complied with.

10.3 Stamp Duties

There are stamp duties and other taxes in Australia. Stamp duty is a state-based tax, so care should be taken to check the position in each State or Territory in which the franchise will operate.

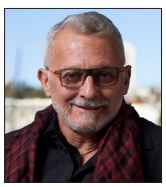
Trends and Developments

Contributed by:
Warren Scott, Stewart Levitt, Erik Purcell and Lachlan Speirs
ARCHER SCOTT Lawyers

ARCHER SCOTT Lawyers is a full-service, globally connected, Australian law firm. Internationally recognised franchising law expert Warren Scott is the national managing partner of this fast-growing law firm, which has offices in Melbourne, Adelaide and Sydney (via its association with Levitt Robinson Lawyers), and provides premium national support and service to national and international clients. Lawyers now at ARCHER SCOTT have advised leading Australian and international franchise brands – including Formula 1, Boost Juice, Silk Laser Clinics, Jetts Fitness, Back in Motion Physiotherapy, Laser Plumbing & Electrical, Priceline Pharmacy, and Price Attack – on the development, structuring, and expansion of their franchise networks, as well as on network sales. Lawyers at ARCHER SCOTT and its associated firm Levitt Robinson have also acted in significant litigation matters, including a class action on behalf of 7-Eleven franchisees and litigation involving the Link Business Broking franchise.

Authors

Warren Scott is an internationally recognised expert in franchising law and M&A, with a Master's in Commercial Law from the University of Melbourne. He has worked on some of the most prominent franchising M&A, including the sale of Jetts' Fitness to private equity-backed Fitness First/Goodlife, the sale of Back in Motion Physiotherapy group to an ASX-listed purchaser, and the sale of Laser Plumbing & Electrical to O'Brien. Warren advises on all aspects of setting up a franchise, growing it and selling the entire network, and clients value his long-term approach to building value.



Stewart Levitt is a leader in commercial litigation, including franchising-related matters. He commenced a class action proceeding in early 2018, and a settlement was negotiated in mid-2021 for AUD98 million, the first class action "win" against 7-Eleven anywhere in the world. Stewart continues to represent the interests of franchisees across the spectrum of franchised goods and services, and consulted with the Morrison government in relation to Franchising Code reform.

Erik Purcell is an associate at ARCHER SCOTT and has been involved in a range of franchise advisory work, as well as franchising litigation. Having started his own wine bar at age 21, Erik has an interest in entrepreneurship and the hospitality industry, having signed a lease himself and employed people in his business. This gives him a unique perspective for a mid-level lawyer. He still owns his wine bar, which operates under management.

Lachlan Speirs is a graduate lawyer at ARCHER SCOTT. The son of third-generation dairy farmers, he grew up working in his family's business. This background gives him a practical, grounded perspective on commercial operations and business relationships. Lachlan's legal experience to date has included franchising advice and litigation.

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Franchising in Australia: An Introduction

Australia is arguably the most highly regulated environment in the world in which to conduct a franchised business.

This article outlines an Australian trend whereby businesses that would traditionally have utilised a franchise model to grow and develop their business are looking to alternative models that give them greater control over their network, and align them better to all stakeholders.

History of franchising in Australia

In Australia 20 years ago, a franchise agreement could largely contain any terms that the franchisor considered appropriate, provided an explanatory disclosure document was given explaining the relationship and the terms of the agreement.

A common theme of the franchisor-franchisee relationship was that the franchisor wanted to make sure that the franchisee was obliged to comply with the franchise system and represent the brand in a manner consistent with the franchisor's brand positioning.

Over the past 20 years, successive governments in Australia have heavily regulated the franchising sector on the premise of providing adequate protections for potentially vulnerable franchisees, leading to Australia becoming perhaps the most regulated environment for franchising in the world.

Good faith

Pursuant to the Franchising Code, each party to a franchise agreement must act towards another party with good faith, within the meaning of the unwritten law from time to time, in respect of any matter arising under or in relation to:

- the franchise agreement; and
- the Code.

The obligation to act in good faith contained within the Code extends to negotiations and discussions before the parties enter into a franchise agreement.

"Good faith" is not defined in the Franchising Code, which provides that "each party to a franchise agreement must act towards each other with good faith, within the meaning of the unwritten law". The "unwritten law" means the law developed in the Australian courts through case law or common law.

The High Court of Australia has held that good faith involves "fairness in dealings between contracting parties" (*Commonwealth Bank of Australia v Barker* [2014] HCA 32).

Similarly, the Federal Court of Australia has held that the obligation to act in good faith means to:

"act honestly and with a fidelity to the bargain; an obligation not to act dishonestly and not to act to undermine the bargain entered or the substance of the contractual benefit bargained for; and an obligation to act reasonably and with fair dealing having regard to the interests of the parties (which will, inevitably, at time conflict) and to the provisions, aims and purposes of the contract, objectively ascertained" (*Paciocco v*

Australia and New Zealand Banking Group Limited [2015] FCAFC 50).

The obligation to act in good faith includes the following elements:

- honesty;
- fairness;
- not acting arbitrarily;
- co-operating to achieve the purpose of the franchise agreement;
- reasonableness; and
- having regard to the interests of the other party.

While the Franchising Code does not define "good faith", it provides that a court may consider whether a party acted honestly and not arbitrarily, and whether it co-operated to achieve the purpose of the franchise agreement when assessing whether that party acted in good faith.

The development of the law of good faith means that franchisors cannot simply look to their own interests in consistency within the franchise system to justify actions and decisions. While a party must take the interests of the other party into account, the obligation to act in good faith does not prevent a party from acting in its own legitimate commercial interests. Consequently, a party is not required to act in the interests of the other party at the expense of its own interests.

The view of the Australian Competition and Consumer Commission (ACCC) is that conduct is prohibited where it harms the franchisee but is not necessary for the protection of the franchisor's interests. The Federal Court of Australia has accepted that view, and held that the duty to act in good faith does not enable a party to make a general claim that there has been a failure to act in good faith. Where a franchisee complains that a franchisor has not acted in good faith, the Court has held that "the focus of an obligation of good faith should ordinarily be on a franchisor's use of powers and opportunities available by reason of the franchise relationship" (*Australian Competition and Consumer Commission v Ultra Tune Australia Pty Ltd* [2019] FCA 12).

Unfair contract terms

Under the Australian Consumer Law, contract terms in a standard form small business or consumer contract (including franchise agreements) are deemed unfair if they:

- cause a significant imbalance in the rights and obligations of the parties under the contract;
- are not reasonably necessary to protect the legitimate interests of the party advantaged by the term; and
- would cause detriment to the other party if applied or relied upon.

Prior to 9 November 2023, if a court or tribunal found that a standard form small business franchise agreement contained a term that was "unfair", the term would be void, meaning it would not be binding on the parties.

Since 9 November 2023, businesses are prohibited from entering into standard form contracts with small businesses or consumers that include unfair contract terms. They are also prohibited from applying or relying on (or purporting to apply or rely upon) unfair contract terms in contracts entered into or renewed, or any unfair contract terms that are varied, on or after 9 November 2023.

The ACCC can now seek significant financial penalties from businesses that breach these prohibitions. Subject to the transitional arrangements for standard form contracts entered into before 9 November 2023, entering into contracts with, or relying or purporting to rely upon, unfair contract terms may now be subject to significant penalties. This means that many provisions that would typically have previously been seen in franchise agreements are now unlikely to be permitted, such as:

- entire agreement provisions;
- set off for the franchisor only; and
- unilateral variation provisions.

Perhaps most troubling, the ACCC has expressed a view that restraint of trade and non-competition clauses may infringe the unfair contract laws.

Unconscionable conduct

Good faith (discussed above) and unconscionable conduct are different legal concepts, both of which must be complied with by franchisors in Australia.

Pursuant to Section 20 of the Australian Consumer Law, a person in trade or commerce must not engage in conduct this is unconscionable, within the meaning of the unwritten law from time to time.

This is referencing the fact that there is no codification of what will amount to unconscionable conduct; what amounts to unconscionable conduct will be determined by the courts in Australia on the merits and circumstances of each occasion in which are asked to make an assessment.

However, Sections 21 and 22 of the Australian Consumer Law provide the following.

- First, that the court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention of the duty not to engage in unconscionable conduct.
- Second (without limiting the matters that the court may have regard to), the court may have regard to the following (this list relates to suppliers, and similar provisions apply in respect of acquirers):
  - (a) the relative strengths of the bargaining positions of the supplier and the customer;
  - (b) whether, as a result of conduct engaged in by the supplier, the customer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;
  - (c) whether the customer was able to understand any documents relating to the supply or possible supply of the goods or services;
  - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the customer or a person acting on behalf of the customer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services;
  - (e) the amount for which, and the circumstances under which, the customer could have acquired identical or equivalent goods or services from a person other than the supplier;
  - (f) the extent to which the supplier's conduct towards the customer was consistent with the supplier's conduct in similar transactions between the supplier and other like customers;
  - (g) the requirements of any applicable industry code;
  - (h) the requirements of any other industry code, if the customer acted on the reasonable belief that the supplier would comply with that code;
  - (i) the extent to which the supplier unreasonably failed to disclose to the customer any intended conduct of the supplier that might affect the interests of the customer, or any risks to the customer arising from the supplier's intended conduct (ie, risks that the supplier should have foreseen would not be apparent to the customer);
  - (j) if there is a contract between the supplier and the customer for the supply of the goods or services: the extent to which the supplier was willing to negotiate the terms and conditions of the contract with the customer; the terms and conditions of the contract; the conduct of the supplier and the customer in complying with the terms and conditions of the contract; and any conduct that the supplier or the customer engaged in, in connection with their commercial relationship, after they entered into the contract;
  - (k) without limiting the above, whether the supplier has a contractual right to vary unilaterally a term or condition of a contract between the supplier and the customer for the supply of the goods or services; and
  - (l) the extent to which the supplier and the customer acted in good faith.

In the matter of *ACCC v Productivity Partners Pty Ltd* (trading as Captain Cook College), the High Court of Australia has confirmed that the Act does not require a court to evaluate the impugned conduct by reference to the presence or absence of the circumstances the Act specifies, irrespective of the relevance of those circumstances to the impugned conduct or to the cases as put by the parties to the court. However, the Court has made clear that, insofar as a factor in the Act is applicable, "that matter must be considered. If

not applicable, the matter need not be considered". The judgment goes on to say that the Act does not "codify the values of Australian statute and common law" nor "resolve such difficulties in its application". The provision articulates "a list of wide-ranging matters to consider when applying these values".

It is the totality of the circumstances relevant to the conduct being considered which dictates if any matter set out in the Act applies.

This case confirms that a matter will not be characterised as unconscionable unless it is "outside societal norms of acceptable commercial behaviour [so] as to warrant condemnation as conduct that is offensive to conscience. Some form of moral turpitude remains an important measure of unconscionable conduct".

Vicarious liability

Historically, the view was that employees of the franchisee were the responsibility of the franchisee alone.

In Australia, there has been growing recognition in recent years that franchisors may bear vicarious liability for the conduct of their franchisees, particularly in relation to obligations owed to franchisee employees. Franchisors should be conducting audit-like activities to monitor what franchisees are doing to comply with employment laws; failing to do so could have significant brand and financial consequences for franchisors.

Manuals and unilateral variation

Historically, manuals were heavily referenced in a franchise agreement and were said to be incorporated in the franchise agreement; therefore, adding to or amending the manual would change the terms of the contract.

After recent changes to the Franchising Code, the ability of franchisors to make unilateral variations to a franchise agreement is now limited, including restricting the ability to amend the manual that forms part of a franchise agreement.

Furthermore, the Franchising Code obliges franchisors to disclose unilateral changes that might occur during the term of the franchise agreement. If a particular unilateral change is not disclosed, it will impact the franchisor's ability to make such a change.

Considering alternatives to franchising

As Australia has arguably become the most regulated franchising environment in the world, some businesses are starting to consider alternative strategies to implementing a franchising strategy in Australia.

Many people consider that the environment in Australia no longer enables a franchisor to have sufficient control over their franchisees due to the regulatory environment restricting contractual protections and prohibiting certain conduct that would historically have occurred to enforce brand standards and systems.

Current and prospective franchisors are starting to assess whether franchising is the best option for them, considering:

- if they will have obligations to the franchisee's employees;
- if they cannot confidently enforce standards; and
- if franchisees can walk away from restraints because they are unfair contract terms or because there has been a decision to move away from a franchise model to a different model and simply take the system knowledge with them.

The two key approaches in Australia are as follows.

- First, the use of a corporate structure with employees being incentivised through bonuses and employee share plans using both short-term and long-term incentives. The Franchising Code does not apply to this arrangement.
- Second, the use of a corporate structure with a number of different classes of shares enabling equity participation for persons who would otherwise be franchisees.

The different classes of shares can divide participation in revenues and profits from a company-wide share down to a share of profit from a single shop or business unit.

Adopting this structure (subject to it being properly implemented) means that the business moves out of an environment where the regulator is the ACCC and instead becomes regulated by the Australian Securities & Investments Commission (ASIC).

If correctly structured, the Franchising Code no longer applies, with regulation under the Corporations Act and related legislation instead taking over.

The level of control improves substantially for the business if it elects not to franchise and instead adopts a corporate structure. It can direct employees to do exactly what they want them to do. Furthermore, this corporate structure provides a higher value business for both the entity that would have been the franchisor and the person who would have been the franchisee.

The following case study is intended to demonstrate this concept.

Case study – Back in Motion

Back in Motion was a physiotherapy franchised business with 64 clinics across Australia and New Zealand. As an aside, it was quite a unique franchise in Australia (and perhaps globally) because it is a health and professional services franchise; many people have considered that medical and health professionals could not successfully be obliged to comply with a franchise system.

Franchises in the Back in Motion network were traditional franchises, with an upfront fee and ongoing royalties and marketing fees paid by franchisees on their revenue.

Once up and running, a single Back in Motion business operating under a franchise agreement might be capable of being sold at up to approximately three x Earnings Before Interest and Tax (EBIT).

The franchisor was considering a sale of its business as the franchisor of the network, and was able to negotiate a sale of not just the franchisor company, but of 100% of the franchisee businesses as well, at the same time to the same purchaser, which was an Australian Stock Exchange-listed company that did not itself operate a franchise system but operated similar businesses.

In this transaction, the value obtained by each franchisee was substantially above three x EBIT, which was a fantastic outcome for the franchisees involved, who could never have individually achieved a financial outcome at that level by selling their individual franchises. The franchisor also benefitted by a share in the upside that was recognised in the former franchisee businesses.

In the transaction, Back in Motion became "unfranchised". Upon the sale date, each franchise agreement was cancelled and instead each former franchisee was granted a unique class of share that related to the physiotherapy clinic from which they operated their former franchise.

The unique share meant that each former franchisee could choose what percentage of their business they wanted to sell and what percentage they wanted to effectively retain to continue to work in a relationship akin to a joint venture with the purchaser company. The unique share also enabled each former franchisee to share in a corresponding percentage of profits related to the business they were working in and managing, now as an employee of the company.

In this model, there is a true symbiotic relationship between the company and the employee, whereby they are both focused on profitability rather than revenue (noting that most franchises take their royalties from the top line whether or not a franchisee business makes any profit).

Choosing a structure or restructuring

An entity that already operates a franchise network does not need to wait for a sale of its entire network to restructure away from franchising to a corporate model. This can be done at any time.

If a business is considering franchising as a business model to grow the business, it should consider all business models before determining if franchising is in fact the best model.

Models other than franchises can include:

- a company with a single class of shares (listed or unlisted);
- a company with multiple classes of shares (listed or unlisted);
- a joint venture (incorporated or unincorporated);
- a partnership (of individuals, companies or trusts); or
- a unit trust, among others.

Conclusion

Franchisors and potential franchisors do not need a franchise-specific lawyer to advise them alone – they require advice about a range of structural options, of which franchising is only one.

Even if franchising is chosen as the relevant business structure, a range of laws apply to operating a franchise structure in Australia.

As Australia is home to many domestic and international franchises, the arrangements that should exist between Australia and other international operations also require consideration, such that globally connected advisers can often add additional value through their experience and networks.

CANADA

Trends and Developments

Contributed by:
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MLT Aikins is a full-service business law firm with more than 350 lawyers and offices in Vancouver, Edmonton, Calgary, Saskatoon, Muskeg Lake Cree Nation, Regina and Winnipeg. The MLT Aikins franchise practice group represents and advises franchisors, franchisees and master franchisees, area representatives and licensors to help them understand, manage and navigate the legal and regulatory requirements that apply to Canadian franchises. The firm advises corporate and franchised brands on establishing, structuring, developing and expanding in Western Canada. It assists new entrants into established franchises, international franchisors expanding into Canada and businesses looking to convert into a franchise model. The group serves a wide range of industries (from quick-service restaurants to regulated professions) at each stage of the franchise cycle – from launch and setup to exit planning and sale. MLT Aikins is a member of the Canadian Franchise Association.

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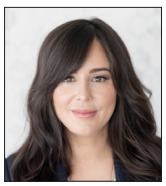

Melissa Cattini is a commercial lawyer and Certified Franchise Executive with a focus in franchise law, mergers and acquisitions and related regulatory compliance. As head of MLT Aikins franchise law practice group, Melissa has significant experience advising franchise systems, including preparation and negotiation of single, multi-unit and development agreements, as well as counselling established and emerging franchisor, master franchisee, equity and multi-unit investor clients across a range of industries for compliance with franchise and applicable regulatory frameworks. Melissa works with businesses at all stages of the franchise cycle – from launch, setup for growth and impact, to maturity, exit strategy planning and sale.

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Recent legal developments in the franchising space across Canada demonstrate that franchise law remains dynamic and ever-evolving. Notable expansion to the scope and nuance to interpretation of franchise disclosure requirements and increased scrutiny of conduct for franchisors and franchise systems is ushering in a phase of complexity in compliance practices. The current era of franchise law is defined by heightened regulation, scrutiny and a growing interplay between changing economic trends and continued technological advances across the country and the globe.

This edition of Trends and Developments begins with legislative updates. Saskatchewan's newly-enacted (but not yet in force) Franchise Disclosure Act ("the Saskatchewan Act") and proposed Regulations aim to enhance cohesion across the regulated provinces of British Columbia, Alberta, Manitoba, Ontario, New Brunswick and Prince Edward Island (collectively, the "Regulated Provinces"), while contemplating certain unique and nuanced procedural obligations of which franchisors should be aware.

Next, we turn to Manitoba's response to the recent Competition Act amendments – ie, the prohibition of certain restrictions and property controls within the commercial leasing context, in contrast with the franchise sector's historical reliance on exclusivity covenants and franchisee expectations of territorial protection. We then touch on British Columbia's recently enacted Business Practices and Consumer Protection Amendment Act (BPCPPA), which introduces changes with implications at the franchise system and franchisee-to-consumer level.

We go on to review two Ontario cases – *Re: The Body Shop Canada Limited (CV-24-00723586-00CL, Endorsement dated December 14, 2024)* ("TBS Canada"),and *2355305 Ontario Inc. v Savannah Wells Holdings Inc., 2025 ONCA 505* ("Jayasena"), providing insight into how fact-specific contexts can qualify or exempt disclosure obligations and emphasising the importance of a considered approach to compliance in the applicable circumstances.

Finally, we conclude with a brief discussion of parallel developments in economic volatility and the proliferation and mandate of technology and AI and the potential implications for franchise systems in 2025. Such developments bring new challenges and opportunities for franchise systems looking to operate proactively and strategically.

Saskatchewan's Franchise Disclosure Act

On 8 May 2024, the Saskatchewan Act received Royal Assent, with The Franchise Disclosure Regulations (the "Saskatchewan Regulations") published on 16 April 2025 and expected to come into force in late 2025 or early 2026. The Saskatchewan Act will align Saskatchewan with other Regulated Provinces requiring mandatory franchise disclosure, but includes notable distinctions and nuances that franchisors must understand when operating or planning to operate in the province.

Saskatchewan's proposed investment threshold, similar to that of British Columbia, is set at CAD5 million, which exempts franchisors from the requirement to provide a disclosure document (Section 6 (8)(i) of the Saskatchewan Act) if the prospective franchisee is investing an amount greater than this threshold. This threshold is higher than Ontario's CAD3 million threshold, limiting the ability of franchisors to rely on disclosure exemptions below that level when operating in Saskatchewan. The Saskatchewan Act and Saskatchewan Regulations also require explicit disclosure of proximity policies and how multiple outlets under the same brand are governed (Subsection 12–14 of the Saskatchewan Regulation).

While most provinces require financial statements to be prepared with the generally accepted accounting principles (GAAP) of the jurisdiction in which the franchise is based, Saskatchewan mandates compliance with GAAP applicable to the franchisor's jurisdiction (Section 7 (3) of the Saskatchewan Regulations). This subtle distinction could be easily overlooked, and franchisors may risk non-compliance unless their financial statements are reviewed and prepared based on this requirement.

The prescribed risk-warning language in Saskatchewan also diverges, omitting the term "expert" and requiring Saskatchewan's statement to appear separately from those of other Regulated Provinces in multi-jurisdictional disclosure documents.

In sum, Saskatchewan's entry into legislated franchise regulation reinforces the benefits of harmonisation, while underscoring the importance of understanding provincial nuances in statutory compliance. Structuring disclosure documents to accommodate these differences while maintaining document precision and traceability will be essential for any franchisor expanding nationally. Franchisors and franchisees operating, or intending to operate, in Saskatchewan should adapt disclosure documents accordingly and seek timely legal and financial advice to ensure precision and continued compliance with the new regime.

Provincial Response to Enhanced Competition Law Scrutiny

Manitoba has enacted The Property Controls for Grocery Stores and Supermarkets Act (Various Acts Amended), SM 2025, c27 ("Manitoba's PCGSS Act") which operates alongside recent federal Competition Act reforms to further regulate and restrict property controls. Effective 3 June 2025, the PCGSS Act targets restrictive covenants, exclusivity clauses and analogous property controls in the grocery sector that are seen to limit competition. It voids most new grocery store property controls going forward and establishes a process for reviewing and, in limited cases, justifying existing ones.

A "property control" includes, with limited exceptions, covenants or exclusivity clauses restricting the sale, ownership, development or use of land as a grocery store or supermarket, granted in favour of an operator or a related party.

Pre-existing property controls are void and unenforceable, unless the agreement is registered on title before 30 November 2025, with registration accepted by Manitoba's Land Titles Office by 30 December 2025. All registered property controls remain subject to the ongoing right of review by the Municipal Board on application by the Minister of Public Service Delivery or any third party. Any person, including private individuals, franchisees or government, will be able to apply to the Minister to request the review of a registered property control. The onus on the business to prove the control is "clearly" in the public interest, beyond private commercial protection for the parties who negotiated it, or risk cancellation, variation or replacement.

Manitoba's PCGSS Act represents a significant departure from standard commercial leasing practices in Manitoba in the grocery retail and franchise sector. For franchisors in the grocery sector, the PCGSS Act necessitates careful contract audits in light of business plans and projections and, where possible or desirable, registration of legitimate protections and readiness to defend them publicly, particularly where tied to site planning or anchor tenant stability.

Manitoba is the first province to adopt such statutory measures, and could serve as a model for other jurisdictions, with the Competition Bureau potentially advocating for similar reforms. Forward-looking franchise systems would be well served by exploring alternative strategies to safeguard market and territory allocations to ensure that policies remain viable and attractive to existing and prospective franchisees.

British Columbia's Business Practices and Consumer Protection Amendment Act

The Business Practices and Consumer Protection Amendment Act (Bill 4, 2025) (BPCPAA) in British Columbia received Royal Assent on 31 March 2025. However, several significant provisions are not yet in force and await future activation by regulation. Among the provisions already in effect are prohibitions in consumer contracts on arbitration clauses, class-action waivers, and terms restricting the posting of online reviews. These restrictions apply retroactively, and render any existing clauses void.

Among other things, the BPCPAA significantly tightens disclosure standards, requiring up-front clarity on pricing, cancellation, renewal, returns and other key terms in consumer-facing contracts. Notably, for non-consumer (business-to-business) contracts, the BPCPAA also limits the enforceability of arbitration and class-action restrictions, but only in cases involving "low-value claims". The monetary value for what constitutes a low-value claim remains to be prescribed by regulation.

Franchisors operating in British Columbia should be proactive and closely audit and update all consumer-facing agreements, including franchisee-to-consumer contracts, and subscription and renewal clauses, ensuring full transparency and removing any prohibited terms. Franchisees, even when acting as intermediaries, must be aware that consumer protections prevail over standard contractual provisions, and it is common practice for franchisors to impose obligations on a franchisee to comply with applicable local laws. Franchisors and franchisees alike should prepare by remaining abreast of regulatory developments, training their teams, and beginning the process of adapting internal processes and manuals ahead of enactment.

Case Law Developments

Re: TBS Canada

In the last weeks of 2024, the Ontario Superior Court of Justice (ONSC) granted an exemption from Ontario's Arthur Wishart Act (Franchise Disclosure), 2000 (AWA) during urgent Companies' Creditors Arrangement Act (CCAA) proceedings. TBS Canada faced severe financial distress after its UK parent entered into administration and was placed under the control of a licensed insolvency practitioner in February 2024, cutting off its funding. With creditor value and hundreds of jobs at stake, the court-supervised sale process set closing deadline of 16 December 2024.

Ordinarily, franchisors in Regulated Provinces must deliver a compliant franchise disclosure document and observe a 14-day cooling-off period before a franchise agreement can be signed. In this case, the ONSC held that strict compliance with the AWA would have jeopardised the sale. Among other factors considered, the buyer, a sophisticated, private equity affiliate with extensive franchise experience, had conducted due diligence for months, negotiated directly with the UK parent company, and was represented throughout by expert franchise counsel. Given these factors, and the public-interest objectives of preserving jobs and business continuity, the court found the disclosure relief justified in the circumstances.

Pertinent takeaways from TBS Canada include the following:

- exemptions to disclosure obligations are rare and fact-specific by design – in this case, an urgent CCAA restructuring proceeding with imminent closing deadlines;
- sophistication counts – the buyer had extensive franchise experience, had conducted lengthy due diligence, and had representation by expert legal counsel throughout, which may be seen as mitigating the need to address what is typically the informational imbalance between franchisor/franchisee in the franchise context;
- public-interest factors – preserving jobs, maintaining operations and maximising creditor recovery may have influenced the ONSC in granting the exemption; and
- intact disclosure obligation – the generalisability of this case was limited, with the AWA protective purpose remaining unchanged for typical franchisees and small-business investors.

While fact-specific and arising in a restructuring context, the TBS Canada decision signals a narrow judicial willingness to flex franchise disclosure rules when the counterparty is well advised, the timeline is critical, and broader stakeholder interests are at risk. For franchisors, this is not a general relaxation of obligations but a reminder that targeted relief may be available in exceptional, well-documented circumstances.

Jayasena

The Ontario Court of Appeal (ONCA) recently upheld the trial decision in Jayasena confirming that, among other things, the franchisee had validly rescinded its franchise agreement and the franchisor could not rely on the statutory disclosure exemption in Subsection 5 (7)(a) and 5 (8)(a) of the AWA.

In this case, the franchisees had purchased an existing Wild Wing franchise from another franchisee, operated it unsuccessfully for 18 months, then served a rescission notice under the AWA and abandoned the business. At trial, they sought declarations that: (i) the agreements related to the franchise were rescinded under the AWA, and (ii) that certain defendants were "franchisor's associates" for the purposes of the AWA.

In its reasons, the ONCA reaffirmed its earlier decisions in *2189205 Ontario Inc. v Springdale Pizza*

Depot Ltd., 2011 ONCA 467, 336 D.L.R. (4th) 234, leave to appeal refused [2014] S.C.C.A No. 35648 ("Springfield Pizza") and *2256306 Ontario Inc. v Dakin News Systems Inc., 2016 ONCA 74* ("Dakin"):

- the AWA is remedial, intended to redress the imbalance of power between franchisor and franchisee;
- disclosure exemptions are to be "narrowly construed";
- if a franchisor requires a new franchise agreement to be signed, the re-sale disclosure exemption under Section 5 (7)(a) of the AWA no longer applies (Dakin);
- where the franchisor merely passively consents to a transfer of a franchise, the exemption can still apply (Springdale Pizza); and
- the onus rests on the franchisor to prove that a disclosure exemption applies.

A critical issue in Jayasena was whether the franchise was granted "by or through" the franchisor, or whether the franchisor merely consented to the transfer of the franchise. Under the AWA, such granting is not "by or through" a franchisor merely because it has an approval right or collects a transfer fee; "something more" is required.

The ONCA found there was ample evidence for the trial judge to conclude that the transfer and grant of the franchise was effected through the franchisor.

Among other things, the trial judge found that Mr Chandiok effectively acted as the "Franchisor's representative" and played more than a passive role, including: (i) steering the franchisees to a specific franchise for sale, (ii) providing a tour, including of non-public areas; (iii) printing sales summaries from the restaurant's computer system; and (iv) explaining Wild Wing's systems and how to operate them, among other things. The franchisees believed, rightly or wrongly, that he was associated with the franchisor. This level of involvement supported the finding at trial that the franchisor could not rely on the re-sale disclosure exemption.

The ONCA upheld the trial judge's reasoning and held that the exemption was unavailable to the franchisor because:

- the franchisor required a new franchise agreement to be signed (as in Dakin); and
- the franchisor's representative took an active role in the transfer, going beyond the passive consent of the franchisor (Springdale Pizza).

The ONCA confirmed that either basis would be sufficient, and that both align with its prior jurisprudence.

The Jayasena case underscores that a franchisor's representative's active involvement in the franchise sales and development processes can trigger characterisation as a "franchisor's associate" under the AWA, carrying personal liability along with the franchisor for disclosure deficiencies. This risk was highlighted in Royal Bank of Canada v Everest Group Inc., 2024 ONCA 577 (the "Paramount"), where the ONAC upheld that a franchisor cannot avoid liability by distancing itself from the franchise sales process, as the law looks to the substance of involvement by the franchisor and its associates (not just those in name only).

Once the actions of a representative are in progress and resemble the granting of a new franchise approval, the exemption for passive transfers evaporates, and full disclosure obligations are imposed, notwithstanding that the franchisor itself may not have got itself involved. This not only exposes the individual representative(s) to liability but also draws the franchisor into potential rescission claims and damages.

This decision is a caution to Canadian franchisors as follows.

- Active participation in resales or transfers risks converting a simplified transfer into a compliance-heavy transaction.
- The franchisor cannot shield itself through internal separate from sales or development as liability attaches to the actions taken (or seen to be taken) in its name.
- System-wide compliance oversight is critical; franchisors must monitor and govern representatives' conduct to ensure it remains within the law.

Jayasena reinforces that Ontario courts will construe disclosure exemptions narrowly, and that franchisors bear the burden of proving their applicability. Ulti-

mately, compliance is a system-wide responsibility that rests on the franchisor's shoulders, no matter who carries out the work. From a practical perspective, many franchise systems will err on the side of providing compliant disclosure to prospective franchisees notwithstanding the availability of a potential disclosure exemption to mitigate risk.

Economic Shifts and Financial Disclosure

In addition to legislative changes and case law developments, the Canadian franchise industry is feeling the effects of global economic and geopolitical volatility. Economic uncertainty in global markets due to rising inflation, supply-chain disruptions, tariff and trade disputes, wage pressures and fluctuating interest rates have heightened the need for financial transparency and increased due diligence considerations for potential investors. These pressures affect both franchisee performance and the accuracy of franchisors' disclosure.

Franchisees are more frequently seeking detailed earnings projections and certainty around costs, including start-up and ongoing fees, operational budgets and profitability expectations. Under Canadian franchise disclosure laws, franchisors must disclose a detailed estimate of the total investment required to open and operate the franchise, including product, equipment, inventory and service costs, which are often subject to "approved supplier" or "approved product" restrictions.

While franchisors may choose whether to provide forward-looking financial performance representations, doing so carries risk; if projections are not met, franchisees may be motivated to seek remedies. In the Regulated Provinces, any such representations, including historical earnings or projections, must include descriptions of assumptions, methodologies, and often supporting documentation. Non-compliance can expose franchisors to rescission or enforcement. Informal statements by sales representatives, agents or associates can also be treated as earnings claims, even without formal documentation. It remains critical for franchisors to implement strict internal controls to ensure only standardised, vetted and up-to-date materials are used, that assumptions are clearly stated and supporting data is available.

Global economic conditions also impact franchise cost disclosures. Where supply chains rely on the US or other foreign sources currently subject to tariffs, sanctions or trade restrictions, franchisee costs can change dramatically and without warning. Such volatility can undermine the reliability of franchisors' cost estimates. In response, some franchisors now qualify cost disclosures to reflect a specific point in time and note that figures are subject to change due to external factors such as tariffs or supply-chain issues. This approach is aimed at maintaining legal compliance by anchoring estimates to documented circumstances, reducing reliance risk if actual costs later diverge.

To further mitigate exposure, along with the broader business community, Canadian franchisors with international supply chains are exploring flexibility in sourcing. Some permit Canadian franchisees to obtain approved products domestically or from alternative suppliers provided they meet the system's brand standards. While no Canadian court has yet ruled specifically on whether such broadly qualified disclosures satisfy statutory requirements in the circumstances, these measures reflect a trend towards proactive cost management, franchisee awareness and overall risk mitigation.

Economic turbulence increases the risk of performance shortfalls, franchisee dissatisfaction and potential damage to brand goodwill. Allegations that projections in disclosure were misleading, incomplete or based on unrealistic assumptions are more likely without a documented basis and transparent rationale.

To mitigate these risks, franchise systems should integrate robust compliance protocols including standardised financial disclosure packages, subjecting all projections to legal and accounting review, maintaining version-controlled delivery logs and utilising clear and appropriate disclaimers. In the current environment, accurate, transparent and compliant disclosure is not just a legal obligation but a strategic necessity for brand protection and franchise system stability.

Technology Mandates and AI in Franchise Systems

A major trend set to influence franchise systems in 2025 and beyond is the rapidly evolving technological

landscape and growing use of AI. Franchisors increasingly mandate specific systems including point-of-sale, automated customer service, booking engines or proprietary AI platforms for franchisees, to ensure the delivery of a uniform brand experience, consistent reporting and centralised data collection. While mandated technology updates offer certain operational and competitive advantages, they also introduce certain legal and adaptability challenges.

A franchisor's ability to mandate software and technology adoption typically stems from the franchise agreement. However, not all agreements are explicit. Broadly drafted or outdated provisions may not clearly authorise the franchisor to demand adaptation of newer or AI-driven technologies. Disputes can arise when mandated technology imposes significant costs, disrupts operations or offers uncertain value. Without clear contractual authority, franchisees may challenge the scope or legitimacy of a mandate, creating conflict over cost allocation and feasibility.

To manage evolving technology, agreements should permit both initial adoption and ongoing updates, upgrades and system overhauls. Still, sweeping system-wide changes, particularly those involving unproven technologies or major disruption, can face resistance. Franchisees may hesitate when costs are high, benefits unclear or changes undermine existing workflows and investments. Balancing innovation with fairness is critical. Franchisors must consider their duty of good faith and fair dealing, ensuring mandates are necessary, proportionate and demonstrably beneficial to the system.

Franchisees also have a stake in system modernisation. Stagnation or uneven adoption risks diminishing brand competitiveness, while non-adopting franchisees can hinder overall system performance. Poorly planned or inequitable mandates can erode rather than enhance franchisee value. As technology becomes central to customer engagement, operational decision-making and marketing automation, its role brings both opportunity and novel legal and management challenges.

Addressing these issues requires well-drafted franchise agreements with clear contractual language, transparent rollout plans and cost-benefit justification. By engaging experienced franchise counsel to structure authority, manage implementation and align value expectations, franchisors can reduce disputes and maintain compliance. As technological innovation accelerates, a coherent and contractually sound approach to technology mandates is essential for sustainable franchise system growth.

Conclusion

Franchise law in Canada is entering an era of heightened regulation, intensified scrutiny and rapid convergence of shifting economic trends with accelerating technological change. Legislative reforms and emerging 2025 case law are reshaping disclosure obligations and compliance expectations for franchise systems nationwide. This environment ushers in conditions that reward agile, strategic and informed systems – those that adapt operations, sales strategies and technology use while embedding such changes into compliance practices across all jurisdictions. Proactive systems that seek timely legal and professional guidance will be best positioned to manage risk, maintain compliance and thrive amid the ongoing evolution in the franchise legal landscape.

CHINA

Law and Practice

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Contents

Jingtian & Gongcheng was established in the early 1990s and is a leading independent partnership law firm in China and recognised as one of the country's top full-service business law firms. It specialises in areas like capital markets, mergers and acquisitions, cross-border investments and intellectual property. The firm operates from key locations across China, including a significant presence in Hong Kong. With a team of 180 partners and 760 lawyers, many from top-tier law schools and with diverse professional backgrounds, the firm offers unparalleled legal expertise. It has a notable reputation for its innovative solutions and adaptability to market trends and has been instrumental in numerous pioneering deals. The firm would like to thank Mr Yanfeng Liu from Beijing Tiantai Law Firm for his contribution to this chapter

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1. An Introduction to Franchising

1.1 Franchise Market Overview

The Chinese Franchise Market Landscape

The commercial franchise market in the People's Republic of China (PRC) is characterised by its significant scale and rapid development. The modern franchising model was introduced to China in 1987 with the arrival of the international fast-food brand KFC. This was followed in the 1990s by the adoption of the model by prominent domestic enterprises, including the restaurant chain "Quanjude" and the sportswear brand "Li Ning".

Since the implementation of the Regulation on the Administration of Commercial Franchises (hereinafter "the Regulation"), China's franchising industry has maintained a stable and rapid development trend, characterised by robust growth in sales, store expansion and significant economic impact.

According to the "2024 Top 100 Franchise Chains in China" list, the total sales of the top franchises reached CNY504.6 billion, a year-on-year increase of 17.3%. The total number of chain stores surged to approximately 257,000, reflecting a remarkable year-on-year growth of 26%. Among these, franchised stores accounted for 222,000, an increase of 55,000 compared to the previous year, representing a year-on-year growth of 33.3%.

The market is highly diversified across multiple sectors. The top 100 companies operate in ten major categories, including catering, accommodation, automotive aftermarket, training and education, lifestyle services, beauty and wellness, specialty food retail, non-food retail, business services, and convenience stores. The industry is also a crucial employment driver, providing about 4 million jobs. On average, each top franchise company operates 2,550 stores. The total social investment driven by these enterprises exceeded CNY170 billion.

A key strength of the leading franchises is their mature management systems and professional expertise, which have enabled sustainable growth. In 2024, 50% of the top brands had been operating for over 20 years. The average franchise renewal rate stood at 85%, and the multi-unit ownership rate was approximately 30%.

The "2024 Commercial Franchising TOP300" report further highlights the industry's expansion. The total number of stores among the TOP300 enterprises reached 830,000 – a significant increase of 30.73% compared to 2023, marking the highest growth rate in recent years. Notably, the number of brands with over 10,000 stores doubled from nine in 2023 to eighteen in 2024.

Key International and Domestic Brands Active in the Market

The Chinese franchising market is vibrant and competitive, with strong participation from both domestic and international brands.

Domestic leaders

Well-known Chinese brands have achieved massive scale and consumer loyalty. In the catering sector, brands like Mixue Bingcheng, Heytea and Luckin Coffee have extensive networks. Retail and convenience stores are dominated by powerful domestic chains such as Meiyijia, Hongqi Chain and Bianlifeng. In the automotive aftermarket, major domestic platforms like Tuhu and Carzone are significant players.

International giants

Global brands continue to thrive and expand their footprint in China. The catering landscape is heavily influenced by giants like McDonald's, KFC, Pizza Hut, and Starbucks. International convenience store chains, including 7-Eleven, FamilyMart and Lawson, maintain a strong presence in major urban centres.

This combination of deeply rooted domestic champions and adaptable international corporations defines the dynamic nature of China's franchising market, driving innovation, consumption and employment across the country.

1.2 Franchise Regulation

The Regulation was promulgated by the State Council of the PRC and has been effective since 1 May 2007; this is the foundational and highest-level administrative regulation specifically governing franchising activities nationwide.

The Civil Code of the People's Republic of China (hereinafter the "Civil Code") provides the fundamental legal principles governing all civil and commercial contracts, including franchise agreements. Provisions on contract formation, validity, performance, liability for breach and interpretation are directly applicable and serve as the general law underpinning franchise relationships.

The Administrative Measures for Archival Filing of Commercial Franchises (hereinafter "the Filing Measures") were issued by the Ministry of Commerce (MOFCOM). This departmental rule specifies the procedures and requirements for the mandatory post-contractual registration of franchise operations. The most recent version was revised and became effective on 29 December 2023.

The Administrative Measures for the Information Disclosure of Commercial Franchises (hereinafter "the Disclosure Measures") were also issued by MOFCOM. This departmental rule provides a detailed elaboration of the franchisor's extensive pre-contractual disclosure obligations to prospective franchisees.

1.3 Definition of a Franchise Agreement

Article 3 of the Regulation defines "commercial franchise" as a business activity where an enterprise (the "franchisor") that owns business resources licenses these resources to another business operator (the "franchisee") through a contract. The key business resources include registered trade marks, enterprise marks, patents, and proprietary technology (know-how). Under the agreement, the franchisee is required to conduct its business operations under a uniform business model prescribed by the franchisor and, in return, pays franchise fees.

The franchisor must be an "enterprise". No entity or individual other than enterprises may engage in the franchise business as a franchisor.

2. Franchise Disclosure

2.1 Mandatory Disclosure

Method and Timing of Disclosure

China has a mandatory and detailed set of franchise disclosure requirements. The obligation is established by the Regulation and further specified in the Administrative Measures for the Information Disclosure of Commercial Franchise.

Pursuant to these, the franchisor must provide the disclosure information to the prospective franchisee in writing, and the disclosure must occur at least 30 days before the franchisee signs the franchise agreement. This serves as a mandatory waiting period.

Disclosure Items

The franchisor must provide a comprehensive set of information as set out below.

- Basic information about the franchisor and its primary business activities:
  - (a) the franchisor's name, address, contact information, legal representative, general manager, amount of registered capital, business scope, as well as the number, address and telephone number of the existing direct sales stores;
  - (b) a brief introduction to the franchisor's engagement in the franchised business operations;
  - (c) basic information about the archival filing of the franchisor;
  - (d) where an affiliated company of the franchisor provides the franchisees with products and services, the basic information of this affiliated company; and
  - (e) information about any bankruptcies and/or applications for bankruptcy of the franchisor or of its affiliated companies during the previous five years.
- Information on the franchisor's registered trade marks, patents, and other business resources:
  - (a) a written statement to the franchisees regarding the information about the registered trade marks, enterprise marks, patents, know-how, business mode and other business resources which it can provide;
  - (b) if the owner of the above-mentioned business resources is an affiliated company of the

franchisor, the basic information of the affiliated company shall be disclosed, and the franchisor shall simultaneously specify how to deal with the franchised business operation system once the contract on authorisation to the affiliated company is cancelled; and

(c) information about any lawsuits or arbitrations involving the franchisor's (and/or its affiliated companies') business resources, such as registered trade marks, enterprise marks, patents and know-how.

- Details of all franchise fees, their purpose and payment methods.
  - (a) The variety, amount, rates and terms of payment of the fees which the franchisor charges and charges in lieu of the third party; if the aforesaid matters cannot be disclosed, an explanation shall be made; if there is no uniform criterion for the fee charge, the highest and lowest rates shall be disclosed and an explanation shall be made.
  - (b) The conditions for collection and refund of security, as well as when and how to refund the security.
  - (c) If the franchisees are required to pay the fees before a franchise contract is concluded, a written statement indicating their purposes and under what conditions – and how – such fees shall be refunded to the franchisee.
- Information on the prices and conditions for providing products, services and equipment:
  - (a) whether or not the franchisees must buy products, services or equipment from the franchisor (or its affiliated company or companies) as well as the relevant prices, conditions, etc;
  - (b) whether the franchisees must buy products, services or equipment from the supplier(s) designated (or permitted) by the franchisor;
  - (c) whether or not the franchisees are allowed to choose other suppliers, as well as the requirements for those suppliers.
- Details of the support services offered to the franchisee (eg, training or technical support):
  - (a) the specific contents, terms of provision and execution plan of business training, including where, when and how long the training is to be held; and
  - (b) the specific contents of technical support, describing the table of contents of the brochure of franchised operations and the corresponding number of pages.
- Information on the franchisee's operational requirements and standards:
  - (a) the form and content of guidance and supervision conducted by the franchisor on the business operations of the franchisees, the obligations that the franchise must perform, and the consequences of any franchisee's non-performance of its obligations; and
  - (b) whether the franchisor will bear joint and several liabilities for the complaints of – and be responsible for compensating – the consumers, and how to bear such liabilities.
- Information about the investment budget for the franchise outlets.
  - (a) The investment budget may cover expenses including membership fees; training fees; expenses for real estate and decoration; expenses for purchasing equipment, office supplies, furniture, etc; initial inventory; expenses for water, electricity and gas; expenses for obtaining any necessary licence and other government approvals; and working capital.
  - (b) The sources of and an estimated basis for the aforesaid data on expenses.
- Relevant information about the franchisees within the territory of China.
  - (a) The existing and expected number of franchisees, distribution areas, scope of authorisation, whether or not there is any solely authorised area (if any, the expected concrete scope shall be indicated).
  - (b) Information about the evaluation of the business status of the franchisees. The franchisor shall disclose franchisee information such as their actual or expected average sales volume, gross profits and net profits, and shall simultaneously state the sources and length of time of the aforesaid information as well as the franchise outlets involved; if the information is estimated, the franchisor shall give the estimation basis and shall expressly state that the actual business operations are likely to be different from the estimates.

- Abstracts of the franchisor's recent two-year financial statements audited by an accounting firm or auditing firm, as well as the abstracts of the auditing reports.
- Information about major lawsuits and arbitrations relating to the franchised business operations of the franchisor within the past five years:
  (a) the term "major lawsuit or arbitration" refers to a lawsuit or arbitration with a value in dispute of CNY500,000 or more;
  (b) basic information about such lawsuits, where they are filed and their results if disclosed.
- Information about the records of any serious illegal business operations of the franchisor and of its legal representative:
  (a) being fined not less than CNY300,000 but not more than CNY500,000 by the administrative law enforcement department; and/or
  (b) being subject to criminal liabilities.
- The text of the franchise contract:
  (a) a sample franchise contract; and
  (b) if the franchisor requires a franchisee to sign any other franchise related contract with it (or its affiliated company or companies), it shall simultaneously furnish a sample of such contract.

Cooling-Off Period

Distinct from the disclosure period, the franchisee has a statutory "cooling-off" period during which they can unilaterally terminate the franchise agreement after it has been signed.

2.2 Consequences of a Failure to Disclose

Right to Terminate and Claim Damages

If a franchisor conceals relevant information or provides false information during the disclosure process, the franchisee has the right to terminate the franchise agreement. The franchisee may also seek compensation for any losses incurred as a result of the non-disclosure or misrepresentation pursuant to the Civil Code.

Administrative Fines

The competent administrative authority (typically the Ministry of Commerce or its local counterparts) can impose penalties on the franchisor. These include issuing an order to rectify the violation and imposing fines ranging from CNY10,000 to CNY100,000, depending on the severity of the offence. In serious cases, a public announcement of the violation may be made.

2.3 Franchise Disclosure Exemptions

The legal texts do not specify broad exemptions from the mandatory disclosure obligation, such as for sophisticated franchisees or minimal investments.

However, according to Article 4 of the Disclosure Measure, the obligation to provide a full disclosure document at least 30 days before signing a contract is waived in the specific scenario where a franchisor and a franchisee renew their agreement under identical terms and conditions as the original contract.

2.4 Franchise Disclosure Language/ Translation Requirements

Translation is not mandated by law but is practically necessary. For the purposes of archival filing, any documents submitted in a foreign language must be accompanied by a Chinese translation. The Regulation requires that a franchisor shall provide authentic, accurate and complete information to its franchisees.

3. Franchise Registration

3.1 Mandatory Registration

In China, franchisors are subject to a mandatory administrative filing system rather than a pre-approval registration. The legal basis for this requirement is found in Article 8 of the Regulation, which mandates that franchisors must submit a filing with the competent authorities after signing their first franchise agreement. Detailed procedural rules are further outlined in the Filing Measures. Franchisors are legally permitted to offer, market and sign franchise contracts before filing, provided they meet substantive legal criteria such as the "two-store, one-year rule" under Article 7 of the Regulations. The actual filing must be completed within 15 days following the execution of the initial franchise agreement and is submitted to the provincial-level Department of Market Regulation.

3.2 Franchise Registration Process

Within 15 days of signing, for the first time, a franchise contract with a franchisee within China, a franchisor shall apply for archival filing to the archival filing authority.

A franchisor applying for archival filing shall submit the following materials to the archival filing authority:

- basic information regarding the commercial franchise;
- information regarding the distribution of stores of all franchisees within China;
- the market plan of the franchisor;
- a business licence for enterprises with legal person status, or other certificate regarding legal status;
- registration certificates regarding the trade mark rights, patent rights, and other business resources relating to the franchised business operations;
- certification documents as prescribed in paragraph 2, Article 7 of the Regulation;
- where a franchisor has engaged in franchised business operations before 1 May 2007, the provisions of the preceding paragraph shall not apply when it submits the materials regarding the application for archival filing of commercial franchises;
- the first commercial franchise contract concluded between the franchisor and the franchisee within China;
- a sample franchise contract;
- the table of contents of the brochure for franchised operations (the number of pages of each chapter and section, and the total number of pages of the brochure shall be indicated and, if such a brochure is available on the internal network of the franchise system, the estimated number of pages for printing shall also be indicated);
- approval documents of the relevant administrative organ for the engagement of a product or service subject to examination and approval under any law or regulation of the state;
- the franchisor's commitment bearing the signature of the legal representative; and
- any other materials that the archival filing authority requires to be submitted.

3.3 Consequences of a Failure to Register

Failure to complete the archival filing obligation within the prescribed time limit can result in administrative penalties. The competent commercial authority may order the franchisor to file within a specified period and can impose a fine of between CNY10,000 and CNY50,000. If the franchisor fails to comply after being ordered to do so, a higher fine of between CNY50,000 and CNY100,000 may be imposed, accompanied by a public announcement.

4. Other Requirements

4.1 Past-Profitability Requirements

The Regulation stipulates several conditions a franchisor must meet, including:

- the franchisor must be an enterprise (not any other unit or individual);
- it must own business resources such as registered trade marks, enterprise logos, patents, or proprietary technology;
- it must possess a mature business model and have the capability to provide continuous business guidance, technical support and training services to the franchisee; and
- it must have operated at least two directly owned outlets for more than one year (the "Two Stores, One Year" rule).

It is generally recognised that a franchise agreement is void if the franchisor lacks enterprise status. However, a franchisor's failure to meet certain other administrative requirements – such as not fulfilling the "Two Stores, One Year" requirement or failing to complete the mandatory archival filing with the competent authorities – does not automatically invalidate the franchise contract itself. These are considered separate administrative violations subject to penalties but do not inherently affect the civil validity of the agreement.

Chinese regulations do not impose any specific past-profitability requirements on the franchisor or its outlets.

5. Duration, Renewal and Termination

5.1 Duration of a Franchise Agreement

The franchise term stipulated in the franchise contract shall not be less than three years, unless it is otherwise agreed upon by the franchisee.

The previous requirement is not applicable when the franchiser and the franchisee renew the franchise contract.

5.2 Franchise Renewal

The regulations do not grant a franchisee an automatic statutory right to renew the franchise agreement upon its expiration. The franchise agreement should explicitly state the terms and conditions for renewal. The law is silent on the matter of goodwill compensation payable upon non-renewal.

5.3 Termination of the Franchise Agreement

Franchisor's Termination Rights

A franchisor may terminate the agreement for cause, such as a material breach of contract by the franchisee. The specific grounds for termination should be clearly defined in the agreement.

Franchisee's Termination Rights

Article 12 of the Regulation mandates that the franchise agreement must include a clause allowing the franchisee to unilaterally terminate the contract within a certain period after signing it (a so-called "cooling-off period").

If the franchise agreement explicitly defines the duration of the cooling-off period, courts will generally uphold this agreed-upon period. But even if the contract is silent on this period, franchisees are generally granted a "reasonable period" to exercise this right by courts. The key factor is that the franchisee has not begun to "utilise the franchisor's business resources".

If the franchisee invoked the "cooling-off" termination and has not used the franchisor's resources (no training received, no store opened, no operational materials used, etc), courts typically recognise the right to terminate and may order a full or partial refund (after deducting costs incurred by the franchisor, such as initial training or materials provided). But if the franchisee has already operated a store or used the franchisor's resources (eg, trade marks, training or operational systems), courts generally do not support termination under the cooling-off period.

Article 23 of the Regulations requires franchisors to provide true, accurate, and complete information during the disclosure process before signing the contract.

If a franchiser hides any relevant information or provides false information, the franchisee may rescind the franchise contract.

6. Restrictions on Competition in Franchise Agreements

6.1 Treatment of Competition Restrictions in Franchise Agreements

Exclusive Territories

Competition authorities assess whether the exclusivity restrictions in a franchise agreement are necessary to protect the franchise system's integrity. If the territory is excessively broad or prevents other franchisees from entering without justification, it may be viewed as anti-competitive. The key is to balance legitimate business interests against the risk of market foreclosure.

Non-Compete Obligations

If the scope, duration, or geographic reach of such obligations in a franchise agreement are overly broad, they may be deemed to restrict competition excessively. Courts and regulators often require that such clauses be proportionate to the legitimate business interests they protect. For instance, non-competes should not apply to ordinary employees without access to confidential information.

Purchase Ties

Tying may be justified for quality control or brand consistency but can be abusive if the franchisor holds a dominant market position and the tie restricts competition without objective justification. Authorities examine whether less restrictive alternatives are available to achieve the same quality standards.

6.2 Exclusive Territories and Competing Businesses

Exclusive territories can be permitted in franchise agreements, and franchisors can include clauses to prevent franchisees from operating competing businesses during the term and for a period after termination. However, their enforceability and specific requirements are subject to legal scrutiny and must balance the interests of both parties.

6.3 Requiring Franchisees to Purchase Specific Goods and Services

A franchisor can require a franchisee to purchase products, services, or equipment from the franchisor or its designated suppliers. This is considered a core element of maintaining brand consistency and quality control within the franchise system. However, such requirements should not be used to impose unreasonable prices or conditions that could be deemed anti-competitive.

6.4 Channel Reservation

A franchisor is generally permitted to reserve certain sales channels, such as the internet or specific corporate accounts, for itself. This should be clearly stipulated in the franchise agreement.

6.5 Vertical Agreement Block Exemptions

While China does not have a direct equivalent to the EU's Vertical Agreement Block Exemption Regulation (VBER), Article 15 of its Anti-Monopoly Law provides for exemptions for monopoly agreements, including vertical ones, under certain circumstances. These exemptions are available if the agreement is for certain specified purposes, such as:

- improving technologies or researching and developing new products;
- upgrading product quality, reducing costs or improving efficiency;
- enhancing the competitiveness of small and medium-sized businesses;
- serving the public interest, such as by conserving energy or protecting the environment;
- mitigating a severe decrease in sales volume during economic recessions; and
- protecting justifiable interests in foreign trade and economic co-operation.

Article 15 Exemption Criteria

The franchisor and franchisee would need to demonstrate that their agreement meets one or more of the criteria listed in Article 15, as set out below.

Franchisor investment

The franchisor invests significantly in developing a proprietary business model, operational systems, specialised software, branding or marketing strategies. The vertical restraints in the franchise agreement (eg, requirements to use specific equipment, follow operational manuals, adhere to quality standards and participate in marketing pools) are indispensable to:

- improving technology/quality – ie, ensuring the franchisee delivers a consistent, high-quality product and customer experience, thereby upgrading the overall product offering in the market; and/or
- reducing costs/improving efficiency – ie, achieving economies of scale in national advertising, centralised purchasing of supplies (which can lower costs for franchisees), and efficient training where such standardisation can reduce the operational and managerial costs for individual, often small, franchisees.

Preventing free riding

The restraints are necessary to prevent "free riding." Without territorial protections or quality controls, one franchisee could benefit from the brand investment and marketing of others while undercutting them on cost by lowering quality, ultimately degrading the entire brand and reducing consumer choice.

The Safe Harbour Presumption

China's State Administration for Market Regulation (SAMR) has issued the "Antitrust Guidelines on the Platform Economy" and accompanying notices that, while focused on platforms, reflect a broader modernised approach. Importantly, they introduced a "safe harbour" presumption for vertical agreements.

While not an absolute exemption, this guidance suggests that if the parties to a vertical agreement (like a franchise) have a market share below 15%, there is a presumption that the agreement does not have the effect of eliminating or restricting competition. This provides a significant degree of comfort for the vast

majority of franchise systems that do not possess significant market power.

7. Choice of Governing Law

7.1 Possibility of a Franchisor Stipulating Non-Local Law

Parties to a franchise agreement are generally permitted to choose a foreign law to govern their contract. This principle of party autonomy is recognised under Chinese law, particularly Article 41 of the Law on the Application of Law for Foreign-Related Civil Relations of the People's Republic of China. If the franchise agreement involves the licensing of intellectual property, Article 49 of the same law specifically addresses IP transfer and licensing, allowing parties to choose the applicable law.

The choice of law is not absolute, however, and is subject to limitations.

- Any choice of foreign law cannot derogate from the mandatory provisions of Chinese law that apply to franchise activities conducted within China. This means that regardless of the chosen governing law, Chinese regulations concerning franchise operations – such as disclosure requirements, registration with the MOFCOM, operational rules, and protections for franchisees – will still apply if the franchise is operating in China.
- Rights in rem concerning IP (eg, ownership and validity) are generally governed by the law of the place where protection is sought.

7.2 Local Law Requirements

Article 2 of the Regulation stipulates that "the engagement in commercial franchise within the territory of the People's Republic of China shall be governed by this Regulation". Thus, mandatory franchise regulations (eg, disclosure rules, registration requirements, the "two stores, one year" requirement for filing, contract duration, and termination requirements) cannot be contractually avoided by selecting foreign law.

The validity, protection, and infringement of intellectual property rights (trade marks, patents, etc) in China are exclusively governed by Chinese law.

7.3 Mandatory Content

Article 11 of the Regulation stipulates that the franchise contract must be in writing and include the following mandatory clauses:

- basic information about the franchisor and franchisee;
- the content and term of the franchise;
- the type, amount and payment method of franchise fees;
- specific details of operational guidance, technical support, and business training;
- provisions on product or service quality control;
- clauses on the use of the franchise brand and related advertising;
- provisions for the renewal, termination and transfer of the franchise;
- liability for breach of contract; and
- dispute resolution mechanisms.

7.4 Prohibited Provisions in Local Law

The law does not provide a specific "blacklist" of prohibited contractual provisions. However, any clause that violates the mandatory provisions of the franchise regulations or other fundamental principles of Chinese law would be deemed invalid and unenforceable.

8. Dispute Resolution

8.1 Enforcement of Foreign Judgments

China is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Therefore, arbitration awards made in other member states are generally recognisable and enforceable in Chinese courts.

Enforcing foreign court judgments in China is generally considered challenging. Enforcement primarily relies on bilateral treaties or the principle of reciprocity.

9. Payment and Taxes

9.1 Restrictions or Limits on Franchisee Fees and Royalties

There is no specific restriction imposed on the payment of franchise fees.

9.2 Withholding Tax

Withholding taxes apply to royalty payments (including franchise fees) and technical service fees made by Chinese franchisees to overseas franchisors. The franchisee is legally obligated to withhold the tax at source before remitting payment abroad.

The normal withholding earned income tax rate for non-resident enterprises is 10% for income from a Chinese source, including dividends, interest, royalties and capital gains.

9.3 Foreign Currency Controls

China maintains a system of foreign exchange controls, administered by the State Administration of Foreign Exchange (SAFE). For routine payments like franchise fees and royalties, businesses generally do not need to obtain prior approval from SAFE or the central bank (People's Bank of China) for each transaction. However, the franchisee's commercial bank will process the outward remittance. The bank is responsible for conducting a routine review of the underlying commercial documents to ensure authenticity and compliance.

10. Execution Formalities

10.1 Authentication, Notarisation, Witnessing, Etc

A franchise agreement must be in writing.

For archival filing, a foreign franchisor must have its identity certification documents (eg, certificate of incorporation) notarised by a notary public in its home country and then authenticated by the Chinese embassy or consulate in that country.

China is a member of the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents. If the foreign franchisor is from another member country, the often simpler apostille process replaces the traditional consular authentication one.

10.2 Electronic Signatures

Article 14 of the Electronic Signature Law of the People's Republic of China specifies that a "reliable electronic signature" has the same legal effect as a handwritten signature or seal. An electronic signature is deemed reliable if it simultaneously meets the following conditions:

- when the electronic signature creation data is used for electronic signature, it belongs exclusively to the electronic signatory;
- at the time of signing, the electronic signature creation data is controlled solely by the electronic signatory;
- any alteration to the electronic signature after signing can be detected; and
- any alteration to the content and form of a data message after signing can be detected.

10.3 Stamp Duties

Stamp duty is governed primarily by the Stamp Tax Law of the People's Republic of China. Several types of documents common in a business franchising relationship may be subject to stamp duties. The types of documents include documents for intellectual property licensing, sales contracts, leasing contracts, technical contracts and business account books.

Trends and Developments

Contributed by:
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Jingtian & Gongcheng was established in the early 1990s and is a leading independent partnership law firm in China and recognised as one of the country's top full-service business law firms. It specialises in areas like capital markets, mergers and acquisitions, cross-border investments and intellectual property. The firm operates from key locations across China, including a significant presence in Hong Kong. With a team of 180 partners and 760 lawyers, many from top-tier law schools and with diverse professional backgrounds, the firm offers unparalleled legal expertise. It has a notable reputation for its innovative solutions and adaptability to market trends and has been instrumental in numerous pioneering deals. The firm would like to thank Mr Yanfeng Liu from Beijing Tiantai Law Firm for his contribution to this chapter

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Introduction

The franchising model has become a significant vehicle for business expansion within China today, following its introduction in 1987 with the arrival of international brands. The market is characterised by its substantial scale and dynamic growth, a trend that has accelerated since the implementation of key regulations in 2007. Leading franchise enterprises collectively generate annual sales exceeding CNY500 billion and operate a network of over a quarter of a million stores, reflecting double-digit year-on-year growth in both metrics. This expansion, driven by a mix of prominent domestic and international brands across diverse sectors from catering to automotive services, underscores the model's economic importance and the corresponding necessity of a clear legal framework.

The legal environment governing these arrangements is multifaceted, consisting of specialised regulations built upon the foundational principles of general contract law. At its base, the Civil Code of China (the "Civil Code") provides the overarching framework, dictating the essential elements of a valid contract, including the principles of fairness and good faith, and the consequences of breach.

Layered upon this foundation is a specific regulatory framework designed to address the unique dynamics of the franchisor-franchisee relationship. The primary legal authority is the Commercial Franchise Administration Regulation (the "Regulation"), effective as of 1 May 2007. This is supplemented by ancillary administrative measures, including the Administrative Measures for the Archival Filing of Commercial Franchises (the "Filing Measures") and the Measures for the Administration of Information Disclosure of Commercial Franchises (the "Disclosure Measures"). Collectively, these regulations establish a comprehensive regime that imposes specific, mandatory obligations upon franchisors, the violation of which forms the basis for a significant portion of commercial franchise litigation in China.

Overview of the PRC Franchise Litigation

Disputes concerning statutory duties of franchisors

The jurisprudential landscape of franchise litigation in China is largely shaped by disputes concerning the statutory duties imposed upon franchisors. Several key areas have emerged as recurrent subjects of judicial scrutiny.

Franchisee's unilateral right of rescission

Article 12 of the Regulation grants the franchisee a statutory "cooling-off period", allowing for the unilateral termination of the franchise agreement post-execution. The statutory ambiguity surrounding the duration of this period has created confusion, which is analysed in detail below.

The "2+1" requirement

The regulations stipulate that a franchisor must have operated at least two directly owned business units in China for a period of no less than one year before engaging in franchising activities. This "two-stores, one-year" rule is a threshold qualification intended to ensure that the franchisor possesses a mature and proven business model. Disputes often involve franchisors who fail to meet this criterion, leading to claims for rescission of the franchise agreement.

Pre-contractual information disclosure

A paramount obligation of the franchisor is the duty of disclosure. The regulations mandate the provision of a detailed information dossier to a prospective franchisee at least 30 days prior to the execution of a franchise agreement. Litigation frequently arises from allegations of incomplete, inaccurate or misleading disclosures. Judicial treatment in such cases often centres on the materiality of the omitted or misrepresented information and its substantive impact on the franchisee's decision to enter into the agreement.

Archival filing obligations

Franchisors are required to complete an archival filing of their franchise operations with the Ministry of Commerce or its local counterparts within 15 days of executing their first franchise agreement. While failure to comply with this administrative requirement may result in administrative penalties, prevailing judicial interpretation holds that such non-compliance does not, in and of itself, render the underlying franchise agreement void. Courts typically view this as a matter of administrative, rather than contractual, validity.

Contract and infringement disputes

The landscape of franchise litigation in China is shaped by two principal categories of dispute: those arising from the franchise agreement itself and those concerning intellectual property infringement.

Contract validity disputes

A significant portion of litigation concerns the fundamental validity of the franchise agreement. Such disputes often arise from the franchisor's failure to comply with statutory preconditions established by the Regulations. Common grounds for challenging a contract's validity include the franchisor's failure to meet the "two stores, one year" operational requirement, failure to complete the mandatory archival filing, or defects in the licensed business resources, such as the use of unregistered trade marks or intellectual property with contested ownership.

Contract termination disputes

These disputes are common and can be initiated by either party. Franchisees frequently seek termination on grounds of material breach, alleging that the services provided are substantially different from what was advertised, that the franchisor failed to provide contractually obligated guidance and training, or that the quality of supplied goods is deficient. Conversely, franchisors may seek termination due to the franchisee's failure to pay fees in a timely manner or for breaching the agreement by selling unauthorised products from other brands.

Infringement by the franchisee of the franchisor's rights

A common area of conflict involves the franchisee's misuse of the franchisor's intellectual property. This includes modifying the franchisor's authorised trade mark and attempting to register it, continuing to use the franchisor's trade marks and trade names after the contract has been terminated, or the unauthorised publication and distribution of proprietary materials such as franchise operation manuals.

Infringement by the franchisee of third-party rights

A franchisee's unauthorised sale of goods that infringe upon the intellectual property rights (eg, trade mark, patent or copyright) of a third party can expose both the franchisee and the franchisor to liability. The rights holder may pursue a claim against both parties, alleging direct infringement by the franchisee and contributory or vicarious infringement by the franchisor.

Infringement by the franchisor of third-party rights

Disputes may also arise if the core business resources licensed by the franchisor are themselves defective and infringe upon the intellectual property rights of others. In such circumstances, a third-party rights holder may take legal action, and the franchisee can be implicated in the dispute and suffer business interruptions and other damage as a result of the franchisor's defective title.

Judicial Treatment of Key Issues

The franchisee's "cooling-off" period

Article 12 of the Regulation grants a franchisee a unilateral right of termination subsequent to the execution of a franchise agreement. However, the statute does not delineate a specific duration for this right; this has created significant ambiguity in statutory interpretation and led to differing judicial treatment. The legislative intent is to correct the inherent asymmetry of information and bargaining power by providing a mandatory period for reconsideration. In the absence of explicit temporal parameters, the Chinese judiciary has formulated a dispositive, fact-intensive test centred on a key question: whether the franchisee has substantially utilised the franchisor's operational resources. This doctrine establishes a functional, rather than a purely chronological, boundary for exercising the termination right.

Case law demonstrates that the right of rescission is robustly protected during the preliminary, pre-operational phases of the franchise relationship. For instance, courts have affirmed termination where franchisees, approximately one month post-execution, had only paid fees, received technical manuals, and engaged in site-selection discussions. The judicial reasoning is that such preparatory acts do not constitute substantial utilisation of the franchisor's core business resources, as the franchise location was never established and no operational training or services were rendered.

Furthermore, courts have invalidated contractual clauses that impose a manifestly unreasonable and

truncated cooling-off period (eg, five days), viewing such provisions as improper attempts to nullify statutory protections. After striking such clauses, courts apply the "substantial utilisation" test. If the franchisee has not yet commenced operations or used the franchisor's resources, the right to terminate is typically upheld.

Conversely, consistent judicial findings indicate that once a franchisee begins to actively operate the business, the right of unilateral termination is extinguished. In one matter, a franchisee attempted to invoke the cooling-off period after operating the business for four months. The court denied the termination, establishing that the actual operation of the franchise and commercial use of the franchisor's brand and systems represent a definitive act of substantial utilisation, exhausting the legislative purpose of the cooling-off period. By accepting goods, using the franchisor's branding, and engaging in commerce, the franchisee moves beyond the reconsideration phase and affirms the contract through performance, thereby forfeiting the right to unilateral termination.

The written form requirement

Article 11 of the Regulations stipulates that franchise agreements "shall be concluded in written form". A recurrent issue in franchise litigation is whether the failure to adhere to this requirement of form renders an agreement void. The prevailing judicial interpretation indicates that it does not.

This determination is guided by the established judicial distinction between "validity-related" and "management-related" mandatory provisions. A contract is deemed void for illegality only when it violates a validity-related provision, which typically concerns the public interest or fundamental market order. Provisions aimed at regulating administrative procedures, such as Article 11's requirement for a written instrument, are generally classified as management-related. Non-compliance, therefore, does not automatically nullify the underlying civil agreement.

This interpretation is further buttressed by Article 490 of the Civil Code, which provides that performance can cure a formal defect. Where a contract is required by law to be in writing but is not, it is nonetheless considered formed if one party has performed its main obligations and the other party has accepted said performance. Consistent court rulings affirm that where a franchisor has provided its operational resources and the franchisee has accepted and utilised them, a valid and enforceable oral contract is established. However, a franchisor's failure to adhere to these rules can indeed trigger both administrative penalties and separate civil liabilities.

Information disclosure and commercial fraud

Distinct from procedural formalities, the franchisor's duty of pre-contractual information disclosure is a core, substantive obligation. A violation provides the franchisee with an independent basis for seeking termination. However, courts do not treat all instances of non-disclosure equally. The judicial analysis centres on distinguishing between mere non-compliance and malicious fraud, with the latter being required to invalidate or rescind a contract, particularly one that has been partially performed.

For a franchisor's non-disclosure to be deemed fraudulent, it must be established that the concealed or falsified information was material and that it induced the franchisee to enter into the contract under a false understanding. In one case, a franchisor made extensive claims regarding its US origins, its relationship with a major global education group, and its ownership of registered trade marks. After the franchisee paid significant fees and invested in a location, it was discovered that the US entity was a shell company, the educational partnership was non-existent, and the core trade marks were not registered. The court held that such severe and material misrepresentations of core operating resources constituted fraud, fundamentally frustrating the contract's purpose and entitling the franchisee to terminate the agreement and recover its fees and associated losses.

Judicial findings indicate that conduct may be deemed fraudulent if it falls into the following categories, causing the franchisee to sign the agreement against their true intent.

- *Misrepresentation of operating resources* – This includes concealing a lack of disposition rights over key intellectual property, or presenting an

unregistered trade mark or non-patented technology as registered or patented.
- *Concealment of adverse business conditions* – This includes the deliberate concealment of significant litigation, arbitration or administrative penalties against the franchisor; hiding an existing or impending bankruptcy status; or severely misrepresenting the scale of the enterprise or the origin of the brand (eg, presenting a domestic brand as a well-known international one).
- *Misrepresentation of franchisee's operating conditions* – This includes failing to disclose the existence of other franchisees within the contractually agreed-upon territory or making gross exaggerations regarding the quality of products or services.

The "two stores, one year" rule

Article 7 of the Regulations imposes a market-entry threshold on franchisors, stipulating that they "shall have operated at least two direct stores for more than one year".

A franchisor's failure to meet this statutory precondition does not, as a matter of law, render a franchise agreement void. Courts reason that a violation is a matter for administrative sanction and does not provide a statutory basis for nullifying the contract itself, particularly where the franchisee has not proven a distinct material breach.

Although a contract's formal validity may be preserved, a franchisor's violation of the "two stores, one year" rule is a highly salient fact in assessing its ability to perform core contractual obligations. Courts view non-compliance not as a mere technicality, but as compelling evidence that the franchisor lacks a mature operational system. In a case involving an international yogurt brand, a franchisee sought to terminate an agreement on grounds including that the franchisor did not meet the "two stores, one year" requirement and could not prove it had the legal right to license the brand in China. The court found that the combination of the statutory non-compliance and the failure to substantiate its intellectual property rights constituted a fundamental failure to provide the core resources of the franchise. It held that the franchisor's incapacity to meet these basic legal and operational thresholds justified the contract's termination and a substantial refund of fees paid.

The archival filing requirement

Article 8 of the Regulations imposes a procedural duty on franchisors to complete an archival filing with the competent commerce authority. The judiciary uniformly treats this as an administrative formality that does not affect the validity of the franchise agreement itself.

Courts have consistently held that the filing requirement is a quintessential "management-related mandatory provision". Its purpose is to regulate the franchisor's interaction with administrative bodies, not to establish a precondition for the validity of its civil contracts. The legal consequence of non-compliance is therefore administrative sanction, not contractual nullity. This judicial treatment is consistent with the analyses of the "written form" and "two stores, one year" provisions, reinforcing the judicial approach that a franchisee seeking rescission must demonstrate a material breach that frustrates the contract's purpose.

Lack of a registered trade mark

The definition of a commercial franchise under Article 3 of the Regulations lists "registered trade marks" as a primary business resource. The failure to own a registered trade mark for the principal brand is a significant defect in the operating resources provided by the franchisor. However, it does not automatically frustrate the contract's purpose, particularly where the franchisee's conduct can be construed as an assumption of the associated risk.

A claim for termination based on this defect is subject to a fact-intensive analysis of performance, causation and the franchisee's own conduct. In one matter involving a beverage franchise, the agreement explicitly required the franchisor to provide the "exclusive use" of its trade mark. The franchisor was later unable to provide proof of a registered trade mark in mainland China, only an application receipt that was subsequently rejected. The court held that without a registered trade mark, the franchisor was legally incapable of providing the "exclusive use" it had contractually promised. This failure to deliver a core component of the bargain was found to be a material breach that frustrated the purpose of the contract, giving the fran-

chisee the right to terminate the agreement. The court distinguished this from situations where a trade mark is merely one of several operating resources, giving dispositive weight to the specific contractual promise of exclusivity that could not be legally fulfilled.

Franchisee's unauthorised operations

A significant risk for franchisors is the potential for a franchisee to leverage the brand's reputation to engage in business activities that are outside the scope of the franchise agreement (ultra vires), thereby causing harm to consumers. While the franchisor is often insulated from direct legal liability for such unauthorised actions, the commercial and reputational risks can be substantial.

Franchise agreements typically define the franchisee as an independent legal entity, responsible for its own operations and liabilities, and strictly delineate the scope of authorised business activities. Consequently, when a franchisee offers unauthorised products or services, their actions are legally considered independent business conduct. In a prominent case involving a major national gold retailer, consumers incurred significant losses from a "gold custody" service offered by a franchisee. This service was not authorised by the franchisor and was expressly prohibited by the franchise agreement. The court ultimately determined that the custody service was an independent act of the franchisee, falling outside the scope of the franchise agreement. Accordingly, it held that the franchisor was not legally liable for the consumers' losses.

However, a favourable legal judgment does not eliminate what might be a significant commercial fallout. Consumers are often drawn to a franchisee by the power and reputation of the franchisor's brand, and they may not distinguish between authorised and unauthorised services. When a franchisee's unauthorised actions lead to widespread consumer losses, the resulting public outcry and negative media attention directly tarnish the franchisor's brand image. As seen in similar high-profile incidents, the franchisor, despite being legally shielded, may be compelled by market pressure and the need to protect its reputation to advance payments to compensate affected consumers. This creates a significant contingent liability and business risk, where the franchisor may find it commercially necessary to cover losses for which it bears no legal responsibility.

Practical Implications

Cooling-off period

The franchisee's right to terminate is functional, not chronological. It is extinguished by the substantial utilisation of the franchisor's resources, which is typically marked by the commencement of business operations.

Oral agreements

An oral franchise agreement can be validated by performance. The primary risk shifts from contractual invalidity to the evidentiary burden of proving the oral terms, and such informality often signals deeper, substantive compliance failures.

The "2+1" rule

Non-compliance with the "two stores, one year" requirement does not void a contract but serves as strong evidence of the franchisor's lack of a mature system, substantially aiding a franchisee's claim of fundamental breach when linked to an operational failure.

Archival filing

The filing requirement is an administrative duty. A failure to file invites regulatory penalties but is not, in itself, sufficient grounds to terminate a franchise agreement.

Information disclosure fraud

A franchisee seeking to rescind a contract based on non-disclosure must demonstrate that the franchisor's misrepresentations were material and induced the agreement, rising to the level of fraud rather than mere commercial puffery.

Unregistered trade marks

Licensing an unregistered trade mark can be deemed as a defect in operation resources. However, a franchisee who continues to operate the business after discovering the issue may be deemed to have waived their right to terminate the contract on this basis.

Ultra vires operations

A franchisor may not be legally liable for a franchisee's unauthorised business activities, but it faces significant commercial risk. To protect brand reputation, the franchisor may be compelled to compensate consumers for losses, creating a substantial contingent liability.

Conclusion

The judicial treatment of commercial franchise disputes in China reflects a consistent and pragmatic "substance over form" approach. Courts are reluctant to invalidate agreements based on non-compliance with statutory provisions that are deemed administrative or procedural in nature, particularly after the franchisee has accepted the benefits of the relationship through performance.

However, this preservation of contractual validity does not insulate franchisors from liability. The analysis reveals a clear demarcation: while procedural lapses (eg, failure to file or lack of a written contract) may be cured or result only in administrative sanctions, failures that go to the substance of the bargain are treated seriously. Material misrepresentation in information disclosure, the failure to provide a licensable trade mark, or an inability to deliver on operational promises – often evidenced by non-compliance with the "two stores, one year" rule – can and do provide sufficient grounds for contract termination and the restitution of fees.

For all participants in the Chinese franchise market, the message is clear: while courts will strive to uphold the commercial reality of an agreement, they will not hesitate to grant relief where a franchisor's failure to adhere to its core statutory and contractual obligations fundamentally frustrates the purpose of the franchise.

DENMARK

Law and Practice

Contributed by:
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Contents

Bech-Bruun is a market-oriented law firm offering a wide range of specialist advisory services to large sections of the Danish corporate and public sectors, as well as to global enterprises. Consisting of around 600 highly experienced and specialised employees (54 of whom are partners), Bech-Bruun is one of Denmark's leading full-service law firms, and has office locations in Copenhagen and Aarhus. Bech-Bruun's franchising team (comprising approximately five experts) advises on all legal aspects of franchising and offers a full-service, commercial approach to establishing and operating franchise networks across various sectors. The team co-operates with leading international franchising lawyers and maintains an extensive international network to service its clients. Recent clients include Joe & the Juice, Oakberry, Sunset Boulevard and Kvik.

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1. An Introduction to Franchising

1.1 Franchise Market Overview

The Danish franchise market is a dynamic sector that has experienced significant growth in recent years. It forms a particularly important part of the retail and service industries in Denmark.

Market Size

Franchising in Denmark covers a wide range of industries, including restaurants, retail and services. Though the exact number of franchise businesses varies, franchising is a widespread business model in Denmark, and it significantly contributes to the Danish economy by creating jobs and stimulating entrepreneurship.

The Danish franchise market is characterised by a mix of strong international brands and innovative national concepts, together creating a varied and competitive market.

International Brands

Several international franchise brands have established a strong presence in Denmark. Some of the most well-known include:

- McDonald's – one of the largest fast-food chains in the world, with a significant presence in Denmark;
- Burger King – a competitor of McDonald's, also with many restaurants in Denmark;
- 7-Eleven – a widespread and popular convenience store chain in larger cities and at a large number of Danish railway stations;
- Starbucks – the world's largest coffee chain, with many coffee shops in Denmark; and
- Carl's Jr – an American fast-food chain with multiple restaurants in Denmark.

Domestic Brands

Several Danish franchise businesses have also been successful both nationally and internationally – eg:

- Joe & the Juice – a Danish chain offering juice, coffee and sandwiches, which has expanded internationally (most recently in the Middle East);
- Søstrene Grene – a Danish retailer of a wide range of products in home decorations, creativity and accessories, which has mainly expanded in Europe;
- Flying Tiger Copenhagen – a Danish retailer of everyday items and seasonal goods, which has expanded internationally;
- Sunset Boulevard – a Danish fast-food chain focusing on quality burgers and sandwiches, mainly present in the Danish market; and
- Kvik – a Danish retailer of kitchens, wardrobes and bathroom fittings, which has expanded internationally.

1.2 Franchise Regulation

In Denmark, franchising is not governed by specific franchise laws but rather by the Danish Contracts Act and general Danish contract law principles – most notably, the principle of freedom of contract.

Franchising must also adhere to a variety of special legislation. This includes but is not limited to:

- the Marketing Practices Act;
- the Competition Act;
- the Business Lease Act;

- the Product Liability Act; and
- the Interest Act.

1.3 Definition of a Franchise Agreement

Under Danish law, there is no statutory definition of "franchising".

However, "franchising" is generally understood as a business model where a franchisor, through a franchise agreement, grants a franchisee the right to operate a business using the franchisor's brand, trade mark and business system. The franchisor is the original business owner who has developed a successful brand and business system. The franchisee is another business that wants to open and operate one or more stores using the franchisor's brand and business system.

2. Franchise Disclosure

2.1 Mandatory Disclosure

In Denmark, there is no legal mandatory requirement for franchisors to disclose information before entering into a franchise agreement with a franchisee.

However, it is generally recommended that franchisors provide certain disclosures due to the principles of culpa in contrahendo and the obligation of good faith. These principles suggest that it is prudent to share relevant information before finalising a franchise agreement.

The obligation of good faith requires both the franchisor and the franchisee to consider each other's interests and provide necessary information to prevent losses. Thus, concealing information or misleading behaviour can be a breach of the principle of good faith.

While not legally required, franchisors are encouraged to share key details that could affect the franchisee's decision-making process. These might include:

- information about the expected profitability of the franchise;
- any significant legal disputes that could impact the franchisee's operations; or
- the status of trade mark applications.

Such transparency helps build trust and ensures that the franchisee is fully informed about potential risks and opportunities prior to entering into the franchise agreement.

2.2 Consequences of a Failure to Disclose

While there are no specific legal disclosure requirements either before or after signing a franchise agreement, a franchisor's failure to disclose essential information may lead to certain legal consequences. If the franchisor misrepresents or mis-sells essential information regarding the franchise concept, the franchisee may have the right to nullify the franchise agreement depending on the nature of the misrepresentation of information.

If the franchisee is misled, they may pursue legal action to seek reimbursement or damages. This might include reimbursement for losses incurred due to the franchisor's lack of disclosure.

Duty of Loyalty

If a franchisor fraudulently neglects the duty of loyalty and fails to disclose material commercial information, the franchise agreement could be considered invalid. Additionally, failing to uphold this duty may be seen as a breach of contract, providing the franchisee with grounds to seek remedies.

Remedies for Breach of Contract

In cases where the franchisor breaches the franchise agreement, the franchisee has the right to claim damages. To do so, several conditions must be met:

- the franchisor must be liable (culpa);
- the franchisee must have suffered a loss;
- the loss must have been foreseeable; and
- there must be an adequate causal connection between the breach and the incurred loss.

Furthermore, pre-contractual liability requires evidence of unfair conduct or violation of pre-contractual principles. Damages can be sought for losses and expenses related to the conclusion of the agreement, effectively restoring the non-breaching party to the

position they would have been in had the agreement not been made (reliance damages).

2.3 Franchise Disclosure Exemptions

As mentioned in **2.2 Consequences of a Failure to Disclose**, there is no disclosure obligation under Danish law.

2.4 Franchise Disclosure Language/ Translation Requirements

Danish law does not require pre-contractual disclosure and therefore does not require disclosure documents. If the franchisor decides to provide disclosure documents, they are free to determine the language of the disclosure documents, and there is no legal requirement for the documents to be translated into Danish. Danish and English are widely used as contracting languages for franchise agreements in Denmark.

3. Franchise Registration

3.1 Mandatory Registration

There is no franchise registration law in Denmark, and there are no required or mandatory franchise registrations before a franchisor can operate. There are also no requirements that franchise agreements be registered with Danish authorities.

Under Danish law, professional parties entering into agreements are generally not bound by any stringent formal requirements. This means that the formation of contracts does not necessitate adherence to specific formalities or procedures, allowing for a more flexible approach to the creation of legally binding agreements. Hence, a franchise agreement does not require registration with Danish authorities to be considered valid and enforceable.

3.2 Franchise Registration Process

There are no registration requirements for franchise agreements under Danish law.

3.3 Consequences of a Failure to Register

There are no registration requirements for franchise agreements under Danish law.

4. Other Requirements

4.1 Past-Profitability Requirements

There are no legal requirements stipulating that the franchisor demonstrate that the business concept has operated profitably for a period of time before entering into a franchise agreement.

Under Danish law, there are generally no requirements that must be met before a company can enter into a franchise agreement.

5. Duration, Renewal and Termination

5.1 Duration of a Franchise Agreement

Under Danish law, there are no legal or regulatory requirements regarding the minimum or maximum duration of a franchise agreement.

Franchise agreements are governed by the contractual principle of freedom of contract. This means that the parties have the autonomy to determine the content of the agreement with generally few restrictions on its terms. Consequently, the parties are free to agree on the duration of the franchise agreement.

However, if the franchise agreement contains a non-compete obligation, the parties should be aware of the restrictions on the duration of such non-compete obligation according to competition law (see **6.2 Exclusive Territories and Competing Businesses** for further information). This implies that a duration of five years is typical for franchise agreements in Denmark.

Although there are no statutory requirements regarding the duration of a franchise agreement, practical considerations such as the size of the investment, repayment periods and market conditions may influence the determination of the agreement's duration. It is also common for franchise agreements to include provisions for extension or termination, which can affect the actual duration of the agreement.

5.2 Franchise Renewal

The franchisee does not have a legal or statutory right to renew the franchise agreement upon expiry. A renewal right must be explicitly outlined within the

franchise agreement itself. While the franchisee can request the renewal of the agreement, the franchisor retains the discretion to decline such a request. Danish law does not impose any obligation on franchisors to extend or renew a franchise agreement that is about to expire or has expired.

Compensation Upon Non-Renewal

Danish law does not entitle the franchisee to receive compensation if the franchise agreement is not renewed, expires or is rightfully terminated. Compensation to the franchisee is only applicable if it is explicitly mentioned within the franchise agreement.

However, there are scenarios where compensation might be considered relevant. For instance, compensation may be warranted if the franchise agreement includes provisions for compensation under certain conditions (such as when the franchisee has made significant investments that have not yet fully depreciated) or if the franchisor is in breach of the terms of the agreement.

In summary, the renewal of franchise agreements and the entitlement to compensation upon non-renewal are governed by the terms set forth in the franchise agreement and not by statutory laws.

Goodwill Compensation Under Commercial Agency Laws

According to the Danish Commercial Agents Act, a commercial agent is entitled to goodwill compensation upon termination of the agency agreement, provided that the following conditions are met:

- the agreement is terminated by the principal;
- the agent has established a customer base from which the principal can benefit even after the collaboration with the agent has ended; and
- payment of compensation can be considered reasonable.

However, there may be specific circumstances that result in the commercial agent not being entitled to goodwill compensation.

The Risk of the Franchisee Being Deemed a Commercial Agent of the Franchisor

Under the Commercial Agents Act, a commercial agent is defined as an independent business operator that has formed a contractual relationship with another company – known as the principal – to promote the sale of the principal's goods by negotiating the sale of the goods or by entering into sales agreements in the name of the principal. The commercial agent actively seeks out potential buyers and obtains quotations on behalf of the principal.

In contrast, a franchisee typically functions as an independent distributor, purchasing products and selling them under their own name and on their own account. Therefore, the risk that a typical franchisee would be deemed a commercial agent of the franchisor is low. Despite this distinction, there are scenarios where a franchisee might be perceived as acting as a commercial agent for the franchisor.

Therefore, it is advisable for the franchise agreement to contain clear provisions that explicitly state that the franchisee does not act as a commercial agent for the franchisor.

5.3 Termination of the Franchise Agreement

There are no restrictions on the termination rights of the franchisor, and Danish law does not grant statutory termination rights to the franchisee.

The principle of freedom of contract entitles the franchisor and the franchisee to mutually agree on the terms and conditions regarding termination of the franchise agreement, including the rights to terminate and the notice periods required. Danish law does not impose specific statutory termination rights that automatically supersede the agreed contractual terms. This means that the parties have the flexibility to negotiate and define their own termination provisions.

If the franchise agreement lacks a specified notice period for termination for convenience, and if the franchise agreement does not explicitly state that it is non-terminable, termination for convenience requires a reasonable notice period. The determination of what constitutes a reasonable notice period depends on

the particular circumstances regarding the agreement. Nevertheless, Danish case law suggests that a notice period of approximately six months is considered reasonable in many situations. Further, the franchise agreement may be terminated upon material breach with immediate effect under Danish law, unless the franchise agreement grants the party in breach a cure period for such breach.

6. Restrictions on Competition in Franchise Agreements

6.1 Treatment of Competition Restrictions in Franchise Agreements

Franchise agreements often include restrictions – such as exclusive territories, non-compete clauses and purchase obligations – to ensure uniform distribution and to protect the franchisor's intellectual property (IP). The European Commission and the Danish Competition Authority recognise that certain restrictions which are objectively necessary for the franchise system's operation may be exempt from the prohibition against anti-competitive agreements in Article 101 (1) of the Treaty on the Functioning of the European Union (TFEU) – eg, restrictions on competitors' access to know-how and non-compete obligations that are necessary to ensure a common identity and reputation of the franchise network.

Competitive restraints contained in franchise agreements will be assessed using the principles applicable to the distribution system that most closely corresponds to the particular franchise agreement – eg, a franchise agreement that results in a closed network, where the franchisees are prohibited from selling to non-franchisees, must be assessed under the principles applicable to selective distribution.

Note that under certain circumstances it may be possible to modify a franchise agreement so that it differs from what is stated in **6.2 Exclusive Territories and Competing Businesses**, **6.3 Requiring Franchisees to Purchase Specific Goods and Services** and **6.4 Channel Reservation**. However, this would require an individual assessment of the specific agreement and relevant market conditions to ensure that the agreement is reasonable and complies with applicable law.

6.2 Exclusive Territories and Competing Businesses

Exclusive Territories

The franchisor is often permitted to grant the franchisee the exclusive rights to operate the franchise within a specific geographical area, and exclusivity provisions are common in Danish franchise agreements. The agreement is covered by the Vertical Agreement Block Exemption (VBER; see also **6.5 Vertical Agreement Block Exemptions**) if:

- each of the parties' market share does not exceed 30% of their respective markets;
- the number of distributors appointed per exclusive territory or customer group does not exceed five; and
- the agreement does not contain any hardcore restrictions (eg, a restriction on passive sales).

If the franchise agreement does not contain any exclusivity provision, the franchisor is allowed to conduct business under the franchised brand in the specific geographical area itself, or may grant others the right to do so. However, the franchisor must always observe its duty of loyalty towards the franchisee.

Competing Businesses

In general, case law states that non-compete obligations that are necessary to ensure a common identity and reputation of the franchise network can prohibit the franchisee from establishing a similar business in an area where the franchisee may compete with a member of the franchising network. Such a non-compete obligation may last during the term of the contract and for a reasonable period after its expiry.

A non-compete obligation that is limited to a maximum period of one year after the termination of the franchise agreement is covered by the VBER (see again **6.5 Vertical Agreement Block Exemptions**) if two additional conditions are met. First, the non-compete obligation must be limited to the point of sale from which the franchisee operated during the term of the agreement. Second, the non-compete obligation must be indispensable to protecting the know-how that the franchisor has transferred to the franchisee.

6.3 Requiring Franchisees to Purchase Specific Goods and Services

The franchisor can require the franchisee to purchase certain products and services only from the franchisor or its nominated suppliers. This is a common practice for Danish franchise arrangements.

A purchasing obligation may constitute a non-compete obligation, as it requires the franchisee to buy goods exclusively from the franchisor or nominated suppliers, thereby preventing other suppliers from competing for the contract goods. A purchasing obligation must therefore be objectively necessary for the operation of a franchise system to comply with EU competition law.

Requiring the purchase of certain products and services only from the franchisor or nominated suppliers is typically necessary to maintain the franchisor's quality standards for the products and services offered under the franchise concept, as well as to uphold the brand's integrity and high level of service for consumers.

6.4 Channel Reservation

A franchisor is allowed to impose certain restrictions on the franchisee's online sales. This can include limitations on the use of specific e-commerce platforms, and can set out specific quality requirements regarding the content and layout of an e-commerce platform. However, these restrictions must not prevent the franchisee from effectively utilising the internet as a sales channel. Additionally, a franchisor may reserve certain territories or customer groups for the franchisor or other franchisees, provided that the franchisee is not prohibited from passively selling to these areas or customer groups.

6.5 Vertical Agreement Block Exemptions

When operating a business in Denmark (an EU member state) as a franchisor or franchisee, it is important to consider whether the franchise agreement is covered by the VBER, which plays a crucial role in shaping how vertical agreements are handled. The VBER provides a framework that makes permissible certain agreements which might otherwise be considered illegal under competition law for being anti-competitive.

If the franchise agreement is covered by the VBER, the parties do not need to conduct an individual assessment of whether the franchise agreement complies with the rules on competition.

For the VBER to apply, the following general conditions must be met:

- each of the parties' market share must not exceed 30% of either the sales or purchasing market for the goods or services in question;
- the franchise agreement must constitute a vertical agreement;
- the franchise agreement must not contain so-called "hardcore restrictions" – eg, fixed prices or minimum prices (ie, resale price maintenance) and market-sharing restrictions such as restricting passive sales (ie, internet sales); and
- any provisions relating to IP rights must be ancillary to the main purpose of the franchise agreement and must be directly related to the use, sale or resale of goods or services by the franchisee or its customers.

The VBER also contains rules on various aspects relevant for franchising, including online sales, exclusivity, distribution systems and pricing.

If the foregoing conditions are not met, the franchise agreement requires an individual assessment.

7. Choice of Governing Law

7.1 Possibility of a Franchisor Stipulating Non-Local Law

The franchisor is permitted to stipulate the laws of its jurisdiction as the governing law of the franchise agreement. This is a consequence of the principle of freedom of contract under Danish law.

The choice of governing law may be influenced by various factors, such as the franchisor's familiarity with the franchisee's legal system, perceived advantages in terms of legal protections, or strategic business considerations. Ultimately, the decision on which jurisdiction's laws will apply is a matter of negotiation between the parties.

7.2 Local Law Requirements

There is no requirement for franchise agreements to be governed by Danish law. All elements of a franchise agreement, including the IP elements, may be governed by the laws of the domestic or foreign jurisdiction agreed between the parties.

The parties in a franchise agreement generally have the freedom to choose which law will govern their agreement. This flexibility allows them to choose a jurisdiction that best suits their interests.

7.3 Mandatory Content

Danish law does not impose mandatory content and provisions that must be contained in a franchise agreement. The fundamental legal principle of freedom of contract means that the parties are free to enter into any franchise agreement they wish, with whatever content they wish.

In the event that a franchise agreement does not address certain issues – such as termination due to material breach, force majeure, liability or notice periods – the general principles of Danish contract law and the principles of the law of obligations will apply.

7.4 Prohibited Provisions in Local Law

Danish law does not contain a specific "blacklist" of prohibited provisions that may not be contained in a franchise agreement.

The principle of freedom of contract governs agreements, including franchise agreements. This principle allows parties to freely negotiate and establish the terms and conditions of their contractual relationships without significant interference from statutory regulations. This contractual freedom means that generally minimal restrictions are imposed on the provisions of franchise agreements, allowing for a wide range of terms to be included.

Exceptions

There are, however, some notable exceptions worth mentioning.

- Under the Danish Act on Restrictive Employment Clauses, non-solicitation clauses are deemed illegal and invalid. Consequently, the franchisor is prohibited from including such clauses in the franchise agreement.
- Competition law rules impose certain requirements that agreements and provisions must not restrict competition. If the franchise agreement contains provisions that are anti-competitive (eg, provisions on fixed prices or minimum prices), these provisions may be declared invalid (see **6. Restrictions on Competition in Franchise Agreements**).
- If provisions are unreasonable, unfair or contrary to principles of fair conduct, the provisions may be amended or set aside pursuant to Section 36 of the Danish Contracts Act.

8. Dispute Resolution

8.1 Enforcement of Foreign Judgments

Foreign Judgments

The 1968 Brussels Convention, the 2007 Lugano Convention and EU Regulation 1215/2012 apply in Denmark. Hence, foreign judgments from EU member states and EFTA countries (Iceland, Liechtenstein, Norway and Switzerland) can be recognised and enforced in Denmark. Yet, it is important to note that certain conditions must be met and that specific exceptions apply.

Judgments issued by courts outside the EU and EFTA are generally not recognised and cannot be enforced in Denmark.

Foreign Arbitration Awards

Denmark is a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). This means that arbitration awards from other countries which have also acceded to the Convention can generally be recognised and enforced in Denmark.

Pursuant to the Danish Arbitration Act, all foreign arbitration awards can generally be recognised and enforced in Denmark. This includes arbitration awards from countries that are not party to the New York Convention.

To enforce a foreign arbitration award, the party seeking enforcement must submit a request to the Danish

courts. The enforcement of foreign arbitration awards is carried out by the Danish bailiff court.

However, there are specific circumstances under which foreign arbitration awards may not be enforced in Denmark. This can occur if the defendant did not receive proper notice of the arbitration proceedings or was otherwise unable to present their case. These exceptions apply to all arbitration awards, including those from countries that are party to the New York Convention.

9. Payment and Taxes

9.1 Restrictions or Limits on Franchisee Fees and Royalties

No restrictions are imposed on the payment of franchise fees, royalties or service fees under Danish law. The parties are free to agree on the specific amount of franchise fees, royalties or service fees.

However, payment of franchise fees, royalties or service fees must comply with Section 36 of the Contracts Act regarding unfair provisions. Section 36 of the Contracts Act is primarily aimed at protecting consumers from unfair terms imposed by economically stronger and more knowledgeable business entities. While its primary focus is consumer protection, its applicability extends to business-to-business transactions, offering a layer of fairness in commercial dealings. Despite its broad scope, Danish courts are reluctant to apply Section 36 to commercial contracts.

There is no general or annual maximum payment permitted in foreign currency or any maximum for royalties.

9.2 Withholding Tax

The Danish tax system distinguishes between companies and individuals based on their tax residency status.

Those who are considered tax residents in Denmark – whether they are companies or individuals – are subject to full tax liability. This means that they are obligated to pay taxes on their worldwide income, adhering to the comprehensive tax regulations set forth by Danish law.

Further, companies and individuals that are not tax-resident in Denmark may be subject to a limited tax liability in Denmark on certain types of income. This implies that their tax obligations are confined to certain types of income sourced from within Denmark, and they should not be required to pay taxes on income earned outside the country.

Royalties

Royalties are subject to a 22% (for 2025) withholding tax. This means that foreign companies (foreign franchisors) are subject to a limited tax liability concerning royalties received from sources (a franchisee) in Denmark. The Danish franchisee must withhold the tax and report the royalty payment to the Danish tax authorities by no later than the 10th of the month following the payment.

In most cases, the withholding tax rate can be reduced in accordance with a double taxation treaty.

The tax liability does not include royalties that are covered by EU Directive 2003/49 on a common system of taxation applicable to interest and royalty payments made between associated companies of different member states. However, the exemption only applies if the paying company (the franchisee) and the receiving company (the franchisor) are associated as mentioned in the Directive for a continuous period of at least one year, and if the payment date also falls within this continuous period.

Fees from Denmark that fall outside the definition of “royalties” will generally not be subject to Danish limited taxation, which entails that no withholding tax must be withheld in Denmark. Therefore, “service fees” and “technical fees” paid from Denmark should generally not trigger withholding tax in Denmark.

Double Taxation Treaties

Foreign franchisors may find themselves subject to taxation by multiple jurisdictions on the same income. However, Denmark has entered into double taxation treaties that aim to mitigate this issue of double taxation.

9.3 Foreign Currency Controls

In Denmark, there are generally no foreign currency controls that hinder or prohibit the payment of franchise fees. There are no restrictions on transferring money from Denmark, including the payment of franchise fees.

Furthermore, there is no requirement to obtain authorisation from the Bank of Denmark or the franchisee's commercial bank before making a payment. However, it is important to be aware of standard banking procedures and any documentation requirements, which may vary from bank to bank.

10. Execution Formalities

10.1 Authentication, Notarisation, Witnessing, Etc

There are no formalities to be observed under Danish law when signing a franchise agreement. Franchise agreements are valid without any formalities being needed (ie, authentication or notarisation of signatures, witnessing, registration or similar).

10.2 Electronic Signatures

Electronic signatures, such as those provided by service providers (eg, Docusign), are permitted in Denmark. Danish law does not impose specific formal requirements for the execution of agreements, meaning that electronic signatures hold the same legal validity as handwritten signatures.

The eIDAS Regulation

Regulation (EU) 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the "eIDAS Regulation") stipulates that an electronic signature cannot be denied legal effect solely because it is electronic.

Additionally, the eIDAS Regulation sets forth several technical requirements for digital signatures. Qualified electronic signatures and advanced electronic signatures always hold the same status as handwritten signatures. The European Commission has established the eIDAS Trusted List, which includes a number of providers of electronic signatures that meet the Regulation's requirements.

10.3 Stamp Duties

In Denmark, no specific document taxes or stamp duties apply generally to all documents. However, there may be fees associated with certain types of documents or transactions, such as registration fees when registering property or mortgages. No such taxes or stamp duties apply to franchise agreements themselves.

Trends and Developments

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Bech-Bruun

Bech-Bruun is a market-oriented law firm offering a wide range of specialist advisory services to large sections of the Danish corporate and public sectors, as well as to global enterprises. Consisting of around 600 highly experienced and specialised employees (54 of whom are partners), Bech-Bruun is one of Denmark's leading full-service law firms, and has office locations in Copenhagen and Aarhus. Bech-Bruun's franchising team (comprising approximately five experts) advises on all legal aspects of franchising and offers a full-service, commercial approach to establishing and operating franchise networks across various sectors. The team co-operates with leading international franchising lawyers and maintains an extensive international network to service its clients. Recent clients include Joe & the Juice, Oakberry, Sunset Boulevard and Kvik.

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Franchising is a popular business model in Denmark, offering a structured approach for businesses to expand their reach and capitalise on established brand recognition.

Danish Consumers' Preferences for Established Brands

Danes' emphasis on quality is a defining characteristic of consumer behaviour, which is intricately linked with the preference of well-known and established brands. In Denmark, the consumer market is heavily influenced by a cultural inclination towards high-quality products and services that established brands are often perceived as delivering. This preference is not merely a matter of product excellence but also encompasses the trust and reliability that these brands have cultivated over time. Established brands benefit from strong recognition and trust among Danish consumers, who value consistency and dependability in their purchasing decisions. This trust is built on years of positive experiences and the assurance that these brands will continue to meet their expectations.

Expansion to Denmark using local franchisees allows global brands to maintain their established reputation while integrating into the local market in a way that is both respectful and beneficial to the local economy. By leveraging local franchisees, these brands can ensure that their products and services are tailored to meet the specific preferences of Danish consumers, while also supporting local entrepreneurship.

Viability for Franchisors and Franchisees

Franchising presents a compelling and attractive option for individuals aiming to enter the business world; it offers numerous benefits such as brand recognition, a proven business model, economies of scale and risk mitigation. Aspiring entrepreneurs can leverage these advantages to enhance their chances of success and achieve their business goals.

In Denmark, being an independent entrepreneur within the retail sector can be challenging, making franchising a more viable approach for those seeking to establish themselves with a proven concept. The franchise model is equally beneficial for well-established concepts looking to expand, as it allows for rapid growth with reduced financial risk compared to opening numerous new stores independently, which may require a substantial amount of funds.

Franchising has emerged as a robust and superior business model compared to sole proprietorships in Denmark, as it provides a structured framework that combines the benefits of established brand recognition, proven business practices and ongoing support from the franchisor. Franchisees benefit from the collective strength of the network, which often leads to enhanced market penetration and operational efficiency compared to independent businesses. This collaborative nature of franchising enables better resource allocation and strategic planning, making it a preferred choice both for new entrants and for established businesses seeking expansion.

Franchise Concepts Outperforming in Recent Years

The significant difference between being an independent entrepreneur as a franchisee and being independent outside a franchise network lies in the foundation

upon which the business is established. A franchisee launches their business on a proven basis, without the need to invent and test various concept possibilities. Instead, they start their venture following tried-and-tested guidelines, offering products and services that have already demonstrated their appeal to consumers. The franchise concept has been successfully implemented elsewhere, providing the franchisee with a substantial advantage over those who rely solely on a good idea.

In recent years, franchise concepts have shown remarkable resilience and adaptability, outperforming other retail stores and sole proprietorships in Denmark. The inherent advantages of franchising – such as shared marketing strategies, bulk purchasing power and streamlined operations – have enabled franchise businesses to navigate economic fluctuations more effectively. This has resulted in a more stable performance and growth trajectory, even amidst challenging market conditions.

Despite the advantages, franchises have not been immune to the pressures of supply chain and logistics challenges during recent years. However, franchise chains in Denmark have shown remarkable strength in absorbing these pressures and planning more effectively. The collaborative nature of franchising allows for better resource allocation and strategic planning, enabling franchisees to mitigate disruptions and maintain service quality.

Financial Challenges

The current economic climate in Denmark and the rest of the world, characterised by geopolitical turmoil and financial uncertainty, poses significant challenges for businesses, including franchises. However, franchising offers a distinct advantage in this environment due to the established financing structures that many franchise chains possess. These structures often include partnerships with banks, leasing companies and other financial institutions, providing franchisees with access to favourable financing options. This financial support can ease the burden of initial set-up costs and ongoing operational expenses, making franchising a more viable option compared to independent business ventures.

In Denmark, a floating charge is particularly beneficial for financing operational assets and inventory, as a floating charge allows businesses to secure loans against their movable assets. For franchisees, the ability to leverage a floating charge can enhance their financial stability and support the expansion of their franchise business.

Fast and Smooth Establishment of New Companies

Establishing a new company in Denmark for setting up a franchise business is a straightforward process. Denmark offers a streamlined registration system through the Danish Business Authority, where entrepreneurs can easily submit necessary documentation online, including the new company's articles of association and details about management and ownership. A new company can be established within a day.

Broadly speaking, Denmark is one of the world's most digitalised countries. Electronic signatures hold the same legal validity as handwritten signatures; there are no requirements for authentication, notarisation or witnessing in relation to the establishment of a new company or decisions made at general meetings or by the board, and most documentation can be submitted to the Danish authorities online.

The choice of legal structure – such as a private limited company (ApS) or a public limited company (A/S) – is flexible and can be tailored to suit business needs and capital requirements. The capital requirements for an ApS were reduced from DKK40,000 to DKK20,000 in February 2025, making it even easier for entrepreneurs to establish a company in Denmark. If an A/S is preferred, the capital requirement is DKK400,000.

Minimal Regulation of Franchising

Denmark does not have specific franchise legislation. Instead, franchising and franchise agreements are governed by general Danish contract law principles. This legal framework provides the parties with significant freedom to negotiate terms tailored to their specific needs and business objectives. However, it is crucial for both franchisors and franchisees to be aware of the implications of Danish contract law, as it influences the enforceability and interpretation of franchise agreements.

Owing to the absence of specific franchise legislation, there are no statutory requirements for pre-contractual disclosure in Denmark as may be mandatory in various other jurisdictions. This allows the parties to streamline the negotiation process without the need to provide extensive information upfront. Additionally, there are no requirements for translations, apostille or notarisation of signatures, or registration of signed franchise agreements. In addition, there is no requirement for a "cooling off" period between contract negotiation and signing.

This lack of formalities simplifies the process of concluding a binding and enforceable contract, making it smoother and easier for parties to enter into franchise agreements in Denmark, compared to other jurisdictions where such requirements can be burdensome and time-consuming.

Despite the ease of entering into franchise agreements, the parties must exercise due diligence and ensure that their agreements comply with general Danish contract law principles. Furthermore, while the legal process is straightforward, the parties should be mindful of other relevant Danish legislation that may impact their franchise operations, such as competition law, consumer protection regulations, data protection regulations and employment law.

Overall, the flexibility afforded by the Danish legal system provides a conducive environment for franchising, allowing businesses to focus on growth and expansion without being encumbered by excessive legal formalities. However, it remains essential for the parties to seek legal advice to navigate the complexities of contract law and to ensure that their franchise agreements are adequate, robust and enforceable. Hence, a franchise agreement with unclear wording poses uncertainties with respect to the parties' legal positions in the case of disputes, termination and the like, and may result in Danish contract law principles having to be used to determine such legal positions.

Increasing Legal Complexity for Businesses

Even though there is no specific Danish legislation that governs franchising, there is a growing complexity of legal requirements in Denmark within various legal fields, which may present significant challenges for companies not properly suited to navigating such complexity. Franchising emerges as a strategic solution for this, offering substantial economies of scale in areas such as IT infrastructure, compliance and marketing.

Franchise networks often benefit from centralised IT set-ups that ensure robust data management and cybersecurity, reducing the burden on individual franchisees to purchase or develop and maintain sophisticated systems independently. This shared infrastructure not only enhances operational efficiency but also helps ensure compliance with stringent data protection laws.

Moreover, the collective approach to compliance within a franchise system provides a significant advantage. Franchisees may rely on the franchisor's expertise and resources to meet evolving regulatory demands, from employment laws to environmental standards. This support mitigates the risk of non-compliance and allows franchisees to focus on their core business activities.

In the realm of marketing, franchising offers a unified strategy that leverages brand recognition and established market presence. Franchisees benefit from co-ordinated marketing efforts that adhere to legal advertising standards, ensuring consistency and compliance across all platforms. Alternatively, an international franchisor may rely on the franchisee ensuring compliance with local marketing laws for local campaigns, should the franchisor not be familiar with national requirements.

Overall, the franchise model provides a robust framework for addressing the increasing legal complexities. By capitalising on economies of scale in IT, compliance and marketing, franchisees can achieve operational excellence and maintain a competitive edge in a challenging regulatory environment.

Implementation of the Accessibility Act in Denmark

The Danish Act on Accessibility Requirements for Products and Services (the "Accessibility Act") applies to certain products and services from 28 June 2025, and represents a significant step towards equal access to certain products and services for all citizens, includ-

ing those with disabilities. This legislation, implementing the EU Directive on accessibility requirements for products and services, mandates that certain products and services must be made accessible to persons with disabilities.

For franchises operating in Denmark, the Accessibility Act necessitates a review and potential overhaul of their service delivery models – primarily web shops and smartphone apps offering e-commerce services (the option to purchase services/goods) – to ensure compliance with the Accessibility Act from 28 June 2025. Also, payment terminals and self-service terminals delivering services covered by the Accessibility Act must meet the requirements set out in the Accessibility Act if the terminals are placed on the market after 28 June 2025.

The implementation of the Accessibility Act in Denmark presents both challenges and opportunities for franchises. By embracing these changes, franchises can enhance their inclusivity, improve customer satisfaction, and align with broader societal goals of equality and accessibility.

Upcoming EU Regulation on Payment Terms in Commercial Transactions

In April 2024, the European Parliament approved the European Commission's proposal for new EU regulation on combating late payment in commercial transactions. There is currently no set date for when the regulation may be expected to enter into force, as it is awaiting the European Council's first reading.

The regulation is designed to protect debtors in commercial transactions between businesses and is expected to set maximum payment deadlines, automatic and mandatory interest on late payments, and enforcement measures. The maximum payment deadline is expected to be 30 days from the date the debtor receives an invoice, but may be increased by agreement to 60 days for all types of goods and to 120 days for slow-moving goods and seasonal goods.

Franchise agreements must be carefully examined to ensure compliance with this expected new regulation. The regulation's strict payment deadlines and mandatory interest on late payments could significantly impact the financial arrangements within franchise agreements.

Franchisors and franchisees should review their contracts to ensure that they align with the regulation's requirements – which cannot be deviated from, as the regulation currently entails sanctions for violations. It is also important to be aware of the right to claim interest and compensation for late payments.

The regulation is expected to apply to contracts entered into before the regulation's effective date if the transactions under the contracts are executed after such date. For long-term contracts – such as franchise agreements still in effect when the regulation enters into force – it is crucial to assess how the new rules will affect credit periods, prices, etc. There may also be a need to renegotiate existing contracts, especially if they are based on longer credit periods.

Conclusion

Franchising in Denmark is a popular business model due to Danish consumers' preference for established brands, driven by a cultural emphasis on quality, trust and reliability. The franchise model offers benefits such as brand recognition, a proven business framework, economies of scale and risk mitigation, making it viable for new entrepreneurs and established businesses seeking expansion. Financially, franchising in Denmark provides advantages through established financing structures and the concept of a floating charge, enhancing stability and growth potential. The lack of specific franchise legislation in Denmark allows for flexibility in negotiations and franchise agreements, although other Danish legislation does have an impact on franchises.

NEW ZEALAND

Law and Practice

Contributed by:
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MinterEllisonRuddWatts

Contents

MinterEllisonRuddWatts is a leading, full-service law firm in New Zealand, with internationally recognised, experienced legal and business advisers who work across a wide range of practice areas and industry sectors.

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1. An Introduction to Franchising

1.1 Franchise Market Overview

Franchising is a very common business model in New Zealand.

The Franchising New Zealand 2024 survey conducted by Dr Simon Moore and Prof Jonathan Elms at Massey University identified that in 2024 the franchise sector's turnover was approximately NZD73.4 billion, including business format franchises, motor vehicle sales and retail of fuel.

International franchise brands operating in the New Zealand market include:

- McDonald's;
- Domino's;
- Pizza Hut; and
- Starbucks.

New Zealand-founded franchise brands include:

- Green Acres (lawn and garden care);
- Rodney Wayne (hair salons);
- Stirling Sports (athletic retail); and
- Robert Harris (cafes).

1.2 Franchise Regulation

New Zealand does not have legislation that specifically regulates the ongoing relationship between franchisors and franchisees. Instead, franchise arrangements are subject to a range of general laws – including those governing contracts, competition, intellectual property (IP), employment, consumer law, privacy and real estate – as well as a voluntary franchise code.

A key piece of legislation is the Fair Trading Act 1986, which imposes obligations on all traders. It prohibits unconscionable conduct, misleading or deceptive practices, and making claims that cannot be substantiated.

While membership in the Franchise Association of New Zealand (FANZ) is voluntary, those who join must adhere to its Code of Practice and Ethics (the "FANZ Code"). This code promotes ethical conduct and best practice standards in franchising, including requirements for transparency, dispute resolution and fair dealing.

1.3 Definition of a Franchise Agreement

In New Zealand, there is no statutory definition of "franchising". However, FANZ provides a definition in its *Best Practice in Franchising Rules*.

A "franchise" refers to a method of operating a business that involves the right to offer, sell, or distribute goods or services in New Zealand, and includes at least the following elements:

- the grant by a franchisor to a franchisee of the right to the use of a trade mark, in such a manner that the business carried on by the franchisee is or is capable of being identified by the public as being substantially associated with a trade mark identifying, commonly connected with or controlled by the franchisor; and
- the requirement that the franchisee conducts the business, or that part of the business subject to the franchise agreement, in accordance with the marketing, business or technical plan or system specified by the franchisor; and
- the provision by the franchisor of ongoing marketing, business or technical assistance during the term of the franchise agreement.

While FANZ membership is voluntary and the above definition is not legally binding, it is a useful reference when interpreting what constitutes "franchising" in New Zealand.

2. Franchise Disclosure

2.1 Mandatory Disclosure

New Zealand law does not specifically cover disclosure requirements in a franchise context. However, disclosure documents are best practice for ensuring that prospective franchisees are informed about the franchise and their investment, and for mitigating risks of misrepresentation.

Franchisors should ensure that all disclosure materials are thorough, accurate and transparent and comply

with New Zealand's general laws on commercial contracting and dealings, including the Fair Trading Act 1986. This Act prohibits unconscionable conduct in trade, misleading or deceptive conduct (which may include omissions) and unsubstantiated representations. Franchisors must ensure that all disclosed material information is accurate.

If the franchisor is a member of FANZ, mandatory disclosure obligations apply under the FANZ Code. The Code contains a list of required content in disclosure documents, including:

- franchisor details;
- a resume of the business experience of the franchisor and key directors/executives/managers;
- a current franchisor solvency certificate (the contents of which are prescribed in the Code);
- details of any bankruptcies, receiverships, liquidations, etc, of the franchisor or its directors/executive officers/principals from the past five years;
- a summary of the main particulars and features of the franchise;
- a list of components making up the franchise purchase;
- details of financial requirements of franchisees;
- information about current franchisees, recent terminations or non-renewal of franchisees, and litigation with existing or former franchisees;
- financial projections (or a statement that financial projections are not provided);
- a statement as to whether the territory or site to be franchised has been subject to any trading activity – particularly a previous franchise in the same franchise system within the previous five years – and if so, the history and details, including the circumstance of any cessation of the franchise; and
- a statement indicating that the prospective franchisee should seek independent legal and accountancy advice and, if the prospective franchisee declines to obtain that independent advice, that it will need to sign a statement to that effect.

Under the Code, the disclosure document must be updated at least annually.

The disclosure document must be provided to prospective franchisees at least 14 days before signing a franchise agreement, or before becoming bound by a preliminary agreement. Existing franchisees are entitled to receive an updated disclosure document within one month of requesting it when renewing their franchise agreement.

If the franchisor or franchisee is a publicly listed entity in New Zealand, additional disclosure obligations may apply due to continuous disclosure requirements imposed by the stock exchange.

2.2 Consequences of a Failure to Disclose

If a franchisor fails to provide disclosure and this failure leads to a misinformed decision, the franchisee may be able to terminate the agreement and/or claim damages against the franchisor.

As New Zealand does not have specific franchise laws, a franchisee claim would be pursuant to New Zealand's general commercial laws, including under the Contract and Commercial Law Act 2017 and the Fair Trading Act 1986.

Under the Contract and Commercial Law Act 2017, a franchisee may be entitled to damages from the franchisor or be able to cancel a contract with a franchisor if the franchisor makes a misrepresentation. For example, a franchisee may be able to cancel a franchise agreement if:

- the truth of the representation is essential;
- the effect of the misrepresentation will substantially reduce the benefit, or substantially increase the burden, of the contract; or
- the effect of the misrepresentation will make the benefit or burden of the contract substantially different from that represented or contracted for.

Franchisees may also pursue claims under the Fair Trading Act 1986 if the franchisor engages in misleading, deceptive or unfair practices. In addition to remedies such as injunctions and awards of damages, companies can be liable for fines of up to NZD600,000 and individuals for fines of up to NZD200,000.

Disclaimers or Exclusion Clauses

It is possible to contract out of some statutory remedies through disclaimers or exclusion clauses. The

enforceability of such clauses depends on whether they were clearly communicated before or at the time of contracting. Courts interpret exclusion clauses strictly, and any ambiguity is typically resolved against the party relying on the clause. Notably, clauses attempting to exclude liability for fraudulent misrepresentation are always unenforceable.

FANZ

In addition to the foregoing, for FANZ members there is a complaints procedure for breaches of the FANZ Code. Sanctions that may be issued include:

- written censure of the member (confidential);
- suspension or removal from FANZ membership;
- a direction to undertake remedial action in respect of the conduct;
- a written apology to the complainant; and
- the recovery of reasonable costs incurred by FANZ.

2.3 Franchise Disclosure Exemptions

In New Zealand, there are no statutory franchise disclosure obligations under general law.

If a franchisor is a member of FANZ, they are required to comply with the FANZ Code, which includes mandatory disclosure requirements. There are limited exemptions under the FANZ Code – eg, full disclosure requirements do not apply to assignment of an existing franchise, and may not apply to renewals or extensions of an existing franchise.

2.4 Franchise Disclosure Language/ Translation Requirements

The official languages of New Zealand are English, Te Reo Māori and New Zealand Sign Language. Typically, contracts are in English.

3. Franchise Registration

3.1 Mandatory Registration

There are no franchise registration requirements under New Zealand law. Franchisors are not required to register their franchise agreement, disclosure document or themselves with any government authority before operating in New Zealand.

3.2 Franchise Registration Process

This is not applicable as there is no franchise registration process in New Zealand.

3.3 Consequences of a Failure to Register

This is not applicable as there is no franchise registration process in New Zealand.

4. Other Requirements

4.1 Past-Profitability Requirements

There are no past-profitability requirements under New Zealand law.

If a franchisor is a member of FANZ, the franchisor is required to comply with the FANZ Code, which includes a requirement to provide potential franchisees with a franchisor solvency certificate as well as ongoing disclosure requirements.

Similarly, the Fair Trading Act 1986 prohibits misrepresentations in the course of trade, and representations need to be true and substantiated.

5. Duration, Renewal and Termination

5.1 Duration of a Franchise Agreement

In New Zealand, there are no legal or regulatory requirements that prescribe a minimum or maximum duration for franchise agreements. The duration is agreed between the franchisor and franchisee. Note, however, New Zealand contract and commercial law requirements, including a prohibition on unfair contract terms – see **7.4 Prohibited Provisions in Local Law**.

5.2 Franchise Renewal

In New Zealand, there are no legal or regulatory requirements that prescribe renewal rights. Note, however, New Zealand contract and commercial law requirements, including a prohibition on unfair contract terms – see **7.4 Prohibited Provisions in Local Law**.

5.3 Termination of the Franchise Agreement

There are no franchise-specific requirements around termination or minimum notice periods under New Zealand law, and general commercial and contract law applies. Note, however, New Zealand contract and commercial law requirements, including a prohibition on unfair contract terms – see **7.4 Prohibited Provisions in Local Law**.

6. Restrictions on Competition in Franchise Agreements

6.1 Treatment of Competition Restrictions in Franchise Agreements

The Commerce Act 1986 prohibits various things, including the following.

- The entering into of or giving effect to cartel provisions between competitors (Section 30). A cartel provision is a provision contained in a contract, arrangement or understanding between competitors (including potential competitors) for the supply or acquisition of goods or services which has the purpose, effect or likely effect of fixing prices, restricting output or allocating markets. Breach of the cartel prohibition is a criminal offence in New Zealand.
- The entering into of or giving effect to a provision of a contract, arrangement or understanding (Section 27), or a person with substantial market power from engaging in conduct (Section 36), which has a purpose, effect or likely effect of substantially lessening competition in a relevant market.

The Commerce Act was amended from 5 April 2023 to remove historic protections for IP licensing agreements and the enforcement of statutory IP rights.

Previously, Section 36 (3) provided that a business does not take advantage of market power simply by enforcing a statutory IP right (eg, a patent, trade mark or copyright). Section 45 (1) also previously added that the Act's other prohibitions do not apply to the entering into of IP agreements (such as licences, settlement and co-existence agreements) in so far as they contained a provision that authorises something that would otherwise be prohibited by an IP right, or giving effect to such provisions. This could extend to restraints on operating areas, first- and third-line forcing, and other structural arrangements.

These protections have now been removed, bringing New Zealand in line with Australia, though the Australian regime has more flexibility as it is permissive of "exclusive dealings". There is considerable uncertainty about the extent to which the removal of the IP exception will impact the exercise of IP rights in New Zealand. The Commerce Act is currently under review, including because of issues arising since the historic IP exceptions were removed; this is particularly relevant to business structures such as franchising and licensing. In August 2025, the Minister of Commerce and Consumer Affairs indicated changes to the framework around collaboration and the potential to include "class exemptions". Details are not yet known, but this may impact franchise models given the inherent issues following the 2023 removal of the IP exception.

As can often be the model in franchise structures, if the franchisor is itself operating in the market and also selling goods or providing services in competition with its franchisees, they may be competitors for the purposes of the Commerce Act. Often, franchise agreements contain restrictions that could therefore be viewed as potential cartel provisions (ie, territorial, field-of-use or customer restraints). These provisions may breach the Commerce Act's cartel prohibition or prohibition on anti-competitive arrangements unless one of the exceptions applies.

Businesses with substantial market power that enforce statutory IP rights in a way that has the purpose and/or effect of substantially lessening competition in a market are now subject to the Section 36 misuse of market power prohibition. An owner of IP rights might have a substantial degree of power in a market simply by virtue of its ownership of those rights, especially if there are no acceptable substitutes for the products/services that the owner supplies in that market (for example, where the party is the first to patent a particular technology).

The Commerce Commission considers this situation in its *Guidelines on the Application of Competition Law to Intellectual Property Rights*, and notes that a

refusal to license to a competitor or even a potential competitor may be a misuse of market power in some circumstances.

New Zealand law also prohibits suppliers from specifying a minimum resale price or from taking actions to enforce a specified resale price (including inducing or attempting to induce another person to not sell at a price less than that specified).

6.2 Exclusive Territories and Competing Businesses

The permissibility of including and enforcing exclusive territories in franchise agreements depends on the specific circumstances and the extent of restrictions imposed.

Exclusive territories in franchise agreements may trigger three prohibitions under the Commerce Act 1986:

- the cartel prohibition;
- the general prohibition on anti-competitive provisions; and/or
- the misuse of market power prohibition.

Cartel Prohibition

If a franchisor and franchisee are competitors for the supply of goods or services, an exclusive territory clause may amount to market allocation, which is a form of cartel conduct. This is prohibited unless an exception applies.

The most relevant exception to the cartel prohibition for exclusive territories is the collaborative activity exception. The collaborative activity exception applies where:

- the franchisor and franchisee are engaged in a collaborative activity;
- the dominant purpose of the collaborative activity is not to lessen competition between the parties; and
- the exclusive territory clause is reasonably necessary for the purpose of the collaborative activity.

Franchise agreements may qualify as collaborative activities. However, franchisors must ensure that the clause is reasonably necessary for the purpose of the collaborative activity. This involves a fact-specific assessment of the exclusive territories' scope and duration, and whether less restrictive alternatives could achieve the same outcome.

If exclusive territories extend beyond the term of the agreement (eg, one year), the cartel prohibition does not apply if three conditions are met:

- the collaborative activity has ended;
- the exclusive territories were reasonably necessary to achieve the aims of that collaborative activity; and
- the agreement did not end because its dominant purpose became the lessening of competition between the franchisor and franchisee.

The other relevant exception is the vertical supply contract exception. For the vertical supply contract exception to apply to exclusive territories:

- the contract must be between a supplier or likely supplier of goods or services and a customer or likely customer of that supplier;
- the cartel provision must relate to the supply or likely supply of the goods or services to the customer or likely customers;
- the cartel provision must not have the dominant purpose of lessening competition between any two or more of the parties to the contract;
- the franchise agreement must involve the franchisor supplying goods or services to the franchisee; and
- the exclusive territory clause must relate to that supply and must not have the dominant purpose of reducing competition between the franchisor and franchisee.

General Prohibition on Anti-Competitive Provisions

The exclusive territories must also be assessed under the general prohibition on provisions in contracts, arrangements, understandings or covenants that have the purpose, effect or likely effect of substantially lessening competition in a relevant market. The relevant market is based on a market definition that best isolates the key competition concerns.

Misuse of Market Power Prohibition

Enforcing exclusive territories may also trigger the misuse of market power prohibition. This applies where the franchisor holds substantial market power and the enforcement of the clause has the purpose, effect or likely effect of substantially lessening competition in a defined market.

Restraint of Trade: Common Law Doctrine

Exclusive territories also constitute a "restraint of trade". Under New Zealand common law, a restraint of trade is unenforceable unless the party seeking enforcement establishes that it is reasonably necessary to protect a legitimate commercial interest (eg, goodwill). Typically, franchise agreements will include a restraint of trade on that basis.

6.3 Requiring Franchisees to Purchase Specific Goods and Services

The franchisor may require a franchisee to purchase certain products or services from the franchisor or its nominated suppliers, provided this does not contravene Sections 27, 30 or 36 of the Commerce Act 1986.

A provision in a franchise agreement that requires franchisees to purchase certain goods or services from a third-party supplier may be considered a market allocation provision (a type of cartel provision) if the franchisor and franchisee are competing to acquire those goods or services.

There is an exception under the Commerce Act for joint buying and promotion agreements. The joint buying and promotion agreements exception applies where a provision in a contract, arrangement or understanding:

- relates to the price for goods or services to be collectively acquired by some of the parties to the arrangement;
- provides for joint advertising of the price for the resupply of goods or services acquired collectively;
- provides for a collective negotiation of the price of goods or services which are then purchased individually; or
- provides for the purchase of goods or services to occur via an intermediary.

The joint buying and promotion agreements exception only excludes the application of price fixing, not other cartel provisions such as market allocation provisions.

The provision that requires the franchisees to purchase specific goods or services from certain parties must also not have the purpose, effect or likely effect of substantially lessening competition in the relevant market, as prohibited under Section 27 of the Commerce Act.

Where the franchisor holds substantial market power, such a requirement on franchisees may also breach the misuse of market power prohibition if it has the purpose, effect or likely effect of substantially lessening competition in a defined market.

6.4 Channel Reservation

Franchisors can reserve certain channels, as long as the reservation:

- is not a cartel provision, or is a cartel provision but an exception applies;
- does not have the purpose, effect or likely effect of substantially lessening competition, in breach of the general prohibition against anti-competitive provisions; and
- (if the franchisor has substantial market power) does not have the purpose, effect or likely effect of substantially lessening competition in that market.

Channel reservations in franchise agreements, such as allocating online platforms or other sales channels, may be considered market allocation or output restriction provisions (which are cartel provisions) where the franchisor and franchisee compete for the supply of goods or services. As with exclusive territories, cartel provisions are prohibited unless an exception applies. The most relevant exception is the collaborative activity exception, though the vertical supply contract exception may also apply in some circumstances.

6.5 Vertical Agreement Block Exemptions

The Commerce Commission can authorise certain provisions in contracts, arrangements or understandings, or conduct that may breach competition laws, if the public benefits outweigh the anti-competitive detriments.

This authorisation can apply to:

- anti-competitive provisions (Sections 27 and 28 of the Commerce Act 1986);
- cartel provisions (Section 30);
- misuse of market power (Section 36); and
- resale price maintenance (Sections 37 and 38).

Once authorised, the provision or conduct subject to the authorisation is protected from legal action under the Commerce Act, both by the Commission and private individuals.

The Commission may grant clearance for cartel provisions under the collaborative activity exception. Clearance will be given if the applicant can demonstrate that all criteria for the collaborative activity exception are met. This clearance regime is voluntary and there is no statutory requirement to seek clearance for the collaborative activity exception to apply.

In August 2025, the Minister of Commerce and Consumer Affairs indicated that the review of the Commerce Act being undertaken by the Ministry of Business, Innovation and Employment may propose "class exemptions" – for example, to allow the Commission to exempt categories of conduct that are low-risk or clearly beneficial. No details have yet been announced.

7. Choice of Governing Law

7.1 Possibility of a Franchisor Stipulating Non-Local Law

The parties are free to select the governing law. It is important that the franchise agreement clearly identifies the governing law.

7.2 Local Law Requirements

The parties are free to select the governing law. It is important that the franchise agreement clearly identifies the governing law.

7.3 Mandatory Content

There is no mandatory content for franchise agreements under New Zealand law.

If a franchisor is a member of FANZ, they are required to comply with the FANZ Code, which stipulates that franchise agreements contain provisions requiring:

- a cooling-off period of not less than seven days from the date of entry into the franchise agreement (or preliminary agreement, as the case may be), during which the franchisee may, by formal notice to the franchisor (or master franchisee/sub-franchisor, as the case may be), elect to withdraw from the agreement at their discretion;
- that both the franchisor (and each master franchisee/sub-franchisor) and the franchisee use reasonable endeavours to comply with the provisions of the FANZ Code and rules;
- that the franchisee comply with the laws of New Zealand, including all laws relating to employment, health and safety, fair trading and tax; and
- that each franchisee use reasonable endeavours to clearly identify that the franchisee's business is being operated under franchise from the franchisor, including in all written contracts entered into with customers of the franchisee.

7.4 Prohibited Provisions in Local Law

There are no prohibited provisions specific to franchise agreements under New Zealand law.

However, under New Zealand's Fair Trading Act 1986, the use of unfair contract terms in certain types of contracts is prohibited. This includes "standard form" contracts where the expected annual value of the trading relationship is less than NZD250,000 (including goods and services tax) at the time the contract is formed.

A term may be declared unfair by the court if it meets all three of the following criteria:

- it creates a significant imbalance in the parties' rights and obligations;
- it is not reasonably necessary to protect the legitimate interests of the advantaged party; and
- it would cause detriment (financial or otherwise) to a party if enforced or relied upon.

In assessing fairness, New Zealand courts must consider the contract as a whole and the transparency

of the term. The Fair Trading Act 1986 also provides examples of potentially unfair terms, such as clauses that allow only one party to:

- vary the contract unilaterally;
- avoid or limit performance;
- terminate the agreement; and
- impose penalties.

Certain terms are exempt from being declared unfair, including those that define the main subject matter of the contract or set the upfront price payable.

8. Dispute Resolution

8.1 Enforcement of Foreign Judgments

New Zealand is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "New York Convention"); thus, arbitral awards can be enforced through the Convention protocols.

9. Payment and Taxes

9.1 Restrictions or Limits on Franchisee Fees and Royalties

There are no restrictions specific to the franchise sector.

Franchisors should be aware that New Zealand:

- implements United Nations Security Council sanctions – violations can result in severe penalties, including fines and imprisonment as well as commercial and reputational damage (New Zealand banks are generally risk-averse in relation to sanctions);
- has the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which imposes obligations on certain entities (including financial institutions, lawyers, accountants and real estate agents) to have in place procedures and processes to detect, deter, manage and mitigate money-laundering and the financing of terrorism; and
- has a range of import tariffs, taxes and charges that may apply depending on the relevant business area.

9.2 Withholding Tax

New Zealand imposes withholding taxes on interest, dividends and royalties paid by New Zealand residents to non-residents. Franchise fees, royalties and technical service fees may be subject to such withholding taxes if the payments fall within the definitions of interest, royalties or dividends, as defined under New Zealand tax legislation. While New Zealand does not have a specific withholding tax for management fees or technical service fees, the definition of "royalties" under domestic legislation is broad and includes payments for know-how. Accordingly, the withholding tax on royalties may capture certain types of technical service fees, depending on the exact nature of the activity being compensated.

Royalty withholding tax generally applies at 15% to the gross payment under domestic legislation, which may be reduced to 10% or 5% under an applicable double tax treaty.

Where New Zealand-sourced fees for services that are not characterised as dividends, royalties or interest for New Zealand tax purposes are paid to a non-resident franchisor, such fees may be relieved from New Zealand taxation under an applicable double tax treaty under the standard "business profits" article, unless that item of income is attributable to a permanent establishment of the non-resident franchisor in New Zealand, or unless that item of income is otherwise dealt with in another article of the relevant treaty.

New Zealand also imposes interim withholding taxes on certain contract payments made to non-residents that perform services physically in New Zealand, although exemptions may be obtained from the New Zealand tax authority if the non-resident establishes that its contract activity is treaty-protected (eg, not attributable to a permanent establishment in New Zealand under an applicable double tax treaty) or falls within certain prescribed limits under domestic tax legislation.

9.3 Foreign Currency Controls

In New Zealand, there are no specific foreign currency laws or regulations (such as exchange control restrictions) in relation to payment of franchise fees. However, foreign currency payments are controlled through related legislation, including:

- United Nations Security Council sanctions – violations can result in severe penalties, including fines and imprisonment, as well as commercial and reputational damage;
- the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which imposes obligations on certain entities (including financial institutions, lawyers, accountants and real estate agents) to have in place procedures and processes to detect, deter, manage and mitigate money laundering and the financing of terrorism; and
- a range of import tariffs, taxes and charges, which may apply depending on the relevant business area.

See **9.1 Restrictions or Limits on Franchisee Fees and Royalties**.

10. Execution Formalities

10.1 Authentication, Notarisation, Witnessing, Etc

There are no formalities specific to franchise agreements, though normal New Zealand contract law requirements apply, including the need for legal consideration, as well as issues if there is past consideration. Otherwise, under New Zealand law, the franchise agreement can be executed as a deed. Generally:

- authentication and notarisation of documents is not required under New Zealand law;
- if the franchise agreement is executed as a deed, it will need to comply with the formalities for execution of a deed under New Zealand law; and
- companies will need to execute the agreement in accordance with their constitution.

10.2 Electronic Signatures

Under New Zealand law, electronic signatures may be used to execute a franchise agreement, provided certain conditions are met. Specifically, the electronic signature must:

- sufficiently identify the signatory and clearly indicate their approval of the relevant information; and
- be appropriately reliable given the purpose and context in which the signature is required, as outlined in Section 226 of the Contract and Commercial Law Act 2017.

To avoid ambiguity, the franchise agreement should include a clause confirming that electronic signatures are acceptable.

10.3 Stamp Duties

There are no document taxes or stamp duties in New Zealand.

PERU

Law and Practice

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Contents

Aguirre Abogados & Asesores is a law firm comprising experienced professionals specialised in corporate law, mergers and acquisitions (M&A) and franchising. Regarding franchising, the firm has participated in the structuring, negotiation and drafting of major franchise agreements in the last 20 years in Peru, advising franchisors and franchisees, both locally and internationally, including the most representative international brands. Aguirre Abogados & Asesores advises its clients in each phase of the franchising process, including on the structuring of franchises at the national and international levels, technology transfer, registration and protection of intellectual property, negotiation and drafting of the franchise agreement, distribution and licensing agreements, and reorganisations, renewals and termination of franchises, among other issues. The firm's experience also extends to offering legal advice on conflict resolution, litigation, mediation and arbitration.

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Walter Aguirre is the founding and managing partner of Aguirre Abogados & Asesores. Previously, Mr Aguirre was the head of the legal corporate practice of PricewaterhouseCoopers (PwC) Peru, and in 2011, he was posted in PwC London and PwC Madrid. Mr Aguirre has over 30 years' experience in corporate, civil and commercial law, and has acted as lead counsel in the largest corporate and M&A transactions in the country, including major due diligence and corporate structuring. He has also participated in major franchising deals in Peru, developing a practice focusing on corporate transactional business law. He is exceptional at putting together complex deals, and in advising clients on strategic business negotiations.

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1. An Introduction to Franchising

1.1 Franchise Market Overview

The franchise market in Peru has experienced significant growth over the past 20 years. However, it was one of the sectors most severely affected by the COVID-19 pandemic, experiencing a critical downturn for a couple of years. Beginning in 2023, the franchise sector started to recover strongly, particularly in industries such as technology, education and healthcare. There has been an increase in investment in low-cost franchises not only in the capital city, Lima, but also in the provinces, with smaller-scale formats and more modest infrastructure requirements. Moreover, the expansion of the retail sector, along with the construction and renovation of a significant number of shopping centres across the country, has further boosted the franchise market over the past two years.

According to the Peruvian Chamber of Franchises, there are currently more than 500 franchise systems operating in Peru, with approximately 50% being foreign franchises and 50% domestic franchises. With regard to domestic franchises, more than 60% are in the gastronomy and restaurant sector. However, in recent years, there has been a notable increase in franchise activity in other areas such as healthcare, beauty, education and technology.

1.2 Franchise Regulation

Peru does not have a specific "Franchise Law" that expressly governs this type of business model. Instead, franchise agreements govern the relationship between the parties and are subject to the provisions of the Peruvian Civil Code.

According to Section 1353 of the Peruvian Civil Code, agreements that are not expressly named or regulated – such as franchise agreements – are subject to the general rules set forth in the first section of Book VII of the Peruvian Civil Code.

1.3 Definition of a Franchise Agreement

In line with the foregoing, and in the absence of a legal provision expressly regulating franchises, the Peruvian legal system does not provide a statutory definition of "franchise agreement".

Nevertheless, based on widely accepted legal doctrine, a franchise agreement may be defined as follows: "A franchise agreement is an agreement whereby a franchisor grants a franchisee the right to reproduce, within a specified territory and with the franchisor's technical assistance, a system previously developed by the franchisor. This system is distinguished by the use of the franchisor's registered trade marks".

2. Franchise Disclosure

2.1 Mandatory Disclosure

Under current Peruvian law, there is no specific legal obligation requiring the franchisor to disclose business-related information. Notwithstanding the foregoing, based on general principles of contract law and the express duty of good faith established in Section 1362 of the Peruvian Civil Code, all agreements must be negotiated, executed and performed in accordance with good faith and the common intention of the parties.

Accordingly, this principle imposes a duty on both the franchisor and the franchisee to disclose relevant information to the other party at every stage of the franchise approval process.

2.2 Consequences of a Failure to Disclose

If the aggrieved party can demonstrate that it has suffered any damage resulting from a lack of good faith in respect of the disclosure of information, it may file a claim for compensation against the other party. Furthermore, if the aggrieved party proves that it was misled due to the other party's failure to disclose material information it possessed, such failure may be grounds for annulment of the agreement, according to Section 201 of the Peruvian Civil Code.

Notwithstanding the foregoing, it must be noted that litigation before Peruvian civil courts is time-consuming, and it takes many years to obtain a final decision.

2.3 Franchise Disclosure Exemptions

Since the duty of disclosure is not expressly regulated under Peruvian law, there are no formally recognised exceptions to such duty.

2.4 Franchise Disclosure Language/ Translation Requirements

The franchise agreement may be drafted in any language agreed upon by the parties. Peruvian legislation does not expressly prohibit the use of foreign languages in this context. Nonetheless, it is recommended that the agreement be drafted and executed in a language understood by both the franchisor and the franchisee. In practice, franchise agreements are usually executed in either Spanish or English.

3. Franchise Registration

3.1 Mandatory Registration

Under the current legal framework, there is no specific obligation to register a franchise agreement. Notwithstanding the foregoing, if the franchise agreement involves a licence to use the franchisor's intellectual property in favour of the franchisee, it is highly recommended that such intellectual property be previously registered in the franchisor's name with the competent authority, namely the National Institute for the Defense of Competition and the Protection of Intellectual Property (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* INDECOPI).

3.2 Franchise Registration Process

Regarding the registration process and related formalities, see **3.1 Mandatory Registration**.

3.3 Consequences of a Failure to Register

As noted previously, there are no consequences for failing to register the franchise agreement, as no requirement to do so currently exists. However, in the case of industrial property rights (trade marks, patents, industrial designs, trade secrets, trade names, etc) belonging to the franchisor, registration with INDECOPI is necessary to ensure protection that is enforceable against third parties.

4. Other Requirements

4.1 Past-Profitability Requirements

Applicable Peruvian law does not require any demonstration of prior business profitability as a prerequisite to operating a franchise. However, from a commercial standpoint, this is clearly a fundamental factor that any prospective franchisee should evaluate carefully.

5. Duration, Renewal and Termination

5.1 Duration of a Franchise Agreement

The term or duration of a franchise agreement is freely determined by the parties and generally depends on the nature of the business, the investment recovery period and the expected profitability. Based on the authors' experience, franchise terms typically range from five to seven years, depending on these factors.

5.2 Franchise Renewal

There is no statutory obligation to renew a franchise agreement or provide any form of compensation upon non-renewal. However, the parties may agree in advance to the conditions under which the agreement may be renewed. Otherwise, the franchise agreement will automatically expire upon completion of its term.

5.3 Termination of the Franchise Agreement

In addition to termination upon expiration of the term or mutual agreement between the parties, Section 1430 of the Peruvian Civil Code permits the establishment of express termination or early termination grounds for franchise agreements. This type of clause is known as an "express termination clause" and becomes applicable upon the mere occurrence of the specific circumstance defined in the agreement, together with the effective notice to the other party of the termination of the agreement. Such clauses are commonly accompanied by the imposition of penalties.

It is strongly recommended that the franchise agreement explicitly provide that non-compete and confidentiality obligations will remain in effect following termination, in order to protect the franchisor's business model.

6. Restrictions on Competition in Franchise Agreements

6.1 Treatment of Competition Restrictions in Franchise Agreements

Under the applicable legal framework, it is advisable and common to include broad non-compete clauses in the franchise agreement in order to safeguard the franchisor's rights and protect the integrity of its business model. There are no specific restrictions.

However, the following legal provisions should be taken into account to ensure proper enforcement of the franchise agreement.

- Legislative Decree (*Decreto Legislativo*) No 1034: prohibits and penalises anticompetitive conduct with the objective of promoting market efficiency and consumer welfare. This legal provision regulates and prohibits abuse of dominant market position, as well as horizontal and vertical collusive practices.
- Legislative Decree (*Decreto Legislativo*) No 1044: prohibits and penalises any act or conduct constituting unfair competition that may actually or potentially distort or impede the proper functioning of the competitive process. This includes acts such as deception, confusion, undue exploitation of another's reputation, disparagement, misappropriation of trade secrets, business sabotage and false advertising, among others.

Additionally, it is important to highlight Law No 31112, the Act on Prior Control of Business Concentration Operations, which, since 2021, has established a prior approval regime for business concentration transactions with the aim of promoting effective competition and economic efficiency in markets for the benefit of consumers. Under certain circumstances, this regulation will apply to business concentration transactions that produce effects in Peru, including mergers, asset acquisitions, the formation of a new economic entity or the execution of a joint venture agreement or any "other similar contractual arrangement" that entails the acquisition of control over one or more economic agents. Although uncommon, a franchise agreement could potentially be subject to this law and therefore require prior authorisation.

6.2 Exclusive Territories and Competing Businesses

Exclusive territories are permitted, and it is essential that the franchisor clearly define the specific territory in which the franchise agreement will be in effect. Franchise agreements in Peru often include an express prohibition to operate a business that directly or indirectly competes with the franchised business. Furthermore, the franchisor may validly enforce such a prohibition even after the expiration of the agreement.

6.3 Requiring Franchisees to Purchase Specific Goods and Services

Similar to what was described in **6.2 Exclusive Territories and Competing Businesses**, it is possible to establish valid and exclusive obligations for the franchisee to acquire from the franchisor certain goods, services or technology related to the delivery or distribution of the franchisor's offerings. These obligations may be incorporated into the franchise agreement itself or included in annexes and/or supplementary agreements.

6.4 Channel Reservation

It is common practice for the franchisor to reserve certain sales channels, including direct and online chan-

nels. It is strongly recommended that such reservations be explicitly included in the franchise agreement to avoid disputes of any kind between the parties. Likewise, the consumer protection implications arising from the reservation of sales channels must be taken into consideration given that, under the Consumer Protection and Defense Code, both the franchisor and the franchisee could be deemed liable suppliers before the consumer.

6.5 Vertical Agreement Block Exemptions

Peruvian law does not currently include specific regulation on vertical agreement block exemptions.

7. Choice of Governing Law

7.1 Possibility of a Franchisor Stipulating Non-Local Law

Pursuant to Section 2095 of the Peruvian Civil Code, the franchisor may validly choose to have the franchise agreement governed by foreign law. There is no requirement that the agreement be governed by or interpreted in accordance with Peruvian law.

7.2 Local Law Requirements

As noted in **7.1 Possibility of a Franchisor Stipulating Non-Local Law**, with regard to the choice of governing law applicable to the contractual relationship between the franchisor and the franchisee, Peruvian law does not impose any additional requirements beyond the existence of a valid agreement between the parties.

However, registration and other actions relating to the franchisor's industrial property rights must be carried out in accordance with the applicable local laws, as well as regional regulations such as Decision No 486 (Common Regime on Industrial Property of the Andean Community), which sets forth binding rules for the protection of industrial property applicable to all member countries, including Peru.

7.3 Mandatory Content

Where the franchise agreement is governed by Peruvian law, the parties are free to determine its content.

7.4 Prohibited Provisions in Local Law

Section 1354 of the Peruvian Civil Code provides that parties may freely determine the content of their agreements, provided such content does not contravene mandatory legal provisions. There is no statutory "blacklist" of prohibited contractual clauses.

8. Dispute Resolution

8.1 Enforcement of Foreign Judgments

With respect to the enforcement of foreign judgments in Peru (exequatur), Section 2106 of the Peruvian Civil Code expressly allows foreign judgments to be enforced in the country, provided certain conditions are met.

In addition, pursuant to Section 74 of the Arbitration Act (Legislative Decree No 1071), a foreign arbitral award is defined as one rendered outside of Peruvian territory. Such awards will be recognised and enforced in Peru in accordance with the following instruments:

- the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted in New York on 10 June 1958;
- the Inter-American Convention on International Commercial Arbitration, adopted in Panama on 30 January 1975; or
- any other treaty on the recognition and enforcement of arbitral awards to which Peru is a party.

Unless the parties agree otherwise, the most favourable treaty for the party seeking recognition and enforcement of a foreign arbitral award shall apply. It is worth noting that the process for enforcing foreign judgments and arbitral awards in Peru may be prolonged due to judicial delays and court backlog.

9. Payment and Taxes

9.1 Restrictions or Limits on Franchisee Fees and Royalties

There are no restrictions in Peruvian law on payments made under a franchise agreement for initial franchise fees, royalties or services. Likewise, there are no

restrictions on making payments in foreign currency, or on the amount of royalties payable.

9.2 Withholding Tax

Under Peru's current Income Tax Act, non-resident taxpayers are subject to tax only on income derived from Peruvian sources. Accordingly, as a general rule, there is an obligation to withhold the applicable tax on behalf of a non-resident franchisor in connection with the payment of the initial franchise fees, royalties and services. The applicable withholding tax rate on royalties paid to a non-resident franchisor is currently 30%. These payments may be deducted by the franchisee in accordance with applicable tax regulations.

The exact withholding rate will depend on the specific nature of the income and whether any of the double taxation agreements (DTAs) entered into by Peru are applicable. Peru currently has DTAs in force with Brazil, Canada, Chile, Mexico, Portugal and Switzerland, among other countries. Therefore, carrying out a case-specific tax analysis to determine the applicable treatment is strongly recommended.

9.3 Foreign Currency Controls

Pursuant to current Peruvian legislation, it is permissible to enter into obligations denominated in foreign currency, and the terms set forth in the franchise agreement in this regard are valid and enforceable. It is important to note that no foreign exchange controls are currently in effect in the country.

10. Execution Formalities

10.1 Authentication, Notarisation, Witnessing, Etc

Peruvian law does not impose any formal execution requirements on the franchisor or the franchisee in relation to a franchise agreement. Nonetheless, to lend greater formality and legal certainty to the transaction in the event of a potential dispute, it is recommended that, at a minimum, the parties' signatures on the franchise agreement be notarised and/or that the agreement be formalised as a public deed. The use of witnesses is not required.

10.2 Electronic Signatures

Pursuant to the provisions of Law No 27269, electronic signatures are granted the same legal validity and enforceability as handwritten signatures, which means that the use of electronic signatures is permitted when executing a franchise agreement. However, it is worth noting that, at present, the use of electronic signatures for this type of transaction is still not widespread. Therefore, the authors continue to recommend the use of handwritten signatures, as well as the notarisation of the parties' signatures before a notary public and/or the formalisation of the franchise agreement as a public deed.

10.3 Stamp Duties

There are no stamp duties in Peru.

Trends and Developments

Contributed by:
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Aguirre Abogados & Asesores is a law firm comprising experienced professionals specialised in corporate law, mergers and acquisitions (M&A) and franchising. Regarding franchising, the firm has participated in the structuring, negotiation and drafting of major franchise agreements in the last 20 years in Peru, advising franchisors and franchisees, both locally and internationally, including the most representative international brands. Aguirre Abogados & Asesores advises its clients in each phase of the franchising process, including on the structuring of franchises at the national and international levels, technology transfer, registration and protection of intellectual property, negotiation and drafting of the franchise agreement, distribution and licensing agreements, and reorganisations, renewals and termination of franchises, among other issues. The firm's experience also extends to offering legal advice on conflict resolution, litigation, mediation and arbitration.

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Introduction

Franchising was introduced in Peru over 40 years ago with the arrival of US chains such as KFC and Pizza Hut, which marked the beginning of the popularisation of this model for business development, management and expansion.

Although the Peruvian franchise sector has experienced steady growth since its initial entry into the market, its development was severely impacted in March 2020, when the Peruvian government declared a national state of emergency and imposed mandatory lockdowns lasting for several months due to the COVID-19 pandemic. In fact, the franchise sector was one of the hardest hit nationwide, primarily because most franchise systems were related to the retail and gastronomy sectors, and their commercial premises were largely located in shopping malls, which remained closed for more than six months. Nevertheless, starting in early 2023, the franchise sector began to recover, particularly in the areas of gastronomy, education, technology and healthcare. It is worth noting that there has been a significant increase in the number of franchises requiring lower investment to operate in the market.

At the beginning of 2025, the Peruvian Chamber of Franchises (CPF) reported that there are over 500 franchise systems operating in Peru, approximately 50% of which are foreign franchises; the remaining 50% are domestic.

Among foreign franchises, those originating from the United States are the most prevalent in the Peruvian market, representing nearly 40% of the total, followed by franchises from Argentina, Spain, Brazil and Colombia. As for domestic franchises, over 60% are in the gastronomy industry, while the remaining 40% operate in other commercial sectors, including apparel and accessories, beauty and health, education, handicrafts and jewellery, among others. The internationalisation of Peruvian franchises continues to benefit from the global popularity of Peruvian cuisine, with more than 30 domestic restaurant brands having established a presence abroad in countries such as Argentina, Bolivia, Brazil, Colombia, Spain, the United States, Mexico, Paraguay and Portugal, among others.

In Peru, the pioneer in adopting the franchise business model was the DELOSI Group, which currently operates brands such as KFC, Pizza Hut, Burger King, Chili's and Starbucks, among others. Another key franchise operator is NG Restaurants, part of the INTERCORP Group, which operates brands such as Papa Johns, Popeyes, Dunkin' Donuts, Bembos, Chinawok and Don Belisario. Other operators include the David Group, which manages brands like Bath & Body Works, American Eagle Outfitters and Victoria's Secret. In the hospitality sector, the Breca Group manages brands such as Westin, JW Marriott and AC Hotels by Marriott. The Yes Group operates several well-known apparel brands, including Armani, Armani Exchange and Hugo Boss. Leading Spanish brands from the INDITEX Group, such as Zara, Zara Home, Stradivarius, Massimo Dutti and Oysho, also operate in Peru under franchise agreements.

Given the strong influence of retail on the growth of the franchise sector, it is worth highlighting that, according to the Peruvian Association of Shopping and Entertainment Centers (*Asociación de Centros Comerciales y de Entretenimiento del Perú* ACCEP), there are currently more than 90 shopping centres in the country that are open to the public and operating at full capacity. A significant number of domestic and international franchise systems operate within these venues. Moreover, there are numerous ongoing development projects involving new shopping centres and expansions of existing ones. These developments are expected to further promote and consolidate the franchise sector in Peru over the medium and long term.

Regulations Applicable to Franchises in Peru

There is no specific legal provision regulating franchises in Peru. Nonetheless, under a well-established legal doctrine, a franchise is understood as a business model whereby the franchisor grants the franchisee the right to replicate, within a specific territory and with the franchisor's technical assistance, an already-developed business. This system is distinguished by the franchisor's trademark.

Since there is no specific franchise law in place, franchisors and franchisees are not required to register the franchise system with any supervisory authority, or to disclose related information, unlike in other jurisdic-

tions with specialised legislation. In the absence of such a law, the general principles of contract law as set forth in the Peruvian Civil Code govern the relationship between franchisors and franchisees, grounded in good faith and freedom of contract as recognised in the Peruvian Constitution.

Intellectual Property, Competition Law, Consumer Protection and Personal Data

In a franchise business, two of the most valuable assets are the franchisor's industrial property and their know-how, which must be duly protected by registering them with the National Institute for the Defense of Competition and the Protection of Intellectual Property (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* INDECOPI). This protection applies to all economic activities, individuals and legal entities, whether domestic or foreign, and is upheld by the Peruvian Constitution. Industrial property rights protect invention patents, utility models, industrial designs, trade secrets and trademarks for goods and services, among other things.

With regard to competition law, despite their specific characteristics, franchise agreements are not considered inherently restrictive or distortive of free competition, nor are they regarded as per se generators of unfair competition. Accordingly, it is common practice to include robust provisions on confidentiality, non-compete and exclusivity, restrictions on online sales or direct product sales, exclusive supply arrangements and even pricing guidelines.

Although consumer protection laws do not directly restrict franchise operations, franchisors and franchisees must bear in mind that end users of goods and services are fully entitled to seek protection under the Peruvian Consumer Protection and Defense Code.

In addition, Personal Data Protection laws must be considered by both local and foreign investors, as franchise agreements generally involve the collection, processing and transfer of information, and often the cross-border flow of such information, which must be registered and reported to the competent authority. In this regard, it is important to note that penalties for violations of data protection regulations are quite significant. In 2024 alone, the National Authority for the Protection of Personal Data (*Autoridad Nacional de Protección de Datos Personales* ANPDP) imposed fines totalling over PEN13 million for breaches of the applicable legislation.

Tax Considerations for Non-Resident Franchisors

As a general rule, local franchisees are required to withhold income tax (*impuesto sobre la renta* IR) on payments made to a franchisor that is not a resident in Peru. However, the applicable withholding rate will depend on the specific nature of the payment, among other factors such as the application of double taxation agreements (DTAs) that Peru has entered into with countries such as Brazil, Canada, Chile, Mexico, Portugal and Switzerland, among others.

In the case of royalty payments, the current withholding rate for outbound payments is 30%.

Termination of the Franchise Agreement

In recent years, there has been a significant increase in disputes between franchisors and franchisees seeking to terminate franchise agreements due to inaccurate information provided at the outset of the relationship or breaches of contract by either party. Given the absence of a specific franchise law, the grounds and procedures for termination must be clearly set forth in the franchise agreement.

Franchise System Due Diligence

In light of the above, and the growing number of disputes between franchisors and franchisees, due diligence has become an indispensable tool for both parties in the franchising sector.

For the franchisee, due diligence plays a critical role, as it provides a complete profile of the franchise system being considered for investment, as well as insights into the business model and any potential contingencies that may arise during the term of the agreement. The process begins by understanding the business, analysing the relevant industry and assessing the franchisor's economic activity. Next, the specific regulatory framework applicable to the franchise sector must be identified, allowing the parties to define the key focus areas for conducting a thorough due diligence review. Without prejudice to the mandatory financial, operational and commercial

review, from a legal standpoint the author considers it essential to evaluate, at a minimum, the following aspects:

- the franchisor's ownership of intellectual property rights within the country;
- the legal framework and regulatory requirements applicable to the specific industry in which the franchise will operate;
- the related tax considerations;
- the lease agreement for the commercial premises; and
- the prospective franchise agreement.

On the other hand, the franchisor should evaluate the franchisee's financial and operational background, as well as its experience in managing the business, since – among other considerations – they will be granted a licence to use the brand, and any breach by the franchisee could severely damage the reputation of the franchise system in the market.

Therefore, due diligence must be a secure and effective process not only to accurately determine the profile of each party and identify potential risks in the business relationship, but also as a strategic management tool for both the franchisor and the franchisee. Due diligence enables a comprehensive understanding of the industry and provides solutions to mitigate the impact of identified contingencies. From the franchisee's perspective, and in the absence of specific franchise regulation, conducting thorough due diligence of the franchise system prior to signing any documents or making any investments is essential.

Non-Resident Franchisors Doing Business in Peru

The Peruvian Constitution provides that domestic and foreign investments are subject to the same conditions within the country.

Additionally, Law No 26887, the General Companies Act, governs the operation of companies in Peru. The most commonly used corporate structure for both local and foreign investors doing business in Peru is the closely held corporation (*sociedad anónima cerrada* SAC), which is characterised by:

- a minimum of two and a maximum of 20 shareholders, who may be individuals or legal entities, domestic or foreign;
- an optional board of directors; and
- a restriction on the transfer of shares.

It is important to highlight that there is no minimum capital requirement for Peruvian companies, nor are there any limits on foreign ownership of shares.

Trends for 2025–26 and Conclusions

Although the economic crisis caused by the COVID-19 pandemic in 2020 suspended many expansion and investment plans for several years, it also prompted the adaptation and reinvention of numerous franchise systems. These systems adjusted to the new reality through lower capital requirements, cost reductions, diversification, increased profitability and greater productivity per square meter, while focusing on sectors that benefited from the pandemic.

In this regard, based on the author's experience in the sector and the current national context, the following trends in franchising are highlighted:

- increased importance of online sales channels;
- development of delivery and takeout services;
- greater emphasis on digital marketing;
- reduced dependence on physical premises or large infrastructures;
- flexible and adaptable business structures; and
- franchise and commercial lease agreements featuring strong exit clauses for force majeure or unforeseen events.

While the author expects the franchise sector to continue growing, it is important to note that Peru will hold presidential elections in 2026, which could lead to a general slowdown in investment. Historically, in Peru, political uncertainty tends to decelerate investment during the year prior to elections. However, the first half of 2025 has shown relative macroeconomic stability, which the author hopes will continue.

In conclusion, franchising in Peru represents a powerful tool for economic development and growth – not only for domestic and international investors involved in new or existing franchise systems, but also for local

entrepreneurs aiming to launch their own businesses or expand internationally. Last year, the firm participated alongside the CPF in the first working session held at the Congress of the Republic of Peru to develop a new Franchise Law for the country. The firm looks forward to continuing its collaboration with the Peruvian government to establish an appropriate legal framework ensuring the continued development of this important business model for both franchisors and franchisees.

PHILIPPINES

Law and Practice

Contributed by:
Patricia A O Bunye, Anica Angela G Gomez, Angel Rae N Balbin and Bianca Marie J Angela M Rañola
Cruz Marcelo & Tenefrancia

Contents

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Cruz Marcelo & Tenefrancia is a top-tier full-service law firm with a strong track record of providing exceptional legal services across various industries. With recognised expertise in intellectual property (IP), among other areas, the firm advises both local and foreign clients throughout the entire IP life cycle, from creation to protection, enforcement and commercialisation, to ensure that maximum value is derived. Cruz Marcelo & Tenefrancia provides comprehensive legal and business-oriented advice to clients to promote innovation and address the complexities of all types of IP commercialisation agreements, including, but not limited to, licensing and franchising agreements. The lawyers are attuned to the business objectives of their clients, tailoring their advice and strategies to maximise the value of IP towards sustainable business growth.

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1. An Introduction to Franchising

1.1 Franchise Market Overview

With over 1,800 franchise brands and 120,000 franchise outlets, the Philippines has solidified its position as the largest franchising market in Southeast Asia and the seventh largest worldwide. Projected to be the "Golden Age of Franchising", the Philippines' franchising industry is expected by the Philippine Franchise Association (PFA) to achieve revenue growth of up to 10% in 2025 notwithstanding challenging market uncertainties, where industry-wide earnings are estimated to surge to PHP800 billion from a PHP538 billion valuation in 2022.

The remarkable growth trajectory in the franchising industry is largely driven by the food sector, which accounts for the majority (60%) of the franchise opportunities nationwide, although the services sector is one of the fastest-growing segments.

According to the International Trade Association (ITA), the market is predominantly composed of American brands, but there is a growing preference for Japanese, Korean, Chinese and European options among the younger generation. The ITA emphasised that entry of new American brands in the market may be stifled by high market saturation and stiff competition, and it is important to identify a qualified local partner to establish a footprint in the Philippines.

At present, there are several local firms with experience in franchises that tend to dominate the American brands, including the Max's group (handling Krispy Kreme and Jamba Juice), Jollibee Foods Corporation (handling Burger King, Panda Express and CBTL) and the Bistro Group (handling Buffalo Wild Wings, Denny's, Texas Roadhouse, Italianni's and Fridays, among others).

In 2024, the PFA hosted its annual Franchise Excellence Awards, which recognises franchises that have become benchmarks in franchise operations in the Philippines. The awardees include Shakey's, Mang Inasal, Potato Corner and Famous Belgian Waffles, which have been inducted into its Hall of Fame. Other notable awardees are 7-Eleven, Greenwich, Toby's Sports, Chowking, Chatime, Grainsmart, Master Siomai and But First, Coffee.

Outside of the PFA's list of awardees, the Philippines has a dynamic franchising market consisting of both domestic and international brands. According to the Philippine Department of Trade and Industry (DTI), there is a growing demand for Filipino franchises internationally. At the Franchising Expo held in Sydney in May 2025, Philippine homegrown franchise brands generated USD33.45 million in actual and potential export sales. Participating brands included Bench, Jollibee, Max's Restaurant, Miguelito's Ice Cream and Shawarma Shack, among others. International franchisors, which include McDonald's, Dunkin', KFC and Starbucks, likewise have a strong presence in the Philippine market.

The Philippine franchising industry is projected to sustain its robust growth over the years with continuing support from public and private sectors. For instance,

the DTI, recognising the sector's impact on economic growth, will provide financial support in the form of loans ranging from PHP200 million to PHP500 million, with 0% interest and no principal payments required for the first six months for aspiring franchisees joining the PFA. The PFA has also partnered with PLDT Enterprise to equip franchises with digital tools to enhance their business operations, including next-generation connectivity, cloud solutions, AI-powered insights and robust cybersecurity.

1.2 Franchise Regulation

The Philippines does not have a single comprehensive law that regulates franchising. Instead, franchising is governed by a combination of general laws and presidential issuances or orders.

The current regulatory framework on franchising primarily includes the Civil Code of the Philippines (the "Civil Code") and the Intellectual Property Code of the Philippines (the "IP Code"). Other notable laws include:

- Executive Order (EO) No 169 (series of 2022), which aims to strengthen micro, small and medium enterprises (MSMEs) in the franchising industry;
- the Philippine Competition Act (the "Competition Act"), which codifies the competition policy of the Philippines;
- the Consumer Act of the Philippines, which applies to certain aspects of franchising related to product quality, labelling and advertising for consumer protection;
- the Revised Corporation Code, which is the primary law applying to corporations with respect to establishing and structuring a franchising entity;
- the Labor Code of the Philippines, which governs the labour standards and relations of franchise personnel;
- the National Internal Revenue Code (the "Tax Code"), which provides for tax rates and the procedure for tax registration and compliance;
- the Local Government Code, which provides for the substantive requirements, such as permits and fees, which businesses must comply with in the localities where they intend to operate; and
- the Data Privacy Act of 2012, which regulates the processing of personal information for the protection of the right to privacy.

Since franchise agreements are contracts, they must comply with the provisions of the Civil Code, which governs general contract law principles – particularly consent, capacity, object, cause and formalities, among others.

While the Civil Code grants the parties contractual autonomy to stipulate any clause in their franchise agreements, the clauses must not be contrary to law, morals, good customs, public order or public policy. Thus, the agreements must be consistent with the rights vested under the IP Code, which covers the law on trade marks, trade names, copyright, patents and other IP rights that are crucial to a franchise.

Further, since a franchise agreement falls under the definition of a technology transfer arrangement (TTA) under Section 4.2 of the IP Code, it must comply with the provisions on voluntary licensing, particularly the prohibited and mandatory clauses under Sections 87 and 88 of the IP Code.

TTAs are defined as "contracts or agreements, involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts; and the transfer, assignment or licensing of all forms of intellectual property rights, including licensing of computer software except computer software developed for mass market".

Despite the foregoing definition, not all contracts involving the licensing of IP rights will be considered a TTA. Rule 1 (n) of IPO Memorandum Circular 2020-002 further qualifies the definition of a TTA: "The transfer, assignment or licensing of intellectual property rights will be considered a [TTA] only if it involves the transfer of systematic knowledge".

The term "systematic knowledge" is not specifically defined under local regulation or jurisprudence. Thus, it remains subject to interpretation. However, the World Intellectual Property Organization has stated that technology licensing is not necessarily synony-

mous with technology transfer as the latter requires an actual transfer of technology and knowledge by the licensor to the licensee, who learns how to effectively use, adapt and improve such technology and knowledge. In view of the foregoing, franchise agreements are considered TTAs as they involve the transfer of systematic knowledge. Thus, the agreement must not contain the prohibited clauses under Section 87 of the IP Code and must comply with the mandatory clauses under Section 88 of the IP Code.

Additionally, EO No 169 likewise sets the minimum terms and conditions for franchise agreements for MSME franchisees. In this regard, said EO provides that the franchisor has an obligation to execute an undertaking that all future franchise agreements with MSME franchisees shall incorporate the minimum terms and conditions prescribed thereunder, which shall be registered under the Franchise Registry to be created under the DTI.

In all cases, franchise agreements must comply with the Competition Act, which prohibits entities from abusing their dominant position by engaging in conduct that would substantially prevent, restrict or lessen competition.

While the franchising industry is subject to the regulatory power of various government agencies, it also self-polices its own ranks through franchise associations, such as the PFA. The PFA is a voluntary self-regulating governing body for franchising in the Philippines that introduced, in 2005, the Fair Franchising Standards – a code of franchising ethics applying a fair set of provisions in the conduct of sale of their franchises that PFA members commit themselves to respecting. Notably, however, the PFA is a private association that is not connected with the government, and membership thereof – or of any franchise association for that matter – is purely voluntary.

1.3 Definition of a Franchise Agreement

EO No 169 defines a "franchise" as "a contract or agreement between a franchisor and a franchisee where: (i) the franchisor grants to the franchisee the right to operate a business according to the franchise system and during a term as determined by the franchisor; (ii) the franchisor grants the franchisee the right to use a mark, or a trade secret, or any confidential information or intellectual property owned by the franchisor or relating to the franchisor; (iii) the franchisor possesses the right to control the administration over the franchisee's business operation during the franchise in accordance with the franchise system; and (iv) in return for the grant of the above rights, the franchisee is required to pay a fee or other form of consideration".

It further defines a "franchise agreement" as "a written contract or agreement between a franchisor and a franchisee by which the former grants the latter the right to engage in the business of offering, selling or distributing goods or services under a marketing system, technology transfer arrangements included, for a certain consideration. Unless otherwise provided, said right includes the use of a trademark, service mark, trade name/business name, know-how, logo-type advertising or other commercial symbols associated with a particular business".

On the other hand, DTI Bureau Order No 10-24, or the Advisory on Due Diligence to be Undertaken by a Prospective Franchisee, defines a "franchise agreement" as "a written contract or agreement between two or more parties by which a Franchisor grants the Franchisee right to engage in the business of offering, selling, or distributing goods or services under a marketing plan/system/concept, for a certain consideration. Unless otherwise provided, said right includes the use of a trademark, service mark, trade name/business name, know-how, logo-type advertising, or other commercial symbols associated with a particular business".

2. Franchise Disclosure

2.1 Mandatory Disclosure

DTI Bureau Order No 10-24 recommends that prospective franchisees obtain what it refers to as "Disclosure Information" from the franchisor as part of the due diligence process prior to entering into or acquiring a franchise. Franchisors should provide the following Disclosure Information when requested by a prospective franchisee:

- business address, email address, internet home page/website, fax numbers and other contact details;
- copy of DTI or Philippine Securities and Exchange Commission (SEC) registration numbers;
- parent companies and affiliates, if any, and their respective roles in the franchise – and the franchisor's declaration if an affiliate is a supplier, including what they will supply;
- names of the board of directors and officers, with a brief description of their qualifications and background, ownership of interests and references;
- contact number and business location of existing franchisees;
- executed promotional/marketing materials;
- description of the business concept, which includes the brand image, brand personality, unique selling proposition, target market, mission and vision, among other things;
- basic information on training, commercial and/or technical assistance;
- certificate showing that the franchisor is a member in good standing of any franchisor association and that the franchisor has no pending administrative, civil or criminal case;
- declaration of the initial fee – the amount that will be collected and the services covered by the fee;
- training that will be provided – the number of persons, length of the training period and training modules;
- number of years that the company has operated, and the number of years it has franchised, with the corresponding numbers of company-owned branches and franchised branches;
- draft franchise agreement;
- full disclosure of the financial requirements of the franchise business;
- a provision that requires the franchise applicant to seek adequate legal and financial counsel before signing the franchise agreement; and
- mechanisms for dispute resolution.

It is important to note that this issuance serves only as a recommendation and does not create any legal obligation for the franchisor to provide such Disclosure Information. Moreover, it does not specify any required method or format for disclosing the information to the interested franchisee.

2.2 Consequences of a Failure to Disclose

Since there is no legal obligation to provide Disclosure Information, the law does not expressly provide for remedies resulting from the franchisor's failure to disclose. Nevertheless, if the consent of the franchisee in entering the franchise agreement is vitiated by mistake, violence, intimidation, undue influence or fraud, the franchisee may have the franchise contract annulled (Article 1390, Civil Code) even if there is a disclaimer in the franchise agreement. However, if the franchisee has been made aware of facts and circumstances that require the conduct of further due diligence, it may be construed as implied acquiescence or consent.

The Competition Act also grants the parties to franchising agreements the right to unilaterally terminate the agreement. Additionally, the franchisee may also seek recovery of damages in case there is fraud on the part of the franchisor in carrying out its obligations under the franchise agreement (Article 1170, Civil Code).

2.3 Franchise Disclosure Exemptions

There is no franchise disclosure obligation in the Philippines. Thus, the franchisor is essentially exempted from any request for disclosure from the franchisee.

2.4 Franchise Disclosure Language/ Translation Requirements

There is no legal requirement in the Philippines for the Disclosure Information to be written in the local language, but in practice, most commercial documents are in English. However, the document should be written or translated into English if it is to be submitted as evidence before the local courts (Rule 132, Section 33, Revised Rules of Evidence).

3. Franchise Registration

3.1 Mandatory Registration

There is no standalone law governing franchise registration in the Philippines. Nevertheless, franchisors and franchisees that are juridical entities must be duly registered in their country of origin to have the legal capacity to enter into franchise agreements. In the Philippines, domestic corporations must be regis-

tered with the SEC and comply with post-registration requirements, such as registration of the taxpayer with the Bureau of Internal Revenue and securing a business permit with the city or municipality where the corporation conducts its business. Other than the foregoing, there are no specific registration requirements for franchisors and franchisees.

As for franchise agreements, which are considered as TTAs, they generally do not need to be registered with the Documentation, Information and Technology Transfer Bureau (DITTB) of the IPOPHL if they comply with the requirements of Sections 87 and 88 of the IP Code on prohibited and mandatory clauses, respectively.

Non-compliance with any of the provisions of Sections 87 and 88 of the IP Code shall automatically render the franchise agreement unenforceable, unless an application for exemption has been filed with the DITTB and subsequently granted, and the franchise agreement is approved and registered with the DITTB. Section 91 of the IP Code provides that the parties may seek exemption from the application of Sections 87 and 88 by filing a request with the DITTB. Such exemption may be granted only in exceptional and meritorious cases where the arrangement will bring substantial benefits to the economy, such as high technology content, increase in foreign exchange earnings, employment creation, regional dispersal of industries and/or substitution with or use of local raw materials – or in the case of Board of Investments, registered companies with pioneer status.

In cases where there are multiple franchise agreements, the IPOPHL requires that a separate request for registration and exemption should be made if the parties involved are different. Thus, in the case of a franchisor with multiple franchisees, each franchise agreement with a different franchisee must be registered with the necessary exemption for it to be valid and enforceable.

If the franchise agreement involves the licensing of trade marks, it must likewise be recorded with the Bureau of Trademarks (BOT) to be valid against third parties. Moreover, under Section 150 of the IP Code, the franchise agreement must provide for the effective control by the franchisor of the quality of the goods or services of the franchisee in connection with which the mark is used. In the absence of such provision, or if such quality control is not effectively carried out, the franchise agreement shall not be valid. To record the trade mark licence agreement with the BOT, the DITTB must first issue a Certificate of Compliance certifying that the trade mark licence agreement is cleared for recordal with the BOT.

In cases where the franchisee is an MSME, the franchise agreement must comply with the minimum terms and conditions set forth under Section 2 of EO No 192 and be registered with the DTI. EO No 192 further requires the franchisor to take responsibility for registering the franchise agreement with the DTI, and to submit an undertaking that all future agreements with MSME franchisees will likewise include the prescribed minimum terms and conditions.

3.2 Franchise Registration Process

The IPOPHL follows the same procedure for filing requests for the registration and recordal of franchise agreements. However, the parties must specify the subject of their request since the IPOPHL issues separate certificates for different purposes. In particular, there are three certificates issued by the IPOPHL in relation to franchise agreements.

- First, for the registration of franchise agreements with the DITTB, the parties should request a Certificate of Registration, which is issued when a TTA has been granted certain exemptions from the application of Sections 87 and 88 of the IP Code. The Certificate of Registration is a mandatory requirement for a TTA that does not comply with the IP Code to be enforceable.
- Second, the parties may request a Certificate of Compliance, which certifies that a TTA does not contain any of the prohibited clauses under Section 87 of the IP Code and conforms to all the mandatory provisions under Section 88 of the IP Code. In such instance, since the TTA complies with the IP Code, the parties are not required to register the TTA with the DITTB. However, the parties may voluntarily request a Certificate of Compliance for the purposes of ensuring that the contract is enforceable, and particularly that the parties may enforce

the contract's terms between themselves and against third parties in case there is any breach of such contract.
- Third, for the recordal of franchise agreements with the BOT, parties should request a Certificate of Clearance, which certifies that a franchise agreement that contains trade mark licensing provisions has been cleared for recordal with the BOT. Under Section 150 of the IP Code, a trade mark licensing agreement, which is necessarily incorporated in franchise agreements, shall have no effect against third parties until such recordal is effected. Thus, the recordal is required for the agreement to be valid and binding with respect to third persons. Nevertheless, even prior to recordal, the trade mark licence agreement is valid and effective between the contracting parties.

In any case, the request should be filed together with:

- the original franchise agreement, which should be notarised (if executed in the Philippines) or apostilled (if executed abroad);
- a notarised application form, including a verified statement that the agreement is not subject to any judicial, administrative or other proceedings;
- a list of all IP rights (trade marks, copyrights and patents) covered by the agreement; and
- payment of fees.

Upon filing the request, the DITTB is mandated to decide on the same within 20 working days from the filing date. Should the DITTB issue a favourable decision, it shall issue the appropriate certificate/s within seven days from receipt of the duly executed and notarised agreement and payment of the required fees.

Should any provision of the agreement violate any of the provisions under the IP Code, the DITTB shall issue a Notice of Findings and a Notice to Comply, which shall inform the parties of any violation and require them to respond and comply with the orders contained therein. Upon the parties' satisfactory response to the findings of the DITTB and their subsequent compliance, the DITTB shall issue the appropriate certificate/s within seven days from receipt of the duly executed and notarised agreement and payment of the required fees.

3.3 Consequences of a Failure to Register

As a general rule, franchise agreements, which are considered as TTAs, do not need to be registered with the DITTB if they comply with the requirements of Sections 87 and 88 of the IP Code on prohibited and mandatory clauses, respectively. Thus, if the franchise agreement complies with Sections 87 and 88 of the IP Code, there will be no consequences of non-registration of the franchise agreement. On the other hand, if the franchise agreement does not comply with Sections 87 and 88 of the IP Code, it shall be deemed unenforceable, unless an application for exemption has been filed with the DITTB and subsequently granted, and the franchise agreement is approved and registered with the DITTB.

Unenforceability, in this context, has been interpreted to mean that neither party will be allowed to have any legal recourse against the other in court in case of breach of contract. The Civil Code states that contracts deemed "unenforceable" are considered valid and binding as between the parties who entered into them. However, in case there is a breach of such contract, neither party can go to court to enforce the contract's terms. Further, the Civil Code provides that an unenforceable contract is valid between the contracting parties but may not be invoked against third persons.

4. Other Requirements

4.1 Past-Profitability Requirements

Aside from the legal capacity to enter into franchise agreements discussed in **3.1 Mandatory Registration**, there are no other requirements that must be met before a company can enter into a franchise agreement. Thus, Philippine law does not require a franchisor to demonstrate that the business has operated profitably for a period of time in a number of locations before allowing the franchise business to operate.

5. Duration, Renewal and Termination

5.1 Duration of a Franchise Agreement

The duration of a franchise agreement is subject to the agreement of the parties. There is no statutory maximum or minimum duration under the law.

5.2 Franchise Renewal

Philippine law does not provide for any statutory renewal rights, compensation payable upon non-renewal or goodwill compensation payable under commercial agency laws. These terms are subject to the agreement of the parties.

5.3 Termination of the Franchise Agreement

The grounds for termination are subject to the agreement of the parties. Generally, agreements provide for termination on the ground of default, and the parties are free to stipulate what they deem events of default. The parties may also agree on the effects of such events of default, for instance by adopting an automatic termination clause. The Competition Act provides that franchising, licensing, exclusive merchandising and distributorship agreements that give each party the right to unilaterally terminate the agreement are permissible.

In case of insolvency, applying Section 57 of the Financial Rehabilitation and Insolvency Act of 2010, a licence cannot be unilaterally terminated on the ground of mere insolvency of the licensee or licensor and will remain valid and effective despite a subsequent declaration of the insolvency of either or both parties.

6. Restrictions on Competition in Franchise Agreements

6.1 Treatment of Competition Restrictions in Franchise Agreements

Section 15 of the Competition Act generally prohibits entities from abusing their dominant position by engaging in conduct that would substantially prevent, restrict or lessen competition. Particularly, the Competition Act prohibits the imposition of restrictions on the contract for sale of goods or services where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially.

Notably, the Competition Act must be read in conjunction with the IP Code, which prohibits clauses expressly enumerated under Section 87 and other clauses that similarly have anti-competitive effects. These clauses, which include anti-competitive clauses, stipulations in restraint of trade and purchase ties, are considered prima facie to have an adverse effect on competition and trade.

6.2 Exclusive Territories and Competing Businesses

Exclusive territories and similar clauses are generally permitted in franchise agreements in the Philippines, subject to the general limitations of contract law. Parties may freely establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy.

Furthermore, such exclusivity clauses must not violate Philippine competition laws. The Competition Act prohibits anti-competitive agreements and specific restrictive contractual practices (such as price-fixing, market allocation and unfair trade restrictions) when these significantly prevent, restrict or lessen competition. However, it expressly permits “permissible franchising, licensing, exclusive merchandising, or exclusive distributorship agreements”, provided they do not result in a substantial anti-competitive effect.

On the other hand, in-term and post-term non-compete clauses are generally enforceable in the Philippines and are not necessarily void for constituting restraint of trade, provided there are reasonable limitations as to time, trade and place, which may be assessed on a case-to-case basis.

The IPOPHL has previously allowed non-compete clauses for a period limited to one year from the termination of the agreement. In *Blue Sky Holdings Limited v DITTB*, IPOPHL Appeal No 05-2012-0001 (30 April 2013), the IPOPHL ruled that a non-compete clause for a period of two years following the termination of the franchise agreement is a prohibited anti-competitive clause. Notably, however, the IPOPHL stated that,

while a request for exemption may be granted by the DITTB on a case-to-case basis, the franchisor failed to provide evidence of substantial benefits that will accrue to the economy as a result of the agreement.

6.3 Requiring Franchisees to Purchase Specific Goods and Services

Section 87 of the IP Code prohibits clauses that require the licensee to source capital goods, intermediate products, raw materials or other technologies exclusively from a specified supplier, or to permanently employ personnel designated by the licensor.

6.4 Channel Reservation

The franchisor's reservation of its rights to use specific channels is allowed, as long as it does not result in substantial anti-competitive effects in the market. This aligns with the general principle of freedom to contract, also provided under Article 1306 of the Civil Code, which permits parties to agree on terms and conditions they consider appropriate provided these do not violate law, morals, good customs, public order or public policy.

6.5 Vertical Agreement Block Exemptions

Sections 87 and 88 of the IP Code provide the prohibited and mandatory provisions governing TTAs. Section 87, in particular, prohibits provisions that are considered prima facie to have an adverse effect on competition and trade.

However, Section 91 of the IP Code allows parties to apply for an exemption from the requirements of Sections 87 and 88 by submitting a request to the DITTB. This exemption may be granted only in exceptional and meritorious cases where the agreement is shown to provide significant benefits to the economy, such as high technology content, increase in foreign exchange earnings or employment creation, among other things.

7. Choice of Governing Law

7.1 Possibility of a Franchisor Stipulating Non-Local Law

Since the franchise agreement involves a TTA, Section 88.1 of the IP Code requires that Philippine law be its governing law. Should there be a stipulation to the contrary, the franchise agreement will be deemed unenforceable.

7.2 Local Law Requirements

Since the franchise agreement falls under the definition of a TTA, it is mandatory for the agreement to provide that the laws of the Philippines shall govern the interpretation of the same, and, in the event of litigation, the venue shall be the proper court in the place where the licensee has its principal office. Otherwise, the TTA will be unenforceable in the Philippines.

7.3 Mandatory Content

As a general rule, parties are free to stipulate the terms and conditions of their franchise agreement. However, since the franchise agreement falls under the definition of a TTA, it must comply with the mandatory provisions under Section 88 of the IP Code.

Particularly, the following terms must be included in an agreement involving a TTA:

- the laws of the Philippines shall govern the interpretation of the same, and, in the event of litigation, the venue shall be the proper court in the place where the licensee has its principal office;
- continued access to improvements in techniques and processes related to the technology shall be made available during the period of the TTA;
- in the event the TTA shall provide for arbitration, the Procedure of Arbitration of the Arbitration Law of the Philippines, the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) or the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) shall apply, and the venue of arbitration shall be the Philippines or any neutral country; and
- the Philippine taxes on all payments relating to the TTA shall be borne by the licensor.

Nevertheless, under Section 91 of the IP Code, an exemption from the application of Section 88 of the IP Code may be allowed but only in exceptional and meritorious cases, as previously discussed. It must be noted, however, that the IPOPHL does not grant exceptions regarding the governing law. Thus, if the parties use the laws of their own jurisdiction as the

governing law, they take the risk of the agreement's unenforceability in the Philippines.

Additionally, the law is deemed written into every contract. Thus, the law may supplement the gaps in a franchise agreement where the latter failed to provide clarity or adequate relief. For instance, the provisions under the Civil Code, including those on termination in case of material breach, are deemed impliedly written in all agreements, whether it involves a TTA or not. However, it may also serve as a restriction on the parties' contractual autonomy as the stipulations in the franchise agreement will yield to mandatory laws.

7.4 Prohibited Provisions in Local Law

Section 87 of the IP Code lists the following prohibited clauses that may not be contained in the franchise agreement, as they are deemed prima facie to have an adverse effect on competition and trade:

- those that impose upon the licensee the obligation to acquire from a specific source capital goods, intermediate products, raw materials and other technologies, or to permanently employ personnel indicated by the licensor;
- those pursuant to which the licensor reserves the right to fix the sale or resale prices of the products manufactured on the basis of the licence;
- those that contain restrictions regarding the volume and structure of production;
- those that prohibit the use of competitive technologies in a non-exclusive technology transfer agreement;
- those that establish a full or partial purchase option in favour of the licensor;
- those that obligate the licensee to transfer to the licensor, for free, inventions or improvements that may be obtained through the use of the licensed technology;
- those that require payment of royalties to the owners of patents for patents that are not used;
- those that prohibit the licensee from exporting the licensed product unless justified for the protection of the legitimate interest of the licensor, such as exports to countries where exclusive licences to manufacture and/or distribute the licensed product(s) have already been granted;
- those that restrict the use of the technology supplied after the expiration of the TTA, except in cases of early termination of the TTA for reason(s) attributable to the licensee;
- those that require payments for patents and other industrial property rights after their expiration;
- those that require the technology recipient to not contest the validity of any of the patents of the technology supplier;
- those that restrict research and development activities of the licensee designed to absorb and adapt the transferred technology to local conditions, or to initiate research and development programmes in connection with new products, processes or equipment;
- those that prevent the licensee from adapting the imported technology to local conditions or introducing innovation into it, as long as this does not impair the quality standards prescribed by the licensor;
- those that exempt the licensor for liability for non-fulfilment of their responsibilities under the TTA and/or liability arising from third-party suits brought about by the use of the licensed product or the licensed technology; and
- other clauses with equivalent effects.

Nevertheless, under Section 91 of the IP Code, an exemption from the application of Sections 87 and 88 of the IP Code may be allowed in exceptional and meritorious cases, as previously discussed.

Further, the Competition Act prohibits anti-competitive agreements and certain restrictive practices in contracts, such as price-fixing, market allocation and unfair restrictions on trade, if these substantially prevent, restrict or lessen competition. However, it explicitly allows "permissible franchising, licensing, exclusive merchandising or exclusive distributorship agreements", unless these are found to have a substantial anti-competitive effect. Furthermore, the Competition Act allows franchise agreements to include provisions for unilateral termination, as well as protections for IP, confidential information and trade secrets, provided these do not have a substantial anti-competitive effect.

8. Dispute Resolution

8.1 Enforcement of Foreign Judgments

Under Rule 39, Section 48 of the Rules of Court, the effect of a judgment or final order of a tribunal of a foreign country having jurisdiction to render the judgment or final order is as follows:

- in case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing; and
- in case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right between the parties and their successors-in-interest by subsequent title.

Notably, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud or clear mistake of law or fact. The process therefor is straightforward. A party seeking the enforcement of a foreign judgment may file a Petition for Recognition of Foreign Judgment before the proper Regional Trial Court (RTC), where the foreign judgment must be proved as a matter of fact. Furthermore, the RTC will determine:

- whether the foreign judgment is contrary to an overriding public policy in the Philippines; and
- whether there exists an extrinsic ground to repel the foreign judgment (ie, want of jurisdiction, want of notice, collusion, fraud or clear mistake of law or fact).

Absent any of the foregoing, the court will enforce the judgment as if it was issued by a Philippine court.

The Philippines is a party to the New York Convention (the "Convention") and thus adheres to its procedure for the recognition and enforcement of foreign arbitral awards, as affirmed by Section 42 of the Alternative Dispute Resolution Act of 2004, which provides that the Convention shall govern the recognition and enforcement of arbitral awards covered by said Convention. Philippine courts generally uphold the validity of arbitral awards, and there are very limited grounds to question such decision by the arbitral tribunal.

9. Payment and Taxes

9.1 Restrictions or Limits on Franchisee Fees and Royalties

Currently, there are no specific laws and regulations that impose restrictions on the payment of franchise fees, royalties or service fees. No set standards are provided under Philippine law and jurisprudence regarding a reasonable range or cap on the amount of franchise fees, royalties or service fees to be paid. In any event, the general rules on contract law apply, wherein parties may freely establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy.

While there are no statutory or jurisprudential standards for the payment of franchise fees, royalties or service fees, there are industry standards for each sector that may serve as a benchmark for franchisors and franchisees in assessing the reasonableness of the rates.

9.2 Withholding Tax

The Tax Code imposes a final tax on royalties, with the applicable rate varying based on the classification of the taxpayer, whether an individual, a non-resident alien not engaged in trade or business in the Philippines, a domestic corporation or a non-resident foreign corporation.

Generally, royalties derived from sources within the Philippines that are paid to resident individuals or corporations are subject to a final tax at a rate of 20%, while royalties paid to non-residents are subject to a final tax at a rate of 25%, unless a tax treaty provides a lower rate.

Furthermore, the Tax Code imposes a value added tax (VAT) of 12% on gross receipts from the sale, barter, exchange or lease of goods or properties. If the licensor transfers or leases the right to use IP in the course of trade or business, they becomes liable for VAT. This VAT applies regardless of where the licence agreement is executed, as long as the IP is leased or used within the Philippines.

Since the franchise agreement qualifies as a TTA, Section 88.4 of the IP Code mandates that all Philippine taxes related to the arrangement must be borne by the licensor.

9.3 Foreign Currency Controls

There are currently no laws or regulations that potentially hinder the payment of franchise fees in foreign currency. Generally, monetary obligations in the Philippines must be settled in Philippine currency, which is legal tender in the Philippines, unless the contracting parties stipulate that foreign currencies may be used for settling obligations (Section 1, Republic Act No 8183).

10. Execution Formalities

10.1 Authentication, Notarisation, Witnessing, Etc

Since franchise agreements are essentially governed by the law on contracts under the Civil Code, the agreement shall be valid and binding among the parties regardless of its form. However, should the parties desire that the agreement be valid and binding with respect to third persons, the document should be notarised if executed in the Philippines and apostilled if executed abroad.

10.2 Electronic Signatures

Contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity under Article 1318 of the Civil Code are present. Moreover, the use of electronic signatures is valid and recognised under the E-Commerce Act. To date, there is no existing jurisprudence where the due execution or authenticity of a digitally signed contract is in issue.

10.3 Stamp Duties

A documentary stamp tax (DST) is imposed on certain documents, instruments, loan agreements and papers that evidence the acceptance, assignment, sale or transfer of an obligation, right or property. The tax is levied on the document itself because it evidences a transaction or legal relationship.

DST is generally paid by the person making, signing, issuing, accepting or transferring the instrument, but all parties to the transaction may be held liable, and they may agree among themselves on who will shoulder the cost. However, since the franchise agreement qualifies as a TTA, Section 88.4 of the IP Code mandates that all Philippine taxes related to the arrangement must be borne by the licensor.

Trends and Developments

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Cruz Marcelo & Tenefrancia is a top-tier full-service law firm with a strong track record of providing exceptional legal services across various industries. With recognised expertise in intellectual property (IP), among other areas, the firm advises both local and foreign clients throughout the entire IP life cycle, from creation to protection, enforcement and commercialisation, to ensure that maximum value is derived. Cruz Marcelo & Tenefrancia provides comprehensive legal and business-oriented advice to clients to promote innovation and address the complexities of all types of IP commercialisation agreements, including, but not limited to, licensing and franchising agreements. The lawyers are attuned to the business objectives of their clients, tailoring their advice and strategies to maximise the value of IP towards sustainable business growth.

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Anica Angela G Gomez specialises in litigation and the commercialisation of IP owned by local and foreign companies and individuals. Her commercialisation practice includes providing practical and business-focused legal advice to clients from various industries, such as food, cosmetics, technology and gaming, among others. Anica Angela has actively assisted in the negotiation, preparation, drafting, review and implementation of various agreements; the conduct of due diligence; the licensing and franchising of IP, including the registration of technology transfer agreements with the Philippine Intellectual Property Office (IPOPHL); and regulatory matters. She is a member of the Licensing Executives Society Philippines.

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The Philippine franchising industry has entered its "Golden Age", with a multi-billion valuation and tremendous growth trajectory in 2025. While it has secured the top spot as a franchising hub in Southeast Asia, the Philippine franchising industry is still expected to experience upward growth with the continuous influx of local and foreign brands looking to establish their footprint in the Philippines and worldwide.

In recognition of the franchising industry's contribution to overall economic growth, reforms in Philippine intellectual property law reinforce the ways through which new and existing franchises can continue to thrive in the Philippines. To this end, recent legal developments have enhanced enforcement mechanisms to ensure the protection of the intellectual property and goodwill established by franchise businesses over the years.

Register of Well-Known Marks

Primarily to safeguard the rights of well-known franchise brands, the Philippine Intellectual Property Office (IPO) has issued Memorandum Circular No 2025-009, or the Rules and Regulations for the Declaration and Creation of the Register of Well-Known Marks (the "Regulations"), which took effect on 28 April 2025.

In 2007, the Philippine Supreme Court issued a landmark decision declaring "IN-N-OUT" as a well-known mark – the first mark to receive this formal declaration in the Philippines. Eighteen years later, the Regulations have streamlined the process for obtaining a declaration of well-known status by establishing a Register of Well-Known Marks (the "Register"), an ex parte system through which trade mark owners can obtain a declaration that its marks are well-known without having to participate in adversarial litigation.

The Register is especially valuable considering that it is not uncommon for owners of well-known marks to become aware of infringing or confusingly similar applications or registrations only upon encountering them as citations in the course of their own filings, by which time the appropriate recourse involves costly and time-consuming proceedings. Most of the time, these opposition, cancellation or intellectual property violation filings are resolved without even addressing the well-known status of the mark concerned. Now, the declaration may be issued simply on the basis of the applicant's evidence.

Application process and criteria

To apply, trade mark owners must submit a notarised application for the declaration of a well-known mark, together with evidence that the mark is well-known or falls under the criteria below, and other information on the mark required by the IPO. All submissions need only be filed via email.

The criteria for determining whether a mark is well-known are as follows (with the first four being mandatory criteria that must be proven):

- the duration, extent and geographical area of any use of the mark;
- the market share in the Philippines and other countries;
- the degree of inherent or acquired distinction of the mark;
- the quality, image or reputation acquired by the mark;
- the extent to which the mark has been registered worldwide;
- the exclusivity of registration attained by the mark worldwide;
- the extent to which the mark has been used worldwide;
- the exclusivity of use attained by the mark worldwide;
- the commercial value attributed to the mark worldwide;
- the record of successful protection of the rights over the mark;
- the outcome of litigations dealing with the issue of whether the mark is well-known, if any; and
- the presence or absence of identical or similar marks validly registered for or used on identical or similar goods or services, and owned by persons other than the person claiming that their mark is a well-known mark.

Should the applicant's evidence be sufficient, the examiner shall recommend the mark's approval to the Director of Trademarks, and a decision on the declaration of the mark as well-known shall be issued, which shall then be published in the E-Gazette. The Director

of Trademarks' decision may be appealed before the IPO Director General in accordance with the Philippine Uniform Rules on Appeal.

Any interested person who may be damaged by such declaration may file with the Director of Trademark a Notice of Third-Party Observation within one month from the publication of the same. After another month from the Director of Trademarks' receipt of such Notice, a verified and written observation must be filed, which – together with any subsequent comment from the applicant – will be considered by the Bureau of Trademarks in deciding whether to grant the declaration.

In the absence of a Notice of Third-Party Observation, the mark will be declared as well-known on the 31st day following the publication of the declaration, after which a certificate shall be issued, and the declaration shall be entered in the Register.

Validity and maintenance requirements

The declaration of well-known status is valid for ten years and renewable for periods of ten years, provided that the registrant submits the following within one year from the fifth anniversary of the declaration, and upon each renewal:

- proof of continuous use in commerce (eg, receipts, actual labels, signages, bills of lading, product photos bearing the well-known mark); and
- proof of well-known status (eg, advertisements, certificates of registrations, financial statements).

Such evidence of use shall be submitted in addition to the Declaration of Actual Use, which must be filed within three years from the mark's filing date, five years from its registration date and one year from its renewal date.

The following shall lead to the revocation of the declaration:

- failure to renew the declaration within six months prior to its expiration or within six months after its expiration upon payment of surcharge;
- failure to submit proof of continuous commercial use; or
- petition for revocation with substantial evidence that the mark is no longer well-known.

Trade mark owners whose marks have previously been declared well-known by a competent authority need not submit an application and may simply file a Manifestation with the Bureau of Trademarks, attaching evidence of such declaration. Proof of continuous commercial use of such marks must also be submitted within five years from the effectivity date of the Regulations.

The recognition of a mark's status as well-known is beneficial as it helps prevent the registration of identical or confusingly similar marks, including those covering goods and services that are dissimilar to the well-known mark. This helps safeguard the mark from dilution or misuse in unrelated industries. Moreover, marks that are not yet registered in the Philippines but are declared well-known under this procedure are also protected with respect to identical or similar goods and services.

The declaration of a mark as well-known shall also constitute prima facie evidence of the well-known status of the mark with respect to the goods and services stated in the application, and shall result in the inclusion of the mark in the Register, which the IPO will consider in examining trade mark applications.

Use of Copyrighted Musical Works in Businesses

While legal reforms lend support to franchise businesses, the protection granted to them is counterbalanced by the right of other intellectual property owners to the protection of their creations. Thus, individuals and entities that seek to establish a business in the Philippines must consider recent Philippine jurisprudence on copyright infringement. This is particularly important for businesses that intend to play background music in their establishments, such as radio broadcasts played as background music in restaurants.

In *Filipino Society of Composers, Authors and Publishers, Inc. v Anrey, Inc.*, G.R. No 233918 (09 August 2022), the Supreme Court upheld the right of the Filipino Society of Composers, Authors and Publishers,

Inc (FILSCAP) to collect royalties over copyrighted works of its member artists.

This case arose from the refusal of Anrey Inc ("Anrey"), the operator of two restaurants in Baguio, to pay annual licence fees to FILSCAP for the unauthorised use of its members' copyrighted music. Anrey denied playing any copyrighted music within its establishments and averred that its establishments were merely playing music being broadcast over the radio, whose royalties have already been paid for by the radio stations.

In deciding whether the unlicensed playing of radio broadcasts as background music in dining areas of a restaurant amounts to copyright infringement, the Supreme Court ruled that the act of playing radio broadcasts containing copyrighted music through the use of loudspeakers is, in itself, a performance separate from the radio broadcast, and is thus entitled to its own protection. According to the Supreme Court, "A radio reception creates a performance separate from the broadcast. This is otherwise known as the doctrine of multiple performances which provides that a radio (or television) transmission or broadcast can create multiple performances at once". Accordingly, it is immaterial if the broadcasting station has been licensed by the copyright owner. The reception of the broadcast becomes a new public performance requiring separate protection.

Further, the Supreme Court held that radio reception transmitted through loudspeakers to enhance profit does not constitute, and is not analogous to, fair use. The circumstances under which the copyrighted music was being played weighed against Anrey Inc's argument of fair use. In this case, the copyrighted songs in their entirety were being played publicly throughout Anrey Inc's establishments. The Supreme Court explained that "while Anrey does not directly charge a fee for playing radio broadcasts over its speakers, such reception is clearly done to enhance profit by providing entertainment to the public, particularly its customers, who pay for the dining experience in Anrey's restaurants". This commercial use, according to the Supreme Court, "is beyond the normal exploitation of the copyright holder's creative work".

In *Icebergs Food Concepts, Inc. v FILSCAP*, G.R. No 256091 (12 April 2023), the Supreme Court urged Congress to consider allowing exemptions for small businesses in copyright infringement cases.

The Supreme Court, citing its earlier ruling in *FILSCAP v Anrey, Inc.*, supra, found Icebergs liable for copyright infringement for playing copyrighted musical works of FILSCAP in its restaurants without consent.

The Supreme Court noted that this ruling would create a ripple effect such that all businesses, including small businesses that play music through radios, would also be subject to suits for copyright infringement. Thus, the Supreme Court recommended that Congress consider implementing a similar set of exemptions for small businesses in the Philippines following the "three-step test", which provides exemptions to the copyright holders' rights if they:

- cover only certain special cases;
- are not in conflict with the normal exploitation of the work; and
- do not unreasonably prejudice the legitimate interests of the copyright holder.

In *Filipino Society of Composers and Publishers v Wolfpac Communications, Inc.*, G.R. No. 184661 (25 February 2025), the Supreme Court addressed a novel intersection between copyright protection and consumer access to digital media. At issue was whether the act of allowing consumers to listen to 20-second audio samples of ringback tones before purchase constitutes a "public performance" or "communication to the public", and whether such use infringes upon copyright or qualifies as fair use under Section 185 of the Intellectual Property Code of the Philippines.

The case stems from Wolfpac Communications, Inc ("Wolfpac"), a mobile content distributor that marketed downloadable ringback tones through telecommunications platforms such as Smart Communications. Users of the Smart website were permitted to listen to 20-second previews of songs, referred to as a "prelistening function", prior to downloading the ringtones.

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Here, the Court held that the "pre-listening function" constitutes communication to the public, but not as a public performance. The Supreme Court then found that Wolfpac's agreements with composers only authorised the conversion of musical works into downloadable ringtones and their commercial distribution. These agreements did not explicitly include authorisation to stream free 20-second samples. Because all unassigned rights remained reserved to the composers, Wolfpac's use of the pre-listening function exceeded the scope of its licence and infringed upon the copyright owner's right of communication to the public. Nevertheless, the Supreme Court ruled that the pre-listening function qualified as fair use, shielding Wolfpac from liability.

This case is particularly important as creative content increasingly circulates through digital spaces. The Supreme Court's approach balances acknowledging developments caused by innovative digital technologies while preserving the fundamental legislative policy of incentivising creativity.

The foregoing decisions highlight valuable considerations for individuals and entities who wish to do business in the Philippines by demonstrating the importance of ensuring that the necessary licences are obtained prior to using any copyrighted musical works. By properly licensing copyrighted works, franchise businesses can prevent any potential actions against them on the ground of copyright infringement.

For instance, in the case of franchise agreements, warranty clauses regarding the use only of licensed intellectual property, which includes copyright, must be stipulated for the benefit of both the franchisor and the franchisee. This would ensure that only licensed copyrighted works are used for the franchise business, and any violation of such warranty would constitute a breach of the agreement. Additionally, when licensing copyrighted works, the party seeking to obtain a licence must ensure that all its intended uses of the work are sufficiently covered by the licence. Otherwise, any use exceeding the scope of the licence may be considered as copyright infringement, unless it falls under exceptions such as fair use.

SOUTH KOREA

Law and Practice

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Contents

Bae, Kim & Lee LLC was founded in 1980 and is a full-service law firm covering all major practice areas, including corporate law, mergers and acquisitions transactions, dispute resolution (arbitration and litigation), white-collar criminal defence, competition law, tax law, capital markets law, finance, intellectual property, employment law, real estate, technology, media and telecom, maritime and insurance matters. With more than 650 professionals located across its offices in Seoul, Beijing, Hong Kong, Shanghai, Hanoi, Ho Chi Minh City, Yangon and Dubai, Bae, Kim & Lee LLC offers clients a wide range of expertise through a vast network of offices. The firm is composed of a diverse mix of Korean and foreign attorneys, tax advisers, industry analysts, former government officials and other specialists. A number of its professionals are multilingual and have worked at well-known law firms in other countries, enabling them to successfully assist international clients as well as Korean clients abroad with cross-border transactions.

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1. An Introduction to Franchising

1.1 Franchise Market Overview

The franchise industry in South Korea is a major driver of the national economy, valued at approximately USD83 billion and employing over 1 million people. The sector includes more than 8,000 franchisors, 12,000 franchise brands and 365,000 franchisees nationwide.

The franchise market is heavily concentrated in convenience stores and food and beverages, though retail and service-oriented franchising also hold substantial market shares. Growth has been steady in recent years, with record numbers of new franchise registrations and continued expansion despite economic headwinds.

Convenience Store Franchises

South Korea has one of the world's most saturated convenience store markets, with most major players operating under franchise models that allow participation by a wide range of franchisees. Examples of such franchises include CU, GS25, 7-Eleven and emart24.

Food and Beverage Franchises

Franchising is the dominant model for quick-service restaurants, coffee chains and casual dining in South Korea. Examples of such franchises include the following.

- South Korean franchise brands:
  - (a) coffee – Mega Coffee, A Twosome Place and Ediya;
  - (b) burgers and sandwiches – Lotteria, Mom's Touch and Eggdrop;
  - (c) chicken – BBQ Chicken, BHC and Kyochon; and
  - (d) bakery – Paris Baguette and Tous les Jours.
- International franchise brands:
  - (a) coffee – Coffee Bean and Illy Caffé; and
  - (b) burgers and sandwiches – McDonald's, Burger King, KFC and Subway.

1.2 Franchise Regulation

Obligation to Register and Provide Disclosure Documents

Before entering into a franchise agreement, a franchisor must register its disclosure document with the competent administrative authority (Article 6-2 of the Fair Transactions in Franchise Business Act – the "Franchise Act") and deliver the registered disclosure document to the prospective franchisee (Article 7 of the Franchise Act).

Prohibition of Unfair Trade Practices

Under Article 12 (1) of the Franchise Act, a franchisor shall not engage in, or cause another business entity to engage in, any of the following acts likely to impede fair franchise transactions:

- unreasonable suspension or refusal to trade – unreasonably suspending or refusing to supply goods, services or business assistance to a franchisee, or imposing significant restrictions on such supply;
- imposing unfair restrictions – imposing unfair restraints on the prices of goods or services handled by a franchisee, or on the franchisee's customers, business territory or business activities;

- abuse of superior bargaining position – placing a franchisee at an unfair disadvantage by abusing the franchisor's superior bargaining position;
- unreasonable imposition of liability for damages – unreasonably requiring a franchisee to compensate for damages, such as by imposing liquidated damages that are excessive in light of the standards prescribed by presidential decree, including in relation to the purpose and content of the agreement and the losses expected to occur; and
- other acts likely to undermine fair franchise transactions – any other act, not falling under the foregoing, that is likely to impede fair franchise transactions, including improperly inducing franchisees of a competing franchisor to transact with the franchisor.

Prohibition on Infringement of Business Territory and Restrictions on Operating Hours

Pursuant to Article 12-4 (3) of the Franchise Act, a franchisor may not, without justifiable cause, establish a directly operated store or another franchise of the same type of business (ie, one that may reasonably be recognised as the same in light of the regional and demographic scope of the consumer base, the items handled, and the form and method of business) within the designated business territory of an existing franchisee.

Under Article 12-3 (2) of the Franchise Act, a franchisor may not require a franchisee to operate during late-night hours where such operations would result in loss.

Mandatory Terms of Franchise Agreements

Franchise agreements must cover the following (Article 11 (2) of the Franchise Act):

- licensing and use of the franchisor's trade marks;
- terms and conditions of the franchisee's business activities;
- education, training and operational guidance for the franchisee;
- payment of franchise fees and other costs;
- designation of business territory;
- duration of the agreement;
- transfer of business;
- grounds for termination of the agreement;
- requirement that a franchise deposit be held in a depository for two months from the date of the franchise agreement (or until business commencement, if earlier), or if the franchisor maintains damage compensation insurance, details of the insurance policy;
- confirmation (if consultation was obtained) that a prospective franchisee has consulted an attorney-at-law or certified franchise transaction consultant;
- compensation for damages incurred by the franchisee due to unlawful acts of the franchisor or its executives, or acts contrary to social norms that may damage the reputation or creditability of the franchise business;
- where the franchisor obliges the franchisee to transact with designated suppliers, the scope of the obligation (eg, types of real estate, services, facilities, goods, raw materials or lease arrangements) as well as the method of calculating supply prices;
- conditions for refund of franchise fees and other payments;
- installation, maintenance and cost burden of the franchisee's operational facilities and equipment;
- measures related to the termination and cancellation of the franchise agreement;
- justifiable reasons for the franchisor to refuse renewal of the franchise agreement;
- trade secrets of the franchisor;
- compensation for damages due to breach of the franchise agreement;
- requirement of the franchisor to engage in discussions with the franchisee when changing the transaction terms and procedures for dispute resolution;
- contract with the previous franchisee in the event the franchisor transfers the franchise business to another business operator; and
- measures to be taken upon the expiration of the franchisor's intellectual property rights.

Additionally, under Article 12-4 of the Franchise Act, the franchisor is required to designate the business territory of the franchisee and specify it in the franchise agreement.

1.3 Definition of a Franchise Agreement

Under Korean law, a "franchise business" is legally defined as a business relationship that includes all of the following elements:

- the franchisee is granted the right to use the franchisor's trade marks (including trade marks, service marks, trade names, signs or any other marks);
- the franchisor allows the franchisee to sell products or services (including raw and auxiliary materials) in accordance with prescribed quality standards or business methods, while also providing training and operational support;
- the franchisee provides consideration to the franchisor in the form of a franchise fee, covering both the right to use the trade marks and the training/support received in connection with business operations; and
- the parties enter into a continuous business relationship.

In practice, whether a business relationship qualifies as a "franchise" is determined primarily by the existence of a franchise fee. The concept of a franchise fee is interpreted broadly and may include virtually any payment made by the franchisee to the franchisor, such as:

- membership fees, initial joining fees, training fees or contract fees paid in consideration for the right to use trade marks or for operational support and training;
- payments serving as security for the franchisee's obligations, including the cost of goods supplied by the franchisor or compensation for damages;
- upfront payments required as a condition for the grant of franchise rights, such as the cost of fixtures, equipment or goods provided by the franchisor, or rent for premises payable to the franchisor;
- periodic or irregular payments to the franchisor for the use of trade marks, training, support or other benefits conferred under the franchise agreement; and
- any other payments made by a prospective or existing franchisee to acquire or maintain the right to operate the franchise business.

2. Franchise Disclosure

2.1 Mandatory Disclosure

General Principles

Under Article 7 of the Franchise Act, a franchisor is required to provide a franchise disclosure document to a prospective franchisee. A disclosure document that has been duly registered (or amended and re-registered, where applicable) with the Korea Fair Trade Commission (KFTC) or the competent metropolitan/provincial government authority (eg, the mayor of a special metropolitan city, the mayor of a metropolitan city or the provincial governor) should be provided.

The Franchise Act requires disclosure to be made in accordance with methods prescribed by the Enforcement Decree of the Franchise Act, such as certified mail or other objectively verifiable means, to confirm the timing of disclosure. Although the Franchise Act does not explicitly mandate translation, in practice the KFTC requires that the franchise disclosure document be submitted in Korean in the registration process.

Information Required in the Franchise Disclosure Document

Under Article 2 of the Franchise Act and its Enforcement Decree, the franchise disclosure document must include, among other things:

- general information on the franchisor (corporate details, history and financial statements);
- current state of the franchise business, including the number of stores, closures and average sales;
- record of legal violations by the franchisor or its executives;
- obligations imposed on the franchisee;
- conditions or restrictions on business activities (eg, mandatory purchases, business territory);
- procedures and timelines for commencing business operations;
- details of support, education and training to be provided by the franchisor; and
- the status of stores directly operated by the franchisor.

Under Article 9 (1) of the Franchise Act, a franchisor is prohibited from engaging in the following conduct in relation to the franchise disclosure document:

- providing false or exaggerated information (ie, offering information that is inconsistent with the facts or presented in an overstated manner); and
- providing deceptive information (ie, withholding or downplaying material facts that would significantly affect the conclusion or continuation of a franchise agreement).

Cooling-Off/Waiting Period

The franchisor may not (i) enter into a franchise agreement with the prospective franchisee or (ii) receive any franchise fees until 14 days have elapsed from the date on which the franchise disclosure document is provided. This waiting period may be shortened to seven days where the prospective franchisee has obtained legal advice from an attorney-at-law or certified franchise transaction consultant with respect to the franchise disclosure document.

Amendments to Disclosure Documents and Reporting Requirements

If there are changes to the key matters listed in Annex 1-2 of the Enforcement Decree of the Franchise Act, the franchisor is required to file a "registration" of the amended franchise disclosure document within the prescribed period. For minor changes identified in the same annex, the franchisor is required instead to submit a "report" of such changes.

2.2 Consequences of a Failure to Disclose

Non-compliance with disclosure obligations under the Franchise Act may give rise to administrative fines, statutory rights of termination and refund for franchisees, and criminal sanctions.

- Administrative fines: Failure to register amendments to the disclosure document or to provide disclosure may result in a negligence fine of up to KRW10 million (Article 43 (6)1, 2). Failure to report minor changes may result in a negligence fine of up to KRW3 million (Article 43 (7)1).
- Franchise remedies: If a franchise agreement is executed without the franchisor having provided a duly registered franchise disclosure document, the franchisee may terminate the franchise agreement and demand a refund of all franchise fees within four months from the date of execution of the franchise agreement (Article 10 (1)1).
- Criminal sanctions: A franchisor that fails to comply with an obligation to provide disclosure documents may be subject to criminal sanctions, including imprisonment of up to two years or a fine of up to KRW50 million (Article 41 (3)2).

2.3 Franchise Disclosure Exemptions

Unlike certain jurisdictions that provide exemptions from disclosure obligations, no such exemptions are available under Korean franchise law.

2.4 Franchise Disclosure Language/ Translation Requirements

Although the Franchise Act does not explicitly mandate translation, in practice the franchise disclosure document must be prepared and provided in Korean, as the KFTC requires the document to be registered in Korean.

3. Franchise Registration

3.1 Mandatory Registration

Franchisors are required to register the franchise disclosure document with the KFTC (with the registration process delegated to the Korea Fair Trade Mediation Agency; KOFAIR), or with the competent metropolitan or provincial government authority.

3.2 Franchise Registration Process

Concerning the franchise registration process, see **2.1 Mandatory Disclosure**.

3.3 Consequences of a Failure to Register

Regarding the consequences of failing to obtain the registration, see **2.2 Consequences of a Failure to Disclos** e.

4. Other Requirements

4.1 Past-Profitability Requirements

A franchisor may not execute a franchise agreement without first registering its disclosure document with the KFTC or the competent metropolitan/provincial government authority, and providing the registered disclosure document to the prospective franchisee.

The Franchise Act does not explicitly require a franchisor to demonstrate past profitability before commencing franchise operations. However, in practice, a de facto past-performance requirement exists, because the KFTC may refuse registration where the franchisor lacks a directly operated store or where such store has been in operation for less than one year.

Specifically, when applying for initial registration, the KFTC may refuse to register the franchise disclosure document if: (i) the franchisor does not operate at least one directly operated store under the same trade mark, quality standards, and business methods as those described in the franchise disclosure document, or (ii) the directly operated store has been in operation for less than one year (Article 6-3 (1)3 of the Franchise Act).

An exception applies where the franchisor has engaged in the same line of business for at least one year, either domestically or abroad. In such cases, the existence of a directly operated store is not required, and registration may not be refused on this basis (Article 5-5 (2)2 of the Enforcement Decree).

5. Duration, Renewal and Termination

5.1 Duration of a Franchise Agreement

The Franchise Act grants franchisees a statutory right to request renewal of the franchise agreement, but this right is capped so that the total duration of the franchise relationship, including the initial term, does not exceed ten years (Article 13 (2) of the Franchise Act). The Franchise Act does not prescribe a maximum duration for franchise agreements.

5.2 Franchise Renewal

Under Article 13 (1) of the Franchise Act, if a franchisee requests renewal of the franchise agreement between 180 and 90 days before the expiration of the term, the franchisor may not refuse such renewal without justifiable cause. Exceptions apply in the following cases:

- the franchisee fails to make the required payments under the franchise agreement;
- the franchisee objects to terms, conditions or business policies that apply generally to other franchisees;
- the franchisee is not compliant with critical business policies necessary for maintaining the franchise, including securing required business premises and facilities, obtaining necessary qualifications, licences, or permits, complying with required manufacturing processes or service techniques to maintain quality, protecting intellectual property rights essential to the operation of the franchise, and participating in the franchisor's regular education and training programmes; and
- where the total duration of the franchise relationship, including its initial period, exceeds ten years.

Where a franchise agreement is not renewed due to the franchisor's breach of law or of the franchise agreement, the franchisee may seek damages under tort liability. Damages are generally assessed with reference to the operating profits the franchisee could reasonably have expected to earn had the franchise relationship continued.

Goodwill compensation under Article 92-2 of the Korean Commercial Act, which applies to commercial agents, does not directly extend to franchisees.

5.3 Termination of the Franchise Agreement

The Franchise Act prescribes specific procedures that a franchisor must follow in order to terminate a franchise agreement. In general, the franchisor is required to:

- clearly notify the franchisee of the breach of the agreement;
- provide the franchisee with a two-month period to remedy the breach; and
- issue at least two written notices to the franchisee regarding the breach.

However, the Franchise Act also sets out certain circumstances in which the franchisor may terminate the franchise agreement immediately, without providing a cure period. Immediate termination is permitted where it is impractical to continue the franchise relationship, including in the following situations:

- an application for the franchisee's bankruptcy is filed or compulsory workout procedures are initiated against the franchisee;
- bills or checks issued by the franchisee are dishonoured for reasons such as payment default;
- the franchisee is no longer able to operate the franchise due to a natural disaster, significant personal reasons or other circumstances;
- the franchisee receives administrative sanctions or court judgments for violations of laws or regulations related to franchise operations, which causes significant harm to the franchisor's reputation or credibility and creates a serious obstacle to the franchise business (including corrective orders, penalty surcharges, administrative fines or business suspension orders);
- the franchisee receives an administrative sanction that prevents correction of a violation (eg, revocation of qualifications, licences or permits, or a business suspension order exceeding 15 days) due to a violation of laws or regulations related to franchise operations – provided that this does not apply where a penalty surcharge or administrative fine is imposed instead of such sanction;
- the franchisee repeats the same violation within one year (including the previous contract period in the case of renewal) after correcting the issue at the franchisor's request, despite having been notified by the franchisor that such repetition will result in termination without the opportunity to cure;
- the franchisee receives a criminal penalty for an act related to franchise operations;
- the franchisee operates the franchise in a manner that poses an imminent threat to public health, making it impractical to wait for corrective action by authorities; and
- the franchisee suspends business for seven consecutive days or more without justifiable cause.

6. Restrictions on Competition in Franchise Agreements

6.1 Treatment of Competition Restrictions in Franchise Agreements

The Franchise Act regulates a broad range of matters concerning franchise transactions (see **2. Franchise Disclosure**, **5. Duration, Renewal and Termination**, **6. Restrictions on Competition in Franchise Agreements** and **7. Choice of Governing Law**). Its stated purpose is to ensure the mutually complementary and balanced development of franchisers and franchisees on an equal footing, rather than to safeguard competition in the relevant market (Article 1 of the Franchise Act).

Accordingly, the restrictions commonly found in franchise agreements, such as exclusive territories, non-competes and mandatory purchase obligations, are regulated under the Franchise Act primarily to protect the interests of franchisees (see **6.2 Exclusive Territories and Competing Businesses** and **6.3 Requiring Franchisees to Purchase Specific Goods and Services**).

For matters falling within the scope of the Franchise Act, the following provisions of the Monopoly Regulation and Fair Trade Act (South Korea's principal competition law) do not apply: Article 45 (1) subparagraphs 1 (unreasonable refusal to deal), 4 (unfair inducement of customers), 6 (abuse of superior bargaining position) and 7 (exclusive dealing and territorial or customer restrictions), and Article 46 (resale price maintenance).

6.2 Exclusive Territories and Competing Businesses

Exclusive Territory

Under Article 12-4 (3) of the Franchise Act, the franchisor may not, without justifiable cause, operate a directly operated store or establish a franchise of its own or its affiliate within the franchisee's designated business territory in the same line of business. A business will be considered the same where it is reasonably recognised as such in light of the consumer base's regional and demographic scope, the items handled, and the form and method of business. Accordingly, exclusive territories are permitted in franchise agreements, and the franchisor is expected to guarantee the franchisee's territorial rights as stipulated in the agreement.

Non-Compete Clause During the Term of the Franchise Agreement

Under Article 6 (10) of the Franchise Act, franchisees are prohibited from engaging in the same line of busi-

ness as the franchisor during the term of the franchise agreement. Therefore, non-compete clauses that restrict the franchisee from operating a competing business during the contract period are permitted under Korean law and are commonly included in franchise agreements.

Non-Compete Clause After Termination

The Franchise Act does not explicitly regulate non-compete clauses that apply after the termination of the franchise agreement. However, the KFTC reviews such clauses to determine whether they constitute an "unfair contract term" under Article 12 (1)3 of the Franchise Act.

In assessing whether a post-termination non-compete clause is unfair, the KFTC considers the harm to the franchisee and prevailing industry practices. For example, in a recent decision, the KFTC found that imposing a two-year post-termination non-compete obligation was an unfair contract term as it exceeded what is typically observed in comparable franchise relationships (KFTC Decision No 2025-024, dated 18 February 2025). The KFTC reasoned as follows.

- Non-compete obligations may be justified to the extent necessary to protect the franchisor's proprietary know-how or trade secrets. However, if the restriction is excessive, it could unduly limit the franchisee's ability to conduct business and serve as a means to exclude competitors. As such, these clauses must be interpreted and applied strictly.
- The Franchise Act itself limits non-compete obligations to the duration of the franchise agreement.
- The KFTC also took into account industry practices, noting that a two-year post-termination restriction deviated from what is typically observed in comparable franchise relationships.

Accordingly, the permissibility of a one-year post-termination non-compete clause should be assessed in light of prevailing industry practices in the market in which the franchisor operates. In Korea, many industries (such as restaurant franchises) commonly use one-year post-termination non-compete clauses. The KFTC has not taken specific action against such clauses to date, and Korean courts have upheld their validity. Therefore, a one-year post-termination non-compete clause is generally unlikely to be considered a violation of the Franchise Act.

6.3 Requiring Franchisees to Purchase Specific Goods and Services

Overview: Regulations on Mandatory Items

A franchisor may require a franchisee to purchase certain products or services exclusively from the franchisor or from designated suppliers ("mandatory items"). However, such requirements are subject to specific regulations under the Franchise Act.

The relevant regulations include:

- the requirement to disclose details of the mandatory items in both the franchise agreement and the disclosure document; and
- prohibition on unfairly restricting the franchisee's choice of suppliers, which constitutes an unfair trade practice.

Disclosure Requirement in the Franchise Agreement and Disclosure Document

The franchisor must specify in the franchise agreement the types of mandatory items and the methodologies used to determine the supply price of each item (Article 11 (2) of the Franchise Act). In addition, the franchisor must include the following in the franchise disclosure document (Franchise Act Article 2 (10); Enforcement Decree, Annex 1):

- a list of mandatory items;
- the upper and lower limits of the supply price for key mandatory items during the preceding business year;
- information on any difference between the supply price of the mandatory items and a reasonable wholesale price; and
- information on any economic benefits (such as sales incentives and rebates) the franchisor or its affiliates obtain in connection with the supply of mandatory items.

Prohibition on Unfairly Restricting the Franchisee's Choice of Suppliers

The franchisor must ensure that the requirement to purchase mandatory items does not constitute an unfair restriction on the franchisee's choice of suppli-

ers. The Franchise Act sets out the following conditions under which a requirement to purchase mandatory items will not be considered an unfair restriction (Article 12 (1)(2)):

- the mandatory item must be objectively essential for the operation of the franchise business;
- it must be objectively recognised that, without dealing with the specific suppliers designated by the franchisor, it would be difficult to protect the franchisor's trade mark rights and maintain the uniformity of goods or services;
- the franchisor must disclose details of the mandatory items in advance in the disclosure document and incorporate them into the franchise agreement; and
- where the franchisor changes the details of the mandatory items (eg, specifications, price, quantity, quality or suppliers) in a manner disadvantageous to the franchisee, the franchisor must first consult with the franchisee.

6.4 Channel Reservation

Restrictions on the Franchisee's Use of Sales Channels

Restricting a franchisee's use of sales channels may be considered "unreasonable restriction on the franchisee's business activities" and prohibited as an unfair trade practice. However, the Franchise Act provides that such restrictions will not be regarded as unlawful if both of the following conditions are satisfied (Franchise Act Article 12 (1)2; Enforcement Decree, Annex 2):

- it is objectively necessary to protect the franchisor's trade mark rights or to maintain uniformity in goods or services, and this cannot reasonably be achieved without restricting the franchisee's business activities; and
- the franchisor discloses the restriction in the franchise disclosure document and enters into the agreement with the franchisee on that basis.

Franchisor's Ability to Operate in the Same Sales Channels as Franchisees

The Franchise Act permits franchisors to operate directly, but such activity is subject to certain limitations.

Protection of the franchisee's business territory

As discussed in **6.2 Exclusive Territories and Competing Businesses**, during the term of a franchise agreement, the franchisor may not, without justifiable cause, operate a directly operated store or establish another franchise of the same line of business within the franchisee's designated business territory (Franchise Act Article 12-4 (3)). Accordingly, the franchisor's offline sales channels are restricted to protect the franchisee's territory.

Disclosure of the franchisor's online and offline sales activities

If the franchisor operates through specific sales channels such as online platforms, this must be disclosed in the franchise disclosure document. Specifically, the franchisor must disclose (i) the proportion of annual domestic sales accounted for by online versus offline sales; (ii) the proportion of products sold exclusively online or offline; and (iii) whether the franchisor sells goods or services identical or similar to those of franchisees through online, home shopping or telemarketing channels (Franchise Act Article 2 (10); Enforcement Decree, Annex 1).

Consultation with franchisees and franchisee associations

Franchisees may request consultation with the franchisor, and the franchisor is obligated to participate under the principle of good faith (Franchise Act Article 4). Franchisees may also form franchisee associations, which may request consultation with the franchisor concerning transaction terms, including changes to the franchise agreement. In such cases, the franchisor must respond in good faith to such requests (Franchise Act Article 14-2), though it is not legally required to reach agreement.

Franchisees or franchisee associations may request consultations with the franchisor regarding matters related to the franchisor's use of specific sales channels. In this regard, the "Standard Franchise Agreement (for Retail and Other Sales Businesses)" published by the KFTC provides that franchisees, either individually or through their associations, may request consultations with the franchisor on issues such as whether and to what extent the franchisor engages in online sales, including the types of products sold, the

share of sales and the pricing. The franchisor, in turn, is prohibited from unreasonably refusing or neglecting to engage in such consultations.

Accordingly, where the franchisor utilises specific sales channels such as online platforms, franchisees or franchisee associations may request consultations. In such cases, the franchisor must participate in the consultations in good faith, but is not legally required to reach agreement on the matters under discussion.

6.5 Vertical Agreement Block Exemptions

Under the Franchise Act, a franchisor may not, without justifiable cause, fix the resale prices of goods or services sold by franchisees or unfairly restrict the franchisees' ability to determine such prices (Article 12 (1)2 of the Franchise Act; Enforcement Decree, Annex 2). However, the following practices are excluded from this prohibition:

- recommending resale prices to franchisees; and
- requiring that franchisees consult with the franchisor in advance when determining or changing resale prices, provided that the franchisor does not coerce compliance through such consultations.

Within the scope of these exceptions, vertical agreements between franchisors and franchisees are permitted under Korean law. Separately, in assessing the competitive effects of vertical restraints in franchise relationships, pro-competitive effects may also be considered in theory. In practice, however, pro-competitive justifications rarely play a decisive role in enforcement outcomes.

7. Choice of Governing Law

7.1 Possibility of a Franchisor Stipulating Non-Local Law

The Franchise Act does not expressly regulate the governing law of franchise agreements. Accordingly, the franchisor may stipulate the laws of its own jurisdiction as the governing law of the agreement.

7.2 Local Law Requirements

Korean law does not formally require that franchise agreements be governed by Korean law. Nevertheless, the generally accepted view, also reflected in the KFTC's position, is that the Franchise Act constitutes overriding mandatory provisions. Therefore, even where the parties designate foreign law as the governing law, the Franchise Act will continue to apply to agreements with franchisees in Korea.

The Franchise Act applies equally to both the intellectual property elements and the service elements of a franchise agreement.

7.3 Mandatory Content

Mandatory Terms of Franchise Agreements

Franchise agreements must include matters concerning the following (Article 11 (2) of the Franchise Act):

- licensing and use of the franchisor's trade marks;
- terms and conditions of the franchisee's business activities;
- education, training and operational guidance for the franchisee;
- payment of franchise fees and other costs;
- designation of business territory;
- duration of the agreement;
- transfer of business;
- grounds for termination of the agreement;
- requirement that a franchise deposit be held in a depository for two months from the date of the franchise agreement (or until business commencement, if earlier), or if the franchisor maintains damage compensation insurance, details of the insurance policy;
- confirmation (if consultation was obtained) that a prospective franchisee has consulted an attorney-at-law or certified franchise transaction consultant;
- compensation for damages incurred by the franchisee due to unlawful acts of the franchisor or its executives, or acts contrary to social norms that may damage the reputation or creditability of the franchise business;
- where the franchisor obliges the franchisee to transact with designated suppliers, the scope of the obligation (eg, types of real estate, services, facilities, goods, raw materials or lease arrangements) as well as the method of calculating supply prices;
- conditions for refund of franchise fees and other payments;

- installation, maintenance and cost burden of the franchisee's operational facilities and equipment;
- measures related to the termination and cancellation of the franchise agreement;
- justifiable reasons for the franchisor to refuse renewal of the franchise agreement;
- trade secrets of the franchisor;
- compensation for damages due to breach of the franchise agreement;
- requirement of the franchisor to engage in discussions with the franchisee when changing the transaction terms, and procedures for dispute resolution;
- contract with the previous franchisee in the event the franchisor transfers the franchise business to another business operator; and
- measures to be taken upon the expiration of the franchisor's intellectual property rights.

Statutory Provisions Implied by the Franchise Act

The mandatory provisions of the Franchise Act take precedence over the terms of the franchise agreement. When entering into a franchise agreement with a Korean franchisee, the following statutory requirements must be observed.

Refund of franchise fees

Under Article 10 of the Franchise Act, the franchisor is required to refund franchise fees within one month of a written request by the franchisee (or prospective franchisee) in any of the following circumstances:

- the franchisor (i) fails to provide the disclosure document to a prospective franchisee, or (ii) receives franchise fees or enters into a franchise agreement before 14 days have elapsed from the date on which the disclosure document was provided, and the prospective franchisee or franchisee requests a refund either prior to the execution of the franchise agreement or within four months from the date of its execution;
- the franchisor (i) provides false information or exaggerates facts in providing information to a prospective franchisee or franchisee, or (ii) conceals or downplays material facts that may have a significant impact on the conclusion or maintenance of the franchise agreement, and the prospective franchisee requests a refund of the franchise fees prior to the execution of the franchise agreement;
- the franchisor provides false or exaggerated information (or omits material facts) to a prospective franchisee or franchisee, and such conduct is deemed to have had a material impact on the conclusion of the franchise agreement, and the franchisee requests a refund of the franchise fees within four months from the date of execution of the franchise agreement; or
- where the franchisor unilaterally discontinues the franchise business without just cause, and the franchisee requests a refund of the franchise fees within four months from the date of discontinuation of the franchise business.

Even if the franchise agreement contains provisions on the return of franchise fees that are inconsistent with the Franchise Act, the franchisor must comply with a franchisee's request for the return of franchise fees under the Franchise Act.

Prohibition on unjustified store renovation requirements and cost sharing

Under Article 12-2 of the Franchise Act and Article 13-2 of the Enforcement Decree, the franchisor may not, without justifiable cause, compel franchisees to carry out store renovations. Even where justifiable cause exists, the franchisor is required to bear:

- 20% of the costs of sign replacement and interior work (excluding the cost of replacing equipment and utensils); or
- 40% of such costs if the renovation involves expansion or relocation.

Exceptions apply in the following cases:

- where the franchisee undertakes renovations voluntarily, without any recommendation or request from the franchisor; or
- where renovations are unavoidable due to hygiene, safety or similar issues arising from reasons attributable to the franchisee.

Accordingly, even if the franchise agreement contains provisions on renovation obligations and cost allocation that differ from the Franchise Act, the franchisor

may only require store renovations in the circumstances prescribed by the Franchise Act and must share costs in accordance with the statutory standards.

Prohibition on unfair restrictions on operating hours

Under Article 12-3 of the Franchise Act and Article 13-3 of the Enforcement Decree, the franchisor may not impose unfair restrictions on franchisees' operating hours contrary to normal business practices. The followings are considered unfair restrictions:

- where, despite the franchisee's request, the franchisor refuses to allow shortened operating hours even though late-night operations (between midnight and 6am or between 1am and 6am) have resulted in operating losses for three consecutive months due to the store's location or other factors; and
- where the franchisor refuses to allow a franchisee to shorten operating hours to the minimum extent necessary for unavoidable circumstances such as illness or medical treatment.

Accordingly, even if the franchise agreement contains different provisions on operating hours, the franchisee may request a reduction in operating hours pursuant to the Franchise Act.

Prohibition on infringement of business territory

As discussed in **6.2 Exclusive Territories and Competing Businesses**, the franchisor (i) must designate a business territory for the franchisee at the time of entering into the franchise agreement and specify it in the contract, and (ii) may not infringe on the franchisee's territory during the term of the agreement without justifiable cause (Article 12-4 of the Franchise Act). Accordingly, even if the agreement provides otherwise, the franchisor must comply with the prohibition on unjustified territorial infringement under the Franchise Act.

Advertising and sales promotions

Where the franchisor conducts advertising or promotional activities for which franchisees bear all or part of the costs, the franchisor must obtain the consent of at least 50% of the franchisees concerned (70% in the case of promotions). However, this consent requirement does not apply where the parties enter into a separate agreement, apart from the franchise agreement, governing the advertising or promotional activity and the activity is carried out pursuant to that agreement. In addition, the franchisor must notify franchisees of the details of such activities and, upon request, allow them to review the records of execution (Article 12-6 of the Franchise Act; Articles 13-5 and 13-6 of the Enforcement Decree).

Accordingly, even if the franchise agreement contains different provisions on advertising or promotions involving cost-sharing by franchisees, the franchisor must comply with the Franchise Act's requirements concerning consent and disclosure.

Renewal of franchise agreements

As discussed in **5.2 Franchise Renewal**, the Franchise Act prohibits a franchisor from refusing a franchisee's request to renew the franchise agreement without justifiable cause and enumerates the exceptional circumstances under which renewal may be denied (Article 13). Therefore, even if the agreement provides otherwise, the franchisor must renew the franchise agreement in accordance with the Franchise Act.

Termination of franchise agreements

As discussed in **5.3 Termination of the Franchise Agreement**, the Franchise Act generally requires that the franchisor allow a cure period of at least two months before terminating a franchise agreement and strictly limits immediate termination to the exceptional cases specified in the Franchise Act (Article 14). Therefore, even if the agreement provides different procedures or grounds for termination, the franchisor must comply with the Franchise Act and may immediately terminate only on the statutory grounds.

7.4 Prohibited Provisions in Local Law

The Franchise Act does not contain a statutory blacklist of clauses that may not be included in franchise agreements. However, if a franchisor incorporates into a franchise agreement provisions that amount to conduct prohibited under the Franchise Act, this may be considered a violation (ie, imposition or amendment of unfair contract terms). Care should therefore be taken when drafting agreements. For relevant statutory restrictions, see **6.2 Exclusive Territories and**

Competing Businesses, 6.3 Requiring Franchisees to Purchase Specific Goods and Services and **7.3 Mandatory Content**.

8. Dispute Resolution

8.1 Enforcement of Foreign Judgments

Enforcement of Foreign Judgments

Under Article 217 of the Civil Procedure Act and Article 26 of the Civil Execution Act, a foreign judgment may be enforced in Korea once it has been recognised by a Korean court. Recognition is granted where the following requirements are met:

- the foreign court had proper international jurisdiction under Korean law or applicable treaties;
- the defendant who lost the case was duly served with the complaint (or equivalent documents) and notice of hearing or orders in a manner that afforded sufficient time to prepare a defence – excluding service by publication or similar methods – or, if not duly served, nevertheless appeared and defended the case;
- the content of the final judgment and the proceedings leading to it are not contrary to sound morals or other aspects of social order in Korea; and
- reciprocity exists where the foreign country also recognises Korean judgments under substantially similar conditions.

Enforcement of Foreign Arbitration Awards

South Korea is a party to the New York Convention (having acceded in 1973). Accordingly, foreign arbitration awards are recognised and enforceable in Korea in accordance with the Convention.

9. Payment and Taxes

9.1 Restrictions or Limits on Franchisee Fees and Royalties

Regulation on Payment Amount of Franchise Fees

The Franchise Act does not impose any statutory limits on the amount of franchise fee, royalties or service fees. There is also no annual maximum payment cap in foreign currency.

Other Regulations on Franchise Fees

A franchisor is required to set out franchise fees and other costs to be borne by the franchisee in the franchise disclosure document (Article 2 (10) of the Franchise Act) and to include the terms of payment of such franchise fees and costs in the franchise agreement (Article 11 (2) of the Franchise Act).

9.2 Withholding Tax

General Rule

For franchisors who are non-residents for tax purposes and do not maintain a permanent establishment in South Korea, franchise royalties are generally subject to withholding tax.

Exception: Compensation for Exclusive Distribution Rights

In a recent case, the Seoul High Court (Case No 2023Nu57526, currently pending before the Supreme Court of Korea) classified compensation for exclusive distribution rights as business income rather than royalty income under Korean tax law. Business income paid to a foreign entity without a permanent establishment in South Korea is not subject to taxation in South Korea. Accordingly, under this reasoning, consideration paid by a franchisee to a franchisor for exclusive distribution rights would not be subject to withholding tax.

9.3 Foreign Currency Controls

General Rule: No Reporting Requirement

Under the Foreign Exchange Transactions Act, only capital transactions are generally subject to reporting requirements; remittances made in connection with the trade of goods or services are not. Accordingly, franchise fees payable to a franchisor are, in principle, not subject to foreign exchange reporting.

Exceptions Where Reporting May Be Required

Depending on the method of payment, certain cases may exceptionally trigger a reporting obligation under Foreign Exchange Transactions Regulation Article 5. These include:

- where frequent transactions with the counterparty are settled on a net basis through a running account;

- where payment for imports is made more than one year before the goods are received;
- where payment is made to a third party; and
- where payment is made without going through an authorised foreign exchange bank.

In these cases, reporting may be required depending on the amount and nature of the payment. Franchisors and franchisees should therefore confirm in advance whether reporting is necessary under these exceptions.

10. Execution Formalities

10.1 Authentication, Notarisation, Witnessing, Etc

There are no formalities required when signing the franchise agreement. In particular, there is no requirement to authenticate or notarise signatures, to have witnesses or to complete any form of registration.

10.2 Electronic Signatures

Electronic signatures are permitted and valid in South Korea. They have full legal effect under the Digital Signature Act.

10.3 Stamp Duties

There are no document taxes or stamp duties applicable to franchise agreements in South Korea. The Franchise Act does not require franchise agreements to be notarised or registered. In addition, no fee is charged for registering the franchise disclosure document with the KFTC or another competent authority.

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