

International Franchise Questionnaire:
Review of Legislation and Practice

Prepared by a Project Team
under the direction of the Franchise & Licensing Subcommittee
of the
Commercialization of Brands Committee

August 2025

INTRODUCTION

During the 2022-2023 and 2024-2025 terms, the Franchise and Licensing Subcommittee of the Commercialization of Brands Committee conducted research regarding the regulation of franchise laws.

The study covered 23 jurisdictions engaging dozens of dedicated professionals in intellectual property. The 33 issues that were raised in the survey included:

- identification of specific franchise law and regulation
- what is considered a “franchise” and does this overlap with other contractual IP relationships
- are there exceptions to what is considered a franchise
- are there local law/local language/dispute resolution requirements
- do franchise agreements or IP components thereof IP require recordal at local registries
- what pre and post disclosure obligations are required
- are there any restrictions on foreign participation in franchise businesses
- are there automatic renewal/extension requirements
- are there specific termination requirements

The purpose of the survey was to provide INTA members an overview resource of the issue, which is often overlooked in licensing. During the first term, the task force members developed a comprehensive questionnaire, identified key countries (primarily those with franchise regulations), and began gathering responses from practitioners. During the second term, the task force members gathered additional responses and compiled the data received worldwide.

This franchise survey marks INTA’s first comprehensive guide to legal and regulatory issues for franchisors, franchisees and their legal advisors to understand in order to comply with requirements in important franchise jurisdictions. It will serve as an informative primer for franchise and IP professionals involved in business expansion opportunities in select markets and the licensing of valuable IP assets in support of that expansion. The questionnaire results formed the basis of an Annual Meeting Presentation at San Diego, CA.

The Subcommittee appreciates the contributions of the many professionals to the survey, all of whom are credited within the report.

Alan Adcock, Valerie Brennan and James Skelton

Task Force Members (2024-2025 term)

With special thanks to:

Past Task Force Member (2024-2025 term): Sebastien Gobat

Task Force Members (2022-2023 term): Tim Golder, Hannah Fernandes, Marc Lieberstein, Michelle Menne

ASIA PACIFIC REGION	3
AUSTRALIA	3
CAMBODIA	18
CHINA	24
INDIA	31
INDONESIA	37
NEW ZEALAND	46
SINGAPORE	51
SOUTH KOREA	58
THAILAND	66
VIETNAM	71
 EUROPE	 77
FRANCE	77
GERMANY	83
ITALY	87
POLAND	98
UNITED KINGDOM	105
 MIDDLE EAST AND AFRICA REGION	 122
ALGERIA	122
MOROCCO	128

SAUDI ARABIA	140
SOUTH AFRICA	152
THE AMERICAS REGION	167
BRAZIL	167
CANADA	174
MEXICO	180
UNITED STATES OF AMERICA	187

Region:	ASIA PACIFIC	
Country:	Australia	
Co-Authors:	Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)	
Verifier:	James Skelton (Swaab)	
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	The relationship between franchisor and franchisee is regulated primarily by the <i>Competition and Consumer (Industry Codes – Franchising) Regulation 2024</i>, Schedule 1 (the Franchising Code of Conduct). This is a mandatory industry code prescribed by regulation under Part IVB of the <i>Competition and Consumer Act 2010 (Cth)</i> (the CCA). The Franchising Code of Conduct commenced operation on 1 April 2025, replacing the <i>Competition and Consumer (Industry Codes – Franchising) Regulation 2014</i>, Schedule 1. In addition to the provisions provided by the Franchising Code of Conduct, franchisors and franchisees are also subject to the general laws governing business relationships and fair trading in Australia, including under Part IVB of the CCA. This includes prohibitions on unconscionable conduct, false or misleading representations and the regulation of unfair contract terms in standard form contracts under the <i>Australian Consumer Law</i>. Also note that the <i>Fair Work Act 2009 (Cth)</i> extends liability to franchisors in certain circumstances, for franchisee breaches of that Act.
2.	Is there a regulator of franchising conduct?	Industry compliance with the Franchising Code of Conduct is overseen by the Australian Competition and Consumer Commission. It has a range of enforcement options. See further in question 27 below.
3.	Is there a voluntary code or other form of self-governance?	No
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	There is a number of franchise organisations which operate in Australia. The Franchise Council of Australia is the peak body for Australia's franchise business segment. It 'provides a platform for franchisors, franchisees, business advisors and small to medium businesses to influence government policy, communicate with political leaders and key decision makers, network with peers and engage in policy debates'. The Australian Association of Franchisees specifically 'protect[s] and advance[s] the rights and interests of franchisees and the health of their franchise'. It aims to empower franchisees in their dealings with franchisors and legislators and advocates 'fair policy, reasonable regulation and equitable relationships'. The Australian Franchise Association is 'dedicated to enhancing the business skills and financial acumen of franchise owners'.

Region:	ASIA PACIFIC	
Country:	Australia	
Co-Authors:	Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)	
Verifier:	James Skelton (Swaab)	
#	Question	Answer
		Membership of each of these organisations is voluntary and the associations do not impose additional legal obligations on their members.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	Under section 7 of the Franchising Code of Conduct, there are three elements which must be satisfied for an agreement to be classified as a franchise agreement: a) 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; b) the operation of the business will be substantially or materially associated with a trade mark, advertising or a commercial symbol: (i) owned, used or licensed by the franchisor or an associate of the franchisor; or (ii) specified by the franchisor or an associate of the franchisor; c) 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.
6.	Does your jurisdiction have the concept of an “accidental franchise”?	There is no concept of an 'accidental franchise' within the Franchising Code of Conduct. However, in the general sense, a business in Australia could operate an 'accidental franchise' if it entered into a distribution, licence or dealership agreement that it did not intend to be a franchise agreement, and that agreement was nevertheless deemed by law to be a franchise agreement because it met the criteria of a franchise agreement under section 7 of the Franchising Code of Conduct.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	Section 10 of the Franchising Code of Conduct provides that it does not apply to a franchise agreement (even if that agreement satisfies the criteria of a franchise agreement) if: a) Part 2 of the <i>Competition and Consumer (Industry Codes – Food and Grocery) Regulation 2024</i> applies; b) Schedule 1 to the <i>Competition and Consumer (Industry Codes – Unit Franchising) Regulation 2021</i> applies. c) it forms part of arrangements under which the franchisee is a member of a registered co-operative or a member with voting rights of a mutual entity. d) each of the following applies:

Region:	ASIA PACIFIC	
Country:	Australia	
Co-Authors:	Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)	
Verifier:	James Skelton (Swaab)	
#	Question	Answer
		a. the franchise agreement is for goods or services that are substantially the same as those supplied by the franchisee before entering into the franchise agreement, and b. the franchisee has supplied those goods or services for at least 2 years immediately before entering into the franchise agreement, and c. sales under the franchise are likely to provide no more than 20% of the franchisee's gross turnover for goods or services of that kind for the first year of the franchise. Note that this exception ceases to apply if sales under the franchise provide more than 20% of the franchisee's gross turnover for the goods or services for three consecutive years and the franchisee informs the franchisor of this fact.
8.	Are there any types of agreements automatically deemed a franchise agreement?	Under section 7(2) of the Franchising Code of Conduct, motor vehicle dealership agreements are deemed to be franchise agreements, even if they do not satisfy the above criteria. A 'motor vehicle dealership' is defined in Section 6 of the Franchising Code of Conduct as a business of: a) buying, selling, exchanging or leasing motor vehicles (as principal or agent) that is conducted by a person other than a person who is only involved as a credit provider, or provider of other financial services, in the purchase, sale, exchange or lease; and b) any servicing or repairing of motor vehicles for that business
9.	Must the franchise agreement be governed by local law?	All franchisors conducting business in Australia, whether local or foreign, must comply with the Franchising Code of Conduct and other Australian laws. Nominating that the agreement will be governed by the law of another jurisdiction does not avoid the obligations to comply with the Franchising Code of Conduct and other Australian laws.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No, all franchisors are subject to the Franchising Code of Conduct.
11.	Must the franchise agreement be in the local language?	There is no restriction on the language of a franchise agreement under the Franchising Code of Conduct. However, the Franchising Code of Conduct identifies specific provisions that need to be included in a franchise agreement and the clear implication is that those clauses should be in English.

Region:	ASIA PACIFIC	
Country:	Australia	
Co-Authors:	Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)	
Verifier:	James Skelton (Swaab)	
#	Question	Answer
12.	Are there any franchising laws which are bespoke to particular industries?	There are no franchising laws which are bespoke to particular industries.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	Section 6 of the Franchising Code of Conduct states: '<i>Trade mark</i> has the meaning given by the <i>Trade Marks Act 1995 (Cth)</i>.' Under section 17 of the <i>Trade Marks Act 1995 (Cth)</i>, a trade mark is defined as: <i>a sign used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person.</i> Although it is prudent to register all trade marks, it is not technically necessary.
14.	Are other types of IP licences captured by the franchising laws?	Other types if IP licences are not captured by the Franchising Code of Conduct unless they also include the licence of a brand, trade mark or other commercial symbol.
15.	Are there any registration requirements relating to the franchise system?	A publicly searchable Franchise Disclosure Register exists under the Franchising Code of Conduct. It requires all franchisors to create a profile, provide answers to 14 questions about the franchise system and provide contact details. Franchisors may, but are not obliged to, upload a copy of their disclosure document and/or standard form franchise agreement. Franchisors must update their profile annually. The Register is at www.franchisedisclosure.gov.au .
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	Yes. Under section 18 of the Franchising Code of Conduct, parties who enter, or propose to enter, into a franchise agreement must act in good faith in their business dealings with each other. The obligation to act in good faith under the Franchising Code of Conduct applies not only during the term of the franchise agreement, but also to any negotiation discussions leading up to the agreement, and any disputes arising after termination. Further, the obligation to deal with the other party in good faith cannot be excluded by operation of the franchise agreement or any documents relating to the franchise agreement. That is, neither party may contract out of the obligation.

Region:	ASIA PACIFIC	
Country:	Australia	
Co-Authors:	Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)	
Verifier:	James Skelton (Swaab)	
#	Question	Answer
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	Under the Franchising Code of Conduct, there are certain disclosure obligations that franchisors are required to meet in relation to the franchise agreement. Franchisors must provide specific information and documentation to the franchisee both before the franchisee enters into the franchise agreement and during the franchise term, where appropriate. Disclosure before entry into a franchise agreement Section 23 of the Franchising Code of Conduct specifies that the franchisor must provide a copy of the following documents to the franchisee or prospective franchisee: a) the franchise agreement in the form in which it is to be executed; b) a copy of the disclosure statement; c) a copy of the Franchising Code of Conduct; d) if the franchisor or one of its associates leases the premises and sub-leases or proposes to sub-lease or grant occupancy rights in respect of, the premises to the franchisee: a. a copy of the franchisor's lease; and b. other information required by State/Territory law, if applicable. Franchisors are not permitted to enter into franchise agreements until after the expiration of a “consideration period” of at least 14 days after the requisite documents have been provided. Section 22 of the Franchising Code of Conduct provides that a franchisor must give to a prospective franchisee a copy of a short pro forma information statement relating to franchising that is published on the ACCC's website, not later than 7 days after the prospective franchisee formally applies or expresses an interest in acquiring a franchised business, and before the franchisor gives the prospective franchisee any of the documents described under section 23 of the Franchising Code of Conduct. Disclosures during the term of the franchise agreement As noted above, disclosures must be made before renewing or extending the term or scope of a franchise agreement. Also, if the franchisor requires the franchisee to enter into certain types of agreements, those must also be provided to the franchisee.

Region:	ASIA PACIFIC	
Country:	Australia	
Co-Authors:	Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)	
Verifier:	James Skelton (Swaab)	
#	Question	Answer
		Finally, the franchisor must disclose materially relevant facts (as defined under section 34 of the Franchising Code of Conduct) to franchisees no later than 14 days after the franchisor becomes aware of them, including facts in relation to proceedings or a judgment against the franchisor, change in majority ownership or control of the franchisor, an associate or the franchise system, or a change in the intellectual property or ownership or control of the franchisor).
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Yes, such disclosure to be provided by the sub franchisor/master franchisee only. A master franchisor is not required to provide disclosures to a sub-franchisee.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	Section 20(3) of the Franchising Code of Conduct provides that the disclosure must be in the form and order as set out in Schedule 1 of the Franchising Code of Conduct. The disclosure document must be updated by the franchisor within 4 months after the end of each financial year. However, an update is not required if, in the previous financial year, the franchisor entered into less than 2 franchise agreements and does not intend to enter into any franchise agreements in the following year. Disclosures must also be made to a franchisee or prospective franchisee before renewing or extending the term or scope of a franchise agreement. In addition, under section 34 of the Franchising Code of Conduct, if the franchisor becomes aware of a certain materially relevant facts, it must make disclosure of those facts to franchisees no less than 14 days after this awareness. See the answer to question 17 for more information about the content of disclosures.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	The Franchising Code of Conduct deals with “specific purpose funds” being funds controlled or administered by (or for) the franchisor into which franchisees or sub franchisees are required to pay money for a specific purpose relating to the operation of the franchised business. Under section 31 of the Franchising Code of Conduct: a) the fund manager (the person administering the fund) must (4 months before the end of the last financial year) prepare and provide to franchisees an annual financial statement detailing all of the fund’s receipts

Region: ASIA PACIFIC		
Country: Australia		
Co-Authors: Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)		
Verifier: James Skelton (Swaab)		
#	Question	Answer
		and expenses for the last financial year. This must give meaningful information about sources of income and items of expenditure and state the percentage of total income spent on: a. meeting expenses disclosed to franchisees in the disclosure document; b. legitimate expenses for the purpose of the fund; c. other expenses agreed to by a majority of franchisees who contribute to the fund; and d. the cost of administering and auditing the fund. b) the fund manager has the statement audited by a registered auditing company (unless within 3 months prior to the end of the relevant financial year 75% of contributing franchisees agree to the fund not being audited). Under section 61 of the Franchising Code of Conduct, the fund administrator must also maintain a separate account with a bank for payments to the fund and is limited in expending money from the fund to those types of expenditure described in subparagraph (a) (i) to (iv) above.
21.	Is there a prescribed dispute resolution procedure?	Yes. Part 5, of the Franchising Code of Conduct allows a complainant to instigate a dispute resolution process that is either contained in the franchise agreement or as prescribed in Division 2 of Part 5 of the Franchising Code of Conduct. However, this Part does not inhibit a party's right to bring legal proceedings. It is mandatory for franchise agreements to contain a complaint handling procedure including a dispute resolution process that accords with Division 2 of Part 5 of the Franchising Code of Conduct. In summary, the mandatory complaint handling procedure set out in section 72 of the Franchising Code of Conduct provides: a) the complainant notifying the other party of the dispute; b) if the parties cannot agree on how to resolve the dispute within 21 days, either party may refer the matter to an ADR practitioner for an ADR process (conciliation or mediation) which must take place in Australia, but may be conducted by means of virtual attendance technology; c) parties must attend the ADR process and a failure to do so will amount to contravention of a civil penalty provision; and

Region: ASIA PACIFIC		
Country: Australia		
Co-Authors: Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)		
Verifier: James Skelton (Swaab)		
#	Question	Answer
		d) the ADR process may be terminated if there is no resolution and at least 30 days have lapsed since the start of the ADR process. Section 73 of the Franchising Code of Conduct also allows multi-franchisee dispute resolutions. It allows 2 or more franchisees that have similar disputes under their franchise agreements with the same franchisor to agree to refer their dispute to a single conciliator or mediator (or arbitrator, if permitted by the agreement). Franchisors can also refer common disputes to a single ADR Practitioner for resolution. If multiple franchisees request that a matter is resolved under the same ADR process, the franchisor cannot refuse to take part in multi-party dispute resolution if the ADR Practitioner decides that it is appropriate to resolve it all together. The franchisor is required to attend the process to try and resolve the dispute, despite their disagreement. Further, where both parties agree in writing, they may also attempt to resolve their dispute by arbitration. Such agreement may be contained in the franchise agreement or in a separate document. The Franchising Code of Conduct prohibits clauses in franchise agreements that: a) compel a party to litigate, arbitrate or conduct an ADR process outside the State or Territory of Australia in which the franchised business or the franchisee is based (subsection 40(2)) or b) compel the franchisee to pay the franchisor's dispute resolution costs (section 43).
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	Yes. Under section 50 of the Franchising Code of Conduct, a franchisee may terminate a franchise agreement: a) within 14 days after entering into the agreement; and b) if the franchisor proposes to lease or allow the franchisee to occupy its premises) within 14 days of the franchisee receiving the terms of proposed lease. The cooling off period does not apply to renewals, extensions of term or extensions of scope of a franchise agreement. If the franchise agreement is transferred from an existing franchisee to a new franchisee (who is taking over the franchise from the existing franchisee) without a new franchise agreement being entered into, the new franchisee may, within 14 days of becoming the new franchisee or before taking possession of the franchised business, give written notice and cease to be the franchisee (section 52 of the Franchising Code of Conduct).

Region:	ASIA PACIFIC	
Country:	Australia	
Co-Authors:	Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)	
Verifier:	James Skelton (Swaab)	
#	Question	Answer
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	Foreign franchisors may enter the Australian franchising market by either setting up an Australian entity or using a foreign company which they register with the Australian Securities Investment Commission. They will need to comply with the <i>Corporations Act 2001</i> (Cth) and any other applicable legislation.
24.	What forms of business entity are typically used by franchisors?	Typically, franchisors are corporations. However, they can also be other entities such as trusts and partnerships.
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Class actions may be brought by a group of aggrieved franchisees in Australia. There must be 7 or more franchisees that have claims against the same franchisor, such claims must relate to the same or similar circumstances and have common issues of fact or law
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	There is no such statutory or common law right in Australia. Sections 43 and 45 of the Franchising Code of Conduct, (the latter of which only applies to new vehicle dealership agreements), prohibits franchisors from entering into agreements that do not provide for the payment of compensation (and manner of calculation) if the agreement is terminated before it expires, if franchisor withdraws or rationalises its Australian market presence or changes its distribution models in Australia. Subsection 45 (3) of the Franchising Code of Conduct prohibits franchisors from entering into new vehicle dealership agreement that do not contain provision for the franchisor to buy back or compensate the franchisee for new road vehicles, spare parts and special tools if the franchise agreement is not renewed or if the franchise agreement is terminated before expiry because the franchisor withdraws from the Australian market, rationalises its networks in Australia or changes its distribution models in Australia.
27.	Are there penalties for contravening the franchising laws?	Yes. Contraventions of most of provisions of the Franchising Code of Conduct can make the contravening party liable for a civil pecuniary penalty. The majority of these impose a maximum penalty of 600 penalty units. One penalty unit is currently set at A\$330, so 600 penalty units amounts to A\$198,000. Certain provisions attract higher maximum penalties, namely: for a body corporate, the higher of A\$10 million, three times the value of the benefit the body

Region: ASIA PACIFIC		
Country: Australia		
Co-Authors: Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)		
Verifier: James Skelton (Swaab)		
#	Question	Answer
		corporate obtained by the contravention or 10% of its annual turnover, and for a person who is not a body corporate, A\$500,000. The relevant provisions that attract this higher maximum penalty are: a) subsections 34(1) and (2) (relating to ongoing disclosure); b) subsections 45(2), (3) and (5) relating to new vehicle dealership agreements providing compensation for early termination; c) subsection 46(2) relating to new dealership agreements providing for a reasonable opportunity for return on the franchisee's investment; d) section 64 that prohibits franchisors from engaging in conduct that restricts or impairs a franchisees or prospective franchisee's freedom to form an association or to associate with other franchisees or prospective franchisees for a lawful purpose. Civil penalties can only be imposed by the Federal Court of Australia in a proceeding brought by the Australian Competition and Consumer Commission. The Federal Court of Australia may also make orders such as: a) declarations that a person has contravened the Franchising Code of Conduct; b) injunctions; c) publication orders; d) orders relating to compliance programs; e) other non-punitive orders, and f) remedial orders.
28.	Are there any required provisions for a franchise agreement to be valid?	Franchisees usually enter a franchise agreement by signing a written document, but a franchise agreement can also be oral or implied, provided it meets the common law requirements for the creation of a contract. There is no mandated form of a franchise agreement. The Franchising Code of Conduct prohibits franchisors from entering into franchise agreements that:

Region:	ASIA PACIFIC	
Country:	Australia	
Co-Authors:	Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)	
Verifier:	James Skelton (Swaab)	
#	Question	Answer
		a) require the franchisee to pay its legal costs in connection with the franchise agreement or documents relating to the franchise agreement unless fixed sums are inserted into the agreement; b) require a franchisee to sign a general release of the franchisor of its liability to the franchisee or a waiver of any verbal or written representations by the franchisor; c) require a party to bring proceedings or undertake a dispute resolution process in any State, Territory or country that is outside of where the franchised business is located; d) require a franchisee to pay the franchisor's costs in relation to any dispute resolution process; e) provides that a restraint of trade clause that would apply if: a. the franchise agreement expires; b. the franchise agreement contained an option to renew or extend the agreement and the franchisee exercised that option and was agreeable to entering into the franchisor's then current franchise agreement; c. the franchisee met conditions contained in the franchise agreement to renew or extend the agreement; d. the franchisee was not in serious breach of the agreement or any related agreement; e. the franchisee had not infringed the intellectual property of or confidentiality agreement with the franchisor during the term of the agreement; f. the franchisor chose not to renew or extend the agreement; and g. there was no provision entitling the franchisee to compensation for goodwill. f) do not provide for the payment of compensation (and manner of calculation) if the agreement is terminated before it expires if franchisor withdraws or rationalises its Australian market presence or changes its distribution models in Australia; g) do not contain provision (only in the case of new vehicle dealership agreements) for the franchisor to buy back or compensate the franchisee for new road vehicles, spare parts and special tools if the franchise agreement is not renewed or if the franchise agreement is terminated before expiry because the franchisor withdraws from the Australian market, rationalises its networks in Australia or changes its distribution models in Australia; and

Region: ASIA PACIFIC		
Country: Australia		
Co-Authors: Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)		
Verifier: James Skelton (Swaab)		
#	Question	Answer
		h) do not provide the franchisee with a reasonable opportunity to make a return, during the term of the agreement, on any investment required by the franchisor as part of entering into, or under, the agreement. The Franchising Code of Conduct also requires franchise agreements contain a complaint handling and dispute resolution clause that is consistent with that contained in the Code. Based on current case law in Australia, it is unlikely that a failure by a franchisor to meet these requirements will render the franchise agreement invalid.
29.	What is the minimum duration of a franchise term?	There is no requirement for a franchisor to grant any minimum term of a franchise agreement. However, sections 44 and 46 of the Franchising Code of Conduct prohibit franchisors from entering into franchise agreements unless the agreement provides the franchisee with a reasonable opportunity to make a return, during the term of the agreement, on any investment required by the franchisor as part of entering into, or under, the agreement.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	The insolvency provisions of the <i>Corporations Act 2001 (Cth)</i> contains an ipso facto regime which may restrict the circumstances in which a franchise agreement can be terminated. A right to terminate a franchise agreement cannot be exercised by the franchisor or the franchisee for the sole reason that the other has entered into a scheme of arrangement (section 415D), receivership (section 434J), voluntary administration (section 451E) or restructuring (section 454N). Such a right to terminate is stayed until the relevant event concludes or if the Court orders the stay be extended. The Court may also order that the stay should not apply. The rationale behind the stay is to support the effectiveness of those processes, which would be undermined by rights that apply automatically upon their occurrence. The Corporations Regulations 2001 (Cth) identifies types of contracts for which the ipso facto regime does not apply. Importantly, the ipso facto regime does not prevent termination of a franchise agreement generally while one of the relevant events is occurring. It only stays a right to terminate arising from the fact that a company has entered into a relevant event. It does not stay a right to terminate arising from another fact, such as a failure of performance or some other material breach of the franchise agreement. Additionally, the ipso facto regime does not apply to a right to terminate which arises because the franchisor or franchisee enters into liquidation.

Region:	ASIA PACIFIC	
Country:	Australia	
Co-Authors:	Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)	
Verifier:	James Skelton (Swaab)	
#	Question	Answer
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	A franchisee has a “cooling off” right. This is referred to in the answer to question 22. In addition, a right of termination a) may be included in the franchise agreement; and b) will exist under the Australian common law if a party has breached an essential term of, or repudiated, the franchise agreement (noting this is still subject to the Franchising Code of Conduct's requirements for terminating due to breach by the franchisee) (see answer to question 32). Section 54 of the Franchising Code of Conduct provides that if a franchisee formally requests termination of a franchisor agreement and gives reasons why termination is sought, a franchisor must respond within 28 days and if the franchisor refuses the termination request, the franchisor must give reasons for the refusal. If a right for a franchisor to terminate exists in the franchise agreement, the Franchising Code of Conduct regulates how that right may be exercised. In the context of breach of a franchise agreement, save for “particular grounds” referred to below, section 55 of the Franchising Code of Conduct provides that a franchisor cannot terminate a franchise agreement unless: a) it serves on the franchisee a notice that specifies the breach, specifies how and by when the breach must be remedied (a reasonable time must be given but it need not exceed 30 days) and states that if the breach is not so remedied the franchisor proposes to terminate the franchise agreement; and b) the franchisee does not remedy the breach in the manner and by the time specified in the notice. Section 57 of the Franchising Code of Conduct deals with the ‘particular grounds’ and provides that at least 7 days’ notice of termination may be given to a franchisee if: a) the franchisee no longer holds a licence it must hold to carry on the franchised business; b) the franchisee becomes bankrupt or enters into external administration under the <i>Corporations Act 2001</i> (Cth); c) the franchisee, if a company, is deregistered by the Australian Securities and Investment Commission; d) a court is satisfied that the franchisee has committed a serious contravention of: a. the <i>Fair Work Act 2009</i> (Cth);

Region: ASIA PACIFIC		
Country: Australia		
Co-Authors: Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)		
Verifier: James Skelton (Swaab)		
#	Question	Answer
		b. provisions in the <i>Migration Act 1958</i> (Cth) (sections 245AAA, 245AAB and 245AAC) that prohibit employers from coercing lawful or unlawful non-citizens to enter into working arrangements in circumstances where the worker believes that if they do not agree, this may have an adverse effect on their continued presence in Australia; e) the franchisee is convicted of an offence under sections 245AAA, 245AAB and 245AAC of the <i>Migration Act 1958</i> (Cth); f) the franchisee is convicted of a serious offence, being an offence under which a person would be liable, on first conviction, to imprisonment for not less than 5 years or any offence under the <i>Corporations Act 2001</i> (Cth); g) the franchisee voluntarily abandons the franchise business or the franchise relationship; h) the franchisee operates the franchised business in a way that endangers public health or safety; or i) the franchisee acts fraudulently in connection with the operation of the franchised business. In the case of grounds (g), (h) and (i) above, if the franchisor gives a dispute notice under the dispute resolution provisions, the franchisor must wait until 28 days have expired after the dispute notice was given before terminating the franchise agreement. Section 36 of the Franchising Code of Conduct provides that if a franchisor does not intend to grant a renewal or extend the term of the agreement, notice of this (including reasons) must be given to the franchisee. If the term of the agreement is 6 months or longer, the notice must be given at least 6 months before the end of the term of the agreement. If the term is less than 6 months, the notice must be given at least 1 months before the end of the term. In the case of new vehicle dealership agreements, more onerous obligations are imposed by sections 85 to 87 of the Franchising Code of Conduct including a requirement that the parties to cooperate to develop and implement a written plan for managing the winding down of the dealership, including how the franchisee's stock will be managed over the remaining term of the agreement.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	Normal civil remedies are potentially available. For example, if a franchisee could show it suffered loss or damage by reason of the franchisor failing to comply with its disclosure obligations, it could seek damages.

Region:	ASIA PACIFIC	
Country:	Australia	
Co-Authors:	Tim Golder and Sophie Clapin (Allens) and Philip Colman (MST Lawyers)	
Verifier:	James Skelton (Swaab)	
#	Question	Answer
		The more likely consequences of a franchisor failing to comply with its disclosure obligations remedies are Court imposed civil penalties in a proceeding commenced by the Australian Competition and Consumer Commission or the issuing an infringement notice (see answer to question 27).
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	A right of rescission will only exist under common law if the franchisor breaches an essential term of the franchise agreement or repudiates the franchise agreement. An essential term is a term that is so important to one party that they would not have entered into the agreement without it. Repudiation of an agreement arises where one party, through their words or actions, indicates they will not fulfil the agreement, thereby showing a clear intention not to be bound by the agreement. A franchisee can claim damages for the losses it has or will sustain arising from the breach of the essential term or repudiation of the franchise agreement.

Region:	ASIA PACIFIC	
Country:	Cambodia	
Co-Authors:	Mr. Jay Cohen (Partner), Ms. Chanraksmei Sokun (Associate) (Tilleke & Gibbins)	
Verifier:	Ms. Sochet Kong (Partner), Ms. Yen Vannida (Senior Associate) (Heng & Partners Law Group)	
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	There has yet to be a specific franchise law in Cambodia. However, other sources of law as following, are applicable to franchise: • Law Concerning Marks, Trade Names, and Acts of Unfair Competition (“Trademark Law”); • Prakas No. 36 on Recordal of Trademark License and Franchise Contract (“Prakas No. 36”); • Civil Code; • Law on Competition (“Competition Law”); Law on Taxation (“Tax Law”).
2.	Is there a regulator of franchising conduct?	There is no regulator of franchising conduct in Cambodia. However, a franchise may be deemed as a prohibited vertical arrangement if the franchisor imposes certain requirements on the franchisee, such as requiring the franchisee to purchase all or nearly all of its requirements for particular goods and services from the franchisor. Thus, it is conceivable that a franchise arrangement could trigger a violation under the Competition Law. If a franchise arrangement did trigger a violation under the Competition Law, then the matter would fall under the competent authority of the Cambodia Competition Commission (“CCC”) which was established to implement the Competition Law. Under the Competition Law and its delegated legislation, it is possible to apply for an exemption from the prohibition on vertical arrangements under Article 12 of the Competition Law, if the vertical arrangement satisfies the following requirements: (1) having significant identifiable technological, economic or social benefits, (2) such benefits would not exist without those agreements or activities, (3) those benefits significantly outweigh the effects caused by any determined actions that prevent, restrict or distort competition, and (4) they do not eliminate competition in any important aspects of goods or services.
3.	Is there a voluntary code or other form of self-governance?	No.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	There is a franchise association called Cambodia Business and Franchise Association (CamBFA). The CamBFA is reportedly a non-profit organization and has the objectives to promote and develop small and medium enterprises and entrepreneurship through franchising, and to strengthen relations with government and relevant authorities to build trademark protection for its members.

Region:	ASIA PACIFIC	
Country:	Cambodia	
Co-Authors:	Mr. Jay Cohen (Partner), Ms. Chanraksmei Sokun (Associate) (Tilleke & Gibbins)	
Verifier:	Ms. Sochet Kong (Partner), Ms. Yen Vannida (Senior Associate) (Heng & Partners Law Group)	
#	Question	Answer
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	The legal definitions of a franchise agreement and a trademark license are found under Prakas No. 36 on Recordal of Trademark License and Franchise Contract. A “franchise” agreement is defined as a type of agreement that a business owner, who has established a business model, authorizes any person to use its business model in the Kingdom of Cambodia, including an authorization to use registered/applied trademarks for an operation of that business, with or without payment, and in compliance with the agreed terms. A “trademark license” agreement is defined as a type of agreement that an owner of an applied/registered trademark authorizes any person to use the trademark in Cambodia, with or without payment, and in compliance with the agreed terms. d) Per the above definitions, an agreement provides authorization to use trademarks is considered as a trademark license agreement. If a business model is authorized to be used in addition to the authorization to use trademark, such an agreement will be considered as a franchise agreement.
6.	Does your jurisdiction have the concept of an “accidental franchise”?	No.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	No.
8.	Are there any types of agreements automatically deemed a franchise agreement?	No.
9.	Must the franchise agreement be governed by local law?	No, the franchise agreement does not have to be governed by the local law. Parties are free to select the law of any country as a governing law of the agreement, but the Cambodian authorities and court will not enforce such foreign law to the extent that it would give a result that contravenes “public order and good customs” of Cambodia. In addition, certain subject matter (e.g. real estate issues, zoning issues, etc.) can only be governed by Cambodian law
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No, foreign and domestic franchisors are not subject to different requirements. However, the Tax Law treat payments to non-residents and residents differently. The Tax Law imposes a 14% withholding tax on royalty payments to non-residents and 15% withholding tax on royalty payments to residents.

Region:	ASIA PACIFIC	
Country:	Cambodia	
Co-Authors:	Mr. Jay Cohen (Partner), Ms. Chanraksmei Sokun (Associate) (Tilleke & Gibbins)	
Verifier:	Ms. Sochet Kong (Partner), Ms. Yen Vannida (Senior Associate) (Heng & Partners Law Group)	
#	Question	Answer
11.	Must the franchise agreement be in the local language?	No, the franchise agreement does not have to be in the local Khmer language. In the case where the franchise agreement is in a language other than the English or Khmer language, and the franchise agreement is submitted for a recordal purpose, certified translations into the English and/or Khmer languages must be accompanied.
12.	Are there any franchising laws which are bespoke to particular industries?	No.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	There has yet to be a specific franchise law in Cambodia. However, trademark is defined under the Trademark Law as “any visible sign capable of distinguishing the goods or services of an enterprise.” The trademark that is the subject of a franchise agreement must have been registered or at least applied for registration in Cambodia.
14.	Are other types of IP licences captured by the franchising laws?	No.
15.	Are there any registration requirements relating to the franchise system?	No.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	The Civil Code upholds the principle of good faith which requires parties to the agreement to exercise right and perform duties in good faith
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	No. However, the Civil Code provides that a person who declares their acceptance to an offer may rescind the contract due to a declaration of intent that was made as the result of the other party's misrepresentation. A misrepresentation occurs when: (1) A fact asserted by a party in the course of the formation of the contract is false and the counter-party made a declaration of intent based on that fact. If the party knowingly asserted a fact that was false, the counter-party may rescind the contract on the ground of a defective declaration.

Region:	ASIA PACIFIC	
Country:	Cambodia	
Co-Authors:	Mr. Jay Cohen (Partner), Ms. Chanraksmei Sokun (Associate) (Tilleke & Gibbins)	
Verifier:	Ms. Sochet Kong (Partner), Ms. Yen Vannida (Senior Associate) (Heng & Partners Law Group)	
#	Question	Answer
		(2) The provisions of paragraph (1) above do not preclude the party who made a declaration of intent from claiming compensation for damages from the party who made the misrepresentation if such party negligently committed such error. (3) Rescinding a contract on the grounds of misrepresentation may be asserted against a third party. However, if the third party acted in good faith and without negligence, the rescission of the contract shall not be asserted against such party.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	No.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	No.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	From a tax perspective, when a foreign franchisor (non-resident) requires a franchisee to spend funds on advertising, marketing, or promotional activities for the franchisor's products or marks, these expenses are generally deemed royalties, which are subject to 14% withholding tax even if the expenses are not paid directly to the foreign franchisor. In practice, marketing spends are considered part of the management fee or royalties to maintain the business and are subject to withholding tax
21.	Is there a prescribed dispute resolution procedure?	No, parties are free to agree on dispute resolution procedures.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	No.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e.	No.

Region:	ASIA PACIFIC	
Country:	Cambodia	
Co-Authors:	Mr. Jay Cohen (Partner), Ms. Chanraksmei Sokun (Associate) (Tilleke & Gibbins)	
Verifier:	Ms. Sochet Kong (Partner), Ms. Yen Vannida (Senior Associate) (Heng & Partners Law Group)	
#	Question	Answer
	foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	
24.	What forms of business entity are typically used by franchisors?	There is no mandatory requirement on the franchisor to set up an onshore business entity in Cambodia. Subject to proper tax planning, the franchisor can choose to form a company in Cambodia.
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Yes, a number of aggrieved franchisees may jointly file a suit against a franchisor. Under the Code of Civil Procedure, multiple persons who share the following grounds may jointly file a suit or be subject to a suit as co-parties: (a) where the rights or obligations that are the subject of the suit are common; (b) where the rights or obligations that are the subject of the suit are based on the same factual or statutory cause; (c) where the rights or obligations that are the subject of the suit are of the same kind and based on the same kind of cause in fact or by law.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	There is no overriding statutory or legal right for a franchisee to be entitled to an automatic renewal; thus, the franchisee is not entitled to any statutory compensation. Parties are free to negotiate the term and termination. If the right to renewal is agreed upon and stipulated in the franchise agreement, the right to renewal will be enforced, provided that the franchisee has fulfilled its material obligations during the initial term of the agreement as agreed therein.
27.	Are there penalties for contravening the franchising laws?	Cambodia has not yet enacted a specific franchise law. However, the Competition Law prohibits vertical agreements, which may be triggered by a franchise agreement. The penalty imposed for creating and implementing a prohibited vertical agreement is 3-10% of an infringer's total turnover throughout the infringement period of no longer than three years.

Region:	ASIA PACIFIC	
Country:	Cambodia	
Co-Authors:	Mr. Jay Cohen (Partner), Ms. Chanraksmei Sokun (Associate) (Tilleke & Gibbins)	
Verifier:	Ms. Sochet Kong (Partner), Ms. Yen Vannida (Senior Associate) (Heng & Partners Law Group)	
#	Question	Answer
28.	Are there any required provisions for a franchise agreement to be valid?	Yes, a franchise agreement that includes trademark licensing must contain quality control provisions and that such provisions must be effectively carried out.
29.	What is the minimum duration of a franchise term?	Relevant Cambodian law does not impose any minimum duration that must be set out in a franchise agreement.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	No.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	The franchisor or franchisee may terminate a franchise agreement prior to the expiration date if either of the parties materially breaches any provisions as stipulated in the agreement. Cambodian law does not impose a minimum notice period.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	There are no mandatory disclosure obligations under Cambodian law.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	Yes, please refer to our responses to Q17 and Q31. Further, under the Civil Code, a person who declares their intention to accept an offer may rescind the contract due to the declaration of intent being defective where: a. the declaration of intent was made as the result of an error; b. the declaration of intent was made as the result of the other party's fraud, duress or misrepresentation; the declaration of intent was made as the result of the other party's act with the aim to obtain excessive profits and exploits the situation.

Region:	ASIA PACIFIC	
Country:	China	
Author:	Wency Yu (Anjie Broad Law Firm)	
Verifier:	Bo Yu (QR IP)	
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	Yes, franchising in China is specifically governed by the Commercial Franchise Regulation (商业特许经营管理条例), enacted in 2007. Additionally, the Measures for the Administration of Information Disclosure for Commercial Franchises (商业特许经营信息披露管理办法) and the Administrative Measures for Archival Filing of Commercial Franchises (商业特许经营备案管理办法) provides detailed rules on franchisor obligations, information disclosure requirements, and archival filing obligations.
2.	Is there a regulator of franchising conduct?	Yes, the Ministry of Commerce (MOFCOM) is the primary regulator overseeing franchising activities in China. Local government commerce departments at the provincial and municipal levels are also responsible for supervising franchising activities within their jurisdictions.
3.	Is there a voluntary code or other form of self-governance?	The China Chain-Store & Franchise Association (CCFA), established in 1997 and registered with the Ministry of Civil Affairs. the CCFA provides self-regulatory guideline for franchising, including the Code of Ethics for Franchising (特许经营道德规范).
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	The China Chain Store & Franchise Association (CCFA). Membership in these associations is voluntary. While they provide guidance, training, and industry standards, they do not impose legally binding obligations beyond the existing legal framework.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	Based on the Commercial Franchise Regulation, a franchise agreement is defined by three fundamental characteristics: 1. Ownership of business resources: The franchisor owns operating resources such as trademarks, enterprise logos, patents, proprietary technology, and a unified business model. 2. Use of resources under a unified model: The franchisee is authorized to use these business resources under the franchisor's unified operational model.

Region:	ASIA PACIFIC	
Country:	China	
Author:	Wency Yu (Anjie Broad Law Firm)	
Verifier:	Bo Yu (QR IP)	
#	Question	Answer
		3. Payment of franchise fees: The franchisee pays the franchisor franchise fees to obtain the right to use these resources and the operational model. A trademark license becomes a franchise agreement if the relationship fulfills the above three criteria—namely, if the license is coupled with operational unification, resource usage, and fee payment. To determine whether an agreement constitutes a franchise, one must assess whether the legal relationship aligns with the essential features and purpose of a franchise agreement, as outlined above.
6.	Does your jurisdiction have the concept of an “accidental franchise”?	China does not explicitly define the concept of an "accidental franchise." However, if a business relationship meets the legal requirements of a franchise agreement (e.g., use of business resources, unified operations, and fee payments), it may be subject to the same regulations, even if it was not intentionally structured as a franchise.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	Franchisors are required to operate at least two directly managed stores for more than one year before engaging in franchising. However, businesses already operating franchises before the regulation’s implementation in 2007 were granted a grace period to comply.
8.	Are there any types of agreements automatically deemed a franchise agreement?	No The determination of a franchise agreement in China is not based on the name of the agreement. An agreement will be considered a franchise if it simultaneously contains the three key elements listed in the above #Q5: operational unification, resource usage, and fee payment. The presence of these three elements qualifies an agreement as a franchise, regardless of how the parties label it. This means that certain distribution, licensing, or retail agreements may be deemed franchise agreements if they meet these criteria, triggering compliance requirements such as franchisor registration and disclosure obligations.
9.	Must the franchise agreement be governed by local law?	Yes, according to Article 2 of the Commercial Franchise Regulation, any franchising activities conducted within the territory of the People's Republic of China must comply with Chinese laws and regulations.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	Foreign and domestic franchisors are generally subject to the same core requirements under the Commercial Franchise Regulation, including having operated at least two directly-owned stores in China for more than one year, fulfilling archival filing obligations, and complying with information disclosure requirements.

Region:	ASIA PACIFIC	
Country:	China	
Author:	Wency Yu (Anjie Broad Law Firm)	
Verifier:	Bo Yu (QR IP)	
#	Question	Answer
11.	Must the franchise agreement be in the local language?	Use of local language is not explicitly required by law. However, according to Article 6 of the Administrative Measures for Archival Filing of Commercial Franchises (商业特许经营备案管理办法), if the franchise agreement is formed outside mainland China, it must be notarized, accompanied by a Chinese translation, and authenticated by a Chinese embassy or consulate for filing purposes.
12.	Are there any franchising laws which are bespoke to particular industries?	No
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	Yes, under Article 3 of the Commercial Franchise Regulation, "trademark" is broadly defined as part of the franchisor's "operating resources." This definition includes not only registered trademarks but also unregistered trademarks with prior use and a certain degree of market influence. From the Guiding Opinions of the Beijing Higher People's Court on the Application of Law in the Trial of Commercial Franchise Contract Disputes and the current practical cases, other elements such as enterprise logos, patents, trade names, trade secrets, unique business styles, and distinctive overall business images that confer a competitive market advantage are recognized as operating resources in franchising. It is not mandatory for a trademark to be registered in China to enter into a franchise agreement.
14.	Are other types of IP licences captured by the franchising laws?	Yes, franchising laws also cover other intellectual property (IP) rights, such as patents, proprietary technologies, business models, and trade secrets. These are considered part of the franchisor's "operating resources" that can be licensed to franchisees under a franchise agreement.
15.	Are there any registration requirements relating to the franchise system?	Yes, franchisors in China must register with the Ministry of Commerce (MOFCOM) or the relevant provincial commerce authorities within 15 days of signing their first franchise agreement.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	Both the Articles 7 and 509 of the Civil Code of the People's Republic of China and Article 4 of the Commercial Franchise Regulation emphasizes the principles of fairness, honesty, and good faith in franchising relationships

Region:	ASIA PACIFIC	
Country:	China	
Author:	Wency Yu (Anjie Broad Law Firm)	
Verifier:	Bo Yu (QR IP)	
#	Question	Answer
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	Yes, franchisors in China are subject to a disclosure regime with both pre-contractual and ongoing disclosure obligations. • Before signing the franchise agreement, franchisors must provide certain information at least 30 days in advance. • if there are any material changes to the information provided, the franchisor is required to promptly inform the franchisee of these changes.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Franchisees are not permitted to transfer their franchise rights to others without the franchisor's consent. The primary franchisor is responsible for ensuring that necessary information is disclosed. It is not explicit in law whether franchisees are required to make the necessary disclosures to sub-franchisees.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	The format of disclosures is outlined by Articles 21-23 of the Commercial Franchise Regulation and Articles 4-5 of the Measures for the Administration of Information Disclosure for Commercial Franchises. Franchisors are required to disclose specific information in a standardized format. The law does not mandate frequent updates, but material changes, especially those affecting the franchise system or the franchisor's financial health, must be communicated to franchisees promptly.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	Franchisors must use marketing and cooperative funds according to the agreed terms and must disclose the allocation and usage of these funds. The Commercial Franchise Regulation requires transparency in fund usage, and franchisors must ensure that these funds are applied to benefit the franchise network as outlined in the contract.
21.	Is there a prescribed dispute resolution procedure?	No
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	Yes, according to Article 12 of the Commercial Franchise Regulation, franchise agreements often include a cooling-off period, typically allowing the franchisee to terminate the contract unilaterally within a certain period after signing. This period must be specified in the franchise agreement, giving franchisees a chance to reconsider their decision.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e.	Yes, mainly through the Foreign Investment Negative List and Foreign Investment Law

Region:	ASIA PACIFIC	
Country:	China	
Author:	Wency Yu (Anjie Broad Law Firm)	
Verifier:	Bo Yu (QR IP)	
#	Question	Answer
	foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	
24.	What forms of business entity are typically used by franchisors?	Limited Liability Company; Company Limited by Share Wholly Foreign-Owned Enterprise (WFOE) for Foreign Franchisors
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Chinese law generally does not recognize class actions, but the Civil Procedure Law permits multiple plaintiffs with the same or similar claims to file a lawsuit together.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	No, Chinese law does not provide franchisees with an automatic right to renewal or extension.
27.	Are there penalties for contravening the franchising laws?	Chapter 4 - Legal Liability (Art. 24-30) of the Commercial Franchise Regulation imposes fines and other penalties on franchisors for violations such as failing to register, providing false information, or failing to comply with disclosure requirements. Penalties include fines ranging from 10,000 to 500,000 RMB
28.	Are there any required provisions for a franchise agreement to be valid?	Yes, Article 11 of the Commercial Franchise Regulation requires certain provisions in a franchise agreement: 1. Basic information about the franchisor and franchisee. 2. Franchise fees and payment terms. 3. Terms of business operation, including training, guidance, and support. 4. Quality standards, advertising, and promotion obligations.

Region:	ASIA PACIFIC	
Country:	China	
Author:	Wency Yu (Anjie Broad Law Firm)	
Verifier:	Bo Yu (QR IP)	
#	Question	Answer
		5. Clauses on consumer rights protection. 6. Terms for modifying, terminating, or cancelling the agreement. 7. Dispute resolution methods. 8. Provisions on breach of contract. However, the absence of these provisions does not necessarily render a franchise agreement invalid or unenforceable.
29.	What is the minimum duration of a franchise term?	A franchise term should not be less than three years, unless the franchisee consents to a shorter period.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	The principles of fairness and good faith in the Civil Code may influence the interpretation of termination clauses.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	Yes, under Article 12 of the Commercial Franchise Regulation, the franchisor and franchisee must include a clause in the franchise agreement that allows the franchisee to unilaterally terminate the agreement within a certain period after the contract is signed. Chinese law does not specify a statutory minimum notice period to end a franchise relationship.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	Under Chapter 4 of the Commercial Franchise Regulation, several penalties can be imposed on franchisors for violations, including failure to comply with mandatory disclosure obligations. Franchisees may seek remedies under China's Civil Code and related civil laws, which provide broader recourse for contractual and tort-related breaches.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	Yes, if the franchisor fails to comply with disclosure requirements or provides false information, the franchisee may have the right to rescind the franchise agreement and potentially claim damages. Under Article 23 of the Commercial Franchise Regulation and Article 9 of the Measures for the Administration of Information Disclosure for Commercial Franchises, franchisees can terminate the agreement if the franchisor's lack of disclosure or misrepresentation

Region:	ASIA PACIFIC	
Country:	China	
Author:	Wency Yu (Anjie Broad Law Firm)	
Verifier:	Bo Yu (QR IP)	
#	Question	Answer
		substantially affects the purpose of the contract. The franchisee may also seek compensation for any losses incurred as a result of the franchisor's actions.

Region:	ASIA PACIFIC	
Country:	India	
Co-Authors:	Mr. Srijoy Das and Mr Dhruv Singh (G&W Legal)	
Verifier:	Ramesh Vaidyanathan (BTG Advaya)	
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	There is no specific ‘made to measure’ law that applies to franchising in India. Instead, a host of laws apply to franchising arrangements. A list of such laws can never be exhaustive; however, some of the more obvious ones are mentioned below: • The Foreign Exchange Management Act 1999 and its accompanying rules and regulations. • The Contracts Act 1972. • The Income Tax Act 1961. • The Trade Marks Act 1999. • Arbitration and Conciliation Act 1996 • Information Technology Act 2000 and accompanying rules. • Anti-Corruption and Anti-Money Laundering legislation- namely the Prevention of Corruption Act 1988 and the Prevention of Money Laundering Act 2002. Franchises that in the F&B space will need to comply with various certification and licensing requirements.
2.	Is there a regulator of franchising conduct?	There is no regulatory authority that has been set up to adjudicate on franchising conduct.
3.	Is there a voluntary code or other form of self-governance?	No voluntary code of self-governance in franchising exists for the territory of India.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	A number of national franchising associations exist. These include the Franchising Association of India and the Indian Small Business and Franchise Association. Membership to these associations is voluntary and does not impose any additional obligations on franchisors. The intent of such associations is to assist in the promotion and support of franchising operations in the country.

Region:	ASIA PACIFIC	
Country:	India	
Co-Authors:	Mr. Srijoy Das and Mr Dhruv Singh (G&W Legal)	
Verifier:	Ramesh Vaidyanathan (BTG Advaya)	
#	Question	Answer
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	A franchise agreement as such is not defined under Indian law, even though it was covered in passing under the Finance Act, 1999 - which now stands repealed. The Finance Act only covered this from the point of view of service tax, and a 'franchise' is not defined under any current Indian law. For reference, please read the answer to question 1 which provides a non-exhaustive list of other Indian laws that would apply to franchising. e) While as stated above, there is no Indian statute or precedent that provides for any guidance on distinctions between a mere trademark license and a franchise agreement, generally a franchise agreement calls for the exercise of some form of control over the operations of the franchisee- including the model of business, look and feel and promises of financial investment.
6.	Does your jurisdiction have the concept of an "accidental franchise"?	Given that a 'franchise' finds no reference under Indian legislation, the answer to this question is also in the negative.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	No exceptions to the applicability of relevant Indian laws exist. In practice, foreign franchisors often find it in their interest for agreements to be governed by foreign law on matters concerning rights and obligations of the parties inter-se. Accordingly, when it comes to interpretation and enforcement of the terms of a contract, the parties may avoid Indian courts and thereby procedural rules relating to such courts. The said, when it comes to enforcement of foreign arbitral awards, franchisors do still need to obtain enforcement orders from Indian courts.
8.	Are there any types of agreements automatically deemed a franchise agreement?	c) Given that no category of agreements are recognised under Indian law as franchise agreements, the answer here is no.
9.	Must the franchise agreement be governed by local law?	No. In practice, parties often choose franchise agreements to be governed by the law of the home jurisdiction of the Franchisor.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No, except that foreign franchisors have to adhere to foreign exchange regulations for cross border transactions.
11.	Must the franchise agreement be in the local language?	No. English is well understood as the official language of the courts here in India. Hence, most, if not all, franchise agreements are executed in English.

Region:	ASIA PACIFIC	
Country:	India	
Co-Authors:	Mr. Srijoy Das and Mr Dhruv Singh (G&W Legal)	
Verifier:	Ramesh Vaidyanathan (BTG Advaya)	
#	Question	Answer
12.	Are there any franchising laws which are bespoke to particular industries?	While a number of industry-specific laws apply to an enterprise, there are no bespoke franchising laws in India.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	No. However, trademarks are defined under the Trade Marks Act, 1999 as marks that can be represented graphically and distinguish the goods and services of one party from another. Trademark registrations are not mandatory to enter into a franchise agreement, though these are advised, as they afford statutory protection in addition to common law rights enjoyed by unregistered trademarks.
14.	Are other types of IP licences captured by the franchising laws?	It is not mandatory to have trademark licenses registered in India. Patent licenses however are only valid if registered with the Controller of Patents. Generally, in the event a Franchisor wants to provide the Franchisee with the power to enforce trademark rights in India, it is advisable for the Franchisor to register trademark licenses with the Registrar of Trademarks.
15.	Are there any registration requirements relating to the franchise system?	Please refer to the answer immediately above. Please do note that franchise agreements do not need to be mandatorily registered in India. If the agreement is drawn in writing, appropriate stamp duty (a type of tax) will have to be paid before signing the agreement in India. If the agreement is signed outside India, stamp duty should be paid within 3 months of the date of receipt of the agreement in India. The stamp duty will have to be paid in the province where the subject matter of the agreement is located and where the agreement will be signed, and these two facts will also determine the applicable stamp duty on franchise agreements which differs from province to province.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	While not specific to franchising, Indian courts have established a long line of precedent holding that 'good faith' (defined in Indian law to mean an act done with honesty) is an essential element of contracts. Parties that have been held to act in bad faith are regularly held liable for damages or denied remedies which would have otherwise been available to them. Contracts may also become voidable in instances where consent was obtained through an act of bad faith.
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	While there exist no pre-contractual disclosure requirements for franchisors under Indian law, please note the good faith obligations immediately above. Franchisors are advised to keep clear of promises regarding revenue/profits to be earned by franchisees who often use this as a cause to dispute terms of contracts.

Region:	ASIA PACIFIC	
Country:	India	
Co-Authors:	Mr. Srijoy Das and Mr Dhruv Singh (G&W Legal)	
Verifier:	Ramesh Vaidyanathan (BTG Advaya)	
#	Question	Answer
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	No. Please refer to Questions 16 and 17 which would apply equally to franchisees entering into agreements with sub-franchisees.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	No. In the absence of Indian legislation in this area, there is no prescribed format that must be followed.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	No additional regulations apply specific to the creation of a marketing fund by the franchisor and the charging of a marketing fee from the franchisee. Such arrangements may be provided for in the franchise agreement, and this is commonplace in India too.
21.	Is there a prescribed dispute resolution procedure?	There is no prescribed procedure for dispute resolution. However, if none has been identified, the courts where the subject of the contract or in the alternative where the franchisee is located will be afforded jurisdiction, subject to pecuniary restrictions.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	No cooling off period is mandated.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	India's foreign direct investment laws place a number of restrictions on foreign parties. For example, certain types of retail activities may be restricted. A foreign entity may not directly enter into leases, or for that matter hire employees without first setting up an Indian enterprise. This is a complex area, and foreign franchisors are best advised to seek local legal advice specific to their circumstances.
24.	What forms of business entity are typically used by franchisors?	We often see foreign franchisors enter franchise arrangements with Indian franchisees. It is important to consider tax implications, particularly whether the franchisor is able to take advantage of Double Taxation Avoidance Agreements

Region:	ASIA PACIFIC	
Country:	India	
Co-Authors:	Mr. Srijoy Das and Mr Dhruv Singh (G&W Legal)	
Verifier:	Ramesh Vaidyanathan (BTG Advaya)	
#	Question	Answer
		that India has with a number of countries. Accordingly, franchisors may either choose to set up Indian entities or enter into agreements through a foreign entity.
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	A number of laws (both specific and general) technically provide for class actions to be brought. The Civil Procedure Code (1908), Competition Act 2002, the Consumer Protection Act 2019, the Companies Act 2013 etc. Under the Civil Procedure Code- while there is no prohibition on franchisees bringing class actions, but the franchisees will be required to prove a common cause of action against the franchisor. While an increase in class action litigation has been witnessed in areas such as consumer protection, antitrust and even the companies act- while technically possible, we are still to see instances of class actions successfully being brought by franchisees against a franchisor.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	No. This will be governed by the wording of the franchise agreement.
27.	Are there penalties for contravening the franchising laws?	A failure to abide by laws mentioned in answer to question 1 may lead to penalties being imposed, including several criminal offences.
28.	Are there any required provisions for a franchise agreement to be valid?	While there are no requirements specifically for the validity of a franchise agreement, Indian law does provide requirements which all contracts must fulfil to be considered valid. To be considered valid, contracts must be made for a lawful consideration and a lawful object, and with the free will of the involved parties. Contracts must also not be based on misrepresentation, fraud, or undue influence.
29.	What is the minimum duration of a franchise term?	No such restrictions exist in Indian law. The duration of franchise may be determined contractually by the parties.

Region:	ASIA PACIFIC	
Country:	India	
Co-Authors:	Mr. Srijoy Das and Mr Dhruv Singh (G&W Legal)	
Verifier:	Ramesh Vaidyanathan (BTG Advaya)	
#	Question	Answer
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	Since the franchisee-franchisor relationship is contractual, and in the absence of any relevant legislation, parties to a franchise agreement can terminate the agreement in accordance with its terms. Any termination action not envisaged by the terms of the contract may be held to be a breach of the agreement
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	If the terms of the agreement allow for such termination, parties are free to terminate the franchise agreement prior to its expiry. No legislation in India governs the minimum notice period for a franchise agreement- required to terminate a business relationship and this is entirely a contractual matter
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	As no mandatory disclosure obligations exist under Indian law, there are no applicable remedies regarding the same.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	If the terms of the contract allow for the franchisee to rescind the franchise agreement and/or claim damages, such acts would not be restricted in any manner.

Region:	ASIA PACIFIC	
Country:	Indonesia	
Co-Authors:	Norma Mutalib and Aliya Ilysia Irfana Ampri (Makarim & Taira S.)	
Verifier:	Wongrat Ratanaprayul and Rina Sinaga (Tilleke & Gibbins)	
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	Yes, there are. The following regulations (collectively referred as the “Indonesian Franchise Regulations”) govern franchising: a. Government Regulation No. 35 of 2024 on Franchises (“GR 35/2024”); b. Minister of Trade Regulation No. 71 of 2019 on the Implementation of Franchises (“MOT Regulation 71/2019”); and Business Competition Supervisory Commission (“Komisi Pengawas Persaingan Usaha / KPPU”) Regulation No. 6 of 2009 on the Guidelines for Exceptions to the Implementation of Law No. 5 of 1999 on the Prohibition Against Monopolies and Unfair business Practices related to Franchising Agreements (“PerKPPU 6/2009”).
2.	Is there a regulator of franchising conduct?	The regulator of franchising conduct is the Ministry of Trade of the Republic of Indonesia.
3.	Is there a voluntary code or other form of self-governance?	No other codes, guidance, or regulations on franchising apply than those in 1. above.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	Yes, the Indonesian Franchise Association (“Asosiasi Franchise Indonesia / AFI”). Related but different to franchising, there is also another national association named the Indonesian Licensing Association (“Asosiasi Lisensi Indonesia / ASENSI”). In addition, there is also Indonesian Franchise & License Association (“Perhimpunan Waralaba & Lisensi Indonesia / WALI”). WALI serves as a key organization for supporting and fostering the development of franchise and licensing businesses in Indonesia. WALI acts as a platform for the growth of franchise and licensing models, offering various support programs for entrepreneurs in these sectors. Membership in AFI, ASENSI, and WALI is voluntary. Neither franchisors nor franchisees are obligated to participate in these associations (aside from paying the monthly fees), as the main purpose of these associations is simply to connect franchise business actors (franchisors, franchisees, and master franchisees) in Indonesia.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	Under GR 35/2024, a franchise agreement is defined as a written contract between the party granting the franchise and the party receiving it, or between a party granting a sub-franchise and the party receiving it. The agreement outlines the right to enjoy the economic benefits of a franchise for a specified period and under certain conditions. The provisions/content of a franchise agreement must at least include the following: a. the name and address of the franchisor or subfranchisor and the franchisee or subfranchisee;

Region:	ASIA PACIFIC	
Country:	Indonesia	
Co-Authors:	Norma Mutalib and Aliya Ilysia Irfana Ampri (Makarim & Taira S.)	
Verifier:	Wongrat Ratanaprayul and Rina Sinaga (Tilleke & Gibbins)	
#	Question	Answer
		b. intellectual property is still under protection; c. business activities; d. business system; e. rights and obligations of the franchisor or subfranchisor and the franchisee or subfranchisee; f. assistance, facilities, operational guidance, training, and marketing provided by the franchisor or subfranchisor to the franchisee or subfranchisee; g. business area; h. guarantee from the franchisor or subfranchisor to the franchisee or subfranchisee to obtain compensation and/or grant rights to the franchise in the event that the franchisor or subfranchisor ceases its business activities; i. the term of the franchise agreement; j. procedures for payment of fees; k. ownership and transfer of ownership of the franchise; l. dispute resolution; m. procedures for extension and termination of the franchise agreement; n. guarantee from the franchisor or subfranchisor to continue to perform its obligations to the franchisee or subfranchisee; and o. the number of outlets/business premises to be managed by the franchisee or subfranchisee. <u>When does a trademark licence become a franchise agreement?</u> A trademark license agreement is a written agreement between a licensor and a licensee under which the licensor grants permission to the licensee to use its registered IPR (trademark, geographical indication, trade secret, industrial design, integrated circuit layout design, copyright, or patent). Arguably, a trademark license agreement only becomes a franchise agreement if the agreement meets the mandatory criteria for a franchise agreement under GR 35/2024. However, since no clear restriction applies, it is up to the parties to decide whether their arrangement is a franchise agreement or a trademark license agreement. If a trademark license agreement is preferred, please note that under Government Regulation No. 36 of 2018 (“GR 36/2018”) on the Recordation of Intellectual Property License Agreements, the license agreement must include at least the following: a. The details of the date, and place of the signing of the agreement; b. The details of the licensor and licensee;

Region:	ASIA PACIFIC	
Country:	Indonesia	
Co-Authors:	Norma Mutalib and Aliya Ilysia Irfana Ampri (Makarim & Taira S.)	
Verifier:	Wongrat Ratanaprayul and Rina Sinaga (Tilleke & Gibbins)	
#	Question	Answer
		c. The object of the license, such as trademark, copyright, etc.; d. Stipulation on whether the license is exclusive or not, or authorization for sub-license; e. The period of the agreement; and f. The territory of the agreement. Referring to the requirements outlined in GR 35/2024 and GR 36/2018, the requirements in a franchise agreement are more complex than those in a license agreement. Therefore, for a license agreement to be considered a franchise agreement, it must include the provisions required by GR 35/2024 (as explained above). Additionally, for a trademark license agreement, please note the following: a. the trademark license agreement must be recorded by the DGIP; otherwise, the license agreement will not have any effect for third parties; and b. the license agreement must not contain provisions that directly or indirectly have an adverse effect on the Indonesian economy or contain restrictions that hinder the ability of Indonesian people to master or develop technology. To record a trademark license agreement, either the licensor or the licensee (or its proxy) must submit a copy of the licensing agreement, copies of the trademark certificates that are licensed and still valid, a Power of Attorney (if the recordation application is submitted by a proxy), and the receipt for payment of the recordation fee. If the trademark is owned by a foreign entity or the license agreement is related to a foreign-owned trademark, an IPR consultant must be engaged to act as the foreigner's proxy.
6.	Does your jurisdiction have the concept of an “accidental franchise”?	No. The Indonesian Franchise Regulations do not have such a concept. However, an “accidental franchise” may be recognized on a case-by-case basis under a court ruling.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	No. There are no specific exceptions to the relevant regulations.
8.	Are there any types of agreements automatically deemed a franchise agreement?	If the business fulfills the definition of a ‘franchise’ as explained in 5. above, and the franchise agreement satisfies the requirements under GR 35/2024 also explained in 5. above, arguably, the agreement may be deemed a franchise agreement and subject to the Indonesian Franchise Regulations.

Region:	ASIA PACIFIC	
Country:	Indonesia	
Co-Authors:	Norma Mutalib and Aliya Ilysia Irfana Ampri (Makarim & Taira S.)	
Verifier:	Wongrat Ratanaprayul and Rina Sinaga (Tilleke & Gibbins)	
#	Question	Answer
9.	Must the franchise agreement be governed by local law?	Yes. GR 35/2024 and MOT Regulation 71/2019 requires all franchise agreements to be governed by Indonesian law.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No. All franchisors are subject to the same requirements under the Indonesian Franchise Regulations.
11.	Must the franchise agreement be in the local language?	Yes. Under the Indonesian language law, an agreement entered into with an Indonesian party is required to be prepared and also signed in Indonesian language (or in dual language, eg. Indonesian and English - if the agreement also involves a foreign party). In addition, MOT Regulation 71/2019 clearly states that a franchise agreement must be made in the Indonesian language.
12.	Are there any franchising laws which are bespoke to particular industries?	Yes, specific provisions apply in the self-service shop field. Under Article 10 of Minister of Trade Regulation No. 23 of 2021 on Guidelines for the Development, Arrangement, and Guidance of Shopping Centres and Self-Service Shops (as amended under Minister of Trade Regulation No. 18 of 2022 on Guidelines for the Development, Arrangement, and Guidance of Shopping Centres and Self-Service Shops), if a business entity already has 150 stores/outlets and plans to open more, the additional outlets/stores must be under either a franchise scheme or a joint venture or profit-sharing arrangement with a micro, small or medium-scale business. The term 'self-service shop' refers to minimarkets, supermarkets, department stores, hypermarkets, and wholesalers
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	A trademark is not directly defined under the Indonesian Franchise Regulations. However, it is referred to in the definition of a registered intellectual property right under GR 35/2024. A registered intellectual property right is defined as an intellectual property right that is connected to a business, such as a trademark, copyright, patent or trade secret that has been registered with the Directorate General of Intellectual Property. A trademark is defined under Law No. 20 of 2016 on Trademarks and Geographical Indications, as amended, as a sign that may be displayed graphically in the form of an image, logo, name, word, letter, number or colour arrangement, in two dimensions or three dimensions, a sound, a hologram, or a combination of two or more of those elements in order to distinguish goods or services that are produced by individuals or legal entities trading in goods or providing services. Under GR 35/2024, a business needs to have a registered intellectual property right, which can be a trademark. Consequently, yes, one must ideally have a trademark registration to enter into a franchise agreement.

Region: ASIA PACIFIC		
Country: Indonesia		
Co-Authors: Norma Mutalib and Aliya Ilysia Irfana Ampri (Makarim & Taira S.)		
Verifier: Wongrat Ratanaprayul and Rina Sinaga (Tilleke & Gibbins)		
#	Question	Answer
14.	Are other types of IP licences captured by the franchising laws?	Yes, as explained above, an intellectual property right for the purposes of franchising can be a trademark, copyright, patent, or trade secret.
15.	Are there any registration requirements relating to the franchise system?	Yes. Under Article 12 of GR 35/2024, the franchisor, subfranchisor, franchisees, and subfranchisees are required to have a franchise registration certificate ("STPW") as business licensing for support business activities. STPW is proof of registration of the prospectus for franchisors and subfranchisors and proof of registration of the franchise agreement for franchisees and subfranchisees. Franchisees are required to attach the STPW from the Franchisor together with the Franchise Agreement and the relevant supporting documents when filing an application for STPW. Under Article 13 of GR 35/2024, it is further provided that: 1. An STPW must be owned by the Franchisor or Subfranchisor before entering into a Franchise Agreement. 2. The application for STPW by the Franchisor or Subfranchisor is carried out by attaching proof of the Franchise Offering Prospectus. 3. In the event that the STPW application is submitted by the foreign Franchisor, the Franchise Offering Prospectus as referred to in paragraph (2) must be supplemented with: a. business license document issued by the authorized institutions in the country of origin and legalized by: 1. the competent authority, for the state participant of the Convention Abolishing the Requirements of Legalization for Foreign Public Documents (Removal Convention Legalization Requirements for Documents Foreign Public); or 2. the Official Representative of the Republic of Indonesia in country of origin, for non-participating countries Convention Abolishing the Requirement of Legalization for Foreign Public Documents (Convention on Elimination of Requirements Legalization of Foreign Public Documents); and b. a certificate of continuity of activities Franchise business from Trade Attaché Republic of Indonesia or Representative Official Republic of Indonesia in the abroad franchising country.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	The Indonesian Franchise Regulations are silent on the requirements of good faith. None of the Indonesian Franchise Regulations specifically regulates the provisions of good faith. However, Article 1338 (3) of the Indonesian Civil Code requires all agreements to be executed in good faith.

Region:	ASIA PACIFIC	
Country:	Indonesia	
Co-Authors:	Norma Mutalib and Aliya Ilysia Irfana Ampri (Makarim & Taira S.)	
Verifier:	Wongrat Ratanaprayul and Rina Sinaga (Tilleke & Gibbins)	
#	Question	Answer
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	Yes, a pre-contractual disclosure document (known as a prospectus) disclosing the business data or information of the franchisor must be provided to the franchisee. In theory, the franchisor or subfranchisor must submit the franchise offering prospectus to prospective franchisees or prospective subfranchisees no later than 14 (fourteen) calendar days prior to the signing of the franchise agreement. The complete prospectus must be registered with the MOT through the Online Single Submission (OSS) system to obtain a business identification number (NIB) and STPW in the name of the franchisor.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Yes, the above does apply to sales to sub-franchisees. The master franchisee is the party required to make the pre-sale disclosures by providing and registering the business' prospectus.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	The prospectus must provide at least: a. identity data of the Franchisor or Subfranchisor; b. business legality of the Franchisor or Subfranchisor; c. history of business activities d. organizational structure of the Franchisor or Subfranchisor; e. business system; f. financial statements for the last 2 (two) years; g. number of Franchised outlets/business premises; h. list of Franchisees or Subfranchisees; i. the rights and obligations of the Franchisor Subfranchisor and the Franchisee or Subfranchisee; and j. intellectual property certificate or intellectual property registration letter. The Indonesian Franchise Regulations are silent on how often disclosures must be updated and the obligation to continuously make disclosures to existing franchisees.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	The Indonesian Franchising Regulations are silent on this matter. Therefore, it depends on what the franchisor and franchisee have agreed to.

Region:	ASIA PACIFIC	
Country:	Indonesia	
Co-Authors:	Norma Mutalib and Aliya Ilysia Irfana Ampri (Makarim & Taira S.)	
Verifier:	Wongrat Ratanaprayul and Rina Sinaga (Tilleke & Gibbins)	
#	Question	Answer
21.	Is there a prescribed dispute resolution procedure?	The parties can opt for litigation in the Indonesian courts or for arbitration provided by an international or domestic arbitral forum to settle a dispute. However, it should be noted that the Indonesian Franchise Regulations require Indonesian law to be the applicable law for franchise agreements as mentioned in number 9 aforementioned.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	No. The Indonesian Franchise Regulations do not require a “cooling off” period. However, if the parties wish to, they can provide for one in their franchise agreement.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	N/A
24.	What forms of business entity are typically used by franchisors?	Franchise businesses are often in the form of a limited liability company. Foreign franchisors usually appoint an Indonesian franchisee that is already in the form of a limited liability company. Limited liability companies are subject to Law No. 40 of 2007 on Limited Liability Companies.
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Unlike Law No. 8 of 1999 on Consumer Protection and Law No. 32 of 2009 on Environmental Protection and Management which explicitly acknowledge the right to file a class action lawsuit, the Indonesian Franchise Regulations are silent on this right.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend?	The Indonesian Franchise Regulations are silent on this matter. Therefore, it depends on what the parties agree to under the franchise agreement.

Region:	ASIA PACIFIC	
Country:	Indonesia	
Co-Authors:	Norma Mutalib and Aliya Ilysia Irfana Ampri (Makarim & Taira S.)	
Verifier:	Wongrat Ratanaprayul and Rina Sinaga (Tilleke & Gibbins)	
#	Question	Answer
	If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	
27.	Are there penalties for contravening the franchising laws?	Yes. Under GR 35/2024, franchisors and franchisees may be subject to administrative sanctions in the form of: a) a written warning; b) temporary suspension of business activities; and/or c) revocation of STPW. The imposition of the above administrative sanctions are carried out by the Minister, Governor of the Special Capital Region Jakarta/regent/mayor, or Head of the Nusantara Capital City in accordance with its authority. These sanctions are imposed if any of the following actions are carried out: a) The franchisor fails to fulfill the obligation to provide ongoing support to the franchisee and subfranchisee. b) In the event of changes to the data listed in the franchise offering prospectus (except for financial statements for the last 2 years, number of franchise outlets/business locations, and list of franchisees or subfranchisees), and the franchise agreement, the franchisor, subfranchisor, and franchisee originating from foreign franchises do not update the STPW through the Online Single Submission system. c) The domestic franchisor, domestic subfranchisor from foreign franchises, domestic franchisee, subfranchisee from foreign franchises, or domestic subfranchisee does not use the franchise logo. d) Failure to comply with the franchise reporting obligation as regulated under GR 35/2024. Furthermore, administrative sanctions, in accordance with the provisions of risk-based business licensing, will be imposed if the following actions are committed: a) Failure to comply with the requirements for obtaining an STPW, such as the franchisor and franchisee obtaining an STPW, the franchisor obtaining an STPW prior to entering into the franchise agreement, and the franchisee obtaining an STPW before commencing its business. b) An individual or business entity using the term and/or name “franchise” for their name and/or business activities without possessing an STPW. c) An individual or business entity using and/or misusing the franchise logo without proper authorization.
28.	Are there any required provisions for a franchise agreement to be valid?	Yes. The franchise business must first meet the criteria under GR 35/2024, as explained in 5. above. Once it does, the franchise agreement must contain the mandatory provisions, also explained in 5. above. The franchise agreement must

Region:	ASIA PACIFIC	
Country:	Indonesia	
Co-Authors:	Norma Mutalib and Aliya Ilysia Irfana Ampri (Makarim & Taira S.)	
Verifier:	Wongrat Ratanaprayul and Rina Sinaga (Tilleke & Gibbins)	
#	Question	Answer
		then be registered with the Ministry of Trade through the OSS system as this is a mandatory step in the procedure for obtaining an STPW.
29.	What is the minimum duration of a franchise term?	The Indonesian Franchise Regulations are silent on this matter. However, the term of a franchise agreement is usually 5 – 20 years.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	No. It is entirely up to the parties to the franchise agreement what they agree to regarding the termination and expiry of the agreement.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	As explained above, the Indonesian Franchise Regulations are silent on the termination of a franchise agreement. Therefore, it is entirely up to the parties.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	There are no specific sanctions for a franchisor's failure to comply with mandatory disclosure obligations. However, failure to provide the disclosure document will prevent the franchisor from receiving STPW, as submitting the prospectus is a requirement for the STPW application.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	The Indonesian Franchise Regulations are silent on this matter. Therefore, it depends on what the parties have agreed to under the franchise agreement.

Region:	ASIA PACIFIC	
Country:	New Zealand	
Co-Authors:	Sarah Chapman (Simpson Grierson)	
Verifier:	Stewart Germann (Stewart Germann Law Office)	
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	There are no specific laws relating to franchising in New Zealand. However, there must be compliance in particular with the Commerce Act 1986, the Fair Trading Act 196 and the Contract and Commercial Law Act 2017.
2.	Is there a regulator of franchising conduct?	Not specifically as New Zealand has no specific franchising laws. However, the Commerce Commission, New Zealand's competition, consumer and regulatory agency, enforces laws relating to competition, fair trading, and consumer credit contracts, and has specific regulatory responsibilities in the electricity lines, gas pipelines, telecommunications, dairy and airport sectors.
3.	Is there a voluntary code or other form of self-governance?	Yes, the Franchise Association of New Zealand (FANZ) has the Code of Practice and Ethics with which all members must comply*. *There were two separate Codes but as of 1 April 2025 they were combined into one Code.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	Yes, the FANZ, which imposes obligations through the Franchising Code of Practice and Ethics., which provides for minimum standards and self-regulation in franchising
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	There is no legal definition of a franchise agreement in New Zealand. However, the FANZ Code of Practice and Ethics defines "franchise agreement" as an agreement to grant and accept the grant of a franchise, as further described in the Rules.
6.	Does your jurisdiction have the concept of an "accidental franchise"?	No.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	No.
8.	Are there any types of agreements automatically deemed a franchise agreement?	No.

Region:	ASIA PACIFIC	
Country:	New Zealand	
Co-Authors:	Sarah Chapman (Simpson Grierson)	
Verifier:	Stewart Germann (Stewart Germann Law Office)	
#	Question	Answer
9.	Must the franchise agreement be governed by local law?	The governing law of a franchise agreement between an overseas-owned entity and a New Zealand entity will be determined by the terms of the agreement, interpreted in light of the usual common law "conflict of laws" principles.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	There are no separate requirements for franchise agreements involving foreign owned entities. New Zealand law applies to overseas-owned entities operating in New Zealand in the same way as it applies to New Zealand entities. (Although, in some situations, overseas owned entities may first need to obtain consents necessary under overseas investment legislation).
11.	Must the franchise agreement be in the local language?	There is no legal requirement for the franchise agreement to be offered in a particular language or format, though it would be customary for the agreement to be in English as it is an official language of New Zealand and the primary language used in business.
12.	Are there any franchising laws which are bespoke to particular industries?	No as New Zealand does not have specific franchising laws.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	We do not have any specific franchise laws in New Zealand. However, in general, IP rights are governed by statute, case law and international agreements in New Zealand. For example, Trade Marks Act 2002, Patents Act 2013 and the Designs Act 1953.
14.	Are other types of IP licences captured by the franchising laws?	New Zealand does not have specific franchising laws
15.	Are there any registration requirements relating to the franchise system?	No as we do not have any specific franchising laws.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	There is no general obligation of good faith in New Zealand for franchise agreements. However, there is case law in New Zealand to suggest that in exercising a contractual power, a party cannot act in bad faith.

Region:	ASIA PACIFIC	
Country:	New Zealand	
Co-Authors:	Sarah Chapman (Simpson Grierson)	
Verifier:	Stewart Germann (Stewart Germann Law Office)	
#	Question	Answer
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	There are no specific franchise laws in New Zealand. However, FANZ imposes disclosure obligations on members and franchisors must publish a disclosure document.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	FANZ disclosure obligations apply to sales to sub-franchisees as well. The party offering the franchise agreement must provide the disclosure document. Noting that if both the franchisor and master franchisee / sub-franchisor contract with the franchisee, the disclosure document must include material and financial details on both. If only the master franchisee / sub-franchisor contracts with the franchisee, then it must disclose the impact of their agreement ending with the Franchisor.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	The disclosure format for FANZ members is prescribed by the FANZ Code of Practice. The Code of Practice requires disclosure to be updated at least annually and be provided to all prospective Franchisees at least 14 days prior to signing a franchise agreement. The financial disclosure within the disclosure document must be updated annually and be provided to any existing franchisee at any time upon their request.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	There are no specific franchise laws in New Zealand. However, it is common for franchise agreements to contain an obligation for franchisees to pay money into the marketing fund controlled by the franchisor and this marketing fund should be held in a bank account in the nature of a trust account for the benefit of all franchisees.
21.	Is there a prescribed dispute resolution procedure?	Not by law, but if you are a member of FANZ, the Code of Practice specifies a dispute resolution procedure that can be used by franchisor and franchisee to seek a solution and avoid litigation. The Code emphasises resolution by mutual negotiation.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	Not by law, but if you are a member of FANZ, under the Code of Practice, there is a minimum seven-day cooling-off period which must be provided in all new franchise agreements, allowing the franchisee at least seven days from signing the agreement to terminate the purchase.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or	An overseas company intending to carry on business in New Zealand must either register as an "overseas company" with the New Zealand Companies Office (to operate as a New Zealand branch) or incorporate a local subsidiary to operate that business (Although, in some situations, overseas owned entities may first need to obtain consents necessary under overseas investment legislation).

Region:	ASIA PACIFIC	
Country:	New Zealand	
Co-Authors:	Sarah Chapman (Simpson Grierson)	
Verifier:	Stewart Germann (Stewart Germann Law Office)	
#	Question	Answer
	control of a franchise business in the jurisdiction).	
24.	What forms of business entity are typically used by franchisors?	Limited liability companies are typically used by franchisors in New Zealand
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	There is no applicable franchise specific law regarding this, but class actions are available under New Zealand law
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	There is no overriding statutory or legal right for a franchisee to be entitled to an automatic renewal or extension of terms in New Zealand. No.
27.	Are there penalties for contravening the franchising laws?	No, as New Zealand does not have any specific franchising laws. However, contravening any other applicable laws in New Zealand will likely result in penalties. If you are a member of FANZ, contravention of the Codes may lead to removal, or suspension of membership and recovery of reasonable costs incurred by FANZ.
28.	Are there any required provisions for a franchise agreement to be valid?	There are no specific provisions for a franchise agreement to be valid (subject to the general laws relating to contracts and as set out in the Contract and Commercial Law Act 2017 (CCLA))
29.	What is the minimum duration of a franchise term?	There is no minimum duration for a franchise term under New Zealand.

Region:	ASIA PACIFIC	
Country:	New Zealand	
Co-Authors:	Sarah Chapman (Simpson Grierson)	
Verifier:	Stewart Germann (Stewart Germann Law Office)	
#	Question	Answer
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	Termination will be subject to the terms of the agreement and any surrounding circumstances, including general laws that may apply, such as the CCLA.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	There are no specific franchise laws in New Zealand that would apply. However, early termination of an agreement may be legal depending on the terms of the agreement, the circumstances surrounding the termination and any general laws (such as the CCLA). There are no local rules that impose a minimum notice period. However, a notice period may be deemed unlawful if it is found, for example, to be an unfair contract term under the Fair Trading Act 1986.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	As above, if you are a member of FANZ, contravention may lead to removal, or suspension of membership and recovery of reasonable costs incurred by FANZ.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	There are no specific franchising laws in New Zealand. However, a party may be entitled to rescind an agreement and/or claim damages under the CCLA or any other applicable law.

Region:	ASIA PACIFIC	
Country:	Singapore	
Author:	Daniel Lim (Joyce A Tan & Partners)	
Verifier:	Max Ng (Gateway Law)	
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	There is no specific law that applies to franchising in Singapore. Instead, the laws relating to contracts, companies, intellectual property (“IP”), real estate, competition, data protection and tax would apply to franchising arrangements in Singapore. As the law of contract in Singapore is based on the common law, there may be instances where the Singapore courts may imply terms into a franchise agreement on a case-by-case basis. In the case of <i>Telestop Pte Ltd v Telecom Equipment Pte Ltd and another suit</i> [2004] SGHC 267 (“Telestop”), the court noted, <i>obiter</i>, that in view of a provision specifying that the licensed outlet was to be operated in a particular location, it would be necessary and obvious for there to be some limitation on competition and for the principal to not be entitled to compete with the franchisee by operating another outlet with the same goods and services in the vicinity.
2.	Is there a regulator of franchising conduct?	There is no regulator in Singapore that is designated to regulate franchising conduct. However, governmental bodies and private associations that may be relevant to the conduct and operation of franchises, such as: • Franchising and Licensing Association of Singapore (“FLA”) – a private association that seeks to nurture and advance the franchise industry in Singapore; • Enterprise Singapore (“EnterpriseSG”) – a government agency (under the Ministry of Trade and Industry of the Government of Singapore) that seeks to support and facilitate the overseas expansion of Singapore-based businesses; and • Intellectual Property Office of Singapore (“IPOS”) – a government agency (under the Ministry of Law of Singapore) that advises on IP laws, maintains IP registers and engages businesses on their IP needs in Singapore. Competition & Consumer Commission of Singapore (“CCCS”) – a statutory body (under the Ministry of Trade and Industry of Singapore) that administers and enforces competition laws. The CCCS Guidelines specifically address competition concerns that can arise under IP licensing and franchise agreements.
3.	Is there a voluntary code or other form of self-governance?	Yes, the FLA has published a Code of Ethics (“ FLA Code ”), which is operative only on members of the FLA. While the Code does not bind non-members of the FLA, it can be used as a framework reference for the franchising arrangements of non-members.
4.	Is there any national franchise association? If so, is the association voluntary and does this	Yes, the FLA. Joining the FLA is voluntary, and the FLA requires its members to comply with the FLA Code.

Region:	ASIA PACIFIC	
Country:	Singapore	
Author:	Daniel Lim (Joyce A Tan & Partners)	
Verifier:	Max Ng (Gateway Law)	
#	Question	Answer
	franchise association impose additional obligations upon franchisors?	
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	There is no statutory definition of a “franchise” or “franchise agreement” in Singapore. However, guidance has been provided through comments by FLA and the Singapore Courts. <u>Guidance from FLA:</u> The FLA has stated the following as key elements of a franchise agreement – • Duration and renewal terms • Royalties and franchise fees • Territorial rights and exclusivity • IP usage • Conditions for termination and transfer <u>Singapore courts’ comments on when trademark licences may become franchise agreements:</u> A franchise agreement will include a trade mark licence as a component part, but not every trade mark licence amounts to a franchise agreement: <i>Rainforest Coffee Products Pte Ltd v Rainforest Café, Inc</i> [2000] 1 SLR(R) 725; [2000] SGCA 21 (“<i>Rainforest Coffee</i>”)¹. There is no definitive way in which a trade mark licence becomes a franchise agreement and multiple factors will likely be considered by the Singapore courts. While the franchisee’s licensed use of the trade mark is an essential element of a franchise arrangement, it is not the sole factor which defines the franchise; the transfer of know-how and the provision of commercial or technical assistance are not unimportant elements and other IP rights may also be licensed to the franchisee (<i>Rainforest Coffee</i> at [37]).
6.	Does your jurisdiction have the concept of an “accidental franchise”?	The concept of an “accidental franchise” has not arisen in Singapore.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	There is no exception to relevant laws that are specific to franchising agreements.
8.	Are there any types of agreements automatically deemed a franchise agreement?	There are no types of agreements automatically deemed a franchise agreement.
9.	Must the franchise agreement be governed by local law?	There is no requirement for a franchise agreement to be governed by Singapore law.

Region:	ASIA PACIFIC	
Country:	Singapore	
Author:	Daniel Lim (Joyce A Tan & Partners)	
Verifier:	Max Ng (Gateway Law)	
#	Question	Answer
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	There are generally no differences in requirements for foreign franchisors and domestic franchisors.
11.	Must the franchise agreement be in the local language?	There is no requirement for a franchise agreement to be in a local language.
12.	Are there any franchising laws which are bespoke to particular industries?	There is no franchising laws which are bespoke to particular industries.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	A “trade mark” is defined in the Trade Marks Act 1998 of Singapore as “any sign capable of being represented graphically and which is capable of distinguishing goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person”. While a franchisor should ideally register its trade mark, one does not necessarily need to have a trade mark registration in order to enter into a franchise agreement (subject to such terms being set out in the franchise agreement). A trade mark that satisfies the necessary elements under the law of passing off may qualify for protection under the law even if it is not a registered trade mark.
14.	Are other types of IP licences captured by the franchising laws?	As set out in Rainforest Coffee , other IP rights may also be licensed in a franchise agreement.
15.	Are there any registration requirements relating to the franchise system?	There are no law in Singapore establishing a registration system for franchises, franchisors or franchisees. Even so, franchisors or franchisees may voluntarily register to become a member of the FLA.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	There is no overriding requirement in Singapore for parties to deal with each other in good faith. It is also worth noting the following: • The duty of good faith has no general application in contractual relationships under Singapore law and such a duty cannot be implied into a contract by operation of law (Ng Giap Hon v Westcomb Securities Pte Ltd [2009] 3 SLR(R) 518, affirmed by the Singapore Court of Appeal in The One Suites Pte Ltd v. Pacific Motor Credit (Pte) Ltd [2015] 3 SLR 695 (“The One Suites”)). • However, where a franchise agreement contains an express term that a duty of good faith is to apply, this can be upheld in the Singapore courts (HSBC Institutional Trust Services (Singapore) Ltd v Toshin Development Singapore Pte Ltd [2012] 4 SLR 738). The Court of Appeal acknowledged in The One

Region:	ASIA PACIFIC	
Country:	Singapore	
Author:	Daniel Lim (Joyce A Tan & Partners)	
Verifier:	Max Ng (Gateway Law)	
#	Question	Answer
		Suites that the law on good faith continues to be in flux, thus franchisors should continue to watch for future developments. The FLA states on its website that there is an expectation of good faith and fair dealing between franchisors and franchisees. Under such belief, FLA states that franchisors should provide disclosure documents to prospective franchisees according to industry best practices, including detailed information on fees, obligations, and potential risks.
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	There is no disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations, specifically as such. However, under the law on misrepresentation a case-specific duty to disclose may be imposed where a non-disclosure renders what has been represented misleading or false. Under the FLA Code, which is voluntary, it is stated that a franchisor shall disclose to the franchisee at least 7 days prior to the execution of the franchise agreement the following: • The franchisor's current operations; • The investment required (which shall be as detailed as necessary and specific); • Performance records; and Any other information reasonably required by the franchise that are material to the franchise relationship.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	There is no disclosure regime covering pre-sale disclosure obligations to sales to sub-franchisees specifically as such.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	There is no law or regulation in Singapore on this topic. Under the FLA Code, which is voluntary, only the following conduct is stated: • To the extent possible, a franchisor shall encourage a prospective franchisee to contact existing franchisees to gain a better understanding of the franchise business Upon request by a prospective franchisee, the franchisor shall provide to the prospective franchisee a list of existing franchisees (including address and phone number of each franchisee, and year of commencement of franchise) unless prevented by contract or otherwise from doing so.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	There is no law in Singapore or clause in the FLA Code that governs the situation where a franchising arrangement requires a franchisee to pay money to a marketing fund or other cooperative fund. The terms of the franchise agreement will govern the matter.

Region:	ASIA PACIFIC	
Country:	Singapore	
Author:	Daniel Lim (Joyce A Tan & Partners)	
Verifier:	Max Ng (Gateway Law)	
#	Question	Answer
21.	Is there a prescribed dispute resolution procedure?	There is generally no prescribed dispute resolution procedure. Under the FLA Code, which is voluntary, there are provisions for the resolution of disputes by conciliation.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	There is no law in Singapore or clauses in the FLA Code on a cooling off period.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	There is generally no restriction on foreign franchisors and foreign investment in Singapore. Foreigner parties can register a company in Singapore and own 100% of its shareholding.
24.	What forms of business entity are typically used by franchisors?	Sole proprietorship businesses, partnerships, limited liability partnerships or incorporated companies are the usual business vehicles.
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	A number of aggrieved franchisees can seek collective redress by bringing a representative proceeding, where the aggrieved parties may sue or be sued as a group with one or more of them representing the group. A representative proceeding can be commenced in the General Division of the Singapore High Court, as well as the Singapore International Commercial Court (" SICC ").
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend?	No, the legal rights and obligations for renewal or extension of the franchise agreement will be determined in accordance with the general law of contracts, under which the terms of the agreement signed between the parties are of prime importance.

Region:	ASIA PACIFIC	
Country:	Singapore	
Author:	Daniel Lim (Joyce A Tan & Partners)	
Verifier:	Max Ng (Gateway Law)	
#	Question	Answer
	If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	
27.	Are there penalties for contravening the franchising laws?	To the extent that there is no specific franchising law in Singapore, no. The remedies and penalties prescribed by the relevant laws relating to contracts, companies, IP, real estate, competition, data protection and tax may apply.
28.	Are there any required provisions for a franchise agreement to be valid?	For a franchise agreement to be generally valid, the common law principles on the validity of contracts in Singapore apply. The main requirements for a contract to be valid and enforceable are: i. An offer and an acceptance between the parties; ii. Consideration, unless the contract is recorded in a written document and executed as a deed; iii. The parties' intention to create legal relations; and iv. The absence of vitiating factors. A franchise agreement that involves the licensing of an IP right would additionally be governed by specific IP laws. So, the licence of a registered trade mark is not effective unless it is in writing signed by or on behalf of the grantor. Further, unless the registered trade mark licence is also registered with IPOS, the licence would not be binding on a successor in title to the grantor's interest who is a good faith purchaser without notice of the interest in the registered trade mark. For an exclusive licence of copyright, it must by definition be in writing. As the validity of the whole or a part of the franchise agreement may be affected, compliance and non-contravention of competition laws is a requirement.
29.	What is the minimum duration of a franchise term?	There is no law in Singapore or clauses in the FLA Code on the minimum duration of a franchise.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	There is no law that prevents or interferes with the termination of a franchise agreement. To the extent that it is applicable and binding on its members, the FLA Code states that a franchise agreement may only be terminated for good cause for good cause.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a	The terms of the franchise agreement will be primary determinant of the termination of a franchise agreement prior to its expiry. In the absence of a governing term in the franchise agreement, under the general law of contracts in Singapore, an innocent party may terminate a contract if there has been a material breach by the breaching party. Otherwise, if a party repudiates a contract, the innocent party may elect to either affirm the repudiation or to continue with the contract. To the extent that it is applicable and binding on its members, the FLA Code states that a franchise agreement may only be terminated for good cause for good cause.

Region:	ASIA PACIFIC	
Country:	Singapore	
Author:	Daniel Lim (Joyce A Tan & Partners)	
Verifier:	Max Ng (Gateway Law)	
#	Question	Answer
	business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	There is no law in Singapore or clause in the FLA Code on a minimum notice period that must be given to bring a business relationship to an end. In the absence of an express provision in the franchise agreement, the general law of contract will only imply a reasonable period of notice.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	There is no mandatory disclosure obligations for franchises in Singapore (see response to Question 17), unless such a term is set out in the franchise agreement. The contractual remedies available under Singapore law for a breach of contract include damages.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	If rescission means to be able to set aside the franchise agreement, it may be available to franchisees where – i. The parties have entered into the franchise agreement by a qualifying mistake and the franchisee is the mistaken party; ii. The franchise agreement has been induced by an operative misrepresentation and the franchisee is the induced party; or iii. The franchise agreement has been procured by vitiating factors such as duress, undue influence or unconscionable conduct, subject to the relevant party not having lost the right to rescind by, for example, affirming the contract after the right to rescind arose. Depending on the case-specific situation, damages or a repayment of sums paid may also be available.

Region:	ASIA PACIFIC	
Country:	South Korea	
Co-Authors:	Ryan Il Kang, Youngseok Kim and Han Ju Ru (Bae, Kim & Lee LLC)	
Verifier:	Gun Sup, Shin (Trinity Legal)	
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	The “Fair Transactions in Franchise Business Act” (the “Franchise Act”) applies to franchising. Furthermore, the Korea Fair Trade Commission (the “KFTC”) has implemented various guidelines to provide standards for the enforcement of the Act. Among these, the “Review Guidelines for Unfair Trade Practices in the Franchise Business Sector” serve as a key reference for identifying and addressing unfair practices in the franchise business sector.
2.	Is there a regulator of franchising conduct?	Yes, the KFTC is responsible for enforcing the Franchise Act.
3.	Is there a voluntary code or other form of self-governance?	The Franchise Act allows franchisors or business associations composed of franchisors to voluntarily establish codes of conduct to maintain fair trade practices within the franchise industry (Art. 15(1) of the Franchise Act). Although franchisors have the discretion to decide whether to adopt such self-governance, no industry-wide voluntary code or other form of self-governance has been implemented to date. Nonetheless, the KFTC has developed standard franchise agreements tailored to various industries. These agreements, however, are advisory in nature and not binding (Art.11-2(1) of the Franchise Act). Accordingly, franchisors may freely enter into agreements with franchisees on terms that differ from the standard franchise agreements.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	Yes, the Korea Franchise Association is in place. Additionally, there are industry-specific associations, such as the Korea Association of Convenience Store Industry, which is composed of franchisors operating in the convenience store sector. Franchisors may freely decide whether to join these associations, and joining these associations does not impose any additional obligations on them.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	The Franchise Act presumes that a franchise agreement is entered into between the franchisor and the franchisee (Art. 2, subpar. 4 of the Franchise Act.²⁾ The Franchise Act defines a “franchise business” based on the following criteria (Art. 2, subpar. 1 of the Franchise Act): • Authorization to use the franchisor’s trademarks: The franchisor permits the franchisee to use its trademarks, service marks, trade names, signs, or other trademarks. • Provision of the franchisor’s trade secrets and control over the franchisee: The franchisor provides the franchisee with trade secrets, know-how, or other business methods and controls over the franchisee to ensure that the franchisee’s goods or services meet certain quality standards. • Franchisee’s payment of franchise fees: The franchisee pays franchise fees to the franchisor in exchange for the use of trademarks and other benefits provided.

Region:	ASIA PACIFIC	
Country:	South Korea	
Co-Authors:	Ryan Il Kang, Youngseok Kim and Han Ju Ru (Bae, Kim & Lee LLC)	
Verifier:	Gun Sup, Shin (Trinity Legal)	
#	Question	Answer
		Accordingly, if a trademark license agreement meets the requirements of a franchise business, the Franchise Act will apply to such an agreement.
6.	Does your jurisdiction have the concept of an “accidental franchise”?	The concept of an “accidental franchise” does not exist in South Korea. However, the Franchise Act applies to any agreement that qualifies as a “franchise business” under the Act, regardless of the title of the agreement entered into by the parties.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	The Franchise Act provides an exemption for small-scale franchisors, defining them as those that meet one of the following criteria (Art. 3(1) of the Franchise Act): • The total franchise fees paid by the franchisee to the franchisor within 6 months of the initial payment are less than KRW 1 million; or • The franchisor’s annual turnover is less than KRW 50 million (or KRW 200 million if the franchisor has operated a directly managed store for at least 1 year before initiating its franchise business). However, this exception does not apply if the franchisor has entered into agreements with five or more franchisees. Notwithstanding these exemptions, certain provisions of the Franchise Act, including the obligation to register a franchise disclosure document are applicable to small-scale franchisors (Art. 3(2) of the Franchise Act).³
8.	Are there any types of agreements automatically deemed a franchise agreement?	No.
9.	Must the franchise agreement be governed by local law?	The franchise agreement must be governed by the Franchise Act. In this regard, the Korean Supreme Court has held that the Franchise Act constitutes a mandatory law, meaning it applies regardless of the parties’ intentions (Supreme Court Decision No. 2021Da225708, dated August 19, 2021).
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No. The Franchise Act does not discriminate between foreign franchisors and domestic franchisors.
11.	Must the franchise agreement be in the local language?	No. However, as the disclosure document must be registered, it is advisable to prepare the franchise agreement in Korean or provide a Korean translation.
12.	Are there any franchising laws which are bespoke to particular industries?	No.

Region:	ASIA PACIFIC	
Country:	South Korea	
Co-Authors:	Ryan Il Kang, Youngseok Kim and Han Ju Ru (Bae, Kim & Lee LLC)	
Verifier:	Gun Sup, Shin (Trinity Legal)	
#	Question	Answer
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	The Franchise Act does not separately define the term 'trademark'. Additionally, the Franchise Act does not mandate the registration of trademarks. Therefore, franchisors are not required to register their trademarks in advance to enter into franchise agreements.
14.	Are other types of IP licences captured by the franchising laws?	The Franchise Act stipulates “whether the franchisor has permitted the franchisee to use its business marks” as a requirement for a franchise business (Art. 2, subpar. 1 of the Franchise Act). These business marks include trademarks, service marks, trade names, and signs.
15.	Are there any registration requirements relating to the franchise system?	No. However, the franchise disclosure document must be registered with the KFTC.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	No.
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	Franchisors are subject to pre-contractual disclosure obligations. They must register the franchise disclosure document with the KFTC and provide it to prospective franchisees at least 14 days prior to executing the franchise agreement (Art. 6-2(1) and Art. 7(3) of the Franchise Act). In addition, if there are any changes to the key information in the franchise disclosure document, franchisors must file the registration of change with the KFTC (Art. 6-2(2) of the Franchise Act). The KFTC will then disclose the registered franchise disclosure document to the public. However, the KFTC does not disclose the franchisor's personal information and trade secrets (Art. 6-2(3) of the Franchise Act).
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	No. However, if a local franchisor is in place, the local franchisor may be obligated to fulfil the pre-sale disclosure obligations on behalf of the foreign franchisor.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures	The Franchise Act specifies the items that must be included in the franchise disclosure document (Art. 2, subpar. 10 of the Franchise Act, Art. 4(1) of the Enforcement Decree of the same Act, and Appendix 1).

Region:	ASIA PACIFIC	
Country:	South Korea	
Co-Authors:	Ryan Il Kang, Youngseok Kim and Han Ju Ru (Bae, Kim & Lee LLC)	
Verifier:	Gun Sup, Shin (Trinity Legal)	
#	Question	Answer
	be updated? Is there an obligation to make continuing disclosure to existing franchisees?	The KFTC has established standard format of the franchise disclosure document. According to the format, the franchise disclosure document must include the following information (The KFTC’s guideline: The Notification on Standard Franchise Agreements in Franchise Transactions): • <u>General status of the franchisor</u>: Information including the franchisor’s trade name and financial information (for the past 3 fiscal years). • <u>Franchising status of the franchisor</u>: Information including the history of the franchise business, the total number of franchised and directly operated stores, and the average annual sales of franchisees. • <u>Legal violations by the franchisor and its executives</u>: Information including details of any regulatory actions taken by the KFTC against the franchisor (within the past 3 years) and civil litigations related to the franchise business (within the past 3 years). • <u>Burdens of franchisees</u>: Information detailing a breakdown of financial and operation burdens on franchisees: (i) before starting a franchise, (ii) during operations, and (iii) after termination of the franchise agreement. • <u>Conditions and restrictions on business activities</u>: Information including limitations on operating franchisees' business activities and business regions. • <u>Detailed procedures and timelines for starting a franchise</u>: Information including procedures for negotiating the franchise agreement with the franchisor and procedures for resolving disputes. • <u>Others</u>: Information including the franchisor’s (i) support provided to franchisees, (ii) training and education programs, and (iii) the status of directly operated stores. The Franchise Act does not specify the frequency for updating the franchise disclosure document. However, in practice, the KFTC requires franchisors to update their franchise disclosure documents regularly. Specifically, franchisors must file the registration of change by April each year to reflect any changes from the previous year. Once the franchise disclosure document is disclosed to the public (refer to Q17), franchisors are no longer obligated to disclose the information to existing franchisees.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	The Franchise Act prohibits franchisors from abusing their bargaining position to unfairly impose disadvantages on franchisees (Art. 12(1), subpar. 3 of the Franchise Act). This includes “unfair coercion,” such as unjustly coercing franchisees to provide economic benefits or unfairly imposing costs on them (Art. 13(1) of the Enforcement Decree of the same Act and Appendix 2). Franchisors must ensure that requests for franchisees to contribute to a marketing fund or other cooperative fund are not classified as “unfair coercion”. In this regard, the “Review Guidelines for Unfair Trade Practices in the Franchise Business Sector”, the KFTC’s guideline, stipulate that whether a conduct constitutes “unfair coercion” should be

Region:	ASIA PACIFIC	
Country:	South Korea	
Co-Authors:	Ryan Il Kang, Youngseok Kim and Han Ju Ru (Bae, Kim & Lee LLC)	
Verifier:	Gun Sup, Shin (Trinity Legal)	
#	Question	Answer
		determined based on a comprehensive assessment of factors, including the purpose and nature of the conduct, the terms of the franchise agreement, the reasonableness of the request to provide economic benefits or to bear costs, the franchisee's consent, the likelihood and nature of potential harm to the franchisee due to such requests, and trade customs in the relevant industry.
21.	Is there a prescribed dispute resolution procedure?	No. However, the Franchise Act provides that disputes related to franchise businesses could be resolved through the mediation procedures of the Korean Fair Trade Mediation Agency ("KFTMA") (Art. 16(1) of the Franchise Act). If mediation is successfully concluded, the agreement reached carries the same legal effect as a judicial settlement (Art. 24(5) of the Franchise Act). c) However, the KFTMA's mediation process is voluntary and lacks binding authority. Therefore, if one party to the dispute refuses to participate, the mediation proceedings will be terminated (Art. 23(4), subpar. 3 of the Franchise Act).
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	No. However, refer to Q31 for the termination procedures.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	No.
24.	What forms of business entity are typically used by franchisors?	The Franchise Act does not restrict the legal form of franchisors. However, franchisors typically take the form of a "corporation".
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	No.

Region:	ASIA PACIFIC	
Country:	South Korea	
Co-Authors:	Ryan Il Kang, Youngseok Kim and Han Ju Ru (Bae, Kim & Lee LLC)	
Verifier:	Gun Sup, Shin (Trinity Legal)	
#	Question	Answer
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	Franchisees may request the renewal of a franchise agreement. However, the franchises' right to request the renewal is limited to 10 years which includes the initial term of the franchise agreement. (Art. 13(2) of the Franchise Act). Specifically, the Franchise Act stipulates that if a franchisee requests the renewal of a franchise agreement between 90 to 180 days prior to the expiration of the contract term, the franchisor must not refuse the request without justifiable grounds. However, the following cases may be recognized as justifiable grounds, allowing the franchisor to refuse the franchisee's request for renewal (Art. 13(1) of the Franchise Act and Art. 14(1) of the Enforcement Decree of the same Act). • If the franchisee fails to fulfill their obligation to pay franchise fees or other payments under the franchise agreement; • If the franchisee refuses to accept contractual terms or business policies that are generally applied to other franchisees; or • If the franchisee fails to comply with the franchisor's significant business policies. These policies include: (i) securing stores or facilities necessary for operating the franchise or obtaining qualifications, licenses, or permits required by law; (ii) adhering to manufacturing methods or service techniques necessary to maintain the quality of the goods or services being sold; (iii) protecting intellectual property rights essential to the franchisor's franchise operations; and (iv) participating in and adhering to regular training or education programs provided by the franchisor. If a franchisor refuses to renew the franchise agreement before the 10-year period has elapsed, the franchisee may claim compensation for damages caused by the discontinuation of the franchise business (Art. 37-2(1) of the Franchise Act).
27.	Are there penalties for contravening the franchising laws?	The KFTC may take the following measures on franchisors that contravene the Franchise Act: (i) order corrective measures necessary to address the violation (Art. 33(1) of the Franchise Act); and (ii) impose administrative fines. The maximum administrative fine is 2% of the sales revenue generated by the franchisor from goods or services sold to franchisees or prospective franchisees, or an amount equivalent thereto (Art. 35(1) of the Franchise Act; Art. 34(1) of the Enforcement Decree of the same Act). The Franchise Act also provides for criminal penalties for violations (Art. 41 of the Franchise Act). Both the franchisor and its officers or employees who have violated the law may be subject to criminal liability (Art. 42 of the Franchise Act). The maximum penalties depend on the nature of the violation, with the most severe offenses punishable by up to 5 years of imprisonment or fines of up to KRW 300 million.

Region:	ASIA PACIFIC	
Country:	South Korea	
Co-Authors:	Ryan Il Kang, Youngseok Kim and Han Ju Ru (Bae, Kim & Lee LLC)	
Verifier:	Gun Sup, Shin (Trinity Legal)	
#	Question	Answer
28.	Are there any required provisions for a franchise agreement to be valid?	No. The Franchise Act does not specify the required provisions for a franchise agreement to be valid.
29.	What is the minimum duration of a franchise term?	The Indonesian Franchise Regulations are silent on this matter. However, the term of a franchise agreement is usually 5 – 20 years.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	The Franchise Act prohibits franchisors from unfairly ceasing the supply of goods or services or support for franchise operations—commonly referred to as “unfair refusal to deal” (Art. 12(1)1 of the Franchise Act). This includes the following three types of conduct: • Type 1: A franchisor’s refusal to renew the franchise agreement before the 10-year period has elapsed. The Franchise Act classifies the following conducts as unfair refusal to deal: (i) a franchisor’s refusal to renew a franchise agreement with the intent to establish a directly-operated store; (ii) a franchisor’s refusal to renew with certain franchisees in a discriminatory manner; (iii) a franchisor’s refusal to renew despite the period for the franchisee to recover the costs incurred for store improvement not yet having elapsed; and (iv) other conducts that are similar to those described in (i) through (iii). • Type 2: A franchisor’s refusal to renew the franchise agreement after the 10-year period has elapsed. In this case, the franchisor may freely decide whether to renew the franchise agreement. However, a refusal may still be considered as an unfair refusal to deal if there are specific circumstances indicating that such refusal violates the principle of good faith. • Type 3: A franchisor’s termination of the franchise agreement during the term of the agreement. If a franchisor’s termination of the franchise agreement is deemed substantively or procedurally unreasonable, such termination may be considered an unfair refusal to deal. The “Review Guidelines for Unfair Trade Practices in the Franchise Business Sector” provide the following examples: (i) termination based on false facts; and (ii) termination solely due to minor breaches of obligations by the franchisee. Moreover, the Review Guidelines provide an example of procedurally unreasonable termination, such as failure to comply with the termination procedures stipulated under the Franchise Act (refer to Q31).
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a	The Franchise Act does not specify the grounds for terminating a franchise agreement. However, the Act provides detailed procedures for franchisors to terminate a franchise agreement. Specifically, franchisors must: (i) provide the franchisee with a grace period of at least 2 months; (ii) clearly state the details constituting the breach of the agreement; (iii) notify the franchisee in writing at least twice, indicating that the agreement will be terminated if the breach is not cured (Art. 14(1) of the Franchise Act).

Region:	ASIA PACIFIC	
Country:	South Korea	
Co-Authors:	Ryan Il Kang, Youngseok Kim and Han Ju Ru (Bae, Kim & Lee LLC)	
Verifier:	Gun Sup, Shin (Trinity Legal)	
#	Question	Answer
	business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	Nevertheless, if there are circumstances that make it difficult to continue the franchise business, the franchisor may terminate the franchise agreement without following these procedures. Examples of the circumstances are following: (i) the franchisee filing for bankruptcy, becoming subject to compulsory execution, or entering rehabilitation proceedings; or (ii) the dishonouring of promissory notes or checks issued by the franchisee due to reasons such as default (Art. 14(1) of the Franchise Act; Art. 15 of the Enforcement Decree of the same Act).
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	The KFTC may take the following measures against franchisors that fail to comply with the obligation to register a franchise disclosure document: (i) issue a corrective order requiring the registration of the franchise disclosure document (Art. 33 of the Franchise Act); and (ii) impose administrative fines (refer to Q27 for maximum administrative fines). Furthermore, if a franchisor fails to comply with a corrective order issued by the KFTC, the Franchise Act provides for criminal penalties (imprisonment of up to 3 years or fines of up to KRW 100 million). (Art. 41(2), subpar. 2 of the Franchise Act). These criminal penalties apply not only to the franchisor, but also to the officers or employees who have engaged in such conduct (Art. 42 of the Franchise Act).
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	Franchisees may rescind the franchise agreement in accordance with its terms. Franchisees may claim compensation from the franchisor for damages caused by the franchisor's violation of the Franchise Act (Art. 37-2(1) of the Franchise Act). The Franchise Act provides for punitive damages, requiring franchisors to compensate franchisees up to 3 times the actual damages incurred for certain violations of the Franchise Act (Art. 37-2(2) of the Franchise Act). Such violations include: • Providing false or exaggerated information to prospective franchisees. • Unfairly ceasing, refusing, or significantly restricting the supply of goods, services, or business support to franchisees. Retaliating against franchisees for filing complaints or reports with the KFTC.

Region:	ASIA PACIFIC	
Country:	Thailand	
Co-Authors:	Alan Adcock and Victoria MacLeod (Tilleke & Gibbins)	
Verifier:	Sethaphong Phadungpisuth (Gnosis Advisory)	
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	There are currently no laws in Thailand that specifically apply to franchising. However, in 2019 the Trade Competition Commission of Thailand issued Guidelines for the Consideration of Unfair Trade Practices in Franchise Businesses (Franchise Guidelines) to regulate unfair trade practices in relation to franchising.
2.	Is there a regulator of franchising conduct?	There is currently no regulator responsible for the conduct of a franchisor or franchisee.
3.	Is there a voluntary code or other form of self-governance?	There is currently the Franchise Guidelines that should be followed for franchising businesses. This lays out principles that should be followed by a franchisor and franchisee, for example precontractual disclosure requirements.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	Yes, Thailand has the Franchise and License Association (FLA), a voluntary organization representing the franchise industry. While it does not impose additional obligations on franchisors, the FLA often provides feedback, represents franchisors' interests, and promotes best practices within the industry.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	As there are no statutes governing franchises, there is no legal definition of a franchise agreement. However, the Trade Competition Act defines a franchise relationship as one which, among others, involves an element of control by the franchisor over the business operations of the franchisee.
6.	Does your jurisdiction have the concept of an "accidental franchise"?	Thailand does not have the concept of an "accidental franchise".
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	There are no exceptions to the relevant laws applying.
8.	Are there any types of agreements automatically deemed a franchise agreement?	As there is no legal requirement to register a specific franchise agreement, there are no types of agreements that will automatically be deemed a franchise agreement. Instead, Thai courts often view franchise agreements in the context of mutually agreed commercial contracts.
9.	Must the franchise agreement be governed by local law?	The franchise agreement does not need to be governed by local law, i.e. Thai law.

Region:	ASIA PACIFIC	
Country:	Thailand	
Co-Authors:	Alan Adcock and Victoria MacLeod (Tilleke & Gibbins)	
Verifier:	Sethaphong Phadungpisuth (Gnosis Advisory)	
#	Question	Answer
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No. The Franchise Act does not discriminate between foreign franchisors and domestic franchisors.
11.	Must the franchise agreement be in the local language?	The franchise agreement does not need to be in the local language, i.e. Thai.
12.	Are there any franchising laws which are bespoke to particular industries?	There are currently no franchising laws that are bespoke to particular industries.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	As there are no franchise laws in Thailand, 'trademark' is not defined. However, under the Trademark Act B.E. 2534 (1991), 'trademark' is defined as a mark used or to be used on or in connection with goods in order to distinguish the goods from goods under another person's trademark. There is no law that states you must have a trademark registration before entering into a franchise agreement. However, it is best practice to have a trademark license agreement in place to ensure you have proof of use if either the franchisor or franchisee needs to defend the registered trademark from a third-party cancellation action based on non-use. Such an agreement should be registered at the Department of Intellectual Property ("DIP").
14.	Are other types of IP licences captured by the franchising laws?	If the franchising business involves the use of patented technology, under section 41 of the Patent Act B.E. 2522 (1979), a patent license agreement will need to be registered with the DIP.
15.	Are there any registration requirements relating to the franchise system?	Any IP use should have a corresponding license agreement registered with the DIP.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	Under the Franchise Guidelines, the franchisor should deal with the franchisee in good faith. For example, franchisors have a duty to not impose unjust restrictions on their franchisee. The requirement to act in good faith becomes stronger the bigger the franchisor's bargaining power is.
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	The Franchise Guidelines include a pre-contractual disclosure requirement. Franchisors are required to provide the franchisee with information on matters such as the franchisee fee payments, renewal and termination terms, the model of the franchise and intellectual property rights.

Region:	ASIA PACIFIC	
Country:	Thailand	
Co-Authors:	Alan Adcock and Victoria MacLeod (Tilleke & Gibbins)	
Verifier:	Sethaphong Phadungpisuth (Gnosis Advisory)	
#	Question	Answer
		There is also an ongoing disclosure obligation, for example, if a franchisor wishes to open a new branch in an area, a franchisee who is meeting their existing performance criteria must be offered the right of first refusal.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	The requirements under the Franchise Guidelines aim to ensure all parties are being treated fairly and have the necessary information prior to entering the relationship, as such, pre-sale disclosure obligations also apply to sub-franchisees. The duty of disclosure is on the franchisor that is contracting with the sub-franchisee.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	No. As there is no legislation on this area, there is currently no prescribed format that must be followed.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	This is not a requirement.
21.	Is there a prescribed dispute resolution procedure?	Under Thai law there is no prescribed dispute resolution procedure.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	Under Thai law there is no provision setting a standard cooling off period to terminate or transfer the agreement.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	No. Foreign franchisors can enter the market, provided the franchisee operating the business is Thai and/or permitted to operate it under the Foreign Business Act B.E. 2542 (1999).

Region:	ASIA PACIFIC	
Country:	Thailand	
Co-Authors:	Alan Adcock and Victoria MacLeod (Tilleke & Gibbins)	
Verifier:	Sethaphong Phadungpisuth (Gnosis Advisory)	
#	Question	Answer
24.	What forms of business entity are typically used by franchisors?	This is dependent on the type of business the franchisee will operate. There is no specific requirement for an overseas franchisor to use a separate entity when entering a franchise agreement. However, if restrictions under the Foreign Business Act apply, the franchisor may need their Thai franchisee to set up a new business.
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Yes. Under the amended Civil Procedure Code, class action is permitted in Thailand. Provided the group of persons have the same interests and rights related to tort, breach of contract, and other laws, they can petition to file a class action. Under the amendment, the Court have the power to define the scope or characteristics of a class, therefore it is possible for a number of aggrieved franchisees to bring class action.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	No. This will be governed by the wording of the franchise agreement.
27.	Are there penalties for contravening the franchising laws?	Failure to comply with the Franchise Guidelines and subsequent amendments, may result in penalties under the Trade Competition Act. These penalties include administrative orders and fines, and civil claims for damages.
28.	Are there any required provisions for a franchise agreement to be valid?	In Thailand contracts operate under the freedom-of-contract principle, and so a contract between two equal bargaining powers will rarely be interfered with by the courts, unless there is a public policy reason. However, the terms must be fair and reasonable to remain enforceable. It is therefore important to ensure the provisions comply with the Trade Competition Act and amendments.

Region:	ASIA PACIFIC	
Country:	Thailand	
Co-Authors:	Alan Adcock and Victoria MacLeod (Tilleke & Gibbins)	
Verifier:	Sethaphong Phadungpisuth (Gnosis Advisory)	
#	Question	Answer
29.	What is the minimum duration of a franchise term?	There is no legal minimum and instead will be governed by the wording of the franchise agreement.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	As Thailand is a freedom of contracts jurisdiction, the courts will not intervene unless there is good reason. Therefore, all clauses, including termination, should be drafted in accordance with the Trade Competition Act, the Unfair Contract Terms Act B.E. 2540 (1997) and the Consumer Protection Act B.E. 2522 (1979).
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	There are no laws that govern termination or notice periods, instead the courts will look to the wording of the contract. The parties just need to be of equal bargaining power and the terms should adhere to the provisions of the Trade Competition Act, Unfair Contract Terms Act and the Consumer Protection Act.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	If a court determines that a franchisor's failure to comply with the Franchise Guidelines and subsequent amendments caused damage to a franchisee, the franchisor faces penalties under the Trade Competition Act. These penalties include administrative orders, fines and civil claims for damages.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	This will be governed by the wording of the franchise agreement, as well as what is permissible under the Trade Competition Act, Unfair Contract Terms Act and the Consumer Protection Act.

Region:	ASIA PACIFIC	
Country:	Vietnam	
Co-Authors:	Michelle Ray-Jones and Tu Ngoc Trinh (Tilleke & Gibbins)	
Verifier:	Son Doan (IP MAX Law Firm)	
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	In Vietnam, franchising is governed by the Commercial Law, along with the following implementing legal instruments: 1. Decree 35/2006/ND-CP detailing the implementation of the Commercial Law regarding franchising activities, as amended by Decree 120/2011/ND-CP and Decree 08/2018/ND-CP (herein after referred to as Decree 35) 2. Decree 98/2020/ND-CP prescribing penalties for administrative violations in commercial activities, including franchising (among other areas), as amended by Decree 17/2022/ND-CP (herein after referred to as Decree 98); and 3. Circular 09/2006/TT-BTM guiding the registration of franchising activities, as amended by Circular 04/2016/TT-BCT and Circular 03/2024/TT-BCT (herein after referred to as Circular 09).
2.	Is there a regulator of franchising conduct?	The primary regulatory authority responsible for enforcing franchising laws and requirements in Vietnam is the Ministry of Industry and Trade (MOIT).
3.	Is there a voluntary code or other form of self-governance?	No.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	No.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	There is no straightforward definition of a franchise agreement or list of elements constituting a franchise agreement under Vietnamese law. The licensing authority has also been reluctant to provide any specific guidance on the conditions for an agreement to be considered a franchise agreement. Generally, the elements constituting a franchise arrangement can be deduced from the definition of a <i>commercial franchise activity</i> under Article 284 of Vietnam's Commercial Law, which is very general. According to the Commercial Law, a franchise is defined as “a commercial activity whereby a franchisor authorizes and requires a franchisee to, on its own behalf, sell goods or provide services,” and the activity must be conducted “according to the method of business organization specified by the franchisor and associated with the trademark, trade name, business know-how, business mission statements, business logo and advertising of the franchisor”. Given this definition of franchise, an agreement can be considered a franchise agreement if the following elements can be found therein: (i) The business format is determined by the franchisor;

Region:	ASIA PACIFIC	
Country:	Vietnam	
Co-Authors:	Michelle Ray-Jones and Tu Ngoc Trinh (Tilleke & Gibbins)	
Verifier:	Son Doan (IP MAX Law Firm)	
#	Question	Answer
		(ii) The franchisee affixes the franchisor's trademarks, trade names, business logos, slogans and/or advertisements at the franchisee's business premises; (iii) The franchisor has the right to control the franchisee in carrying out the franchised business; and (iv) The franchisor has the right to assist the franchisee in carrying out the franchised business. If a trademark licence agreement contains all the above-listed elements, it is thus likely to be considered a franchise agreement.
6.	Does your jurisdiction have the concept of an "accidental franchise"?	No.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	No.
8.	Are there any types of agreements automatically deemed a franchise agreement?	Agreements that meet the elements set forth in our answer to Question 5 above will be considered franchise agreements.
9.	Must the franchise agreement be governed by local law?	No, the franchise agreement does not need to be governed by local law. It can be governed by foreign law if one of the parties to the franchise agreement is a foreign entity.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	Yes, foreign and domestic franchisors are subject to different requirements. Domestic franchisors are not subject to franchise registration with the MOIT. Decree 35 only requires domestic franchisors to report their franchise activities to the provincial-level Departments of Industry and Trade (DOIT) where the franchisor's head office is located. However, the current regulations do not set out the procedures, dossiers and templates for franchise notification to provincial DOITs.
11.	Must the franchise agreement be in the local language?	Vietnam's rules require the franchise agreement to at least be made in Vietnamese. Thus, foreign franchisors typically require that the franchise agreement be prepared in both English and Vietnamese. The parties can agree that English is the controlling language, or that the English version will prevail.
12.	Are there any franchising laws which are bespoke to particular industries?	No.

Region:	ASIA PACIFIC	
Country:	Vietnam	
Co-Authors:	Michelle Ray-Jones and Tu Ngoc Trinh (Tilleke & Gibbins)	
Verifier:	Son Doan (IP MAX Law Firm)	
#	Question	Answer
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	There is no definition of “trademark” in the franchise law. However, the term “trademark” is defined by the Law on Intellectual Property. Before a foreign franchisor may grant a franchise into Vietnam, the foreign franchisor must be successfully registered with the MOIT for carrying out their franchising activities in Vietnam. In practice, to ensure the success of obtaining the franchise approval from the competent authority, the trademarks that will be used for the franchise system/activities in Vietnam must be registered domestically or through the Madrid System with a registered designation to Vietnam or obtain foreign trademark certificates.
14.	Are other types of IP licences captured by the franchising laws?	The current franchising laws of Vietnam do not refer to any specific types of IP licences. IP licences are governed by the Law on Intellectual Property and its guiding regulations.
15.	Are there any registration requirements relating to the franchise system?	Yes, before a foreign franchisor may grant a franchise into Vietnam, the foreign franchisor must be successfully registered with the MOIT for carrying out their franchising activities in Vietnam.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	The general rule is that a franchisor and franchisee have the right to freely negotiate the terms and conditions of the franchise agreement, including their rights and obligations toward one another. However, general contracting principles would apply. These general principles are as follows: • Parties are free to enter contracts provided that the contracts are consistent with law and social morals; and • The contracts must be entered into on a voluntary basis, in good faith and with equality, goodwill, cooperation and honesty.
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	Yes, pre-contractual disclosure is required. Specifically, unless otherwise agreed between the franchisor and franchisee, the franchisor must provide the franchisee with the following documents at least 15 business days before the date the franchise agreement is signed: 1) A copy of the franchise agreement template; and 2) A franchise description document (FDD) in a standard form as approved by the MOIT. If there are any changes to the franchise system, the franchisor must inform the franchisee of such changes.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Yes, the general rules of pre-contractual disclosure as set out in question 17 apply to sales to sub-franchisees. The sub-franchisor must disclose the information and documents to the sub-franchisees.

Region:	ASIA PACIFIC	
Country:	Vietnam	
Co-Authors:	Michelle Ray-Jones and Tu Ngoc Trinh (Tilleke & Gibbins)	
Verifier:	Son Doan (IP MAX Law Firm)	
#	Question	Answer
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	The FDD must be made in a standard form under Circular 09. The law does not provide any specific regulation on how often the FDD must be updated to the franchisee; however, the law states that if there are any material changes to the franchise system that will affect the franchisee's operation, the franchisor must update the franchisee of such changes immediately. Separately, the franchisor must update the authority annually before 15 January of any changes to the FDD. If there are any changes to Part A of the FDD (e.g., the corporate information of the franchisor or trademarks), they must be informed to the authority within 30 days from the date of changes.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	Under the standard form of the FDD, if the franchisee is required to pay money to a marketing fund or other cooperative fund, the franchisor must specify the amount, time of fee payment and cases where fees shall be refunded.
21.	Is there a prescribed dispute resolution procedure?	There is no prescribed dispute resolution procedure set out in the franchise laws. The parties are free to agree on the dispute resolution procedure.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	No.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	To enter into Vietnam, the foreign franchisor must register its franchise system with the MOIT. The foreign franchisor is not requested to establish a legal entity in Vietnam. However, if the foreign franchisor would like to establish a company in Vietnam for franchise activities, they must research Vietnamese laws on the proposed franchise sectors. Foreign franchisors who wish to establish a business entity in Vietnam have to satisfy certain conditions or restrictions imposed on foreign investors. Typical examples of these conditions and restrictions include, among other things: • limitations on foreign ownership in certain sectors; • business sector restrictions; • requirements for forms of investment; • geographic restrictions; and • other conditions or requirements relating to specific business sectors.
24.	What forms of business entity are typically used by franchisors?	If the franchisor would like to establish a company in Vietnam, it can form a limited liability company or a joint stock company.

Region:	ASIA PACIFIC	
Country:	Vietnam	
Co-Authors:	Michelle Ray-Jones and Tu Ngoc Trinh (Tilleke & Gibbins)	
Verifier:	Son Doan (IP MAX Law Firm)	
#	Question	Answer
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Vietnamese law does not have a definition of a class action or specific regulations on class actions. However, there are regulations on a joint, multiple or representative action which is similar to a class action. According to the current laws, agencies, organizations and individuals can jointly initiate a lawsuit against other agencies, organizations or individuals over a legal relationship or related legal matters to be resolved in the same case. Thus, in theory, a number of aggrieved franchisees can jointly initiate a lawsuit against a franchisor. However, whether the disputes can be resolved in the same case would depend on the nature of the case.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	No. Considering that there is no mandatory renewal in franchise agreements, there is no overriding right for a franchisee to be automatically entitled to a renewal or extension of the franchise agreement, nor will they be entitled to any compensation or damages. The general rule is that franchisors and franchisees have the right to freely negotiate the terms and conditions of the franchise agreement, including renewal terms. Therefore, if the franchise agreement does not provide for automatic renewal, it will end upon expiration of the term or other conditions set by the parties. If the agreement provides for automatic or conditional renewal, those provisions will prevail.
27.	Are there penalties for contravening the franchising laws?	Yes. Depending on the seriousness of the violations, violations of the franchising laws will lead to an administrative fine of up to VND 100 million (approx. USD 4,000) for violations against regulations on commercial franchise activities and the violator will be forced to submit any illicit benefits gained from such violations.
28.	Are there any required provisions for a franchise agreement to be valid?	The general rule is that franchisors and franchisees have the right to freely negotiate the terms and conditions of the franchise agreement, including their rights and obligations toward one another. However, general contracting principles would apply. These general principles are as follows: • Parties are free to enter into contracts provided that the contracts are consistent with the law and social morals; and • The contracts must be entered into on a voluntary basis, in good faith and with equality, goodwill, cooperation and honesty. In addition, franchising agreements may be governed by a foreign law, provided that the application of that foreign law is not contrary to the "basic principles of Vietnamese law". The "basic principles of Vietnamese law" have been interpreted very broadly, and even seemingly minor inconsistencies can render contract terms unenforceable in Vietnam.

Region:	ASIA PACIFIC	
Country:	Vietnam	
Co-Authors:	Michelle Ray-Jones and Tu Ngoc Trinh (Tilleke & Gibbins)	
Verifier:	Son Doan (IP MAX Law Firm)	
#	Question	Answer
		Therefore, even provisions of the agreement which seem standard to foreign franchisors should be examined very carefully to ensure enforceability.
29.	What is the minimum duration of a franchise term?	There is no minimum duration of a franchise term in Vietnam.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	No. Please refer to our response to question 28 above.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	Yes, the franchisor and franchisee can terminate the franchise agreement prior to the expiry of the agreement if the conditions of the termination were set out in the franchise agreement. In addition, the franchisor and franchisee can unilaterally terminate the franchising agreement according to Article 16 of Decree 35. While Vietnamese law doesn't specify a minimum notice period for terminating a franchise relationship, it's generally advisable to include a reasonable notice period in the franchise agreement itself to ensure a smooth transition and protect the interests of both parties.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	Under Vietnamese law, if the parties agree in the agreement, in addition to the breaching party's obligation to compensate for actual and direct damages caused to the non-breaching party, they may provide an additional penalty of up to 8% of the value of the infringed obligation. The penalty will be capped at 8% of the value of the contractual obligation that is the subject of the default or breach, not 8% of the entire contract value. Thus, in order for a party to claim both a penalty and compensation, this should be set forth in the franchise agreement. In addition, the franchisor may face administrative penalties for failing to comply with mandatory disclosure obligations as regulated, and the violator will be forced to submit any illicit benefits gained from such violations.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	Whether a franchisee is entitled to rescind the franchise agreement and/or claim damages would depend on the terms and conditions that the parties agreed to in the franchise agreement. Meanwhile, the franchise agreement may be considered invalid if any of the general contracting principles (see our response to question 28 above) are violated.

Region: Europe		
Country: France		
Author: Nathalie Dreyfus, Dreyfus Trademark Attorneys		
Verifier: Delphine Brunet-Stoclet, Schmidt Brunet Litzler		
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	In France, franchise law is primarily governed by the Commercial Code. Article L. 330-3 imposes precontractual disclosure obligations on franchisors, requiring them to provide a Disclosure Document ("DIP") at least 20 days before signing the franchise agreement. This document must include essential information about the franchisor, the franchise network, and local market development prospects.
2.	Is there a regulator of franchising conduct?	There is no specific regulator for franchise conduct in France. However, franchise-related disputes can be brought before commercial courts.
3.	Is there a voluntary code or other form of self-governance?	In France, there is no specific voluntary code or self-governance framework exclusively dedicated to franchising. However, the franchising sector is influenced by general principles of commercial law and specific regulations outlined in the French Commercial Code.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	The French Franchise Federation (Fédération Française de la Franchise, FFF) plays a significant role in promoting best practices within the industry. While membership in the FFF is voluntary, the association encourages adherence to ethical standards and provides guidelines to its members, which include both franchisors and franchisees. These guidelines aim to foster transparency, fairness, and mutual respect in franchise relationships. The FFF does not impose legally binding obligations but serves as a platform for self-regulation and the promotion of professional conduct within the franchising community.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	In France, a franchise agreement is defined by Article L330-3 of the Commercial Code and involves the provision of a trade name, brand, or sign, with an exclusivity or quasi-exclusivity commitment. A trademark license becomes a franchise agreement when several specific criteria are met. First, the franchisor must grant the franchisee the right to use a trademark, trade name, or distinctive sign. Second, the franchisor must provide the franchisee with substantial, identified, secret know-how that is tested and useful for operating the business. Third, the franchisee must receive ongoing commercial and technical assistance from the franchisor. Finally, the franchisee must agree to

Region: Europe		
Country: France		
Author: Nathalie Dreyfus, Dreyfus Trademark Attorneys		
Verifier: Delphine Brunet-Stoclet, Schmidt Brunet Litzler		
#	Question	Answer
		operate the business in compliance with the franchisor's established guidelines and standards, often within a framework of territorial exclusivity or quasi-exclusivity.
6.	Does your jurisdiction have the concept of an “accidental franchise”?	In French law, the concept of an "accidental franchise" is not explicitly recognized. However, a commercial relationship may be reclassified as a franchise agreement if it meets the criteria defined by Article L330-3 of the Commercial Code. This can occur when, despite the absence of a formal franchise agreement, the characteristic elements of a franchise are present, such as the provision of a trade name, brand, or sign, exclusivity or quasi-exclusivity, the transmission of substantial know-how, and continuous assistance. In such cases, the legal obligations and protections applicable to franchise agreements could be retroactively imposed.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	In France, the laws governing franchise agreements, particularly those outlined in Article L330-3 of the Commercial Code, have specific exceptions. According to Article L341-1 of the Commercial Code, the regulations do not apply to lease agreements governed by Article L145-4, association contracts, and civil, commercial, or cooperative society contracts. Additionally, Article L341-2 specifies that certain restrictive clauses in franchise agreements are deemed unwritten unless they meet specific conditions, such as being indispensable for protecting substantial, specific, and secret know-how, and being limited in duration and geographical scope.
8.	Are there any types of agreements automatically deemed a franchise agreement?	A franchise agreement is characterized by the provision of a name, trademark, or sign by one party to another, along with an obligation of exclusivity or quasi-exclusivity for the franchisee's activities. No agreement is automatically deemed a franchise agreement. However, courts may requalify a contract as a franchise if it meets three key criteria: (1) the transfer of a substantial, secret, and identifiable know-how, (2) the use of a distinctive sign or trademark, and (3) continuous assistance from the franchisor. Agreements such as licensing or partnership contracts may fall under this classification if these elements are present.
9.	Must the franchise agreement be governed by local law?	The franchise agreement must be governed by local law, as French law applies to all franchise agreements executed within its territory, ensuring compliance with local regulations.

Region: Europe		
Country: France		
Author: Nathalie Dreyfus, Dreyfus Trademark Attorneys		
Verifier: Delphine Brunet-Stoclet, Schmidt Brunet Litzler		
#	Question	Answer
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	Both foreign and domestic franchisors are subject to the same requirements under French law, including mandatory disclosure obligations and the necessity for the agreement to be in French.
11.	Must the franchise agreement be in the local language?	There is no explicit requirement that a franchise agreement must be in French.
12.	Are there any franchising laws which are bespoke to particular industries?	French franchising laws do not specify regulations unique to particular industries; the general framework applies universally across sectors.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	In French franchise law, the concept of a "trademark" is not directly defined in franchise-specific legislation. However, its role is integral to the operation of a franchise agreement, and general trademark law under the Code de la propriété intellectuelle (CPI) governs its definition and use.
14.	Are other types of IP licences captured by the franchising laws?	Franchise agreements encompass various types of intellectual property (IP) licences, including trademarks, commercial names, and signs, as indicated in Article L330-3 of the Code de commerce.
15.	Are there any registration requirements relating to the franchise system?	There are specific registration requirements for franchise systems, particularly when the franchise involves the transfer of IP rights such as trademarks, which must be registered with the Institut National de la Propriété Industrielle (INPI) to be enforceable against third parties.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	French franchise law mandates that parties must deal with each other in good faith, a principle embedded in the general obligations of contract law. This is particularly relevant in the context of pre-contractual disclosure obligations, where the franchisor must provide the franchisee with a document containing sincere and comprehensive information at least 20 days before the contract is signed.
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	Yes, in France, there is a disclosure regime that imposes pre-contractual disclosure obligations on franchisors under the Loi Doubin (Law No. 89-1008 of December 31, 1989). This law aims to ensure that prospective franchisees receive adequate and accurate information before entering into a franchise agreement. While the Loi Doubin specifically addresses pre-contractual disclosure, there

Region: Europe		
Country: France		
Author: Nathalie Dreyfus, Dreyfus Trademark Attorneys		
Verifier: Delphine Brunet-Stoclet, Schmidt Brunet Litzler		
#	Question	Answer
		are no explicit ongoing disclosure obligations, but other general contractual principles may imply continuing duties.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Pre-sale disclosure obligations also apply to sub-franchisees, ensuring that they receive the same level of information as primary franchisees. The franchisor is responsible for making these disclosures, and the format and content of the disclosures are prescribed by law, requiring updates to reflect any significant changes (R 330-1 of the French commercial code).
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	The format and content of the disclosures are prescribed by law, requiring updates to reflect any significant changes. There is also an ongoing obligation to provide continuing disclosure to existing franchisees, particularly regarding any changes that could affect the franchise relationship.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	If the franchisee is required to contribute to a marketing fund or other cooperative fund, the franchisor must clearly outline the nature and amount of these contributions, as well as the specific expenditures and investments related to the franchise brand that the franchisee must undertake before commencing operations.
21.	Is there a prescribed dispute resolution procedure?	French law does not prescribe a specific dispute resolution procedure for franchise agreements, but parties often include arbitration or mediation clauses.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	There is no statutory cooling-off period for terminating or transferring a franchise agreement once signed.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	Foreign franchisors face no specific market entry restrictions beyond general foreign investment regulations.
24.	What forms of business entity are typically used by franchisors?	Franchisors typically operate as SAS (simplified joint-stock company) or (limited liability company).
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	French law permits class actions (known as "actions de groupe"), under certain conditions, but their applicability in the context of franchise disputes is relatively narrow.

Region: Europe		
Country: France		
Author: Nathalie Dreyfus, Dreyfus Trademark Attorneys		
Verifier: Delphine Brunet-Stoclet, Schmidt Brunet Litzler		
#	Question	Answer
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	There is no automatic right to renewal or extension of a franchise agreement; it depends on the contract terms. If renewal is refused, the franchisee may claim compensation if the refusal is deemed abusive or if the franchisee has made significant investments based on the expectation of renewal.
27.	Are there penalties for contravening the franchising laws?	Penalties for contravening franchising laws in France can include fines and other sanctions. For instance, failing to comply with pre-contractual disclosure obligations can result in the franchisee being entitled to rescind the agreement and claim damages.
28.	Are there any required provisions for a franchise agreement to be valid?	There are no specific provisions required for a franchise agreement to be valid, but it must include essential elements such as the rights and obligations of both parties, the duration of the agreement, and financial terms.
29.	What is the minimum duration of a franchise term?	There is no minimum duration for a franchise term, but the agreement must be reasonable and fair.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	French law allows for the termination of a franchise agreement prior to its expiry under certain conditions, such as breach of contract.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	A franchise agreement may be terminated prior to its expiry after a mutual agreement, a breach of contract, a termination without cause for open-ended contracts, or force majeure. Local rules impose a minimum notice period for terminating long-standing business relationships, ensuring fair treatment of the franchisee. For example, a statutory requirement in the Code de commerce indicates that a notice period must be given, which can vary depending on the length of the business relationship (L 442-1 II of the commercial Code). This rule applies even if the written contract provides otherwise or provides a short period of notice.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	If a franchisor fails to comply with mandatory disclosure obligations (the Loi Doubin, 1989, governs the pre-contractual disclosure obligations of franchisors), the franchisee can seek remedies including

Region: Europe		
Country: France		
Author: Nathalie Dreyfus, Dreyfus Trademark Attorneys		
Verifier: Delphine Brunet-Stoclet, Schmidt Brunet Litzler		
#	Question	Answer
		the annulment of the franchise agreement and the recovery of damages. The franchisee must demonstrate that the lack of proper disclosure significantly impacted their decision to enter into the agreement.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	Yes, a franchisee has the right to rescind the franchise agreement and claim damages if the franchisor fails to comply with mandatory pre-contractual disclosure obligations.

Region: Europe		
Country: Germany		
Author: Antje Münch, Heuking Kuehn Lueer Wojtek		
Verifier: Clemens Pfizer, Kurz Pfitzer Wolf & Partner Rechtsanwälte mbB		
#	Question	
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	No specific regulation, franchise agreements are regulated by a mixture of different laws, depending on the specific provisions in the franchise agreement. Usually mainly regulated by lease law, but franchise agreements are combined/mixed contracts under German law.
2.	Is there a regulator of franchising conduct?	No
3.	Is there a voluntary code or other form of self-governance?	Yes, <i>Franchise Compliance Deutschland</i>
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	Yes, <i>Deutscher Franchiseverband</i> . This association is voluntary, additional obligations are imposed. However, only very general requirements are to be fulfilled in order to comply with the association-standards, most of the requirements are only recommended.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	No legal definition given, franchise agreements are regularly defined as atypical lease agreements with elements of a licence. Franchise agreements contain trademark licences to a certain degree, so there is no clear cut between both. In general, agreements can be formed as a mixture of several legally defined agreements under German law with different regulations applying to each provision of the agreement.
6.	Does your jurisdiction have the concept of an “accidental franchise”?	No
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	No, as only general laws apply.
8.	Are there any types of agreements automatically deemed a franchise agreement?	No
9.	Must the franchise agreement be governed by local law?	Not necessarily, depending on the circumstances applicable law can be chosen, as for all contractual agreements, in accordance with European regulation.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No

Region: Europe		
Country: Germany		
Author: Antje Münch, Heuking Kuehn Lueer Wojtek		
Verifier: Clemens Pfizer, Kurz Pfitzer Wolf & Partner Rechtsanwälte mbB		
#	Question	
11.	Must the franchise agreement be in the local language?	No
12.	Are there any franchising laws which are bespoke to particular industries?	No
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	No specific franchise laws existent, trademarks are defined by trademark law, in short: <i>A trademark may consist of any signs, which are capable of distinguishing the goods or services of one company from those of other companies.</i> No trademark registration needed in order to enter into a franchise agreement, use of (company) names or other forms of know-how can also be part of the franchise agreement.
14.	Are other types of IP licences captured by the franchising laws?	No specific franchising laws, but any type of IP licence can be part of the franchise agreement.
15.	Are there any registration requirements relating to the franchise system?	No
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	Any contractual obligation is to be fulfilled in good faith under German law, but no separate provision for franchising.
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	Yes, but again only as for general contractual agreements. Pre-contractual disclosure obligations usually apply as soon as negotiations start. <i>According to case law and the principles of the German Franchise Association (Deutscher Franchiseverband), the franchisor must disclose, in particular, (i) the prospects of success of the business concept, (ii) the functioning of the concept, including the services of the franchisor, (iii) information about discounts, (iv) information about the required labour and capital investments, (v) the practical experience made with the franchisor's pilot projects and other average franchises, and (vi) true key performance parameters.</i>
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	No, pre-sale disclosures need to be made between the parties of contract at hand, so for a sub-franchisee agreement, the franchisee must make the necessary disclosures to the sub-franchisee.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	Only subject to the parties' agreement. General principles for pre-contractual disclosure apply.

Region: Europe		
Country: Germany		
Author: Antje Münch, Heuking Kuehn Lueer Wojtek		
Verifier: Clemens Pfizer, Kurz Pfitzer Wolf & Partner Rechtsanwälte mbB		
#	Question	
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	Obligations would be subject to parties' agreement.
21.	Is there a prescribed dispute resolution procedure?	No, civil litigation applies, if arbitration is not explicitly concluded between the parties.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	Franchisees that are still to be founded or are in the process of founding, have a right of withdrawal within 14 days after entering into the agreement and being properly informed about the right of withdrawal. In other cases, the right to terminate or transfer the franchise agreement are subject to the agreement, except for extraordinary termination for cause, which cannot be excluded.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	The general provisions on acquisitions of Germany entities by non-EFTA members apply.
24.	What forms of business entity are typically used by franchisors?	Registered merchant or German company with limited liability
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	German law generally does not allow class actions. Several plaintiffs may be involved within the framework of the usual civil procedural rules. There are no specific provisions for franchisees.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	Extension is only possible subject to the parties' agreement. However, if the agreement is factually continued by both parties after the end of the initial term, the franchise agreement is seen as entered into indefinitely (Sec. 89 para. 3 German Commercial Code (Handelsgesetzbuch – HGB)). Depending on the individual provisions of the franchise agreement, the franchisee may be entitled to compensation after Sec. 89b German Commercial Code after termination of the agreement.
27.	Are there penalties for contravening the franchising laws?	No specific penalties, contractual damages may be compensated.
28.	Are there any required provisions for a franchise agreement to be valid?	No specific provisions, agreements in general must not violate legal provisions
29.	What is the minimum duration of a franchise term?	No minimum duration

Region: Europe		
Country: Germany		
Author: Antje Münch, Heuking Kuehn Lueer Wojtek		
Verifier: Clemens Pfizer, Kurz Pfitzer Wolf & Partner Rechtsanwälte mbB		
#	Question	
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	No prevention of termination but depending on the individual provisions of the franchise agreement, the franchisee may be entitled to compensation after Sec. 89b German Commercial Code after termination of the agreement. In case of (extraordinary) investments of the franchisee, it may be possible in individual cases that either the termination period may be prolonged, or the franchisee may be entitled to compensation.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	Yes, extraordinary termination for cause may be possible prior to the expiry. Depending on the individual provisions of the franchise agreement, the minimum periods set out in Sec. 89 para. 1 German Commercial Code may apply.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	As disclosure obligations are only subject to the contractual agreement or part of the pre-contractual obligations, only contractual damages can be claimed.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	Usual contractual remedies can be pursued regarding termination, rescindment or damages in case of breach of disclosure or any other contractual obligations. In case of deception or fraud of the franchisor previous to the conclusion of the agreement, including but not limited to pre-contractual disclosure obligations, franchisee may be entitled to rescindment of the franchise agreement after Sec. 123 German Civil Code (Bürgerliches Gesetzbuch).

Region: Europe		
Country: Italy		
Author: Beatrice Bigonzi – Partner, Head of Commercial and IP, Eversheds Sutherland Associazione Professionale Verifier: Debora Zeno - IP & Brand Protection Associate Manager Bulgari S.p.A.		
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	Yes. Franchising agreements are specifically governed by Law No. 129/2004 (hereinafter, the “Franchise Law”) and by Ministerial Decree No. 204/2005 (“Regulation containing rules for the regulation of business affiliation referred to in Article 4, paragraph 2, of Law No. 129 of May 6, 2004”, i.e. concerning franchisors that, prior to the date of signing a franchise agreement, have operated exclusively abroad).
2.	Is there a regulator of franchising conduct?	No.
3.	Is there a voluntary code or other form of self-governance?	Yes. Generally, members of Italian franchise associations must agree to comply with the Codes of Ethics adopted by said associations. In this respect, please see Answer No. 4 below.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	Yes. The most widely known Italian franchise associations are: - Associazione Italiana del Franchising (or “Assofranchising”); and - Federazione italiana del franchising (or “Federfranchising”); Membership in the above associations is on a voluntary basis. Members of the association are generally requested to agree on and comply with the association’s By- laws, regulations, resolutions of the associations bodies, as well as with the association’s Ethical Code. For instance, in this respect: - members of the Associazione Italiana del Franchising must comply with the Code of Ethics available at: https://www.assofranchising.it/chi-siamo/codice-etico.html; - members of the Federazione italiana del franchising must comply with the Code of Ethics available at: https://federfranchising.confesercenti.it/codice-deontologico/
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	According to Section 1(1) of the Franchise Law, a franchising agreement is “an agreement, however named, between two legally and financially independent parties, whereby one party grants the other party, in exchange for a consideration, the right to use a set of industrial or intellectual property rights relating to trademarks, trade

Region: Europe		
Country: Italy		
Author: Beatrice Bigonzi – Partner, Head of Commercial and IP, Eversheds Sutherland Associazione Professionale Verifier: Debora Zeno - IP & Brand Protection Associate Manager Bulgari S.p.A.		
#	Question	Answer
		names, shop signs, utility models, industrial designs, copyright, know how, patents, technical and commercial consultancy or assistance, inserting the affiliate in a system composed of a number of affiliates distributed throughout a territory for the purpose of marketing certain goods and services”. In a trademark licence agreement, the licensor, generally, simply grants the licensee the right to use its trademarks under certain agreed terms and conditions in exchange for a consideration. Instead, a franchising agreement consists of further essential and typical elements, such as, by way of example, the franchisee's inclusion in a distribution network with an established operational structure (i.e. the franchisor must have tested its commercial formula on the market before setting up a franchise network), comprehensive training, marketing assistance and operational support provided by the franchisor, a know-how license, the right of the franchisor to carry out checks and inspections, the payment by the franchisee of an entry fee, etc. A franchise agreement certainly includes a trademark(s) license but also needs the provision of further additional key elements. The difference between a licence and a franchising agreement has been also specifically addressed by the Italian Supreme Court (Italian Supreme Court, Order No. 10420/2019).
6.	Does your jurisdiction have the concept of an “accidental franchise”?	No. However, in case of disputes, Italian Courts are entitled to qualify or re-qualify an agreement or business relationship, regardless of the qualification given to it by the parties, on the basis of the actual terms and conditions agreed between the parties and the actual performance of the relationship. The re-qualification of an agreement shall be made first by identifying the common intention of the parties and then by classifying the agreement in question in the appropriate legal scheme corresponding to the previously identified key elements.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	Not applicable
8.	Are there any types of agreements automatically deemed a franchise agreement?	Yes. The qualification made by the parties of an agreement as “franchise agreement” leads to a legal presumption that the parties wished to enter into an actual franchise agreement. However, as mentioned under

Region: Europe		
Country: Italy		
Author: Beatrice Bigonzi – Partner, Head of Commercial and IP, Eversheds Sutherland Associazione Professionale Verifier: Debora Zeno - IP & Brand Protection Associate Manager Bulgari S.p.A.		
#	Question	Answer
		Answer No. 6 above, the Italian Courts would be entitled to re-qualify an agreement or business relationship on the basis of the actual terms and conditions agreed between them and the actual performance of the relationship, if they did not actually correspond to a franchise agreement.
9.	Must the franchise agreement be governed by local law?	No. The parties are free to choose a foreign governing law, however, this will be without prejudice of overriding mandatory provisions of Italian law (provisions the respect for which is regarded as crucial for safeguarding the Country's its public interests, such as its political, social or economic organisation). Furthermore, where all the other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen (i.e. when both parties are located in Italy and the contract shall be performed in Italy), the choice of the parties shall not affect the application of provisions of the law of the country where all such other elements are located which cannot be derogated from by agreement.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	According to the Franchise Law, at least thirty days before signing a franchising agreement the franchisor must provide the aspiring franchisee with a complete copy of the contract to be signed, together with certain other documents and information (see Answer No. 17 below for more details). Foreign franchisors who wish to enter the Italian market and have never operated their franchise business in Italy before are subject to additional pre-contractual disclosure of information requirement as per Ministerial Decree No. 204/2005 (see Answer No. 17 below for more details).
11.	Must the franchise agreement be in the local language?	The Franchise Law does not expressly provide for any language requirement for neither the pre-contractual document disclosure nor the franchise agreement. However, according to Section 3 of Ministerial Decree No. 204/2005 (concerning franchisors who, prior to the date of signing the franchise agreement, have operated exclusively abroad), the franchisor, upon request of the aspiring franchisee, must provide the information concerning the contract and its annexes in the Italian language.

Region: Europe		
Country: Italy		
Author: Beatrice Bigonzi – Partner, Head of Commercial and IP, Eversheds Sutherland Associazione Professionale Verifier: Debora Zeno - IP & Brand Protection Associate Manager Bulgari S.p.A.		
#	Question	Answer
		In addition, considering that the franchisee is generally regarded as the weak part of the relationship, should the agreement and documentation be drafted – for instance – in English, it is advisable to make sure that the (prospect) franchisee (i) actually understands English and (ii) declares in the agreement it fully understands English, the contents of the agreement and the information disclosed in the pre-contractual phase (i.e., the “cooling-off period”).
12.	Are there any franchising laws which are bespoke to particular industries?	No
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	No “Know-how” is instead defined by the Franchise Law (as “a body of unpatented practical knowledge resulting from experience and testing carried out by the franchisor, which is secret, substantial and identified; secret, in that the know-how, considered as a body of information or the precise configuration and composition of its elements, is not generally known or easily accessible; substantial, in that the know-how includes knowledge that is indispensable to the affiliate for the use, sale, resale, management or organisation of the contractual goods or services; identified, in that the know-how must be described in a sufficiently comprehensive manner, such as to make it possible to verify whether it meets the criteria of secrecy and substantiality”). The Franchise law does not mandatorily require a trademark registration by the Franchisor in order to enter into a franchise agreement. However, in case the trademark is not registered, documentary evidence of the actual use of the trademark/brand shall be provided among the pre-contractual information given to the prospective franchisee. It would be in any case advisable for the franchisor to proceed with the registration of its relevant trademark(s) in order to enjoy the greater protection granted to registered trademarks and strengthen the identity and distinctiveness of the franchise network/system within the relevant markets.
14.	Are other types of IP licences captured by the franchising laws?	Yes. According to the definition of “franchise agreement” under the Franchise Law (see above Answer No. 5), such contract provides for “the right to use a set of industrial or intellectual property rights” of the franchisor,

Region: Europe		
Country: Italy		
Author: Beatrice Bigonzi – Partner, Head of Commercial and IP, Eversheds Sutherland Associazione Professionale Verifier: Debora Zeno - IP & Brand Protection Associate Manager Bulgari S.p.A.		
#	Question	Answer
		such as (in addition to trademarks), trade names, shop signs, utility models, industrial designs, copyright, know-how and patents.
15.	Are there any registration requirements relating to the franchise system?	Under Italian Law there are no specific registration requirements for franchisors and/or franchisee.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	According to the Franchise Law, “the franchisor must behave at all times toward the prospective franchisee with loyalty, fairness and good faith and shall timely provide the prospective franchisee with all the data and information that the latter deems necessary or useful for the purpose of stipulating the franchise contract” unless it is objectively confidential information or information whose disclosure would constitute a violation of third-party rights. Similarly, the Franchise Law provides that “the prospective franchisee must behave at all times towards the franchisor with loyalty, fairness and good faith and must provide the franchisor promptly, accurately and completely with all information and data that might be needed or useful for the purpose of stipulating the franchise agreement, even if not expressly requested by the franchisor. In addition to the above, a general principle of “good faith” according to which both contracting parties shall negotiate and then perform the agreement in good faith is set forth in Articles 1337 and 1375 of the Italian Civil Code.
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	According to the Franchise Law, at least thirty days before signing a franchising agreement the franchisor must provide the aspiring franchisee with a complete copy of the contract to be signed, together with the following attachments: - relevant information about the franchisor; - details of the trademarks used in the concept;

Region: Europe		
Country: Italy		
Author: Beatrice Bigonzi – Partner, Head of Commercial and IP, Eversheds Sutherland Associazione Professionale Verifier: Debora Zeno - IP & Brand Protection Associate Manager Bulgari S.p.A.		
#	Question	Answer
		- characteristics of the business; - a list of the franchisees and of the franchisor's direct outlets, if any (the franchisor may limit such information to that relating to the activities carried out in Italy); - the annual variations in the number of franchisees with their locations and address during the last three years, or from the beginning of the franchise business if started later (the franchisor may limit such information to that relating to the activities carried out in Italy); - a short description of judicial or arbitral disputes concerning the franchising network defined in the last three years (i.e., the franchisor shall provide at least the following information: the parties involved; the judicial or arbitral authority; the claims; the decision or award). The franchisor may limit such information to that relating to the activities carried out in Italy. An exception is expressly provided for the information which should not be disclosed due to objective and specific reasons of confidentiality (e.g., the franchisor's operating manuals or other information subject to confidentiality undertakings towards third parties), provided that this exclusion be mentioned and justified in the agreement. In addition, as anticipated under Answer No. 10 above, foreign franchisors who wish to enter the Italian market and have never operated their franchise business in Italy before are subject to additional pre-contractual disclosure of information requirement. Indeed, according to Ministerial Decree No. 204/2005, they shall also provide: - a numerical list of the franchisees currently operating in the network, as well as a list of outlets directly run, country by country, and, if requested by the prospective franchisee, the details and location of at least 20 franchisees currently operating; - details of the variation, year by year and country by country, in the number of franchisees, including their location, in the last three years; and

Region: Europe		
Country: Italy		
Author: Beatrice Bigonzi – Partner, Head of Commercial and IP, Eversheds Sutherland Associazione Professionale Verifier: Debora Zeno - IP & Brand Protection Associate Manager Bulgari S.p.A.		
#	Question	Answer
		- a description of judicial or arbitral disputes concerning the franchising network defined in the last three years.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Yes. The pre-contractual disclosure obligations also apply in relation to contracts to be stipulated with sub-franchisees. The Franchise law does not expressly identify who must fulfil pre-sale disclosure obligations in this case. However, it is generally understood that who grants the right to operate as franchisee is liable for providing such information. Therefore, in case a master franchisee/sub-franchisor is granted with the right to develop the franchising system in a territory and, consequently, to enter into and execute sub-franchise agreements on behalf of the franchisor, such master franchisee/sub-franchisor is (and shall be made, in the agreement between the principal franchisor and master franchisee/sub-franchisor) responsible for providing the prospective franchisees with all due pre-contractual documentation and information. The principal franchisor, however, will remain responsible for providing on its turn the master franchisee/sub-franchisor with all the necessary information in its hands, and remains liable for the completeness and correctness of such information.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	The Franchise Law does not require the use of a prescribed format for the disclosure, provided that all the required information and documentation is provided in a complete, clear and comprehensible manner. The Franchise Law does not provide for any specific obligation to update the disclosed information, nor for any continuing disclosure obligation. In this respect, it is worth recalling that, according to Article 1375 of the Italian Civil Code, the parties are bound by a general duty of good faith in the performance of the agreements which would suggest informing the franchisee of material events or new information that might directly affect or impact the franchise system.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	There are no express provisions of the Franchise Law dealing with this aspect. The general principle of good faith in the performance of the agreement shall apply, in case the franchisee is required to pay money or a

Region: Europe		
Country: Italy		
Author: Beatrice Bigonzi – Partner, Head of Commercial and IP, Eversheds Sutherland Associazione Professionale Verifier: Debora Zeno - IP & Brand Protection Associate Manager Bulgari S.p.A.		
#	Question	Answer
		marketing fund or other cooperative funds (and it should therefore be expected that such funds are actually used for marketing campaigns benefitting the entire chain of franchisees).
21.	Is there a prescribed dispute resolution procedure?	Under Italian law, disputes arising out of or in connection with franchise agreements may be resolved either before ordinary jurisdiction courts or by arbitration. However, a mandatory attempt at mediation, before bringing the case before the Italian courts, is required. The mediation procedure is a condition for the admissibility of the claim before the Italian Courts. Failure to comply with this out-of-court phase may therefore be objected to by the counterparty or raised ex officio by the Court.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	No. However, according to the Franchise Law, if the contract is entered into for a fixed term, the franchisor must guarantee the franchisee a minimum duration sufficient for amortisation of the investment and in any case not less than three years.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	There are no general restrictions on foreign investment in or ownership or control of franchise business in Italy. However, foreign investments in certain sectors qualified as "strategic" (e.g., energy, transport, and communication networks) are subject to the Italian "Golden power" legislation (i.e., Law Decree No 21/2012, then converted into law by Law no 56/2012, as subsequently amended and implemented). Transactions falling within the scope of application of the Golden Power legislation must be notified in advance to the Italian Presidency of the Council of Ministers which has, among the others, the powers (a) to condition the transaction or resolution on certain investors' undertakings or (b) to veto the transaction.
24.	What forms of business entity are typically used by franchisors?	Generally, franchisors operate in Italy as limited liability companies, whose corporate capital is represented (a) by shares ("Società per azioni" or "S.p.A.") or (b) by quotas ("Società a responsabilità limitata" or "S.r.l."). S.p.A.s are recommended for larger businesses wishing to attract investments and expand their operations. However, they require a higher minimum share capital investment (i.e., €50.000,00) and imply more complex regulatory and administrative requirements and procedures.

Region: Europe		
Country: Italy		
Author: Beatrice Bigonzi – Partner, Head of Commercial and IP, Eversheds Sutherland Associazione Professionale Verifier: Debora Zeno - IP & Brand Protection Associate Manager Bulgari S.p.A.		
#	Question	Answer
		S.r.l.s is instead the most common form of business entity for small and medium businesses in Italy since it has a flexible structure and requires a lower minimum share capital initial investment (€10.000,00 for “ordinary” S.r.l. and between €1,00 and €9.999,00 for a “simplified” S.r.l.). The choice of the form of a business entity to run a franchise system in Italy should be made on a case-by-case basis following an overall assessment and evaluation of several factors, including those related to tax matters.
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Yes. Under Italian law a group of aggrieved franchisees is entitled to bring a class action pursuant to Book 4 (Special proceedings), Title VIII-bis of the Italian Code of Civil Procedure and Law No. 31/2019, however, so far, such kind of actions are not very commonly used, in Italy. Aggrieved franchisees generally prefer to lodge a complaint with the Italian Antitrust Authority, raising a claim for abuse of economic dependency.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	No. Under Italian law, the franchisee is not entitled to the renewal or extension of the franchise agreement, unless it has been specifically agreed by the parties in the agreement. In this respect, according to Article 3(3)(g) of the Franchise Law, the renewal conditions shall be expressly provided for in the agreement. The franchisee would not be entitled to damages if a renewal or extension of its franchise agreement is refused by the franchisor in compliance with the agreement terms, provided that the refusal is not contrary to good faith and/or the franchise could not have a legitimate expectation on the agreement renewal due to a behaviour of the franchisor (for example if the franchisor asked the franchisee for substantial investments shortly prior to the expiration of the agreement, which could not be amortised unless the contract was actually renewed).
27.	Are there penalties for contravening the franchising laws?	No. General contractual remedies apply. In this regard, please also consider that, according to Article 8 of the Franchise Law, if the franchisor provides the prospective franchisee with false information, the franchisee may ask for the annulment of the agreement and the compensation for damages, if proven.

Region: Europe		
Country: Italy		
Author: Beatrice Bigonzi – Partner, Head of Commercial and IP, Eversheds Sutherland Associazione Professionale Verifier: Debora Zeno - IP & Brand Protection Associate Manager Bulgari S.p.A.		
#	Question	Answer
28.	Are there any required provisions for a franchise agreement to be valid?	Yes. Franchise agreements must: • be in writing; • have a duration which is sufficient to allow the amortisation of the investment made by the franchisee and, in any event, not less than 3 years; and • indicate: (i) the amount of investments and entry fees, if any, to be incurred by the franchisee prior to the start of the business; (ii) the method of calculation and payment of the royalties, as well as the indication of the minimum revenue to be realized by the franchisee; (iii) the scope of territorial exclusivity, if any, both in relation to other franchisees and in relation to channels and sales units directly operated by the franchisor; (iv) the specific indication of the know-how provided by the franchisor to the franchisee; (v) the terms, if any, for recognizing the franchisee's contribution to the know-how; (vi) the characteristics of the services offered by the franchisor in terms of technical and commercial assistance, design, set-up and training; (vii) the conditions of renewal, termination or transfer of the agreement.
29.	What is the minimum duration of a franchise term?	According to Article 3 of the Franchise Law, the minimum duration of franchise agreements must be sufficient to allow the amortisation of the investment made by the franchisee and, in any event, not less than 3 years.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	Yes. As indicated under Answer No. 29, according to Article 3 of the Franchise Law, the minimum duration of franchise agreements must be sufficient to allow the amortisation of the investment made by the franchisee and, in any event, not less than 3 years. Please, however, note that this provision does not prevent the franchisor from terminating the franchise agreement in case of franchisee's default or non-performance of its obligations.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have	Both the franchisor and franchisee are always entitled to terminate the franchise agreement in case of the other party's default or non-performance of its obligations.

Region: Europe		
Country: Italy		
Author: Beatrice Bigonzi – Partner, Head of Commercial and IP, Eversheds Sutherland Associazione Professionale Verifier: Debora Zeno - IP & Brand Protection Associate Manager Bulgari S.p.A.		
#	Question	Answer
	existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	The parties would also be entitled to early terminate for mutual consent or for convenience in case this right is specifically agreed between them and stipulated in a contractual provision, provided that the minimum duration requirement set forth by Article 3 of the Franchise Law is complied with. Apart from the above requirement for a minimum initial duration, the Franchise Law does not specifically address the need of a minimum notice period to terminate a business relationship that might have existed for a number of years, which would apply regardless of the notice period set out in the agreement. However, according to the general principle of Italian law of performance of the agreements in good faith, and to avoid claims of abuse of economic dependence, it would be appropriate to always grant a prior notice, which might be considered reasonable under all the specific circumstances of the case (i.e. the amortization of the investments made by the other party, the reliance ingenerated on the other party on the continuation of the relationship, etc.).
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	According to Article 8 of the Franchise Law, if the franchisor provides the aspiring franchisee with false information, the franchisee may ask for the annulment of the agreement and the compensation for damages, if proven. Although the Franchise Law refers to “false information” only, it should be interpreted as also applying to an insufficient disclosure (i.e., the franchisee may claim that it would have not entered into the agreement if fully and correctly informed by the franchisor).
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	In addition to the remedies outlined in Answer No. 32, all standard contractual remedies foreseen under Italian law (i.e., the Italian Civil Code) are available to franchisees. It may also be possible for the franchisee to rescind the franchise agreement where there is a case of misrepresentation, duress and undue influence

Region: Europe		
Country: Poland		
Author: Sławomir Uss and Krzysztof Misarko, Sołtysiński Kawecki & Szlęzak		
Verifier: Agnieszka Skowronek, General Counsel, Eurocash SA		
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	No. Although franchising is very popular in Poland, it is not separately regulated in Poland. In 2023, the government prepared the first-ever bill to regulate franchise in Poland, including the legal definition of a franchise agreement and the introduction of pre-contractual obligations. However, after the change of government at the end of 2023, further work on the bill was apparently suspended. It is unclear whether this project will be continued by the current administration.
2.	Is there a regulator of franchising conduct?	There is no public authority in Poland that deals specifically with franchising. The conduct of franchisors and franchisees may sometimes fall under the jurisdiction of public bodies dealing with general matters, such as antitrust authorities.
3.	Is there a voluntary code or other form of self-governance?	The Polish Franchise Organization has developed and published a "Code of Good Practice for the Franchise Market": Code of Good Practice for Polish Franchise Market – PFO The aim of this code is to set forth good practices, principles, and standards to be followed by Franchisees and Franchisors as part of their cooperation under the franchise agreement, prior to the conclusion of the franchise agreement, and immediately after its termination. The Code regulates issues relating in particular to: 1. establishing cooperation between the Franchisor and a prospective Franchisee, 2. terms of mutual cooperation between the Franchisee and the Franchisor, 3. terms of acceding to the Code and its potential termination, 4. terms of amending the Code, 5. resolution of disputes over the application of the Code.

Region: Europe		
Country: Poland		
Author: Sławomir Uss and Krzysztof Misarko, Sołtysiński Kawecki & Szlęzak		
Verifier: Agnieszka Skowronek, General Counsel, Eurocash SA		
#	Question	Answer
		As stated in the Code, adherence to and compliance with the Code is voluntary.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	Yes, there is a Polish Franchise Organization, which is the only nationwide organization of Polish franchisors. POF – Polska Organizacja Franczyzodawców Its members are obliged, among other things, to comply with provisions of the Franchising Code of Ethics prepared by the European Franchise Federation. In addition to the Polish Franchise Organization, there is also the Association of Franchisees and Concessionaires, which was established recently (in 2020) with the aim of supporting franchisees in their relations with franchisors and lobbying for the legal regulation of franchising in Poland.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	As mentioned in item 1 above, there are no franchise-specific regulations in Poland, including no legal definition of a franchise agreement. Franchise agreements are concluded on the basis of the general rule of freedom of contracts. However, Polish franchise agreements usually follow the standards or forms used in other jurisdictions, so despite the lack of specific regulations, franchise agreements in Poland do not differ much from similar agreements in other countries. In order for a trademark licence to become a franchise agreement some additional, franchise-specific contractual arrangements would need to be made by the parties in such a contract. Such specific arrangements may include, among others, providing the franchisee with the know-how, and other information necessary to operate the franchise business or franchisee's obligations to make efforts to operate the franchise business according to franchisor's business model and methods.
6.	Does your jurisdiction have the concept of an “accidental franchise”?	No. As we understand it, this concept is strictly linked to jurisdictions that have a statutory, legal definition of a franchise agreement.

Region: Europe		
Country: Poland		
Author: Sławomir Uss and Krzysztof Misarko, Sołtysiński Kawecki & Szlęzak		
Verifier: Agnieszka Skowronek, General Counsel, Eurocash SA		
#	Question	Answer
		Poland does not have such definition, so the mentioned concept is currently not existing in Poland.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	As there is no specific franchise law in Poland, there are no exceptions.
8.	Are there any types of agreements automatically deemed a franchise agreement?	No, as there are no franchise-specific regulations.
9.	Must the franchise agreement be governed by local law?	No, the parties may choose a different law to govern their franchise agreement. However, some Polish statutory laws may override the choice of law in relation to certain terms of the agreement, depending on the situation and the nature of the specific provision.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	In the absence of a franchise-specific law, foreign franchisors may only be subject to the general law applicable to all foreign entrepreneurs.
11.	Must the franchise agreement be in the local language?	No, the parties are free to conclude the contract in any language they consider appropriate.
12.	Are there any franchising laws which are bespoke to particular industries?	No, see item 1 above.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	No, see item 1 above. General 'trademark' definitions apply here, which are set forth in the Polish industrial property law of 30 June 2000 (for national trademarks) and in the EU Regulation 2017/1001 of 14 June 2017 (for EU trademarks). While there is no legal requirement of having a trademark registration in order to enter into a franchise agreement (see item 1 above), such trademark registration is a common practice in franchising relationships in Poland.
14.	Are other types of IP licences captured by the franchising laws?	See item 1 above. One of the key elements of a franchising relationship is a license being granted by franchisor to use by franchisee certain intellectual property rights, such as trademarks, <i>know-how</i> or copyrights. Consequently, these types of IP rights are in practice being licensed in franchising agreements.

Region: Europe		
Country: Poland		
Author: Sławomir Uss and Krzysztof Misarko, Sołtysiński Kawecki & Szlęzak		
Verifier: Agnieszka Skowronek, General Counsel, Eurocash SA		
#	Question	Answer
15.	Are there any registration requirements relating to the franchise system?	There are no franchise-specific requirements in this respect, apart from the general rules applicable to all entrepreneurs.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	Yes, Article 354 §1 of the Polish Civil Code requires a debtor to fulfil its obligation in accordance with the "principles of social coexistence", which include the rule that both parties should deal with each other in good faith. The second paragraph imposes a similar obligation on the creditor. At the same time, Article 5 of the Polish Civil Code provides that neither party may exercise its right in contradiction with, inter alia, the "principles of community coexistence" (including the requirement of good faith). Such actions would not be treated as the exercise of the right and would not be protected by the courts. In addition to the above, there are many other statutory, safeguard provisions in the Polish Civil Code that protect against acting in bad faith. In some extreme cases, a contract may even be declared void if its content or purpose is contrary to the rules of good faith.
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	No, but such a disclosure regime has been proposed in the 2023 Bill, the status of which is currently unknown - see item 1 above.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	See item 17 above.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	See item 17 above.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	There is no legal requirement for the franchisee to pay money into a marketing fund or other cooperative fund. The parties are free to agree such payments under the freedom of contracts rule. Whether this would be a valid clause and what obligations would apply depends on the particular contract and its wording.
21.	Is there a prescribed dispute resolution procedure?	See item 1 above.

Region: Europe		
Country: Poland		
Author: Sławomir Uss and Krzysztof Misarko, Sołtysiński Kawecki & Szlęzak		
Verifier: Agnieszka Skowronek, General Counsel, Eurocash SA		
#	Question	Answer
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	There is no overriding statutory law in this regard, so it is up to the parties to decide on the cooling-off period, if any. In practice, however, it is common for the parties to agree a cooling-off period of at least six months during which neither party (or at least the franchisee) cannot terminate the contract, unless there is a breach or other special event which allows the innocent party to terminate with immediate effect.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	In the absence of a franchise-specific law, foreign franchisors may only be subject to the general law applicable to all foreign entrepreneurs.
24.	What forms of business entity are typically used by franchisors?	The most common business form is a limited liability company. This company is a separate legal entity, which is managed by the management board (the equivalent to board of directors in limited liability companies in some other jurisdiction). The company issues shares to the shareholders, who, besides the payment for shares, are not liable for company's debts. The shareholder gather during shareholder meetings, which pas adopt many different resolutions, including those appoint and removing the board members. Generally, Polish limited liability company is similar in nature to limited liability companies in other jurisdictions.
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Yes, the Polish Class Action Law of 17 December 2009 allows for class actions to be brought, inter alia, in cases of tort or breach of contract, which, depending on the situation, may form the basis of a claim by aggrieved franchisees against the franchisor.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend?	See item 1 above.

Region: Europe		
Country: Poland		
Author: Sławomir Uss and Krzysztof Misarko, Sołtysiński Kawecki & Szlęzak		
Verifier: Agnieszka Skowronek, General Counsel, Eurocash SA		
#	Question	Answer
	If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	
27.	Are there penalties for contravening the franchising laws?	See item 1 above.
28.	Are there any required provisions for a franchise agreement to be valid?	See item 1 above. However, under Polish law some contractual arrangements between the parties which form a franchising relationship may require a special form in order to be valid. For example, a license agreement for the use of a registered national trademark requires a written form to be valid.
29.	What is the minimum duration of a franchise term?	See item 1 above.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	There are no franchise-specific rules on this matter. The termination might be declared void or ineffective based on general Civil Code regulations. For example, in an extreme situation, the termination may be considered ineffective if it constitutes an abuse of rights in a particular situation.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	There are no franchise-specific provisions in Poland. However, the parties usually provide for the possibility of early termination in case of breach of contract or other special events. Early termination of a franchise agreement concluded for a definite period without a specific cause set out in a contract would likely be declared ineffective. There are also no general rules applicable to any business relationship that would generally extend the notice period if the business has been in operation for a certain period of time.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	See item 17 above.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	There are no franchise-specific provisions in Poland. Franchisees can only rely on the general provisions of the Polish Civil Code, which allow to rescind from the contract and claim damages only in certain situations. However, in most cases such remedy would not be available to franchisees, due to the nature of franchise agreement. The “rescission” is

Region: Europe		
Country: Poland		
Author: Sławomir Uss and Krzysztof Misarko, Sołtysiński Kawecki & Szlęzak		
Verifier: Agnieszka Skowronek, General Counsel, Eurocash SA		
#	Question	Answer
		aiming to put the parties in place as if the contract had never been concluded. In typical situation this would not be possible to achieve, as the franchise agreement is a continuous, long-term obligation that may last for many years. Thus, the franchisees generally would have to rely on other contractual remedies.

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	The UK has a common law system with considerable freedom for the parties to contractually agree terms. There are no specific franchise laws in the UK although there are a number of other laws that do impact on the relationship such as the Unfair Contract Terms Act 1977, the Trading Schemes Act 1996, competition law, modern slavery laws, anti-bribery, anti-fraud and anti-tax evasion laws and data protection laws. Certain exemptions provided by the Trading Schemes (Exclusion) Regulations 1997 make franchising an exemption to the rules governing pyramid selling schemes where either: - the franchise operates as a single-tier trading scheme (that is, the franchisor and a single level of franchisees below it); or - the franchisor and all franchisees remain registered for VAT at all times. The UK franchise sector is self-regulated with the British Franchise Association (“BFA”) – see the response to Q 3 below.
2.	Is there a regulator of franchising conduct?	There is no legally mandated regulator of franchising conduct in the UK, however, see below answer to question 3.
3.	Is there a voluntary code or other form of self-governance?	The UK franchise sector is self-regulated with the BFA acting as the guardian of standards of good practice that make up ethical franchising. The BFA has adopted the European Franchise Federation’s Code of Ethics and extended this for the UK in its own code of ethics. Franchisors wishing to follow best practice should follow the BFA’s guide to the code of ethics (“Guide”) which includes a copy of the code (“Code”) in the appendix as well as explanatory content. The Code is not legally binding as such and is

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
		not intended to be incorporated into the franchise agreement but members of the BFA are required to abide by it. Whilst the BFA does not have any authority over those who are not members, the BFA sets certain standards that are followed by many in the industry and that prospective franchisees may expect when deciding whether to become part of a particular franchise. Membership of the BFA could be considered as a kite mark of quality. The BFA's Code has been upheld as a moral code by the English Courts in franchise disputes and can be an influential factor in disputes where the Franchisor was or is a current member of the BFA.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	Yes, the national franchise association in the UK is the BFA. Both franchisors and franchisees can apply for membership although the BFA was originally established as a trade association for franchisors. Currently the majority of members are franchisors and suppliers rather than franchisees. Membership of the association is voluntary. Members should comply with the Code which includes certain obligations upon franchisors.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	There is no official definition of the term franchise agreement in the English common law system. The BFA's Code of Ethics defines franchising as “a system of marketing goods and/or services and/or technology, which is based upon a close and ongoing collaboration between legally and financially separate and independent undertakings, the Franchisor and its individual Franchisees, whereby the Franchisor grants its individual Franchisee the right, and imposes the obligation, to conduct a business in accordance with the Franchisor's concept”. A trademark licence alone would not constitute a franchise agreement. A trademark licence would only be considered to be a franchise agreement where it was not simply a trademark licence but also contained the various provisions expected in a franchise agreement relating to the operation of a

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
		business by the franchisee under the strict controls normally imposed in the agreement by the franchisor etc.
6.	Does your jurisdiction have the concept of an “accidental franchise”?	No there is no concept of an ‘accidental franchise’ in the UK.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	Not applicable as no franchise specific laws
8.	Are there any types of agreements automatically deemed a franchise agreement?	No.
9.	Must the franchise agreement be governed by local law?	No. The parties can choose which law governs the franchise agreement, although some English laws will apply as a matter of mandatory public policy despite the governing law in certain circumstances (e.g. consumer protection laws in some cases, the Late Payment of Commercial Debts (Interest) Act 1998, employment legislation etc.). English law should also be considered in respect of areas such as guarantees to ensure these are enforceable.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No although there are separate categories of membership available with the BFA for international franchisors. There are no general restrictions on the foreign ownership of assets or companies. However overseas entities buying property in the UK must register the beneficial owners on the register of overseas entities (ROE) created under the Economic Crime (Transparency and Enforcement) Act 2022. Failure to register could be a criminal offence.
11.	Must the franchise agreement be in the local language?	There is no official requirement for a franchise agreement to be in the local language under law. However, in practice it would be expected for the franchise agreement to be in English.

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
12.	Are there any franchising laws which are bespoke to particular industries?	No as there are no specific franchise laws however there can be industry specific laws for regulated sectors such as healthcare, domiciliary care, car dealerships and financial services.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	There are no franchise specific laws in this jurisdiction. It is not a mandatory requirement for a franchisor to have a trade mark registration in order to enter into a franchise agreement. It should be noted that the BFA's Code of Ethics requires franchisors to "be the owner, or have the legal rights to the use of its network's trade name, trade mark or other distinguishing identification". Trade marks and design rights for the UK can be registered through the UK Intellectual Property office (UK IPO). Patents for the UK can be issued by the UK IPO and the European Patent Office. Copyright works are protected on creation but cannot be registered. If the franchisor has marks registered under the Madrid protocol it may also be able to add the UK to its international trade mark registration through application to the World Intellectual Property Organisation. It may also be possible to add the UK to any international trademark registration that the franchisor may have
14.	Are other types of IP licences captured by the franchising laws?	There are no specific franchising laws in this jurisdiction. It would be expected under UK standard practice for the franchisor to own or be licensed to use the applicable intellectual property rights in all rights granted and proprietary materials provided to the franchisee under the franchise agreement.
15.	Are there any registration requirements relating to the franchise system?	There are no mandatory registrations in the UK relating to the franchise system.

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	There is no overriding statutory requirement for good faith and as a general rule good faith is not an implied term of a commercial contract however in recent years the English Courts have been willing to imply a limited duty of good faith into long term 'relational agreements' in the absence of any express term to the contrary. Franchise agreements can be classified as a relational agreement and therefore there is a risk that the English Courts may be prepared (in certain circumstances) to imply a term of good faith into the franchise agreement. This continues to be an evolving area of law. Members of the BFA are required to follow the Code. The Code requires both the franchisor and the franchisee to "exercise good faith and fairness in their dealings with each other" as well as to "resolve complaints, grievances and disputes with good faith".
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	There is no mandatory disclosure regime at law. The Code states that "In order to allow prospective Individual Franchisees to enter into any binding document with full knowledge, they shall be given a copy of the present Code of Ethics, or a public access to it, as well as full and accurate written disclosure of all information material to the franchise relationship, within a reasonable time prior to the execution of these binding documents". The laws of misrepresentation (including the Misrepresentation Act 1967) will apply to any pre-contractual disclosures made by the franchisor to franchisees and therefore the veracity of disclosures must be checked and substantiated and appropriate disclaimers included to mitigate the risk.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	There is no mandatory disclosure regime at law.

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	There is no mandatory disclosure regime at law.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	The BFA's position historically (although this is not explicitly stated in its current code) is that the marketing fund should be held in a separate bank account and the franchisor should provide an annual statement of the income and expenditure of such a central marketing account.
21.	Is there a prescribed dispute resolution procedure?	There is no prescribed dispute resolution procedure and the parties are free to choose their own form of dispute resolution. The BFA has its own mediation scheme and arbitration scheme. The Code states that parties "shall resolve complaints, grievances and disputes with good faith and goodwill through fair and reasonable direct communication and negotiation". Where the parties fail to resolve a dispute through direct negotiation parties should "seek in good faith mediation before litigation and/or arbitration organized or approved by an EFF National Association Member".
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	No. However, it is fairly common for UK franchise agreements to include termination rights for the franchisor where the franchisee or principal fails to meet the required standard at the initial training and, where given a further opportunity to attempt this, still cannot pass the training. In that situation, it would be expected for the initial fee to be returned to the franchisee, less administrative and training costs of the franchisor incurred up to that point.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-	No.

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
	nationals in respect of the ownership or control of a franchise business in the jurisdiction).	
24.	What forms of business entity are typically used by franchisors?	Limited liability companies
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Group litigation is historically quite limited in the UK compared to some other jurisdictions (such as the US) but have increased in recent years, particularly in the area of competition law. Most of the options are based on an “opt-in” procedure where each claimant has to proactively take action to join the claim, rather than a massive opt-out claim brought by one claimant on behalf of an entire class. An opt- out regime has been introduced for certain infringements of competition law but such class actions still remain very limited in the UK.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	There are no statutory or legal rights for a franchisee to be entitled to the automatic renewal of a franchise agreement. It is UK standard franchise practice for franchise agreements to include renewal rights as the franchisee should be able to recoup its investment in the franchise. Normally renewal would be contingent on the franchisee meeting certain conditions. Common law may require the franchisor to exercise any discretion to terminate reasonably and give the franchisee an opportunity to rectify certain conditions not met, where reasonable. Where a franchisor is entitled contractually to refuse renewal the franchisee would not be entitled to compensation or damages as a result (provided the relationship is a genuine franchise relationship and not a commercial agency).
27.	Are there penalties for contravening the franchising laws?	There are no mandatory franchising laws.
28.	Are there any required provisions for a franchise agreement to be valid?	No mandatory requirements as there are no franchise specific laws so the usual laws regarding the validity of a commercial contract would apply.

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
		The Code sets out what it recommends as the minimum terms of a franchise agreement including: • “The rights granted to the Franchisor • The rights granted to the Individual Franchisee • The Franchisor’s intellectual property rights on the brands, signs, etc. which should be established for a term as long as the term of the franchise agreement • The goods and/or services to be provided to the Individual Franchisee • The obligations of the Franchisor • The obligations of the Individual Franchisee”
29.	What is the minimum duration of a franchise term?	There is no minimum duration of a franchise term under law or the Code, although anything less than 5 years would normally be considered as quite short compared to standard UK franchise practice and it would be expected that the term would be long enough for franchisees to recoup their investment.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	As a general rule no as the franchise agreement should contain the contractual termination rights of the parties and the Courts will uphold the parties express agreement here (unless contrary to public policy). In addition to any contractual right a party has the right under common law (case law) to terminate the agreement if the other party has committed a repudiatory breach – this is a breach that: • goes to the root of the contract; • frustrates the commercial purpose of the venture;

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
		deprives the innocent (or aggrieved) party of the whole or substantially the whole of the benefit which it was the intention of the parties as expressed in the contract that it should obtain. Where a party seeks to terminate a franchise agreement without a contractual right to do so or without validly relying on repudiatory breach, the aggrieved party may be able to obtain an injunction to prevent this.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	The franchisor and franchisee can mutually agree to terminate the franchise agreement prior to the expiry of the agreement. No, the Courts will uphold any contractually agreed notice period for termination. In the absence of a contractually agreed notice period then a reasonable notice period must be given and the time period here will depend on a number of factors
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	There are no mandatory disclosure obligations.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	In the absence of any default by the franchisor, no. Where the franchisor is in breach of the franchise agreement resulting in a loss to the franchisee, the franchisee would be entitled to claim damages for the loss suffered the success of which will depend on the relevant factual and legal circumstances.

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
		It may also be possible for the franchisee to rescind the franchise agreement where there is a case of misrepresentation, duress and undue influence.

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	The UK has a common law system with considerable freedom for the parties to contractually agree terms. There are no specific franchise laws in the UK although there are a number of other laws that do impact on the relationship such as the Unfair Contract Terms Act 1977, the Trading Schemes Act 1996, competition law, modern slavery laws, anti-bribery, anti-fraud and anti-tax evasion laws and data protection laws. Certain exemptions provided by the Trading Schemes (Exclusion) Regulations 1997 make franchising an exemption to the rules governing pyramid selling schemes where either: - the franchise operates as a single-tier trading scheme (that is, the franchisor and a single level of franchisees below it); or - the franchisor and all franchisees remain registered for VAT at all times. The UK franchise sector is self-regulated with the British Franchise Association (“BFA”) – see the response to Q 3 below.
2.	Is there a regulator of franchising conduct?	There is no legally mandated regulator of franchising conduct in the UK, however, see below answer to question 3.
3.	Is there a voluntary code or other form of self-governance?	The UK franchise sector is self-regulated with the BFA acting as the guardian of standards of good practice that make up ethical franchising. The BFA has adopted the European Franchise Federation’s Code of Ethics and extended this for the UK in its own code of ethics. Franchisors wishing to follow best practice should follow the BFA’s guide to the code of ethics (“Guide”) which includes a copy of the code (“Code”) in the appendix as well as explanatory content. The Code is not legally binding as such and is not intended to be incorporated into the franchise agreement but members of the BFA are required to abide by it. Whilst the BFA does not have any authority over those who are not members, the BFA sets certain standards that are followed by many in the industry and that prospective franchisees may expect when deciding whether to become part of a particular franchise. Membership of the BFA could be considered as a kite mark of quality. The BFA’s Code has been upheld as a moral code by the English Courts in franchise disputes and can be an influential factor in disputes where the Franchisor was or is a current member of the BFA.

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	Yes, the national franchise association in the UK is the BFA. Both franchisors and franchisees can apply for membership although the BFA was originally established as a trade association for franchisors. Currently the majority of members are franchisors and suppliers rather than franchisees. Membership of the association is voluntary. Members should comply with the Code which includes certain obligations upon franchisors.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	There is no official definition of the term franchise agreement in the English common law system. The BFA's Code of Ethics defines franchising as "a system of marketing goods and/or services and/or technology, which is based upon a close and ongoing collaboration between legally and financially separate and independent undertakings, the Franchisor and its individual Franchisees, whereby the Franchisor grants its individual Franchisee the right, and imposes the obligation, to conduct a business in accordance with the Franchisor's concept". A trademark licence alone would not constitute a franchise agreement. A trademark licence would only be considered to be a franchise agreement where it was not simply a trademark licence but also contained the various provisions expected in a franchise agreement relating to the operation of a business by the franchisee under the strict controls normally imposed in the agreement by the franchisor etc.
6.	Does your jurisdiction have the concept of an "accidental franchise"?	No there is no concept of an 'accidental franchise' in the UK.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	Not applicable as no franchise specific laws
8.	Are there any types of agreements automatically deemed a franchise agreement?	No.
9.	Must the franchise agreement be governed by local law?	No. The parties can choose which law governs the franchise agreement, although some English laws will apply as a matter of mandatory public policy despite the governing law in certain circumstances (e.g. consumer protection laws in some cases, the Late Payment of Commercial Debts (Interest) Act 1998, employment legislation etc.).

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
		English law should also be considered in respect of areas such as guarantees to ensure these are enforceable.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No although there are separate categories of membership available with the BFA for international franchisors. There are no general restrictions on the foreign ownership of assets or companies. However overseas entities buying property in the UK must register the beneficial owners on the register of overseas entities (ROE) created under the Economic Crime (Transparency and Enforcement) Act 2022. Failure to register could be a criminal offence.
11.	Must the franchise agreement be in the local language?	There is no official requirement for a franchise agreement to be in the local language under law. However, in practice it would be expected for the franchise agreement to be in English.
12.	Are there any franchising laws which are bespoke to particular industries?	No as there are no specific franchise laws however there can be industry specific laws for regulated sectors such as healthcare, domiciliary care, car dealerships and financial services.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	There are no franchise specific laws in this jurisdiction. It is not a mandatory requirement for a franchisor to have a trade mark registration in order to enter into a franchise agreement. It should be noted that the BFA's Code of Ethics requires franchisors to "be the owner, or have the legal rights to the use of its network's trade name, trade mark or other distinguishing identification". Trade marks and design rights for the UK can be registered through the UK Intellectual Property office (UK IPO). Patents for the UK can be issued by the UK IPO and the European Patent Office. Copyright works are protected on creation but cannot be registered. If the franchisor has marks registered under the Madrid protocol it may also be able to add the UK to its international trade mark registration through application to the World Intellectual Property Organisation. It may also be possible to add the UK to any international trademark registration that the franchisor may have
14.	Are other types of IP licences captured by the franchising laws?	There are no specific franchising laws in this jurisdiction. It would be expected under UK standard practice for the franchisor to own or be licensed to use the applicable intellectual property rights in all rights granted and proprietary materials provided to the franchisee under the franchise agreement.

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
15.	Are there any registration requirements relating to the franchise system?	There are no mandatory registrations in the UK relating to the franchise system.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	There is no overriding statutory requirement for good faith and as a general rule good faith is not an implied term of a commercial contract however in recent years the English Courts have been willing to imply a limited duty of good faith into long term 'relational agreements' in the absence of any express term to the contrary. Franchise agreements can be classified as a relational agreement and therefore there is a risk that the English Courts may be prepared (in certain circumstances) to imply a term of good faith into the franchise agreement. This continues to be an evolving area of law. Members of the BFA are required to follow the Code. The Code requires both the franchisor and the franchisee to "exercise good faith and fairness in their dealings with each other" as well as to "resolve complaints, grievances and disputes with good faith".
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	There is no mandatory disclosure regime at law. The Code states that "In order to allow prospective Individual Franchisees to enter into any binding document with full knowledge, they shall be given a copy of the present Code of Ethics, or a public access to it, as well as full and accurate written disclosure of all information material to the franchise relationship, within a reasonable time prior to the execution of these binding documents". The laws of misrepresentation (including the Misrepresentation Act 1967) will apply to any pre-contractual disclosures made by the franchisor to franchisees and therefore the veracity of disclosures must be checked and substantiated and appropriate disclaimers included to mitigate the risk.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	There is no mandatory disclosure regime at law.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	There is no mandatory disclosure regime at law.

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	The BFA's position historically (although this is not explicitly stated in its current code) is that the marketing fund should be held in a separate bank account and the franchisor should provide an annual statement of the income and expenditure of such a central marketing account.
21.	Is there a prescribed dispute resolution procedure?	There is no prescribed dispute resolution procedure and the parties are free to choose their own form of dispute resolution. The BFA has its own mediation scheme and arbitration scheme. The Code states that parties "shall resolve complaints, grievances and disputes with good faith and goodwill through fair and reasonable direct communication and negotiation". Where the parties fail to resolve a dispute through direct negotiation parties should "seek in good faith mediation before litigation and/or arbitration organized or approved by an EFF National Association Member".
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	No. However, it is fairly common for UK franchise agreements to include termination rights for the franchisor where the franchisee or principal fails to meet the required standard at the initial training and, where given a further opportunity to attempt this, still cannot pass the training. In that situation, it would be expected for the initial fee to be returned to the franchisee, less administrative and training costs of the franchisor incurred up to that point.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	No.
24.	What forms of business entity are typically used by franchisors?	Limited liability companies
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Group litigation is historically quite limited in the UK compared to some other jurisdictions (such as the US) but have increased in recent years, particularly in the area of competition law. Most of the options are based on an "opt-in" procedure where each claimant has to proactively take action to join the claim, rather than a massive opt-out claim brought by one claimant on behalf of an entire class. An opt- out

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
		regime has been introduced for certain infringements of competition law but such class actions still remain very limited in the UK.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	There are no statutory or legal rights for a franchisee to be entitled to the automatic renewal of a franchise agreement. It is UK standard franchise practice for franchise agreements to include renewal rights as the franchisee should be able to recoup its investment in the franchise. Normally renewal would be contingent on the franchisee meeting certain conditions. Common law may require the franchisor to exercise any discretion to terminate reasonably and give the franchisee an opportunity to rectify certain conditions not met, where reasonable. Where a franchisor is entitled contractually to refuse renewal the franchisee would not be entitled to compensation or damages as a result (provided the relationship is a genuine franchise relationship and not a commercial agency).
27.	Are there penalties for contravening the franchising laws?	There are no mandatory franchising laws.
28.	Are there any required provisions for a franchise agreement to be valid?	No mandatory requirements as there are no franchise specific laws so the usual laws regarding the validity of a commercial contract would apply. The Code sets out what it recommends as the minimum terms of a franchise agreement including: • “The rights granted to the Franchisor • The rights granted to the Individual Franchisee • The Franchisor’s intellectual property rights on the brands, signs, etc. which should be established for a term as long as the term of the franchise agreement • The goods and/or services to be provided to the Individual Franchisee • The obligations of the Franchisor • The obligations of the Individual Franchisee”
29.	What is the minimum duration of a franchise term?	There is no minimum duration of a franchise term under law or the Code, although anything less than 5 years would normally be considered as quite short compared to standard UK franchise practice and it would be expected that the term would be long enough for franchisees to recoup their investment.

Region: Europe		
Country: United Kingdom		
Authors: Stevens & Bolton LLP; Nicola Broadhurst		
Verifiers: Fields Fisher; Gordon Drakes		
#	Question	Answer
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	As a general rule no as the franchise agreement should contain the contractual termination rights of the parties and the Courts will uphold the party's express agreement here (unless contrary to public policy). In addition to any contractual right a party has the right under common law (case law) to terminate the agreement if the other party has committed a repudiatory breach – this is a breach that: • goes to the root of the contract; • frustrates the commercial purpose of the venture; • deprives the innocent (or aggrieved) party of the whole or substantially the whole of the benefit which it was the intention of the parties as expressed in the contract that it should obtain. Where a party seeks to terminate a franchise agreement without a contractual right to do so or without validly relying on repudiatory breach, the aggrieved party may be able to obtain an injunction to prevent this.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	The franchisor and franchisee can mutually agree to terminate the franchise agreement prior to the expiry of the agreement. No, the Courts will uphold any contractually agreed notice period for termination. In the absence of a contractually agreed notice period then a reasonable notice period must be given and the time period here will depend on a number of factors
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	There are no mandatory disclosure obligations.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	In the absence of any default by the franchisor, no. Where the franchisor is in breach of the franchise agreement resulting in a loss to the franchisee, the franchisee would be entitled to claim damages for the loss suffered the success of which will depend on the relevant factual and legal circumstances. It may also be possible for the franchisee to rescind the franchise agreement where there is a case of misrepresentation, duress and undue influence

Region:	MIDDLE EAST AND AFRICA	
Country:	Algeria	
Authors:	Sofiane Ourabah (Cabinet OURABAH)	
Verifier:	M'hamed Toufik Bessai (Université d'Alger 1)	
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	To this day, there are neither laws nor legal texts specifically governing franchising in Algeria.
2.	Is there a regulator of franchising conduct?	At the moment, there are neither mechanisms nor systems regulating the behavior of the franchisor and the franchisee There is no specific regulator for franchising, but there is a competition authority, the National Competition Council, which has the mandate to potentially address anti-competitive behaviors arising from franchise networks. On the other hand, the common law judge can handle appeals that may arise from disputes between franchisees and franchisors in the absence of a governing law clause designating a foreign jurisdiction or international arbitration.
3.	Is there a voluntary code or other form of self-governance?	Franchising is not regulated to date, but its practice on the ground is tacitly tolerated
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	A national franchise association cannot exist in the absence of relevant legal texts. Any association created by the will of its members and managed by public authorities can establish in its statutes, among other things, obligations that do not conflict with the rules and principles governing its management. Law No. 12-06 of 18 Safar 1433, corresponding to January 12, 2012, regarding associations defines associations as a grouping of people based on a contractual basis. Article 2 of this law states: 'These people voluntarily pool their knowledge and resources for a non-profit purpose to promote and encourage activities in various fields, including professional ones, [...]' Therefore, in legal terms, both franchisees and franchisors can create such an association. Professional associations already exist in other fields. https://www.vitamedz.com/fr/Algerie/associations-professionnelles-et-des-organisations-patronales-algeriennes-20306-Annuaire-1.html
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	There is no definition of a franchise contract in Algerian law, but like any commercial contract, the franchise contract aims to bind two or more parties (individuals or legal entities) to undertake a specific commercial collaboration. When the object of the trademark license contract includes, if applicable, providing the franchisee with management, commercial, or possibly technical training, the contract may tacitly produce the effects of a service, production, or distribution franchise contract, in the absence of specific legal texts and based on the parties' intentions.

Region:	MIDDLE EAST AND AFRICA	
Country:	Algeria	
Authors:	Sofiane Ourabah (Cabinet OURABAH)	
Verifier:	M'hamed Toufik Bessai (Université d'Alger 1)	
#	Question	Answer
6.	Does your jurisdiction have the concept of an “accidental franchise”?	There is no concept of accidental franchising in Algeria. In my opinion, it is necessary to seek criteria to determine whether an agreement constitutes a 'franchise,' even if the parties did not intend to enter into a franchise contract or used a method to bypass the franchise contract through a trademark license.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	N/A
8.	Are there any types of agreements automatically deemed a franchise agreement?	Contractual relationships, primarily governing commercialization according to rules, directives, management, and control, concerning services and/or specifically products or services of a given brand, could be likened to those that the parties would establish in a franchise contract.
9.	Must the franchise agreement be governed by local law?	When imperative legal rules for the implementation and execution of the franchise contract require it, the parties are obliged to consider the application of national law in the contract. Since franchising is a contract, it is subject to the conflict of laws rules on contracts found in Article 18 of the Civil Code, which upholds the autonomy of the parties' will in this matter. An express choice by the parties for a foreign law is permitted.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	National and foreign franchisors, in their capacity as economic operators, are subject to the same rules without distinction regarding compliance with and application of the Algerian laws and regulations in force.
11.	Must the franchise agreement be in the local language?	The language of the franchise contract is normally the one chosen by the parties; it should not therefore be an obstacle to its execution in this context. However, a translation into Arabic is required when the dispute is submitted, in particular, for review by the competent Algerian jurisdiction.
12.	Are there any franchising laws which are bespoke to particular industries?	Since the franchising system, while tolerated in practice, is not properly regulated, it is practically governed either by: Common law (civil, commercial law, etc.) which generally governs the relationship between the franchisor and the franchisee; or Legal rules in force that are specific to the economic sector concerned with the object and purpose of the franchise.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark	In the absence of texts specifically governing franchising, the mention of 'registered trademark' is governed and regulated by a specific legal text (rights conferred by trademark registration—Ordinance 03-06 on trademarks)

Region:	MIDDLE EAST AND AFRICA	
Country:	Algeria	
Authors:	Sofiane Ourabah (Cabinet OURABAH)	
Verifier:	M'hamed Toufik Bessai (Université d'Alger 1)	
#	Question	Answer
	registration in order to enter into a franchise agreement?	
14.	Are other types of IP licences captured by the franchising laws?	In the absence of any legal rules governing franchising, any form of intellectual property license related to it adheres to the general or specific rules of intellectual property.
15.	Are there any registration requirements relating to the franchise system?	There are no legal rules for the registration of trademarks specifically referring to or relating to franchising. However, since franchising is always based on a trademark license that must be previously registered with the body responsible for industrial property, it can be considered that no franchise exists without the prior registration of the trademark license that will be the subject of the franchise contract.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	Since the franchising system is not regulated by Algerian law, common law (civil law, commercial law, etc.) and commercial practices require the parties—the franchisor and the franchisee—to conduct their contractual relations in good faith. In this regard, Article 107 of the Algerian Civil Code states: 'The contract must be executed in accordance with its content and in good faith.'
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	Legal rules prescribe the obligation to submit the results of pre-contractual or ongoing negotiations for control and/or prior approval to the competent authority or hierarchical structure. The law imposes on the parties the obligations of good faith and confidentiality regarding the information shared during negotiations.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Unable to be directly linked to the franchisor, the sub-franchisee maintains a direct contractual relationship with the franchisee. As the franchisee's partner, the franchisee cannot disclose to the sub-franchisee the useful and necessary information for operating the business, unless the master franchise agreement (franchisor/franchisee) permits it.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	The format of the information to be communicated between the parties in the context of their contractual relationship is determined by their mutual agreement, which sets the conditions regarding time and space, unless the applicable law stipulates specific requirements for such matters.

Region:	MIDDLE EAST AND AFRICA	
Country:	Algeria	
Authors:	Sofiane Ourabah (Cabinet OURABAH)	
Verifier:	M'hamed Toufik Bessai (Université d'Alger 1)	
#	Question	Answer
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	Under common law, the franchisee, as a merchant, will have full discretion to contribute money to a marketing fund or a cooperative fund, depending on their financial availability and situation.
21.	Is there a prescribed dispute resolution procedure?	The resolution of disputes between merchants is governed by the judicial procedures applicable to merchants. the obligations applicable in this case are those established by the fund.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	The parties have the authority to establish, in the commercial contract, such as a franchise agreement, a reflection period for terminating or transferring the contract to another party.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	Under the current legal texts, the market does not allow foreign franchisors to establish themselves in Algeria. The texts governing foreign investments in Algeria do not concern or apply to franchise agreements, which, although tacitly tolerated, are not legally regulated by specific texts. It should be noted that participating in the capital of a franchisor company and controlling it within Algerian territory is not prohibited, as it involves an investment in capital denominated in foreign currency and, in such cases, exported by the franchisor to Algeria. Thus, it is subject to a declaration to the National Agency for Investment Promotion, which examines whether the investment project should be conducted under the regime of privileges or under the common law regime, but there is no prohibition on investing in franchises. However, if a project is conducted in a so-called strategic sector, it must be undertaken in partnership with an Algerian partner who holds the majority of the company's capital.
24.	What forms of business entity are typically used by franchisors?	The commercial company may, in accordance with the Commercial Code, take the form of a Joint Stock Company (SPA), a Limited Liability Company (SARL), a Single Member Limited Liability Company (EURL), a Simple Partnership (SCS), or a General Partnership (SNC).

Region:	MIDDLE EAST AND AFRICA	
Country:	Algeria	
Authors:	Sofiane Ourabah (Cabinet OURABAH)	
Verifier:	M'hamed Toufik Bessai (Université d'Alger 1)	
#	Question	Answer
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	The current texts allow for collective actions, particularly for merchants. This is not the case for franchisors/franchisees in the absence of a specific legal status. As franchisees hold the status of merchants, they are therefore able to pursue collective actions just like any other merchant.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	The automatic renewal or extension of the commercial contract, governed in particular by the Commercial Code, applies by analogy to both the franchisee and the franchisor if the contract, duly approved by both parties, specifies this in advance. If one party refuses to renew the commercial contract, as stipulated in the agreement, the other party is entitled to compensation or damages.
27.	Are there penalties for contravening the franchising laws?	In the absence of texts governing franchising, the sanctions for contractual breaches are, in particular, those provided by common law and those arising, if applicable, from the commercial contract.
28.	Are there any required provisions for a franchise agreement to be valid?	Under civil law, the validity of entering into any contract, including a commercial contract (such as a franchise agreement), requires, among other things, consent, a lawful object, and a lawful cause.
29.	What is the minimum duration of a franchise term?	The duration of the contract, which pertains to and aims at a commercial activity such as that of a franchise, is set freely by the parties in their agreement.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	Under common law, interference or prevention of the performance of any commercial contract, such as a franchise agreement, can be caused by events outside the parties' control, such as force majeure. However, it should be noted that although the franchise contract is not specifically regulated, it remains a contract and, as such, is subject to the general rules governing contracts. The termination clause is an expression of the parties' intentions and thus constitutes one of the rules that the parties have established for themselves.

Region:	MIDDLE EAST AND AFRICA	
Country:	Algeria	
Authors:	Sofiane Ourabah (Cabinet OURABAH)	
Verifier:	M'hamed Toufik Bessai (Université d'Alger 1)	
#	Question	Answer
		Preventing the right to termination would be contrary to contractual autonomy. "The contract would become a kind of 'life sentence' for the parties, which is inconceivable."
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	Under common law, each party may terminate the contract if the other party breaches its commercial contractual obligations, before the expiration of the contract's validity period. In the absence of local rules specifying a minimum notice period for terminating a commercial contract, the parties may freely set a notice period in the contract that is shorter than any agreed-upon period, provided that it is justified by one or more exonerating causes of contractual liability, if applicable.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	A franchise agreement is a cooperation contract under which the franchisor is normally required to provide the franchisee with all information concerning the product, sales techniques, business organization, and ongoing assistance. If this obligation is not fulfilled, the franchisee is entitled to terminate the contract. If the information obligation is not included in the contract, it is no longer a franchise contract as defined by global doctrine and practice.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	In the event of the franchisor's failure to fulfill its essential obligations, the franchisee may, if the contract specifies the procedures and conditions for doing so, seek judicial compensation for damages as restitution for the duly justified harm.

Region:	MIDDLE EAST AND AFRICA	
Country:	Morocco	
Authors:	Hicham Chorfi (H&H IP Law)	
Verifier:	Najib Bellamlih (Lawyer at the Bar of Casablanca)	
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	Morocco does not have specific franchise laws. However, even though there is no explicit rule regarding the subject of Franchising, other laws are enacted to govern franchising mainly: - The Commercial Code. -The Code of Obligations and Contracts (DOC). - Law no. 17-97 on the protection of Industrial Property - Law No. 06/99 on the freedom of prices. - Law No. 104-12 on Competition. - Law 20-13 on the Competition Council. - Foreign exchange regulations, which deal with the definitions and financial aspects of the franchise agreement.
2.	Is there a regulator of franchising conduct?	The Moroccan legislator has not legislated the franchise contract as it did for contracts with frequent use (sale, lease, etc.). etc.... As a result, the franchise agreement is mainly governed by the rules of common law, in this case Article 230 of the D.O.C. (Law of Obligations and Contracts) which states that: "validly formed contractual obligations take the place of law for those who have made them, and can only be revoked by their mutual consent or in the cases provided for by law" (same rule as in French law). Nevertheless, the Moroccan Franchise Federation (FMF), founded in 2002, has adopted a code of ethics, like its counterparts in the various states. Similar in content to its European equivalent, this code of ethics provides for pre-contractual information for the franchisee. However, this code of ethics and professional conduct does not have the probative value of a law or regulations.
3.	Is there a voluntary code or other form of self-governance?	In Morocco, the form of self-governance of franchising usually involves compliance with national and international laws and regulations relating to franchising. Franchisors and franchisees often operate under a franchise agreement that outlines their respective rights and responsibilities. In addition, the Moroccan Franchise Federation (FMF) plays a

Region:	MIDDLE EAST AND AFRICA	
Country:	Morocco	
Authors:	Hicham Chorfi (H&H IP Law)	
Verifier:	Najib Bellamlih (Lawyer at the Bar of Casablanca)	
#	Question	Answer
		crucial role in promoting and regulating franchising in the country. It provides guidelines, best practices, and a framework for self-governance within the franchise industry in Morocco. It is essential that franchisors and franchisees understand and comply with these regulations in order to ensure the successful operation of their franchise businesses.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	Yes, there is a national franchise association in Morocco known as the Moroccan Franchise Federation (FMF). The FMF is a voluntary (non-governmental) organization that brings together franchisors, franchisees and other stakeholders in the franchise industry. While FMF membership is not mandatory, it can provide several benefits to franchisors and franchisees, including networking opportunities, access to industry knowledge, and the opportunity to participate in activities to promote and regulate franchising in Morocco. The primary role of the FMF is to promote and support the development of franchising in Morocco. While it does not impose additional obligations on franchisors, it does provide guidelines, best practices, and a framework for ethical and professional conduct within the industry. These guidelines may include standards for disclosure, contractual terms, and dispute resolution, which aim to ensure fair and transparent franchising practices. It is essential for franchisors and franchisees operating in Morocco to consider joining the FMF or at least keep themselves informed of its recommendations and guidelines to maintain good practices in the franchise sector.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	A franchise agreement typically involves a relationship between a franchisor (the owner of a business concept and trademark) and a franchisee (an independent business operator). The franchisor grants the franchisee the right to operate a business under its established brand, using its trademark and following its established business model. A trademark license becomes a franchise agreement when it includes the following key elements: 1. Use of a trademark. 2. Payment: e.g., an upfront franchise fee or ongoing royalties. 3. Control and support. 4. Business format: such as standard operating procedures, store design, and marketing strategies. However, foreign exchange regulations in Morocco provide definitions of franchising, which is how article 281 of the General Instruction on Foreign Exchange Operations of 31 December 2013 defines franchising as "a system of

Region:	MIDDLE EAST AND AFRICA	
Country:	Morocco	
Authors:	Hicham Chorfi (H&H IP Law)	
Verifier:	Najib Bellamlih (Lawyer at the Bar of Casablanca)	
#	Question	Answer
		marketing products, services or technologies, based on permanent collaboration between legally and financially distinct and independent companies, the franchisor and its franchisees. Under this system, the franchisor who owns the concept of production and/or marketing of a product or service grants its franchisees the right to use and exploit that concept under a specific brand or brand." The article also specifies that the rights and obligations of the franchisor and the franchisee as well as the method of calculating remuneration or royalties must be determined in the franchise agreement; and, where applicable, the entrance fees corresponding to the amounts to be paid prior to the use of the sign or trademark. The same text of the financial aspect of the franchise agreement and the method of payment of royalties due to foreign franchisors (Articles 281 to 283). Broadly speaking, the foreign exchange regulations establish the principle that "Moroccan legal persons registered in the commercial register and cooperatives may enter into franchise agreements with foreign entities and transfer the royalties due in this respect under the conditions of this Instruction",
6.	Does your jurisdiction have the concept of an "accidental franchise"?	Just like the topic of franchising, Morocco does not have any specific laws or regulations regarding "accidental franchises", however, it is important for businesses to understand the legal and regulatory framework surrounding franchising to avoid accidentally becoming a franchise. To avoid accidental franchise status in Morocco, companies should pay attention to the following: 1. Franchise agreements: Be cautious when entering into agreements that involve licensing the business model. Such agreements should be structured in such a way as to avoid the unintentional creation of a franchise relationship. 2. Control and Support: Avoid exercising excessive control over business partners or providing extensive support that could be interpreted as a candid relationship. A clear separation between licensors and licensees is crucial. 3. Fees: Be careful with fees. Avoid charging franchise fees, royalties, or any other payments that could be construed as Franchise-related.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	Franchise agreements are generally subject to the commercial and contractual laws applicable in Morocco, but some general exceptions may apply to these laws:

Region:	MIDDLE EAST AND AFRICA	
Country:	Morocco	
Authors:	Hicham Chorfi (H&H IP Law)	
Verifier:	Najib Bellamlih (Lawyer at the Bar of Casablanca)	
#	Question	Answer
		1. International treaties and agreements (such as TRIPS). 2. Sector-specific regulations: such as the requirements of the food and pharmaceutical industry. 3. Consumer Protection Laws. 4. Competition and Competition Law. 5. Labor Law. 6. Intellectual Property Laws. 7. Tax Laws.
8.	Are there any types of agreements automatically deemed a franchise agreement?	In Morocco, there is no type of contract that is automatically considered a franchise agreement. The qualification of an agreement as a franchise agreement usually depends on specific elements and criteria that must be present. These criteria for a franchise agreement may include: 1. Use of the brand: Franchise agreements must involve the use of the franchisor's trademark or business system by the franchisee. 2. Payment of Fees: Franchisees typically pay fees to the franchisor, such as upfront fees, ongoing royalties, or advertising fees. 3. Control and Support: The franchisor typically provides support, training, and guidance to the franchisee, and may exercise some control over various aspects of the business. 4. Standardization: Franchise agreements often require franchisees to follow standard business practices and procedures established by the franchisor. 5. Duration: They must have a defined duration or period for the franchise relationship.
9.	Must the franchise agreement be governed by local law?	In Morocco, franchise agreements may be governed by local law, but this is not an absolute requirement. The choice of law applicable to a franchise agreement is usually a matter of negotiation between the parties involved, namely the

Region:	MIDDLE EAST AND AFRICA	
Country:	Morocco	
Authors:	Hicham Chorfi (H&H IP Law)	
Verifier:	Najib Bellamlih (Lawyer at the Bar of Casablanca)	
#	Question	Answer
		franchisor and the franchisee. While Moroccan law may govern the franchise agreement, the parties may also choose to have the agreement governed by the laws of another jurisdiction.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	In Morocco, foreign franchisors and domestic franchisors are generally subject to the same legal and regulatory requirements when entering into franchise agreements. The key legal framework governing franchise agreements is the Moroccan Commercial Code and other related regulations. These laws generally apply uniformly to foreign and domestic franchisors and franchisees. However, there may be specific requirements related to trademark registration, business permits, and other administrative procedures that may vary for foreign companies compared to domestic companies. In addition, foreign franchisors may need to consider aspects such as taxation, exchange controls, and any international trade agreements that may impact their operations in Morocco.
11.	Must the franchise agreement be in the local language?	There is no specific legal requirement in Morocco that requires a franchise agreement to be exclusively in the local language (Arabic). However, it is generally advisable to have a bilingual or multilingual franchise agreement that includes both the local language and any other language that the parties involved may understand. This can help ensure clarity, understanding, and applicability of the contract. In the event of a dispute, if it is brought before the Moroccan courts, an Arabic translation will be required.
12.	Are there any franchising laws which are bespoke to particular industries?	Morocco does not have industry-specific franchise laws that are tailored to particular sectors. The regulation of franchise agreements in Morocco generally falls within the broader framework of commercial law and contract law. This means that the legal requirements and principles governing franchise agreements in Morocco apply uniformly across various industries. However, there may be industry-specific regulations, licensing requirements, or standards that could indirectly affect certain aspects of franchise agreements.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	While there is no legal requirement to have a registered trademark to enter into a franchise agreement, it is often common practice for franchisors to protect their trademark through trademark registration. This ensures consistency and consistency of branding across their franchise network.

Region:	MIDDLE EAST AND AFRICA	
Country:	Morocco	
Authors:	Hicham Chorfi (H&H IP Law)	
Verifier:	Najib Bellamlih (Lawyer at the Bar of Casablanca)	
#	Question	Answer
14.	Are other types of IP licences captured by the franchising laws?	In Morocco, franchise regulations mainly govern franchise agreements, which include certain aspects related to intellectual property (IP) licenses. While franchising regulations do not comprehensively cover all intellectual property licenses, they do encompass specific elements related to intellectual property in the context of franchise agreements. Here are some key points related to IP licensing under Morocco's franchise laws: 1. Trademarks: Franchise agreements often involve the use of the franchisor's trademarks. Moroccan franchise regulations generally deal with the use of these trademarks in the context of the franchise relationship. 2. Intellectual Property Rights: Franchise agreements may specify terms and conditions related to the use of the franchisor's intellectual property, which may include proprietary business methods, trade secrets, and other intellectual property assets. 3. Brand Identity: Franchise regulations in Morocco may relate to the protection of the franchisor's brand identity and the standards that franchisees must adhere to maintain that brand identity. 4. Confidentiality and non-competition clauses: Franchise agreements may include confidential information protection provisions and non-competition clauses that prevent franchisees from using the franchisor's IP for unauthorized purposes. While these aspects are covered in the context of franchise laws, it is important to note that the primary purpose of Moroccan franchise laws is to regulate the franchise relationship itself. Laws do not provide a comprehensive framework for all types of intellectual property licenses, such as patents and copyrights, which may be governed by separate intellectual property laws and regulations.
15.	Are there any registration requirements relating to the franchise system?	There are no specific registration requirements for franchise systems in Morocco, however, it is possible to legalize the franchise agreement before a public administration, which requires the presence of the parties involved as well as their identification data. While there are no formal registration requirements for franchise systems, it is essential for franchisors and franchisees to carefully document their franchise agreements and ensure that they comply with Moroccan commercial and contract law. This includes providing the necessary information and information to franchisees, as well as clearly defining the terms and conditions of the franchise relationship in the contract.

Region:	MIDDLE EAST AND AFRICA	
Country:	Morocco	
Authors:	Hicham Chorfi (H&H IP Law)	
Verifier:	Najib Bellamlih (Lawyer at the Bar of Casablanca)	
#	Question	Answer
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	Under Moroccan law, Article 231 of the Dahir forming the Code of Obligations and DOC Contracts provides that any commitment must be performed in good faith. This naturally applies to the Franchise Agreement in the same way as any other contract of any kind.
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	In Morocco, there is a pre-contractual disclosure regime that requires franchisors to provide pre-contractual disclosure to potential franchisees. Disclosure requirements are an essential part of the franchise framework in the country. These requirements are outlined in the general framework of franchise regulations and are intended to ensure transparency and protect the interests of franchisees. Franchisors in Morocco are generally required to provide prospective franchisees with an information document or information package that includes essential details about the franchise opportunity. This document should cover important aspects of the franchise system, the franchisor's financial situation, and other relevant information that potential franchisees need to make informed decisions. The details of these disclosure requirements, including the content and timing of disclosure, are generally governed by franchising regulations and are often outlined in the franchise agreement. It is essential that franchisors and franchisees adhere to these disclosure requirements in order to ensure a transparent and legally compliant franchise relationship.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Franchise disclosure obligations generally apply to franchisors when selling franchise opportunities to potential franchisees in Morocco. For sub-franchisees in Morocco, specific pre-sale disclosure requirements can be outlined in the franchise agreement. The responsibility to provide the necessary information to sub-franchisees may depend on the terms negotiated between the master franchisor, the original franchisee and the sub-franchisee.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	In Morocco, the format of franchise disclosures and the frequency of updates are usually governed by specific regulations and laws (such as the Contract Code and the Commercial Code).

Region:	MIDDLE EAST AND AFRICA	
Country:	Morocco	
Authors:	Hicham Chorfi (H&H IP Law)	
Verifier:	Najib Bellamlih (Lawyer at the Bar of Casablanca)	
#	Question	Answer
		The requirements for the format and frequency of franchise disclosures, as well as ongoing disclosure obligations to existing franchisees, would also depend on the specific agreements and contracts between the franchisor and the franchisees. These terms are usually outlined in the franchise agreement and must comply with all applicable laws and regulations in Morocco.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	Where a franchisee in Morocco is required to contribute to a marketing fund or other cooperative fund, specific obligations generally apply, and these obligations may be outlined in the franchise agreement and governed by local regulations. Here are some common obligations related to these funds: 1. Transparency and accountability: The franchisor is generally required to keep transparent and accurate accounts of the fund's contributions and expenditures. The franchisee should have access to reports detailing how the money from the fund is being used for marketing or cooperation purposes. 2. Use of funds: The franchise agreement must specify how the funds are to be used. Common uses include marketing campaigns, advertising, promotional activities, or supporting cooperative efforts between franchisees. 3. Contribution amounts: The franchise agreement must specify the amount and frequency of contributions to the fund. The method of calculating these contributions must be clear. 4. Audit Rights: Franchisees may have the right to audit the fund to ensure that their contributions are being used as agreed. 5. Approval Process: Some franchise agreements require franchisee approval for significant fund expenditures, ensuring that collective funds are spent in the best interest of all franchisees. 6. Reporting: Franchisees may be entitled to receive regular reports on the financial status of the fund and how the funds have been used. 7. Compliance with Local Laws: The use of marketing or cooperation funds must comply with Moroccan laws and regulations relating to franchising, advertising, and cooperatives.
21.	Is there a prescribed dispute resolution procedure?	Morocco did not have a standardized or prescribed dispute settlement procedure specific to franchise agreements. Dispute resolution procedures in franchise agreements in Morocco are usually determined by the terms and clauses

Region:	MIDDLE EAST AND AFRICA	
Country:	Morocco	
Authors:	Hicham Chorfi (H&H IP Law)	
Verifier:	Najib Bellamlih (Lawyer at the Bar of Casablanca)	
#	Question	Answer
		negotiated between the franchisor and the franchisee. These procedures may include negotiation, mediation, or arbitration to resolve disputes without resorting to litigation.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	Although there is no specific cooling-off period stipulated primarily in commercial law for the termination or transfer of franchise agreements, the terms and conditions related to these matters are generally governed by the provisions outlined in the franchise agreement itself.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	Morocco did not have any market-specific restrictions that imposed significant barriers on foreign franchisors entering the market. Morocco has generally been open to foreign investment, and foreign franchisors are allowed to enter the market. Some regulatory requirements and approvals may be required to establish and operate a franchise business in certain sectors such as agriculture, fishing, and audiovisual, but they are generally applied equally to domestic and foreign investors. Morocco has also entered into various international agreements and treaties that promote and protect foreign investment.
24.	What forms of business entity are typically used by franchisors?	Franchisors in Morocco typically use one of the following forms of business entities: 1. Limited Liability Company (LLC): This is a structure commonly chosen by franchisors. It provides limited liability protection to owners and can be set up with a relatively small amount of capital. LLCs are flexible and can have one or more shareholders. 2. Public Limited Company (SA): For larger franchise operations, a SA can be chosen. It allows the issuance of shares to multiple investors and provides a more formal corporate structure. 3. Branch: Some international franchisors choose to establish a branch in Morocco. This allows them to expand their existing activities abroad in the Moroccan market while remaining a part of the parent company. 4. Representative Office: A representative office can be used for market research, marketing and promotional activities.
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Morocco did not have a well-established framework for class actions, and the legal system was not particularly conducive to class actions.

Region:	MIDDLE EAST AND AFRICA	
Country:	Morocco	
Authors:	Hicham Chorfi (H&H IP Law)	
Verifier:	Najib Bellamlih (Lawyer at the Bar of Casablanca)	
#	Question	Answer
		In Morocco, disputes involving franchisees are typically resolved through negotiation, arbitration, or litigation on an individual basis, rather than through a class action. However, if a collective of franchisees grouped together within a given organization (association by exp) has the vocation to defend the common interest of its members, it can take legal action for the interest of the community.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	Morocco does not have specific legislative or legal provisions that give franchisees the right to automatically renew or extend franchise agreements. The terms and conditions of the renewal or extension are generally determined by the agreement between the franchisor and the franchisee. The possibility of renewing or extending a franchise agreement and the associated terms, including indemnification or damages in the event of refusal, are usually described in the franchise agreement itself.
27.	Are there penalties for contravening the franchising laws?	Morocco did not have specific franchising laws that provided penalties for franchising-related contraventions. However, franchise agreements and franchise-related disputes would generally be subject to contract law and commercial law in Morocco. Penalties for violating the terms of a franchise agreement are usually outlined in the agreement itself. These penalties may include financial damages, termination of the agreement, or other remedies as stipulated in the contract.
28.	Are there any required provisions for a franchise agreement to be valid?	Franchise agreements in Morocco are generally governed by the general principles of contract law and commercial law. While there are no specific provisions required by Moroccan law, it is well known that a valid franchise agreement should generally include the following key provisions and elements: 1. Party Information: The agreement must clearly identify the franchisor and franchisee, including their legal names and contact information. 2. Scope of the franchise: It must describe the scope of the franchise, including the rights granted to the franchisee, the obligations of the franchisor, and any territorial restrictions.

Region:	MIDDLE EAST AND AFRICA	
Country:	Morocco	
Authors:	Hicham Chorfi (H&H IP Law)	
Verifier:	Najib Bellamlih (Lawyer at the Bar of Casablanca)	
#	Question	Answer
		3. Term and Renewal: The duration of the franchise agreement and the provisions for renewal or extension must be specified. 4. Fees and Payments: This section should detail the initial franchise fees, ongoing royalties, advertising costs, and any other financial obligations. 5. Operational Requirements: The agreement should outline the franchisee's responsibilities, including standards for product or service quality, operating procedures, and compliance with brand standards. 6. Territorial Rights: Where applicable, the agreement must define the franchisee's exclusive territorial rights or any restrictions on territorial expansion. 7. Intellectual Property: It must relate to the use of trademarks, trade secrets, and other intellectual property rights owned by the franchisor. 8. Support and Training: The franchisor's obligations to provide training, support and ongoing assistance to the franchisee should be specified. 9. Termination and Dispute Resolution: Termination terms and procedures, including notice periods, as well as methods of dispute resolution, must be included. 10. Confidentiality: Provisions for the protection of confidential information and trade secrets should be clarified. 11. Governing Law and Jurisdiction: The choice of applicable law and jurisdiction in the event of a dispute must be specified. 12. Compliance with Laws: The agreement must require the franchisee to comply with all relevant laws and regulations.
29.	What is the minimum duration of a franchise term?	The minimum duration of a franchise agreement is not explicitly regulated by law. Franchise agreements are generally governed by contract law, and the duration of the contract is negotiated between the franchisor and the franchisee. It can vary from franchise to another and is usually specified in the franchise agreement itself.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	There are no specific franchise laws that directly prevent or interfere with the termination of a franchise agreement. The termination of a franchise agreement is mainly governed by the terms and conditions set out in the agreement itself, as well as the general principles of contract law.

Region:	MIDDLE EAST AND AFRICA	
Country:	Morocco	
Authors:	Hicham Chorfi (H&H IP Law)	
Verifier:	Najib Bellamlih (Lawyer at the Bar of Casablanca)	
#	Question	Answer
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	The ability of a franchisor or franchisee to terminate a franchise agreement before it expires, as well as the notice period required, are generally determined by the terms and conditions specified in the franchise agreement itself. In Morocco, there are no specific local rules that impose a minimum notice period to terminate a business relationship, including franchise agreements, that would apply regardless of the notice period agreed in the franchise agreement. However, the rules of common law in Morocco establish the principle of the ability to terminate a contract in the event of non-performance by the other party of its commitments and obligations. This is applicable to the franchise agreement.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	The remedies available to a franchisee in Morocco in the event of a franchisor's failure to comply with its mandatory disclosure obligations may vary depending on the specific circumstances and the terms of the franchise agreement. Although there are no specific franchise laws in Morocco, general principles of contract law and remedies for breach of contract may apply. Here are the possible remedies: 1. Termination of Franchise Agreement: If the franchisor fails to comply with the mandatory disclosure requirements and if such non-compliance constitutes a fundamental breach of the franchise agreement, the franchisee may have the right to cancel or terminate the agreement. 2. Claim for damages: If the franchisor's failure to disclose information has caused financial harm or loss to the franchisee, the franchisee may have a legal basis to claim damages. Damages awarded are generally intended to compensate the franchisee for losses incurred as a result of non-disclosure.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	The ability to terminate the franchise agreement and claim damages is subject to the legal principles of contract law, which include the requirement that failure to comply with disclosure obligations constitutes a material breach of the agreement.

Region:	MIDDLE EAST AND AFRICA	
Country:	Saudi Arabia	
Authors:	Faisal Daudpota (Senior Partner, Daudpota International)	
Verifier:	Khalil Aljehani (Khalil Aljehani Law Firm)	
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	Yes As of 22 October 2019, the Kingdom of Saudi Arabia (“KSA”) has published its Royal Decree No. M/22 dated 9/2/1441 (corresponding to 8 Oct 2019) for Commercial Franchise Law System (“CFL’19”), which has come into force after 180 days of its publication. As of 11 May 2020, that Commercial Franchise Implementing Regulations (hereinafter CFR’20) have also be issued by KSAs Ministry of Commerce and Investment (MOCI) under its Decision No. (00591) dated 18-9-1441 A.H. [corresponding to 11 May 2020 AD], and accordingly MOCI has commenced the necessary administrative, compliance, and enforcement functions under CFL’19.
2.	Is there a regulator of franchising conduct?	Yes
3.	Is there a voluntary code or other form of self-governance?	No
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	No
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	The concept as to “Franchise” has been described in CFL’19, to include an arrangement under which: (a) the Franchisor grants the right to Franchisee (in Franchise business); (b) for its own account or in connection with the trademark or trade name owned/licensed by the Franchisor. (c) provides technical expertise and knowhow to Franchisee. (d) determines how to run Franchise business; and

Region:	MIDDLE EAST AND AFRICA	
Country:	Saudi Arabia	
Authors:	Faisal Daudpota (Senior Partner, Daudpota International)	
Verifier:	Khalil Aljehani (Khalil Aljehani Law Firm)	
#	Question	Answer
		(e) in return for cash or non-cash consideration (however such cash/cash-equivalents does not include any amounts paid by the Franchisee to the Franchisor in consideration of the goods or services so provided).
6.	Does your jurisdiction have the concept of an “accidental franchise”?	Yes – as long as the agreement meets the thresholds as identified in Answer to Question 5 above.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	CFL’19 has also expressly declared that the following types of agreements / arrangements are not to be treated as Franchise Agreements, and accordingly CFL’19 does not apply to them. Such agreements/arrangements are described as: (a) franchises that are granted or issued pursuant to any Royal Decrees of KSA, (b) agreements or contracts that are subject to the Commercial Agency Law of KSA, (c) exclusive agreements or contracts to buy and sell goods or provide certain trademarks services or the use of a trademark or any other intellectual property rights in relation to any goods or services, (d) arrangements whereby the Franchisee is (either directly or indirectly) owned by the Franchisor, and (e) any other agreements / arrangements that are specified under CFR’20. In addition to above, CFR’20 maintains that the following agreements are not Franchise Agreements:⁴ (a) Agreements or arrangements between a Franchisor and a Franchisee on the implementation of a Franchise Agreement, this includes the following: (i) agreements or arrangements between landlord and tenant, or tenant and subtenant. (ii) joint venture or shareholder agreements or arrangements. (iii) loan agreements or arrangements between a lender and a borrower. (iv) agreements or arrangements between an employer and an employee related to their employment relationship.

Region:	MIDDLE EAST AND AFRICA	
Country:	Saudi Arabia	
Authors:	Faisal Daudpota (Senior Partner, Daudpota International)	
Verifier:	Khalil Aljehani (Khalil Aljehani Law Firm)	
#	Question	Answer
		(b) Agreement or arrangements under which a non-profit organization buys goods or services for its members or assists its members to buy goods or services. (c) A license or permit granted by a government or a government authority.
8.	Are there any types of agreements automatically deemed a franchise agreement?	Yes, see Answer to Question 5.
9.	Must the franchise agreement be governed by local law?	Though there is freedom to choose governing law in franchise agreements, owing to local compliance regimes and disclosure obligations on the Franchisor, the local law will also apply to presumptions that prevail over the stipulations in the agreement.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No
11.	Must the franchise agreement be in the local language?	CFL'19 makes it mandatory that a franchise agreement be signed by both the parties, and is: (a) written in Arabic Language, or (b) accompanied with a certified Arabic translation if the original Franchise Agreement is written in a non-Arabic language
12.	Are there any franchising laws which are bespoke to particular industries?	No
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	CFL'19 also provides statutory definitions for the following: "Franchise Operation Model" as the manner in which the Franchise business must be operated by the Franchisee, (in accordance with the guidance by the Franchisor), including the manner of displaying the trademark associated with such Franchise business, (with which it is mandatory for the Franchisee to comply).

Region:	MIDDLE EAST AND AFRICA	
Country:	Saudi Arabia	
Authors:	Faisal Daudpota (Senior Partner, Daudpota International)	
Verifier:	Khalil Aljehani (Khalil Aljehani Law Firm)	
#	Question	Answer
		CFL'19 has also expressly declared that the following types of agreements / arrangements are not to be treated as Franchise Agreements, and accordingly CFL'19 does not apply to them. Such agreements/arrangements are described as: (3c) exclusive agreements or contracts to buy and sell goods or provide certain trademarks services or the use of a trademark or any other intellectual property rights in relation to any goods or services, CFL'19 maintains that in addition to any matters that have been agreed and mentioned in a Franchise Agreement, it is mandatory to have the following clauses/issues covered in a Franchise Agreement: (g) the rights of the Franchisee relating to the use of any trademarks or other intellectual property rights in connection with the Franchise business and the obligations of both parties in the event of any breach of the intellectual property rights and the compensations resulting therefrom; In addition to above, CFR'20 maintains that the Franchise Agreement must include - in addition to what is agreed upon between its parties - the following: (b) Determine/identify the trademark owner, the trade name, or other intellectual property rights used in the Franchise business, and the Franchisor's relationship with the owner [of trademark] if he [Franchisor] is not the owner. CFL'19 also maintains that any assignment / expiration (non-renewal) / termination the Franchise Agreement or Franchise business shall automatically: (a) cancel the authorization for the use of any trademark associated with the Franchise business, or (b) cancel the tradename user agreement associated with the Franchise business. In addition to above, CFR'20 maintains that if the Trademark Use Agreement, that is related to the Franchise business, expires because of the assignment of the Franchise Agreement and the Franchise business or its termination or expiration or non-renewal, [then] the Franchisor shall notify about this to the Saudi Authority for Intellectual Property.

Region:	MIDDLE EAST AND AFRICA	
Country:	Saudi Arabia	
Authors:	Faisal Daudpota (Senior Partner, Daudpota International)	
Verifier:	Khalil Aljehani (Khalil Aljehani Law Firm)	
#	Question	Answer
14.	Are other types of IP licences captured by the franchising laws?	Trademark License / Registered User Agreement (this is not an accidental franchise – there is an express stipulation for this in Article 27 of CFL’19)
15.	Are there any registration requirements relating to the franchise system?	CFL’19 makes it mandatory that all Franchise Agreements, as well as, all the Disclosure Statements, be registered with the MOCI, in accordance with the procedures and supporting documents/information - as required/specified under CFR’20.13 In addition to above, CFR’20 maintains that the Franchisor must register each signed Franchise Agreement and related Disclosure Statement with the MOCI within (90) days from the date of signing the Agreement, by depositing a copy of this Agreement and the Disclosure Statement with the relevant authority at the MOCI. Further, in the event that the Franchise Agreement is modified by changing any of its parties or its duration, the Franchisor shall be bound to register the amended Franchise Agreement with the MOCI within (90) days from the date of its making, by depositing a copy of the signed amendment. CFR’20 also maintains that the official fee for registration of the Franchise Agreement or Disclosure Statement SAR 500 (approx. US\$ 134) per registration. Further, the official fee to register an amended Franchise Agreement is SAR 100 (approx. US\$ 27). CFR’20 also maintains that the registration of a Franchise Agreement and related Disclosure Statement shall continue to be effective for the full term of the given Franchise Agreement. Further, that such registration shall be cancelled in the following cases, provided that the Franchisor applies for the cancellation of the registration within 90 days of the occurrence of any of them, namely: (a) Termination or expiration of the Franchise Agreement. (b) Issuance of a court ruling revoking or terminating the Agreement In addition to above, CFR’20 maintains that a Franchisee's right to compensation shall be limited to damages which directly result from Material breach by the Franchisor as to its obligations.
16.	Is there any overriding requirement for the parties to deal with each other in good faith	No

Region:	MIDDLE EAST AND AFRICA	
Country:	Saudi Arabia	
Authors:	Faisal Daudpota (Senior Partner, Daudpota International)	
Verifier:	Khalil Aljehani (Khalil Aljehani Law Firm)	
#	Question	Answer
	(or for the franchisor to deal with the franchisee in good faith)?	
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	CFL'19 makes it mandatory for that the Franchisor provide a copy of the Disclosure Statement to the Franchisee at least 14 days prior to: (a) entering into any Franchise Agreement with the given Franchisee, or (b) receiving any payment/consideration from the given Franchisee – whichever is earlier.¹⁸ In addition to above, CFR'20 maintains that if any Material Change(s) occurs after a prospective Franchisee has received a Disclosure Statement (but before the Franchise Agreement is signed) then the Franchisor shall provide to the Franchisee a new Disclosure Statement [or a document identifying and explaining the Material Change(s)] as soon as possible and prior to the signing of the Franchise Agreement or before the Franchisee has paid any amount in its respect.¹⁹
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Yes That obligation will then fall upon the Master Franchisee
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	Yes CFL'19 maintains that the form/template of Disclosure Statement, and its mandatory clauses (if any) shall be as required/specified under CFR'20. In addition to above, CFR'20 maintains that the Disclosure Statement must contain the elements and information stipulated in the Appendix to CFR'20, and also must be accompanied by a template of the Franchise Agreement. If any of the elements or information that is expected from Disclosure Statement does not apply to the Franchise business or the Franchisor, then the phrase "not applicable" must be written (for that element in the Disclosure Statement). CFR'20 also maintains that when providing information (in the Disclosure Statement) that relates to the past or expected financial performance of the Franchise Business owned by him [Franchisor] or any person in its [Franchisor] group or [when that] relates to the expected performance of the Franchisee, the Franchisor shall ensure the following:

Region:	MIDDLE EAST AND AFRICA	
Country:	Saudi Arabia	
Authors:	Faisal Daudpota (Senior Partner, Daudpota International)	
Verifier:	Khalil Aljehani (Khalil Aljehani Law Firm)	
#	Question	Answer
		(a) The fundamental assumptions surrounding the preparation and presentation of this information. (b) Whether the information is based on actual results from existing sales outlets. (c) Whether the information relates to sales outlets owned by the Franchisor or the Franchisee. (d) The text stating: "Income may vary between Franchisees, and potential or past information is information of a general nature. Each Franchisee must take into account the special circumstances and the geographical scope in which it conducts the Franchise Business".
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	Yes CFR'20 also maintains that unless the Franchise Agreement stipulates otherwise, if the Franchisor creates a bank account to finance advertising and marketing activities, and the Franchisees who do Franchise business in KSA contribute to it, [then] the Franchisor must submit a report to the Franchisees, showing how the amounts have been disbursed, within (4) months after the end of its fiscal year.
21.	Is there a prescribed dispute resolution procedure?	CFL'19 makes it optional for the parties to resort to ADR proceedings (like arbitration, mediation, or conciliation) to settle any disputes arising from the Franchise Agreement or the application of CFL'19. Accordingly, it is a fairly straight forward conclusion that if parties to Franchise Agreement agree to insert (either an ad hoc or institutional) domestic arbitration clause in the given Franchise Agreement, then such domestic arbitration clause will be respected and fully enforceable with respect to the given parties. However, a tricky conflict of laws situation can arise, if the given parties end up including a clause for (either an ad hoc or institutional) foreign arbitration in the Franchise Agreement. Accordingly, it is important to note that KSA is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958 (New York Convention 1958), pursuant to the same Saudi Arabia has also enacted Royal Decree No. M/34 dated 24/5/1433 (corresponding to 16/4/2012) on Arbitration Law (hereinafter referred to as "AL'12") that deals with domestic and international arbitration.

Region:	MIDDLE EAST AND AFRICA	
Country:	Saudi Arabia	
Authors:	Faisal Daudpota (Senior Partner, Daudpota International)	
Verifier:	Khalil Aljehani (Khalil Aljehani Law Firm)	
#	Question	Answer
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	Yes, in the following situations: CFL'19 maintains that a Franchisor may (by written notice to Franchisor) terminate the given Franchise Agreement on the basis of an expressly listed legitimate cause under CFL'19, which includes: (a) where the Franchisee commits a material breach of the Franchise Agreement, and that such breach remains uncured for 14 days from the day the Franchisor notifies Franchisee in writing of such breach; (c) if the Franchisee voluntarily abandons the Franchise business or voluntarily ceases to carry out the Franchise business for a period of more than ninety 90 consecutive days.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	No
24.	What forms of business entity are typically used by franchisors?	Limited liability companies
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	No
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend?	Yes CFL'19 maintains that if a renewal notice period has not been agreed in a Franchise Agreement, then a conditional statutory right is afforded to the Franchisee to unilaterally renew or extend the duration of an existing Franchise Agreement by serving a written notice of Franchisor at least 180 days before the expiry date of the given existing Franchise Agreement. Once this conditional statutory right is exercised by the

Region:	MIDDLE EAST AND AFRICA	
Country:	Saudi Arabia	
Authors:	Faisal Daudpota (Senior Partner, Daudpota International)	
Verifier:	Khalil Aljehani (Khalil Aljehani Law Firm)	
#	Question	Answer
	If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	Franchisee then the given existing Franchise Agreement will stand renewed or extended for the same duration and with the same terms as the given existing Franchise Agreement. However, the aforesaid conditional statutory right cannot be exercised in the following situations: (a) where the parties agree on new terms, (b) on the occurrence of any of the situations/ legitimate causes on the basis of which a Franchisor can unilaterally terminate a Franchise Agreement - (these are expressly specified in CFL'19), (c) where the Franchisee fails to pay any fees that is due according to the given existing Franchise Agreement, (d) where the Franchisor allows the Franchisee to assign the Franchise Agreement or Franchise business, before the expiration of the given existing Franchise Agreement, to a person that meets the Franchisor's criteria for granting a Franchise, (e) where the Franchisor decides that it no longer wishes to conduct the Franchise business or grant a Franchise pertaining thereto KSA, or (f) where the Franchisee fails to enter into any renewal or extension agreement according to Franchisor's reasonable requirements (for such renewal or extension) at least 60 days before the expiry date of the given existing Franchise Agreement.
27.	Are there penalties for contravening the franchising laws?	Yes CFL'19 provides that violation of (compliance obligations under) CFL'19 (or CFR'20) shall attract a monetary fine up to the maximum amount of SAR 500,000 (i.e. approx. US\$ 133,333). Such fines shall be determined and imposed by a Committee established within the structures of MOCI. Any person aggrieved with imposed fines has the right to assail them before the Board of Grievances (BOG) that is the first instance administrative court. CFL'19 further maintains that aforesaid fines (as imposed by the Committee) shall be without prejudice the rights of a party seeking compensation (for losses incurred and) against the person that has violated CFL'19.

Region:	MIDDLE EAST AND AFRICA	
Country:	Saudi Arabia	
Authors:	Faisal Daudpota (Senior Partner, Daudpota International)	
Verifier:	Khalil Aljehani (Khalil Aljehani Law Firm)	
#	Question	Answer
28.	Are there any required provisions for a franchise agreement to be valid?	CFL'19 maintains that in addition to any matters that have been agreed and mentioned in a Franchise Agreement, it is mandatory to have the following clauses/issues covered in a Franchise Agreement: (a) the name and description of the Franchise business, the duration of the Franchise Agreement, manner for amending its duration and its territorial scope; (b) the consideration payable by the Franchisee to the Franchisor; including financial consideration in relation to the Franchise, the training of the Franchisee employees, if any, and the technical support, as well as the basis for calculating the price of goods or other services provided to the Franchisee by the Franchisor or any member of its Group; (c) any obligations in relation to the training of the Franchisee's employees by the Franchisor; (d) any obligations of the Franchisor in relation to the provision of technical, marketing and any other expertise that the Franchise business requires; (e) any obligation on the Franchisee to comply with the instructions and methods for marketing, displaying and maintaining the identity of the Franchise; (f) any obligations of the Franchisor relating to the supply of goods or services to the Franchisee, and the obligations of the Franchisee in relation to the sourcing of such goods or services from the Franchisor, directly or through a third party based on the instructions of the Franchisor; (g) the rights of the Franchisee relating to the use of any trademarks or other intellectual property rights in connection with the Franchise business and the obligations of both parties in the event of any breach of the intellectual property rights and the compensations resulting therefrom; (h) the mechanism for settling any disputes related to the Franchise Agreement; (i) the Franchisee's right to grant a sub-Franchise to third parties and the provisions governing the same; (j) the effect of any transfer/assignment of ownership of the Franchisor, Franchisee or the person that Controls either of them; and (k) any other conditions as required/specified under CFR'20.
29.	What is the minimum duration of a franchise term?	No

Region:	MIDDLE EAST AND AFRICA	
Country:	Saudi Arabia	
Authors:	Faisal Daudpota (Senior Partner, Daudpota International)	
Verifier:	Khalil Aljehani (Khalil Aljehani Law Firm)	
#	Question	Answer
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	No
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	Yes CFL'19 maintains that a Franchisor may (by written notice to Franchisor) terminate the given Franchise Agreement on the basis of an expressly listed legitimate cause under CFL'19, which includes: a) if the Franchisee declares bankruptcy or insolvency, assigns the Franchise business or the benefit therefrom to its creditors, or otherwise disposes the assets of the Franchise business to a third person; b) if the Franchisee repeatedly fails to comply with the provisions of the Franchise Agreement or any other agreement with the Franchisor or a member of the Franchisor's Group relating to the Franchise despite being notified to do so in writing by the Franchisor; c) if the Franchisee operates the Franchise business in a manner that endangers public health and safety; d) if the Franchisee loses any license required for conducting its Franchise business; e) if the Franchisee commits material breaches of any applicable laws in Saudi Arabia which negatively affects the Franchise business's reputation. f) if the Franchisee commits actions deemed to represent commercial fraud in connection with the operation of the Franchise business; g) if the Franchisee infringes the intellectual property of the Franchisor during the term of the Franchise Agreement; or h) any other matter deemed a legitimate cause for termination pursuant to the Franchise Agreement.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	CFL'19 also maintains that if the Franchisor materially fails to comply with the disclosure obligations as required/specified under CFL'19 (as well as under CFR'20), then the Franchisee may claim compensation from the Franchisor for any losses suffered by it as a result of such failure but such Franchisee shall not be entitled to terminate the Franchise Agreement. In addition to above, CFR'20 maintains that a Franchisee's right to compensation shall be limited to damages which directly result from Material breach by the Franchisor as to its obligations.

Region:	MIDDLE EAST AND AFRICA	
Country:	Saudi Arabia	
Authors:	Faisal Daudpota (Senior Partner, Daudpota International)	
Verifier:	Khalil Aljehani (Khalil Aljehani Law Firm)	
#	Question	Answer
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	Yes CFL'19 also maintains that if the Franchisor materially fails to comply with the disclosure obligations as required/specified under CFL'19 (as well as under CFR'20), then the Franchisee may claim compensation from the Franchisor for any losses suffered by it as a result of such failure but such Franchisee shall not be entitled to terminate the Franchise Agreement. In addition to above, CFR'20 maintains that a Franchisee's right to compensation shall be limited to damages which directly result from Material breach by the Franchisor as to its obligations.³⁶ CFL'19 also maintains that if the Franchisor materially fails to comply with the registration obligations as required/specified under CFL'19 (as well as under CFR'20), then the Franchisee may claim compensation from the Franchisor for any losses suffered by it as a result of such failure but such Franchisee shall not be entitled to terminate the Franchise Agreement. CFL'19 also statutory limitation in time for any legal action claiming compensation for breach (by either Franchisor or Franchisee) of obligations under CFL'19 (or of obligations in the Franchise Agreement), accordingly a compensation claim for the aforesaid breach will becomes time barred - after one year from the date the non-breaching party becomes aware of the breach or after three years from the date on which the breach takes place - whichever is earlier. In addition to above, CFR'20 maintains that a Franchisee's right to compensation shall be limited to damages which directly result from Material breach by the Franchisor as to its obligations. CFL'19 also provides for statutory limitation in time for any legal action claiming compensation resulting from the termination (of the Franchise Agreement) that lacks an expressly listed legitimate cause (per the above list) under CFL'19, accordingly a compensation claim for the aforesaid breach will becomes time barred - after three years from the date on which the breach takes place. In addition to above, CFR'20 maintains that a Franchisee's right to compensation shall be limited to damages which directly result from Material breach by the Franchisor as to its obligations. CFL'19 maintains that if Franchisor commits a material breach of disclosure obligations or registration obligations under CFL'19 or CFR'20, then Franchisee may (by written notice to Franchisor) terminate the given Franchise Agreement without being liable for any compensation to the Franchisor, as long as such notice of termination is issued: - (a) within one year of becoming aware of the occurrence of breach, or (b) within three years from the date on which the given breach occurred - whichever is earlier.

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	Yes, franchising and franchise agreements are specifically regulated in South Africa in terms of the Consumer Protection Act 68 of 2008 ("CPA") and the 'Regulations' (GNR.293 of 1 April 2011) ("Regulations") thereto. Note that franchisees are included in the definition of 'consumer' in the CPA and are treated as such subject to certain exceptions.
2.	Is there a regulator of franchising conduct?	Yes, the National Consumer Commission ("NCC"), established in terms of section 85 of the CPA, is the regulator overseeing compliance with the CPA. The NCC's responsibilities include monitoring pre-disclosure compliance, investigating disputes, and issuing compliance notice(s).
3.	Is there a voluntary code or other form of self-governance?	Yes, the Franchise Association of South Africa ("FASA") is a voluntary industry body promoting ethical franchising standards. While membership by franchisors, franchisees and other industry stakeholders is optional, FASA provides additional governance through the 'Franchise Association of South Africa Code of Ethics and Business Practice' ("Code of Ethics"), which places an emphasis on fair business practices, honest disclosure, and operational transparency.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	Yes, as mentioned above, FASA acts as South Africa's national franchise association. Membership is voluntary for franchisors. FASA imposes additional obligations such as submitting franchise agreements for review to ensure compliance with the CPA and the Code of Ethics. The Code of Ethics further compels franchisors to provide a prospective franchisee with the following: i.a disclosure document setting out all the relevant information about the franchisor and the franchise opportunity (noting that pre-disclosure documents are also mandated by the CPA);

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
		ii.a fair and equitable franchise agreement; and iii.an operations manual which sets out the company’s policies and procedures and is a blueprint to operating a successful business.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	The CPA defines a franchise agreement as “<i>an <u>agreement between two parties, being the franchisor and franchisee, respectively—</u></i>— <i>(a) in which, for consideration paid, or to be paid, by the franchisee to the franchisor, the franchisor grants the franchisee the right to carry on business within all or a specific part of the Republic under a system or marketing plan substantially determined or controlled by the franchisor or an associate of the franchisor;</i> <i>(b) under which the operation of the business of the franchisee will be substantially or materially associated with advertising schemes or programmes or <u>one or more trade marks, commercial symbols or logos or any similar marketing, branding, labelling or devices, or any combination of such schemes, programmes or devices, that are conducted, owned, used or licensed by the franchisor or an associate of the franchisor;</u> and</i> <i>(c) that governs the business relationship between the franchisor and the franchisee, including the relationship between them with respect to the goods or services to be supplied to the franchisee by or at the direction of the franchisor or an associate of the franchisor;</i> A trademark licence alone would not constitute a franchise agreement”. (our emphasis) A trademark license is an ordinary component of a franchise agreement, in terms of which the franchisee is authorised to use the trade mark(s) owned by the franchisor in order to operate the franchised business. A trademark licence would only become a franchise agreement once it meets the definition for a “franchise agreement” under the CPA.
6.	Does your jurisdiction have the concept of an “accidental franchise”?	No, the CPA’s stringent requirements eliminate the risk of “accidental franchises” by mandating a formal franchise agreement with clear terms. Agreements that meet the CPA’s definition of franchising are regulated, regardless of the intent of the parties.

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	No, there are no exceptions to the application of the CPA and the Regulations to franchise agreements. Section 1 of the CPA defines a franchisee as a consumer under the CPA, specifically for the arrangements set out in section 5(6) of the CPA. Section 5(6) of the CPA provides that the following transactions are regarded to be a transaction between a supplier and a consumer: - i.a solicitation of offers to enter into a franchise agreement; - ii.an offer by a potential franchisor to enter into a franchise agreement with a potential franchisee; - iii.a franchise agreement or an agreement supplementary to a franchise agreement; and - iv.the supply of any goods or services to a franchisee in terms of a franchise agreement. In terms of sections 51(1)(b)(i) to (iii) of the CPA, a supplier must not make a transaction or agreement subject to any terms or condition if: - i.it directly or indirectly purports to waive or deprive a consumer of a right in terms of the CPA; - ii.avoid a supplier's obligation or duty in terms of the CPA; or - iii.set aside or override the effect of any provision of the CPA. As such, a franchisee, who is also considered a consumer in terms of the CPA, cannot contract out of the provisions of the CPA. Accordingly, the CPA applies to all franchise agreements, irrespective of the size of the franchisee's asset value or annual turnover.
8.	Are there any types of agreements automatically deemed a franchise agreement?	No, neither the CPA nor the Regulations provide for other types of agreements that may automatically be deemed to be franchise agreements.
9.	Must the franchise agreement be governed by local law?	Neither the CPA nor the Regulations expressly provide which law must govern franchise agreements in South Africa. However, South African law will apply in certain cases (i.e. the jurisdiction of the NCC), since it is legally required that franchise agreements comply with the CPA.

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No, both foreign and local franchisors are subject to the CPA.
11.	Must the franchise agreement be in the local language?	No, however section 22 of the CPA provides that information must be presented in a plain and understandable language. As such, franchise agreements should be in a language the franchisee understands, which would typically (but would not always be) English (noting that South Africa has 11 (eleven) official languages).
12.	Are there any franchising laws which are bespoke to particular industries?	No, the CPA and the Regulations provide for standard requirements applicable to franchise arrangements and terms and conditions which must be included in a franchise agreement, regardless of the industry.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	No, 'trademark' is not defined by South African franchise laws, but the Trade Marks Act 193 of 1993 ("Trade Marks Act"), defines a 'trade mark' as: <i>"a mark used or proposed to be used by a person in relation to goods or services for the purpose of distinguishing the goods or services in relation to which the mark is used or proposed to be used from the same kind of goods or services connected in the course of trade with any other person; and 'mark' as any sign capable of being represented graphically, including a device, name, signature, word, letter, numeral, shape, configuration, pattern, ornamentation, colour or container for goods or any combination of the aforementioned"</i>. Provided that a trade mark qualifies for registration in terms of the Trade Marks Act, any person may apply for registration of such mark. However, a trade mark does not need to be registered in South Africa in order to grant a license to such trade mark to a franchisee, under a franchise agreement. Pending trade mark applications may be licensed and our law recognises common law rights in unregistered trade marks which have a reputation and well-known trade marks, both of which may be licensed under a franchise agreement.

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
14.	Are other types of IP licences captured by the franchising laws?	Other forms of intellectual property may also be the subject of a license granted under a franchise agreement, such as patents, which are registered under the Patents Act 57 of 1978 and designs, which are registered under the Designs Act 195 of 1993. Works of copyright are protected upon creation, under the Copyright Act 98 of 1978, but cannot be registered (except for cinematograph films). Other forms of proprietary creations of the mind, such as valuable know how and trade secrets, should also be protected by appropriate confidentiality clauses under a franchise agreement to maintain their value.
15.	Are there any registration requirements relating to the franchise system?	No, there are no registration requirements relating to franchising or franchise agreements
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	Although neither the CPA nor the Regulations expressly provide that the franchisor and the franchisee must act in good faith, section 2(1) of the CPA provides that the CPA must be interpreted to give effect to the purposes of the CPA as set out in section 3 thereof. Section 3(1)(c) and (d) of the CPA provide that the promotion of fair business practices and the protection of consumers from unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices, and deceptive, misleading, unfair or fraudulent conduct, are some of the purposes of the CPA. The achievement of this purpose is demonstrated through the various provisions of the CPA such as section 48, dealing with unfair, unreasonable or unjust contract terms and section 51 of the CPA, dealing with prohibited transactions, agreements, terms or conditions, which imply an obligation for suppliers, in this instance franchisors to act in good faith towards franchisees in contractual dealings, as such requiring franchisors to act in a manner that is transparent and equitable.
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	Yes, regulation 3 of the Regulations mandates pre-contractual disclosure to franchisees, where every franchisor is obliged to provide a franchisee with a disclosure document dated and signed by an authorised officer of the franchisor at least 14 (fourteen) days prior to the signing of a franchise agreement.

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
		FASA provides that the disclosure document prepared by its franchisor member must comply with the requirements set out in the 'Disclosure Document Requirements Appendix', which are more comprehensive than the disclosure requirements in the Regulations.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Yes, pre-sale disclosure obligations apply to sales to sub-franchisees. Regulation 3 of the Regulations provides that “[e]very franchisor must provide a prospective franchisee with a disclosure document”. Given that a prospective sub-franchisee would be entering into a franchise agreement with the master franchisee/sub-franchisor, the prospective sub-franchisee would be a prospective franchisee, and the master franchisee/sub-franchisor would be a franchisor. As the wording of regulation 3 of the Regulations requires “[e]very” franchisor to provide a prospective franchisee with a disclosure document the master franchisee/sub-franchisor (being the franchisor) arguably bears the obligation to make the necessary disclosures, however it is also arguable that the franchisor bears such an obligation, as it falls within the scope of “[e]very” franchisor.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	Yes, regulation 3(1) of the Regulations provides that the pre-contractual disclosure document must be dated and signed by the authorised officer of the franchisor and, at minimum, must contain the following information: i. the number of individual outlets franchised by the franchisor; ii. the growth of the franchisor's turnover, net profit and the number of individual outlets, if any, franchised by the franchisor for the financial year prior to the date on which the prospective franchisee receives a copy of the disclosure document; iii. a statement confirming that there have been no significant or material changes in the company's or franchisor's financial position since the date of the last accounting officer's, or auditor's certificate or certificate by a similar reviewer of the company or franchisor, that the company or franchisor has reasonable grounds to believe that it will be able to pay its debts as and when they fall due; and

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
		iv. written projections in respect of levels of potential sales, income, gross or net profits or other financial projections for the franchised business or franchises of a similar nature with particulars of the assumptions upon which these representations are made. Regulation 3(2) of the Regulations provides that each page of the disclosure document set out in regulation 3(1) must be qualified in respect the assumptions contained therein. Regulation 3(3) of the Regulations provides that the disclosure document must be accompanied by a certificate certifying that: i. the business of the franchisor is a going concern; ii. the franchisor is able to meet its current and contingent liabilities; iii. the franchisor is capable of meeting all of its financial commitments in the ordinary course of business as they fall due; and iv. the franchisor's audited annual financial statements for the most recently expired financial year have been drawn up in the manner specified within regulation 3(3)(d) of the Regulations. Regulation 3(4) of the Regulations provides that the disclosure document must be accompanied by specific information including a list of current franchisees, if any, and of outlets owned by the franchisor, and an organogram depicting the support system in place for franchisees. A franchisor is obliged to update the financial disclosures listed under regulations 3(1) to 3(3) of the Regulations on an annual basis, and is also obliged to update the information under regulation 3(4) of the Regulations on a continual basis, as and when a new franchised business is sold, or when any information changes. Neither the CPA nor the Regulations make continuing disclosure to existing franchisees an obligation. As such, the obligation for disclosures applies only to potential franchisees and upon the renewal of a franchise agreement.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	Regulation 2(3)(m) of the Regulations provides for obligations where a franchisee is required to contribute to a marketing fund or other cooperative fund, and the franchise agreement must contain clauses informing the franchisee:

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
		- i.of the amount to be paid, or method of calculation where the amount is a percentage; - ii.of the franchisor's contributions to such fund; - iii.that the franchisor and / or franchisor associated franchised businesses do not enjoy any direct or indirect benefit not afforded to independent franchisees; - iv.that the franchisor must, within 6 (six) months after the end of the last financial year, provide a franchisee with a copy of a financial statement, prepared in accordance with applicable legislation, which fairly reflects the fund's receipts and expenses for the last financial year, including amounts spent, and the method of spending on advertising and/or marketing of franchisees and the franchise system's goods and services; - v.that the franchisor must for every 3 (three) months period make financial management accounts relating to the funds available to franchisees; - vi.that the money contributed by the franchisees into the fund may not be spent on advertising and marketing of the franchisor's franchises for sale; - vii.that where an audit is carried out, provision of a certificate of a registered auditor or accounting officer, confirming that the fund's account has been audited; and where no audit is carried out, a certificate by the accountant that management accounts have been prepared and are correct to the best of the directors' knowledge and the franchisees are entitled to request copies of same; - viii.that the franchisee can request a copy of the statement and certificate issued in terms of the above-mentioned audit, and that the franchisor must within a reasonable period of such request provide such copies; and - ix.the contributions to the fund must be deposited into a separate bank account and must only be used for purposes of the fund.
21.	Is there a prescribed dispute resolution procedure?	No, there is no prescribed dispute resolution procedure, however the CPA makes provision for franchisees to approach the NCC, the National Consumer Tribunal ("Tribunal") or the court, where the franchisee's rights, as a consumer under the CPA are/have been infringed, impaired or threatened or prohibited conduct is/has occurred.

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
		Section 70 of the CPA makes provision for alternative dispute resolution (“ADR”) mechanisms, such as conciliation, mediation or arbitration, for any agreements referred to in the CPA. A dispute may also be referred to a provincial consumer court to the extent that such consumer court has jurisdiction to adjudicate on the dispute. In the event where the ADR agent appointed concludes that the matter cannot be resolved by means of an ADR process, the party who has referred the matter to the agent may file a complaint with the NCC, in respect of which the NCC may exercise the available options at its disposal to resolve the matter such as issuing and enforcing compliance notices, referring matters to the Tribunal, or referring alleged offences in terms of the CPA to the National Prosecuting Authority.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	Yes, section 7(2) of the CPA provides that the franchisee may give a written notice to the franchisor to cancel a franchise agreement without cost or penalty within 10 (ten) business days after signing the franchise agreement.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	No, neither the CPA nor the Regulations provide for any market restrictions on foreign franchisors or non-nationals entering the South African franchise market by way of owning or exercising control of businesses in South Africa. Despite the lack of market restrictions, there may be limitations such as the requirement for exchange control approvals from the South African Reserve Bank where there is the payment of royalties to a foreign entity, and the movement of capital, intellectual property and other significant assets out of South Africa.
24.	What forms of business entity are typically used by franchisors?	Franchisors in South Africa generally operate through limited liability companies, which may be private or public. International franchisors frequently conduct business in the country through locally registered external companies (branches). A possible strategy for international franchisors entering the South African market is the establishment of franchise joint ventures. This approach enables them to partner with local entities to develop networks while maintaining control over their brand. International franchisors also often enter into master franchise agreements with South African master franchisees. These master franchisees then contract with various South African sub-franchisees.

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Yes, section 4(1)(c) of the CPA makes provision for class actions. As a result, clauses attempting to waive the right to participate in class actions would be considered unenforceable, as parties cannot contract out of the provisions of the CPA. Class actions are still an emerging and relatively new area in South Africa's legal system. While there have been significant class actions in other sectors, such as in the mining sector and bread/bread milling, we are unaware of any franchisee-led class actions
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	No, the termination and renewal of franchise agreements may be agreed upon contractually between the franchisor and franchisee. The principle of freedom to contract is applicable, as such the parties cannot be forced into a contractual relationship by way of automatic renewal or extensions where the parties have not agreed to same. The franchisee is not entitled to any compensation or damages where there is a refusal for renewal or extension, unless the right to such renewal or extension was provided for in the franchise agreement.
27.	Are there penalties for contravening the franchising laws?	Yes, section 112 of the CPA empowers the Tribunal to impose administrative fines in respect of prohibited conduct or required conduct. As such, the Tribunal may impose administrative fines on franchisors where franchisors contravene the provisions of the CPA as it relates to franchise agreements.
28.	Are there any required provisions for a franchise agreement to be valid?	Yes, regulation 2(3) of the Regulations provides a list of the minimum information and provisions that must be included in a franchise agreement. The provisions which must appear in a franchise agreement are as follows: i.the name and description of the goods or services the franchisee is entitled to provide; ii.the obligations of the franchisor and franchisee; iii.detailed information regarding the territorial rights of the franchisee; iv.a description of the applicable franchise business system; v.the direct or indirect consideration payable by the franchisee to the franchisor;

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
		- vi.a description of the site or premises and location from which the franchisee is to conduct the franchise; - vii.the conditions under which the franchisee or its, her or its estate may transfer or assign the rights and obligations under the franchise; - viii.a description of the trade mark or any other intellectual property owned by the franchisor, or otherwise licensed to the franchisor which is, or will be used in the franchise, and the conditions under which they may so be used; - ix.if the agreement is related to a master franchise, the master franchisor's identity; - x.particulars of the initial training and assistance provided by the franchisor and, where the franchisor provides ongoing training for the duration of the franchise agreement, a statement that the particulars of such training and assistance will be provided to the franchisee as and when necessary; - xi.the duration and the terms of the renewal of the franchise agreement, provided that such terms and conditions are not inconsistent with the purpose and policy of the CPA; - xii.if the franchise agreement provides that a franchisee must directly or indirectly contribute to an advertising, marketing or other similar fund, the franchise agreement must contain clauses informing the franchisee— a. of the amount to be paid, or method of calculation where the amount is a percentage; b. of the franchisor's contributions to such fund; c. that the franchisor and/or franchisor associated franchised businesses do not enjoy any direct or indirect benefit not afforded to independent franchisees; d. that the franchisor must, within 6 (six) months after the end of the last financial year, provide a franchisee with a copy of a financial statement, prepared in accordance with applicable legislation, which fairly reflects the fund's receipts and expenses for the last financial year, including amounts spent, and the method of spending on advertising and/or marketing of franchisees and the franchise system's goods and services;

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
		e. that the franchisor must for every 3 (three) months period make financial management accounts relating to the funds available to franchisees; f. that the money contributed by the franchisees into the fund may not be spent on advertising and marketing of the franchisor's franchises for sale; g. that where an audit is carried out, provision of a certificate of a registered auditor or accounting officer, confirming that the fund's account has been audited; and where no audit is carried out, a certificate by the accountant that management accounts have been prepared and are correct to the best of the directors' knowledge and the franchisees are entitled to request copies of same; h. that the franchisee can request a copy of the statement and certificate issued in terms of the above-mentioned audit, and that the franchisor must within a reasonable period of such request provide such copies; and i. the contributions to the fund must be deposited into a separate bank account and must only be used for purposes of the fund; xiii.the effect of the termination or expiration of the franchise; xiv.extension or renewal terms, or whether there is no option to renew or extend the agreement; xv.a written explanation of any terms or sections not fully understood by the prospective franchisee upon the prospective franchisee's written request; xvi.the franchisor's legal name, trading name, registered office and franchise business office, street address, postal address, email address, telephone number and fax number; xvii.the name, identity number, town of residence, job titles and qualifications of the franchisor's directors or equivalent officers; xviii.except where the franchisor is a company listed on a stock exchange, details of any proprietor, member or shareholder if they are different from the persons referred to in the paragraph immediately above; xix.particulars of any restrictions imposed on the franchisee;

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
		xx.the nature and extent of the franchisor's involvement or approval in the process of site selection; xxi.the terms and conditions relating to termination, renewal, goodwill and assignment of the franchise; xxii.the main obligations of the franchisor in respect of initial and ongoing training to be provided; xxiii.confirmation that any deposits paid by the prospective franchisee will be deposited into a separate bank account and a description of how these deposits will be dealt with; xxiv.full particulars of the financial obligations of the franchisee in terms of the franchise agreement or otherwise related to the franchised business including— - the initial fee payable to the franchisor on the signing of the franchise agreement, including the purpose for which it is to be applied; - the funds required to establish the franchised business including, purchase or lease of property, site conversion costs, décor and signage, equipment, furniture, hiring and training of staff, opening stock, legal and financial charges, as may be applicable; - the initial working capital, where possible, and the basis on which it is calculated; - the total investment required; - a clear statement as to whether or not any expenses, any salary/wages of employees of the franchised business and the costs of servicing loans are included in the purchase price; - the amount of funding that is available from the franchisor, if any, and the applicable conditions; - the total amount that the franchisee must contribute towards the necessary funding before borrowing; and - ongoing amounts payable to the franchisor, with details as to— - whether the amounts are fixed or variable;

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
		- ii.whether all or part of the amounts are included in the price of goods or services that must be purchased from the franchisor or other preferred suppliers; - iii.the dates, or intervals, at which the amounts fall due; and - iv.if any fee is payable in respect of management services provided by the franchisor, details of such services. Regulation 2(3) of the Regulations provides that the terms and conditions of a franchise agreement, and in particular the duration and the terms of the renewal of the franchise agreement, must not be inconsistent with the purpose and policy of the CPA. In ascertaining whether the terms and conditions of a franchise agreement are inconsistent with the purpose and policy of the CPA, consideration must be had to the fact that the regulation of franchise agreements aims to prevent: - i.unreasonable, or overvaluation of, fees, prices or other direct or indirect consideration; - ii.conduct which is unnecessary or unreasonable in relation to the risks to be incurred by one party; and conduct that is not reasonably necessary for the protection of the legitimate business interests of the franchisor, franchisee or franchise system.
29.	What is the minimum duration of a franchise term?	Neither the CPA nor the Regulations provide for a minimum term for a franchise agreement. As such, the franchisor and franchisee may contractually agree on the duration of the franchise.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	No, there are no laws that would override a franchisor's right to terminate a franchise agreement in accordance with the provisions of the franchise agreement (or in terms of the common law).
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement?	It depends on the terms and conditions of the franchise agreement. The termination clause and the terms and conditions associated with same are to be agreed upon contractually between the franchisor and the franchisee. Neither the CPA nor the Regulations prohibit early termination of the franchise agreement (e.g. in terms of a termination for convenience clause), nor do they prescribe for

Region: MIDDLE EAST AND AFRICA		
Country: South Africa		
Author: ENS Africa; Altair Richards (Director, Corporate Commercial), Janine Thomas (Director, Intellectual Property), Orita Maharaj (Senior Associate, Corporate Commercial), Pesachya Glixman (Candidate Legal Practitioner, Corporate Commercial), Nkateko Hlongwane (Candidate Legal Practitioner, Corporate commercial)		
Verifier: Werksmans; Neil Kirby (Director, Healthcare and Life Sciences)		
#	Question	Answer
	Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	notices or a notice period for the termination of the franchise agreement. As such, it is advisable that the termination clause is comprehensive and caters for instances where it would be permissible to terminate the agreement and the minimum notice period for termination.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	Non-compliance with disclosure obligations amounts to a violation of the CPA and the Regulations. The franchisee may report such non-compliance to the NCC, where the NCC may, in the first instance, issue a compliance notice, or refer the non-compliance to the Tribunal, which is empowered to impose an administrative fine.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	Except in terms of section 7(2) of the CPA, which grants franchisees the right to cancel franchise agreements within 10 (ten) days of signing, a franchisee's ability to terminate a franchise agreement and any associated penalties for termination should be governed by the terms of the franchise agreement. Section 2 of the CPA explicitly provides that none of its provisions or the provisions of the Regulations restrict a franchisee from exercising its common law rights, which include the right to claim damages in the event of breach of contract.

Region: THE AMERICAS		
Country: Brazil		
Author: Hannah Fernandes, Di Blasi, Parente & Associados		
Verifier: Paula Mena Barreto, Campos Mello Advogados		
#	Question	Answer
34.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	The main Brazilian legislative bill regulating franchises is Law n. 13,966 of December 26, 2019 ("Brazilian Franchise Law" or "BFL"). The Brazilian Civil Code provisions outline principles and set rules concerning the formation, duration and performance of contracts also apply to franchise agreements. Concerning international franchise agreements, Brazilian Patent and Trademark Office's ("BPTO") Normative Act 70/2017 requires their recordation before the BPTO for the effectiveness of specific provisions.
35.	Is there a regulator of franchising conduct?	No.
36.	Is there a voluntary code or other form of self-governance?	No.
37.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	The most representative entity for the franchising sector is the Brazilian Franchise Association ("ABF"). The association is voluntary, the most relevant obligation imposed on franchisors being the payment of a membership fee. For more information, please go to www.portaldofranchising.com.br .
38.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	According to Article 1 of the BFL, franchise is defined as the system by which a franchisor grants to a franchisee the right of trademark or other intellectual property object's use, associated with the right to exclusive or non-exclusive distribution of products or services and, optionally, also the right of use of technology of implantation and administration of a business or operational system developed or owned by a franchisor against direct or indirect remuneration, however without being characterised as a consumer relationship or an employment relationship, even during the training period. Whereas a trademark license agreement only relates to the right of use a trademark, the risk of having it compared to a franchise is quite low. Conversely, if the trademark deal involves the right of using know-how, technology, and a specific model of operation, including the operational system developed or owned by a franchisor, it is more likely to be considered as a real franchise business. The transfer of know-how related to the business model is also a characteristic of franchise agreements, which differentiates it from a trademark licencing agreement.
39.	Does your jurisdiction have the concept of an "accidental franchise"?	Although not the BFL nor the relevant case law use the expression "accidental franchise", the concept of accidental franchise – meaning that a business arrangement that falls into the concept of franchise and do not comply with the BFL – indeed exists in Brazil.

Region: THE AMERICAS		
Country: Brazil		
Author: Hannah Fernandes, Di Blasi, Parente & Associados		
Verifier: Paula Mena Barreto, Campos Mello Advogados		
#	Question	Answer
40.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	No.
41.	Are there any types of agreements automatically deemed a franchise agreement?	Agreements that meet the requisites set forth in the BFL are automatically subject to it, as they are automatically deemed a franchise agreement, even if the parties did not intend to execute a franchise agreement. This is the case as to trademark licencing agreements that bear features typical of franchise agreements, such as the use of standard operating procedures, standard business model, technology of implantation and administration of a business or operational system developed or owned by a franchisor.
42.	Must the franchise agreement be governed by local law?	It depends. According to Article 7, items I and II of the BFL, franchise agreements that take effect exclusively in the national territory (concluded between Brazilian parties) must be governed by Brazilian law, while in international franchise agreements the contracting parties may opt, in the agreement, for the jurisdiction of one of their countries of domicile. In this sense, Article 7, paragraph 2 of the BFL defines an “international franchise agreement” as one which, due to the acts concerning its conclusion or execution, the situation of the parties as regards nationality or domicile, or the location of its object, has links with more than one legal system.
43.	Are foreign franchisors and domestic franchisors subject to different requirements?	No, except in relation to franchise agreements (Art. 7, items I and II, BFL): those that take effect exclusively in the national territory (concluded between Brazilian parties) will be written in Portuguese and governed by Brazilian law, while international franchise agreements will be written originally in Portuguese or will have a certified translation into Portuguese at the expense of the franchisor, and the contracting parties will be able to opt, in the agreement, for the jurisdiction of one of their countries of domicile.
44.	Must the franchise agreement be in the local language?	Yes. The BFL demands that both FDD and the agreement are written in Portuguese language.
45.	Are there any franchising laws which are bespoke to particular industries?	No.
46.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	Trademarks are not defined by the BFL. The definition of trademarks may be found in the Law n. 9,279 of May 14, 1996 (the “Brazilian Industrial Property Law”), according to which a trademark is a visually perceptible sign used to distinguish goods or services from others identical or similar of different origin.

Region: THE AMERICAS		
Country: Brazil		
Author: Hannah Fernandes, Di Blasi, Parente & Associados		
Verifier: Paula Mena Barreto, Campos Mello Advogados		
#	Question	Answer
		It is necessary that the franchised trademarks must be, at least, filed at the BPTO before a franchise may be offered and/or sold in Brazil. The trademarks do not necessarily have to be granted by the BPTO but rather filed before the Office.
47.	Are other types of IP licences captured by the franchising laws?	The BFL was not designed to encompass a specific kind of IP licence. Any IP licence may be disregarded in favour of the application of the BFL should it meet the definition of a “franchise” provided for in Article 1 of the BFL and the requisites set forth in Article 2 of the BFL.
48.	Are there any registration requirements relating to the franchise system?	Yes. Although the disclosure document does not require registration with any regulator, international franchise agreements on the other hand can be recorded at the BPTO. The registration before the BPTO has always been required to: (i) make the contract enforceable against third parties; (ii) authorize remittance of payments of royalties abroad; (iii) permit tax deduction by the licensee of amounts paid in royalties, as per applicable tax laws and regulations. <u>However</u>, Federal Law No. 14,596 of 06/14/2023, which introduced the new transfer pricing rules, with effect from January 1, 2024 puts an end to the current deductibility limits for passive royalties and the need to register contracts with the BPTO for tax deductibility purposes. Furthermore, Central Bank BCB Resolution No. 278 of 12/31/2022, which regulates Law No. 14,286 of 12/29/2021, abolished the need to register royalty contracts with BACEN (and, consequently, with the Brazilian PTO) for the remittance of royalties abroad. However, the company authorized to operate in the foreign exchange market may eventually request such registration. Based on that, <u>the registration of a franchise agreement before the Brazilian PTO is now only needed to make the contract enforceable against third parties (item (i) above).</u>
49.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	The general rules and principles laid down by the Brazilian Civil Code concerning the negotiation and execution of agreements, including the post-contractual obligations, also apply to franchise agreements. Articles 113 and 422 of the Brazilian Civil Code disposes that all agreements are subject to the principles of good faith. Beyond the obligation not to harm, according to the principle of good faith, it is legally expected from the parties to cooperate with one another with fairness, mutual trust, transparency and honesty during all phases of the transaction in order to ensure that the other party fully understands what is being negotiated and obtains the expected results.

Region: THE AMERICAS		
Country: Brazil		
Author: Hannah Fernandes, Di Blasi, Parente & Associados		
Verifier: Paula Mena Barreto, Campos Mello Advogados		
#	Question	Answer
		The observance of good faith clearly drives the offering stage of franchise transactions, where the franchisor is obliged to provide prospective franchises with a franchise disclosure document ("FDD"), describing in detail the main information on the franchised business. The standards of the principle of good faith shall subsist through all phases of the transaction and even survive termination, which means that the contracting parties must observe and act in accordance with such standards during negotiations, before and during the term of the agreement, as well as after its termination.
50.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	Yes. The main purpose of the BFL is to give transparency to the future franchise relationship and it does so by obligating the franchisor to provide any prospective franchisee with a FDD at least 10 days before the execution of any binding document/agreement or payment of any amount to the franchisor or other designated recipients.
51.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Yes. The BFL does not make any exception when it comes to the obligation of providing the prospective franchisee or sub-franchisee with an FDD at least 10 days before the execution of any agreement or the payment of any amount to the franchisor, master franchisee or other designated recipients. Although the BFL does not specify who is required to make the necessary disclosures to a sub-franchisee, it is common practice to assign to the party directly related to it (normally a master franchisee) the performance of such obligation.
52.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	The FDD must be provided to the prospective franchisee in written, in Portuguese, as clear and accessible as possible, to allow the prospect understanding of the franchised business, its rights and obligations, and must contain all the information established in Art. 2 of the BFL. Although not mandatory, we recommend, at least, an annual update of the FDD. There are no legal statutes requiring continuing disclosure to existing franchisees.
53.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	To give transparency to the future franchise relationship, the BFL obligates the franchisor to provide clear information regarding eventual taxes, such as those related to marketing funds. The information to be disclosed comprises the amount to be paid, indicating specifically how said amount is calculated, and its intended purpose.
54.	Is there a prescribed dispute resolution procedure?	There is no prescribed dispute resolution procedure set in the BFL. The parties are free to agree whether the dispute resolution procedure adopted shall be arbitration or litigation.
55.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	No. However, there are non-competition obligations that, although not prescribed by law, may be laid down in franchise agreements. Said obligations are imposed to the franchisee after the termination of the franchise agreement and aim to refrain the franchisee from competing against the franchisor using the know-how it acquired during the franchise agreement.

Region: THE AMERICAS		
Country: Brazil		
Author: Hannah Fernandes, Di Blasi, Parente & Associados		
Verifier: Paula Mena Barreto, Campos Mello Advogados		
#	Question	Answer
56.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	Although non-nationals can perfectly own or control a business in Brazil, Brazilian law does impose some legal requirements to be observed by any legal entity (or individuals) domiciled abroad that holds equity interests in a Brazilian company. For example, foreign entities must be enrolled with the Federal Taxpayer Registry for Corporate Entities and with BACEN. Also, foreign entities must appoint a Brazilian-resident individual to act as its attorney-in-fact and for receiving summonses on its behalf. Moreover, there are specific restrictions on the participation of foreign investors in certain sectors and types of company, such as the aerospace industry and cable TV.
57.	What forms of business entity are typically used by franchisors?	The types of companies that are most commonly adopted in Brazil are the limited liability company (LLC) and the corporation since in both the partner's liability is generally limited regarding the company and third parties. However, it is noteworthy that the costs of setting up a limited liability company are less significant than the costs of setting up and maintaining a corporation, as the limited liability companies are not subject to the considerable expenses of publishing certain relevant corporate acts that a corporation.
58.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Class actions are only available in Brazil, when damages are caused to the general public with respect to issues such as consumers' rights, the environment and public order. Furthermore, only a handful of entities can file such Court actions – mainly Public Prosecutors, the State, the Brazilian Bar Association and Class Associations. Therefore, class actions cannot be brought to discuss strictly private conflicts, such as those arising out of a franchise agreement. In any event, considering that common and collective rights can be asserted regardless of any contractual provisions, a class action waiver clause would not be enforceable in Brazil.
59.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend?	No. Considering that there is no mandatory renewal in franchise agreements, there is no overriding right for a franchisee to be automatically entitled to a renewal or extension of the franchise agreement. The BFL does not regulate the relationship and, therefore, it does not deal with breach, non-renewal or other reasons for termination. Considering that the law does not require mandatory renewal, if the franchise agreement does not provide for automatic renewal, it will end upon expiration of the term set by the parties. If the agreement provides for automatic or conditional renewal, those provisions will prevail.

Region: THE AMERICAS		
Country: Brazil		
Author: Hannah Fernandes, Di Blasi, Parente & Associados		
Verifier: Paula Mena Barreto, Campos Mello Advogados		
#	Question	Answer
	If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	
60.	Are there penalties for contravening the franchising laws?	Article 2, 2 nd paragraph of the BFL states that, in case of non-compliance to the obligations related to the FDD, the franchisee may argue the annulment or nullity, as the case may be, of the franchise contract and request the restitution of all amounts paid to the franchisor or other designated recipients, by way of affiliation or royalties, monetarily adjusted. Article 4 of the BFL also stresses the possibility of imposing criminal sanctions due to said non-compliance. Moreover, eventual breach of the rules laid down in the contract may result in its termination and may entitle the aggrieved party to seek compensation for damages.
61.	Are there any required provisions for a franchise agreement to be valid?	Art. 7 of the BFL stipulates that franchise agreements must comply with the following conditions: (i) those which produce effects exclusively in the national territory shall be written in Portuguese and governed by Brazilian law; (ii) international franchise agreements shall be written originally in Portuguese or shall have a certified translation into Portuguese at the expense of the franchisor, and the parties may opt, in the agreement, for the jurisdiction of one of their countries of domicile; and (iii) if the choice of forum is expressed in the international franchise agreement, the parties must appoint and maintain a legal representative or attorney duly qualified and domiciled in the country of the defined forum, with powers to represent them administratively and judicially, including to receive summons. Notwithstanding the above, franchisees usually enter a franchise agreement by signing a written document, but a franchise agreement can also be oral or implied. There is no mandated form of a franchise agreement. As the validity, formation, duration, and performance requirements of franchise agreements are not prescribed by the BFL, the rules that govern said agreements are the general contract rules provided in the Brazilian Civil Code.
62.	What is the minimum duration of a franchise term?	There is no legal limitation related to the term of franchise agreements.
63.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	Please refer to answer 31 below.

Region: THE AMERICAS		
Country: Brazil		
Author: Hannah Fernandes, Di Blasi, Parente & Associados		
Verifier: Paula Mena Barreto, Campos Mello Advogados		
#	Question	Answer
64.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	As a rule, the franchisor and the franchisee cannot terminate a franchise agreement prior to the expiry of the agreement. The early termination may be considered a breach of contract and may entitle the aggrieved party to seek compensation for damages unless it is a termination for cause. Regarding the notice period, different set of rules apply depending on whether the franchise agreement has a fixed term or an indefinite period. In connection to indefinite term agreements, a 90 (ninety) days prior notice is required for terminating the agreement. On the other hand, regarding fixed term agreements, which is the most common choice in franchising, the franchise agreement will terminate upon expiration of its contractual term. Although the parties may stipulate that it will not be necessary to take any specific action to terminate the franchise agreement in this case, it is advisable to send a proper notice for post-termination obligations. Also, it is important to stress that article 473 of the Brazilian Civil Code establishes, as a rule for termination of agreements, that, if any of the parties has made significant investments for the execution of the agreement, the unilateral termination will only be effective after the agreement has been in force for a term compatible with the nature and amount of such investments. If the termination conflicts with such provision, the Brazilian courts may (i) set an additional term for the agreement to remain in force or (ii) set a specific compensation if the conflict between the parties renders an extension unfeasible.
65.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	Failure to deliver the FDD within the term established by the BFL entitles the franchisee to seek the cancellation of the Franchise Agreement and the refund of all monies paid by franchisee to franchisor, or to any third party indicated by franchisor, as franchise fees and royalties (duly updated) plus damages. These sanctions are also applicable if the franchisor omits information required by law or conveys false information in the FDD.
66.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	Yes. Please refer to the above answer.

Region: THE AMERICAS		
Country: Canada		
Author: Larry Weinberg, Cassels Brock & Blackwell LLP		
Verifier: Joseph Adler, KMB Law		
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	Yes. Canada has a federal system, with the regulation of contracts delegated to the 10 provinces. Accordingly, each province is to determine whether or not they are to have a law that regulates franchising. Currently there are six (soon to be seven) of the provinces that have a law that specifically regulates the granting and the operation of franchises.
2.	Is there a regulator of franchising conduct?	None of the franchise laws provide for a regulator.
3.	Is there a voluntary code or other form of self-governance?	No, there is no such voluntary code or other form of self-governance, except as noted in the answer to Question #4 below.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	There is no legal obligation for a franchisor to be a member of the Canadian Franchise Association (“CFA”), the national trade association. However, if a franchisor becomes a member, then a term or condition of membership includes agreement to adhere to the CFA Code of Conduct, which in part, requires “voluntary” disclosure even in the non-franchise regulated provinces and territories.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	The provincial franchise laws all have their own individual definitions of a franchise, although they are substantially similar. Generally, the definition of a traditional business format franchise requires that all of the 4 following tests be met: (i) the grant of rights to carry on a business; (ii) direct or indirect payment(s); (iii) association with a trademark; and (iv) substantial control or assistance over the methods of operation of the business. Many trademark license agreements can be seen to be franchises and the determination often turns on the fourth part of the test, namely whether the licensor exercises significant control or offers significant assistance over the methods of operation of the business. There is a second part of the definition of a “franchise” that addresses so called “business opportunities” such as vending machines.
6.	Does your jurisdiction have the concept of an “accidental franchise”?	The concept of an “accidental franchise” is a practical concept, not a legal one. But as noted in the answer to Question #5 above, there are certainly instances where a license, distribution, dealer, agency or other agreement may be found to be a franchise because of the wide-ranging definition of a franchise, and the subjective nature of what “significant control or assistance” means.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	Each of the provincial franchise laws contains a list of relationships that are excluded from the franchise laws. The list provided in the Ontario statute is representative, as it provides:

Region: THE AMERICAS		
Country: Canada		
Author: Larry Weinberg, Cassels Brock & Blackwell LLP		
Verifier: Joseph Adler, KMB Law		
#	Question	Answer
		"This Act does not apply to the following continuing commercial relationships or arrangements: 1. Employer-employee relationship. 2. Partnership. 3. Membership in a co-operative association, as prescribed. 4. An arrangement arising from an agreement to use a trademark, trade name, logo or advertising or other commercial symbol designating a person who offers on a general basis, for consideration, a service for the evaluation, testing or certification of goods, commodities or services. 5. An arrangement arising from an agreement between a licensor and a single licensee to license a specific trade-mark, trade name, logo or advertising or other commercial symbol where the licence is the only one of its general nature and type to be granted by the licensor in Canada with respect to that trade-mark, trade name, logo or advertising or other commercial symbol. 6. An arrangement arising out of a lease, licence or similar agreement whereby the franchisee leases space in the premises of another retailer and is not required or advised to buy the goods or services it sells from the retailer or an affiliate of the retailer. 7. A relationship or arrangement arising out of an oral agreement where there is no writing which evidences any material term or aspect of the relationship or arrangement. 8. A service contract or franchise-like arrangement with the [government] or an agent of the [government]." Separately there is a list of franchise relationships that are exempt from the disclosure obligations but are otherwise governed by the provincial franchise laws.
8.	Are there any types of agreements automatically deemed a franchise agreement?	Any arrangement can be deemed a franchise if it meets the statutory definition.
9.	Must the franchise agreement be governed by local law?	Each of the franchise laws mandates that a franchise agreement cannot preclude application of the local provincial law in relation to any claim under the applicable franchise law. So, in effect, it usually means that local provincial law should apply.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No. The laws apply to any franchisor, subfranchisor or franchisee where the franchise is to be wholly or partly operated in the province. The exception is the franchise law in the province of Alberta which states that the disclosure obligation also requires that the prospective franchisee be a resident or have a permanent establishment of that province.

Region: THE AMERICAS		
Country: Canada		
Author: Larry Weinberg, Cassels Brock & Blackwell LLP		
Verifier: Joseph Adler, KMB Law		
#	Question	Answer
11.	Must the franchise agreement be in the local language?	There is no legal requirement, except as noted below, for a franchise agreement to be in English, the local language in 9 of 10 Canadian provinces. However, the practical likelihood of a franchisee signing a franchise agreement in these provinces in a language other than English is probably close to nil. The one exception is the Province of Quebec. While it does not have a franchise law, it has a language law which requires that all contracts of adhesion (including standard form franchise agreements) be provided to the counter party in the French language, even if the parties agree to sign the contract in a language other than French.
12.	Are there any franchising laws which are bespoke to particular industries?	No. The franchise laws can apply to any industry if the characteristics of the relationship meet the test of a definition of a franchise.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	A “trademark” is not defined by the franchise laws. However, that term is defined in the Federal Trademarks Act, which is a national law that governs the registration of trademarks and enforcement of rights. One does not have to have a registered trademark in order to franchise. But it is important to note that the definition of a franchise is not limited to the license of use of a trademark. All of the provincial franchise laws have an expanded list stating that a franchise can exist when “the franchisor grants the franchisee the right to sell, offer for sale or distribute goods or services that are substantially associated with the franchisor’s, or the franchisor’s associate’s, trademark, service mark, trade name, logo or advertising or other commercial symbol,...”.
14.	Are other types of IP licences captured by the franchising laws?	No. The franchise laws will apply to any type of IP license if the characteristics of the relationship meet the test of a definition of a franchise.
15.	Are there any registration requirements relating to the franchise system?	No, there are no registration requirements under any of the Canadian provincial franchise laws.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	Yes, each Canadian provincial franchise law contains an explicit duty of fair dealing, which requires that both the franchisor and franchisee owe each other the duty to act in good faith, and in accordance with reasonable commercial standards in the performance and enforcement of the agreement. Courts have stated that this duty is in fact part of Canadian common law of contract, and so applies in all common law provinces, even those without a franchise law. In addition, the Civil Code of Quebec also contains similar obligations in that province.

Region: THE AMERICAS		
Country: Canada		
Author: Larry Weinberg, Cassels Brock & Blackwell LLP		
Verifier: Joseph Adler, KMB Law		
#	Question	Answer
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	Yes, the main feature of the Canadian provincial franchise laws is the pre-sale duty of disclosure. These disclosure obligations may also apply in the event of a renewal, extension or transfer of a franchise.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Yes, these disclosure obligations would apply to the offer of a franchise to a prospective sub-franchisee. The obligation would generally apply to the sub-franchisor/master franchisee.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	The overriding obligation is to disclose all of the disclosure items prescribed by regulation under the provincial franchise laws within the franchise disclosure document (FDD). In addition, the franchise laws require that franchisors disclose within their FDD all “material facts”, which term is defined in the provincial franchise laws. The minimum disclosure requirements are very similar, but do vary to some degree. Franchisors are required to update their FDDs at least once per fiscal year. However, the FDD is required to be up to date at the time of disclosure, including if new financial statements are prepared or other materials facts have arisen or changes have occurred. There is no obligation to provide disclosure to existing franchisees, except upon the renewal, extension or transfer of the franchise or the grant of an additional franchise (if not exempted otherwise).
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	Save for the Alberta’s Franchises Act, the franchise laws all require that the FDD include information on what monies will be collected, and what percentage of the ad fund monies collected over the last two fiscal years was in fact used in advertising and what percentage was retained. In addition, each of the franchise laws, except for Alberta, require the projections of same for the current fiscal year and whether reports on advertising activities financed by the fund will be made available to the franchisees.
21.	Is there a prescribed dispute resolution procedure?	The provincial franchise laws do not prescribe a dispute resolution procedure, except for the franchise law in the Province of New Brunswick, which requires that the parties engage in mandatory mediation if any party requires it. In addition, the Province of Manitoba’s franchise law requires the disclosure of certain mandatory information pertaining to mediation and arbitration if the franchise agreement provides that disputes be referred to or resolved by mediation or arbitration.

Region: THE AMERICAS		
Country: Canada		
Author: Larry Weinberg, Cassels Brock & Blackwell LLP		
Verifier: Joseph Adler, KMB Law		
#	Question	Answer
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	There is no cooling off period after the franchise agreement is signed, unless a new franchise is granted, or an existing franchise is renewed, extended or transferred. Provincial franchise laws require a mandatory minimum 14 day cooling off period between the date of receipt by the franchisee of the FDD and the signing by the franchisee of a franchise agreement (or other agreement relating to the franchise) and the receipt by the franchisor of any payment for the franchise, subject to certain limited exceptions.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	There are generally no specific legal restrictions on foreign franchisors entering the Canadian market. There are however foreign investment laws in Canada of general application. And there are industry specific laws that regulate the offering and sale of products and services, such as those that regulate the sale of automobiles, medical and health devices, etc.
24.	What forms of business entity are typically used by franchisors?	Most franchisors use a business corporation as their entity of choice. However, there is no legal requirement that the corporation be Canadian.
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	There are no specific provisions in the franchise laws that mention class actions. However, there are class action laws in the various provinces, and courts have stated that the franchise law provisions stating that franchisees have a right to associate with one another assist in certification of a class of franchisees.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	There are no provisions in the franchise laws in Canada that override the explicit contractual provisions relating to renewal or extension of the franchise. Accordingly, there are no requirements to pay a franchisee compensation or damages if they are not renewed or extended, unless the conduct amounts to a breach of the contract or breach of the duty of fair dealing.
27.	Are there penalties for contravening the franchising laws?	There are no government agencies who oversee or enforce the franchise laws. All of the franchise laws provide civil remedies to franchisees if the franchisor fails to deliver the required FDD, or if the FDD is deficient. There are also rights

Region: THE AMERICAS		
Country: Canada		
Author: Larry Weinberg, Cassels Brock & Blackwell LLP		
Verifier: Joseph Adler, KMB Law		
#	Question	Answer
		of action if the FDD contains a misrepresentation, or if either party breaches the duty of fair dealing. A franchisee also has a right of action if there is a breach by the franchisor of the franchisee's right to associate.
28.	Are there any required provisions for a franchise agreement to be valid?	There are no required provisions in order for a franchise agreement to be valid in Canada, other than the typical ones that are required to make a contract enforceable generally.
29.	What is the minimum duration of a franchise term?	There is no minimum duration of a franchise term in Canada.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	Yes, generally speaking, the duty of fair dealing and the Federal bankruptcy and insolvency laws will override any contractual provisions relating to default and termination of the franchise agreement.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	The parties are governed by terms of the contract in relation to the right to terminate prior to expiry, and there are no minimum rules or notice periods mandated by the franchise laws. However, the franchise laws do require that the franchisor exercise their discretion in the performance and enforcement of the franchise agreement in good faith.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	In the event the franchisor fails to deliver the FDD entirely, or if it is sufficiently deficient, then the franchisee has the right for 2 years from the date of signing the franchise agreement to rescind the agreement. Upon a valid rescission, the franchisor is effectively required to buy back the business, refund monies paid, and compensate the franchisee for any losses. A franchisee can also sue for damages in the event of a breach of the franchise laws, including, in the event of a misrepresentation.
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	Yes, see answer to Question #32 above.

Region: THE AMERICAS		
Country: Mexico		
Author: Pablo Hooper, Perez-Llorca, Gonzalez Cavillo		
Verifier: Alan R. Greenfield, Greenberg Traurig		
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	Yes, they are. Franchises in Mexico are governed and regulated by the Federal Law for the Protection of Industrial Property ("FLPIP") and its regulations under a separate legal body. The FLPIP is a federal law, and there is no state law governing franchises.
2.	Is there a regulator of franchising conduct?	No, there is none.
3.	Is there a voluntary code or other form of self-governance?	No, there is none.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	Yes, there is a Mexican Franchise Association, but it is not mandatory to join.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	In FLPIP Article 245, the following definition of a franchise in Mexico appears: <i>Franchising will exist, when, with the license to use a trademark, granted in writing, technical knowledge is transmitted or technical assistance is provided, so that the person to whom it is granted can produce or sell goods or provide services in a uniform manner and with the operational, commercial, and administrative methods established by the owner of the trademark, aimed at maintaining the quality, prestige and image of the products or services that it distinguishes.</i> According to the franchise definition provided in FLPIP Article 245, there are two key elements needed for any contract to be deemed a franchise agreement: the license of a mark and the transfer of know-how or technical assistance. Thus, a trademark license shall become a franchise agreement when the license also includes the transfer of know how or technical assistance.
6.	Does your jurisdiction have the concept of an "accidental franchise"?	No, there is none.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	No, there is none

Region: THE AMERICAS		
Country: Mexico		
Author: Pablo Hooper, Perez-Llorca, Gonzalez Cavillo		
Verifier: Alan R. Greenfield, Greenberg Traurig		
#	Question	Answer
8.	Are there any types of agreements automatically deemed a franchise agreement?	Other agreements, such as distribution agreements, commission, agency agreements, and service agreements, could implicitly or explicitly contain the above-mentioned key elements, and thus such contracts could be interpreted as franchise agreements.
9.	Must the franchise agreement be governed by local law?	Not necessarily. The franchise agreement could be governed by other law; however, the regulations provided in the FLPIP must be included in the agreement if the same shall produce legal effects into Mexico and/or if the franchise will be located in Mexico such regulations would also apply.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No.
11.	Must the franchise agreement be in the local language?	No.
12.	Are there any franchising laws which are bespoke to particular industries?	No.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	Trademarks are defined in the FLPIP. Article 171 of FLPIP provides that it is understood as a trademark, to be any sign perceptible by the senses and capable of being represented in a manner that allows determining the clear and precise object of protection, which distinguishes products or services from others of the same type or class in the market. A trademark application must be filed before entering into a franchise agreement. If there is no trademark application or trademark registration granted, it is not possible to grant any franchise nor a license agreement; it could be based on use in commerce nor by a foreign application or registration. However, it is best practice for the mark to be registered before franchising. Article 172 provides that types of marks that could be registered at the Mexican Institute of Industrial Property (the "MIIP").
14.	Are other types of IP licences captured by the franchising laws?	No.
15.	Are there any registration requirements relating to the franchise system?	The MIIP is in charge of the registration of all franchise agreements which it is not mandatory. However, it is recommended that summarized versions omitting confidential terms and conditions be filed (such as royalties, territories, development program, opening, technical assistance, among others) to avoid disclosing them at the public

Region: THE AMERICAS		
Country: Mexico		
Author: Pablo Hooper, Perez-Llorca, Gonzalez Cavillo		
Verifier: Alan R. Greenfield, Greenberg Traurig		
#	Question	Answer
		archives of the MIIP as the practice is allowed according to the Regulations of the FLPIP. A bilingual English-Spanish version or just a Spanish language version of the franchise agreement may be filed. There are reasonable official fees to be paid at the MIIP for each trademark application or trademark registration to be recorded with the franchise agreement.
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	No.
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	Yes, Article 65 of the FLPIP requires franchisors to provide prospective franchisees with a disclosure document addressing ten areas of information. The FLPIP Article 245 provides that at least thirty business days (forty-five calendar days) prior to the execution of a franchise agreement, a franchisor must provide to a prospective franchisee the information required in Article 65 of the Regulations.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Yes, as explained above, the obligations apply to the franchisor or master franchisee / Developer, as may apply.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	Article 65 of the FLPIP provides ten requirements for information that must be disclosed: 1. Franchisor's name, corporate name, address and nationality; 2. Description of the franchise; 3. Experience of the franchisor and the amount of time that the franchisor has operated the subject franchise; 4. Intellectual property rights comprised by the franchise and marks; 5. Types and amounts of payments to be made by the franchisee to the franchisor; 6. Types of services and technical assistance which the franchisor will provide to the franchisee; 7. Definition of the geographical area in which the franchise is to be operated; 8. Disclosure as to whether the franchisee is granted the right to grant subfranchises and under what circumstances and conditions; 9. Franchisee's obligations with regard to confidential information provided by the franchisor; and

Region: THE AMERICAS		
Country: Mexico		
Author: Pablo Hooper, Perez-Llorca, Gonzalez Cavillo		
Verifier: Alan R. Greenfield, Greenberg Traurig		
#	Question	Answer
		10. Description of the general rights and obligations of the franchisee under the terms of the franchise agreement. Updates must be made if any of the above-mentioned information changes. Once the franchise agreement is executed by the parties there is no need disclose again.
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	Yes, section III of Article 246 of the FLPIP provides that the franchise agreement must include <i>“the policies regarding inventories and marketing and advertising, as well as provisions related to the merchandise supply and engagement with suppliers, if applicable;”</i> .
21.	Is there a prescribed dispute resolution procedure?	No.
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	No.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	Yes, foreign franchisors are allowed to participate, subject to the industrial sector, but there are some limitations and conditions as provided in the Foreign Investment Law.
24.	What forms of business entity are typically used by franchisors?	Mexican entities such as SAPI, S.A de C.V. and S. de R.L. de C.V.
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Yes, it is possible by means of a special procedure established in the Federal Code of Civil Procedures.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of	No.

Region: THE AMERICAS		
Country: Mexico		
Author: Pablo Hooper, Perez-Llorca, Gonzalez Cavillo		
Verifier: Alan R. Greenfield, Greenberg Traurig		
#	Question	Answer
	whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	
27.	Are there penalties for contravening the franchising laws?	According to Article 388 of the FLPIP, the following remedies are available for violations of the FLPIP: (i) Fine up to approximately USD 1,500,000.00, (ii) Additional fine up to approximately USD 5,500 per each day the violation persists, (iii) Temporary closure until for ninety days, and (iv) Final closure. These remedies are applicable to all matters addressed in the FLPIP, not only for violations of the franchise requirements. Article 392 of the FLPIP shall be observed in order to have the MIIP determining the amount of the fine to be imposed.
28.	Are there any required provisions for a franchise agreement to be valid?	All franchise agreement requirements are addressed in Article 246 of the FLPIP, which reads as follows: I. The geographical zone in which the franchisee will primarily perform the activities which are the subject matter of the agreement; II. The location, minimum size and investment characteristics of the infrastructure, relating to the premises in which the franchisee will carry out the franchised activities; III. The policies regarding inventories and marketing and advertising, as well as provisions related to the merchandise supply and engagement with suppliers, if applicable; IV. The policies, procedures and terms for any reimbursements, financing and other consideration under the respective responsibility of each of the parties in the terms established in the agreement; V. The criteria and methods applicable to determine the franchisee's commissions and/or profit margins; VI. The characteristics of the technical and operational training of the franchisee's personnel, as well as the method or manner in which the franchisor will provide technical assistance; VII. The criteria, methods and procedures for supervision, information, evaluation and grading of the performance and the quality of the services under the respective responsibility of

Region: THE AMERICAS		
Country: Mexico		
Author: Pablo Hooper, Perez-Llorca, Gonzalez Cavillo		
Verifier: Alan R. Greenfield, Greenberg Traurig		
#	Question	Answer
		franchisee and franchisor; VIII. The terms and conditions under which the franchisee is permitted to sub-franchise, if agreed by the parties; IX. The grounds for termination of the franchise agreement; X. The assumptions under which the parties may review, and if such is the case, may mutually agree to amend the terms or conditions related to the franchise agreement; XI. Unless otherwise agreed, the franchisee will not be bound to sell its assets to franchisor or franchisor's designee, upon the termination of the franchise agreement; and XII. Unless otherwise agreed, the franchisee will in no event be bound to sell or transfer any ownership interest in the franchisee to the franchisor, or to make the franchisor a partner of such company.
29.	What is the minimum duration of a franchise term?	There is no minimum duration.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	No.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	Yes, if there is a breach of contract or if both parties agree to do so.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	As explained above, article 388 of the FLPIP may apply.

Region: THE AMERICAS		
Country: Mexico		
Author: Pablo Hooper, Perez-Llorca, Gonzalez Cavillo		
Verifier: Alan R. Greenfield, Greenberg Traurig		
#	Question	Answer
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	Yes, it is possible if it is properly addressed and negotiated in the franchise agreement as provided in Section IX of Article 246 and Article 249 of the FLPIP. If there is no provision expressly indicating that franchisee can rescind, then the only party that can rescind will be the franchisor if it is addressed and negotiated by the parties. The parties may decide under which circumstances will have the right to rescind.

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
1.	Are there any specific laws or other sources of law in your jurisdiction specifically applying to franchising?	Franchise offers and sales are regulated by both federal and state laws and rules, including the Federal Trade Commission (FTC) Franchise Rule (16 C.F.R. Part 436) and specific state laws (e.g., N.Y. Gen. Bus. L. § 680 et seq.; Cal. Corp. Code § 31000 et seq.). These laws and rules govern required franchisor disclosures and sales practices and are distinct from antitrust or competition laws. The FTC oversees consumer protection and derives its authority to issue regulations such as the Franchise Rule, primarily under the Federal Trade Commission Act, which broadly prohibits unfair and deceptive acts or practices in interstate commerce (see 15 U.S.C. § 45 et seq.). The 14 states that require a franchisor to file and obtain registration (and provide disclosure) before offering a franchise are: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin. Oregon requires a franchisor to provide disclosure as well. Even if a relationship does not meet the definition of a franchise, it might be considered a business opportunity. The FTC regulates “business opportunity” sales (16 C.F.R. Part 437) and so do the laws of various states. The FTC Business Opportunity Rule applies to commercial arrangements that have three elements: “First, a seller must solicit a prospective purchaser to enter into a new business. Second, the prospective purchaser of the business opportunity must make a “required payment.” And third, the seller must represent that the seller or one or more designated persons will provide any of three types of business assistance: (1) Providing locations for the purchaser's use or operation of equipment, displays, vending machines, or similar devices; (2) providing outlets, accounts, or customers to the prospective purchaser; or (3) buying back any or all of the goods or services that the purchaser makes, including providing payment for such services as, for example, stuffing envelopes from the purchaser's home.” 76 Fed. Reg. 76816, 76830 (Dec. 8, 2011). Some states regulate business opportunities as well. Most of these states require some form of disclosure that is more akin to franchise disclosure than the abbreviated disclosure required under the FTC Business Opportunity Rule noted above. Some states also require registration of a proposed business opportunity offering with the state. In most instances, these state laws by definition do not apply when the offering party pairs the “business opportunity” with licensing of a registered mark. In some states like Georgia, the exclusion is available to any offeror with a “registered mark” (Ga. Code Ann. § 10-1-410(2)(A)(iii)), while in other states, like North Carolina, the exclusion under

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
		the state law requires licensing of a mark that has been federally registered with the United States Patent and Trademark Office (USPTO) (N.C. Gen. Stat. § 66-94(4)). The following states have enacted business opportunity laws: Alabama, Alaska, Arizona, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and Washington. Where states have both a franchise and a business opportunity sales law (e.g., California), there is typically an exemption from the business opportunity law for companies that come under (and comply with) the franchise law. Of these states, even when the offeror has a federally registered mark, six still require some form of relatively simple exemption filing: Connecticut, Florida, Kentucky, Nebraska, Texas, and Utah. In two states - Florida and Utah – there is an annual filing, and in the other four of these states, there is a one-time filing). At the federal level, key antitrust statutes relevant to franchising include the Sherman Act (15 U.S.C. §1 et seq., prohibiting anti-competitive or monopolistic behavior) and the Robinson-Patman Act (15 U.S.C. §13, prohibiting anti-competitive price discrimination, exclusive dealing, and tying). Additionally, the Clayton Antitrust Act (15 U.S.C. § 12 et seq.) permits private rights of action. The Antitrust Division of the U.S. Department of Justice and the FTC coordinate enforcement of U.S. antitrust law. States also have their own antitrust laws, often aligned with federal statutes but with potential variations, and tend to draw guidance from federal law. <u>See, e.g.</u>, the California Cartright Act, Cal. Bus. & Prof. Code §§ 16600 et seq., and the New York Donnelly Act, N.Y. Gen. Bus. L. §§ 340, et seq. Thus, practitioners must consider both federal and state laws in relevant jurisdictions, especially in cases involving claims over matters such as potential monopolistic behavior, price-setting, exclusive dealing, or tying.
2.	Is there a regulator of franchising conduct?	As noted above, at the federal level, franchising is regulated by the FTC pursuant to its Franchise Rule (16 C.F.R. Part 436). At the state level, state agencies (such as state attorneys general and securities commissioners) typically have responsibility for administering and enforcing state franchise laws.

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
3.	Is there a voluntary code or other form of self-governance?	No. Some franchisee advocates have suggested that franchisors should follow a “fair franchising standard” that was advocated by the American Association of Franchisees & Dealers (AAFD). That standard has not been broadly adopted.
4.	Is there any national franchise association? If so, is the association voluntary and does this franchise association impose additional obligations upon franchisors?	There are several organizations that are all voluntary. These include the International Franchise Association (IFA), which is the largest association representing franchisors, franchisees, and suppliers to the sector. There are also franchisee-oriented associations, such as the American Franchise Association and the American Association of Franchisees & Dealers. The American Bar Association has a dedicated forum (the Forum on Franchising) that is quite active in providing educational programming, culminating in an annual legal forum usually held in October or November. The IFA also has an annual legal symposium, typically in May of each year. Membership in and participation with these associations is voluntary.
5.	What is the legal definition of a franchise agreement? When does a trademark licence become a franchise agreement?	According to the FTC Franchise Rule, a commercial business arrangement, including a trademark license, qualifies as a "franchise" if it meets the following criteria: 1. The franchisee gains the right to operate a business associated with the franchisor's trademark or to handle goods, services, or commodities that are identified or associated with the franchisor's trademark. 2. The franchisor will exert or has authority to exert a significant degree of control over the franchisee's method of operation, or offers substantial assistance in the franchisee's method of operation. 3. The franchisee is required to make a payment, or commit to making one, to the franchisor as a condition for obtaining or starting the franchise. The FTC Franchise Rule exempts transactions where the payment is less than \$735 from before to within the first six months of operations. The franchise definition varies from state to state under their franchise registration and disclosure laws and franchise relationship laws; however, they all generally adhere to the three criteria set out under the federal definition. New York is a state that stands out, however, as its definition only requires the payment of a franchise fee and <i>either</i> of the first two elements.

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
6.	Does your jurisdiction have the concept of an “accidental franchise”?	Yes. If a relationship includes the three definitional elements of a franchise (or two definitional elements as noted above for New York), regardless of the name the parties assign to the relationship, then a franchise exists. It is possible that a trademark license, which includes controlling provisions over advertising or licensee operations, or offers significant operational or marketing assistance terms, could inadvertently create a franchise relationship, subjecting the licensor to a range of regulations and potential liabilities, including rescission of the license. Additionally, most franchise laws do not require the grant of an explicit trademark license and the “accidental franchise” may arise in product distribution or other arrangements where there is a substantial association with the supplier’s trademarks. Agreement drafters are encouraged to explicitly prohibit (and in actuality prohibit) distributors from using the supplier’s trademarks.
7.	Are there any exceptions to the relevant laws applying? If so, please list any exception.	Yes. There are federal exemptions and exclusions from disclosure; and there are state exemptions and exclusions from disclosure and/or registration. One should consult the FTC Franchise Rule and the various state franchise laws for applicable exemptions/exclusions and the conditions for claiming them. The following is a list of several of the more common types of exemptions or exclusions, along with a short description: (There may be others available in a particular jurisdiction.) • <u>Bank Credit Card Plans</u>: Some states exempt bank credit card plans from registration and disclosure. • <u>Cooperative Organizations</u>: The cooperative organization exemption or exclusion varies by jurisdiction. It normally applies to organizations where members own equal shares in the organization and directly benefit from the goods/services the organization provides. • <u>Discretionary Exemptions</u>: Upon an application a discretionary exemption may be granted by the state agency responsible for enforcing the state’s franchise laws if certain conditions are met. • <u>Fractional Franchise</u>: The requirements for the fractional franchise exemption vary by jurisdiction, but it normally applies when the franchisee adds a new product or service line that is substantially similar to its existing business; the sales from the new franchise are no anticipated to exceed over 20% of the franchisee’s total dollar volume in sales; the franchisee has a few years of experience; and the new business line is operated from the same location as the existing business. • <u>Insider Sale</u>: The insider sale exemption is for individuals (e.g., officers, directors, partners, etc.) who, through their role in the franchisor’s business, have knowledge about the franchise and are able to evaluate their investment without governmental oversight.

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
		• <u>Institutional Franchisee</u>: The institutional franchisee exemption applies when a franchisee is an organization like a bank, trust company, insurance company, or broker-dealer and is purchasing the franchise for itself or in a fiduciary capacity. • <u>Internet Offers</u>: Some states exempt offers through the internet from registration and/or advertising filing requirements if the offers are not targeted to a person in that state. • <u>Isolated Sale/Single Sale</u>: Specific conditions vary, but the isolated sale/single sale exemption generally applies to the sale of only a few franchises in a set period of time, and other conditions may apply. • <u>Judicial Officer Sale</u>: The judicial officer sale exemption applies to sales by marshals, sheriffs, receivers, guardians, conservators, trustees in bankruptcy, executors or administrators of an estate, or other judicial officers. • <u>Large/Sophisticated Franchisee</u>: The large/sophisticated franchisee exemption is based on the franchisee's net worth meeting a minimum threshold and experience. Other conditions, such as filing an exemption notice, may apply. • <u>Leased Department</u>: The leased department exemption varies by state, but it normally applies when a franchisee leases space in a large retailer and only pays the large retailer fair market rent. • <u>Minimum Payment</u>: Each jurisdiction varies, and a franchise may be exempt (or excluded) if fees paid by the franchisee to the franchisor (or its affiliate) does not exceed a specific amount (typically between \$100 and \$500) during a specified time period. Some jurisdictions may increase the threshold amount periodically to account for inflation. • <u>Offer While Renewal or Amendment Application Is Pending</u>: Several states exempt offers made while a renewal or amendment application is pending. The exemption is from registration only, and franchisors must comply with the additional requirements each state sets out. • <u>Offer/Sale to Existing Franchisees</u>: The offer/sale to existing franchisees exemption usually applies to the sale of an additional franchise to an existing franchisee who owns the same type of franchise, as long as it is on substantially the same terms as the existing franchisee and additional conditions are met. The exemption may apply to registration and disclosure or to registration only.

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
		• <u>Out-of-State Sales</u>: Some states have explicit exemptions about out-of-state sales. Most of these exemptions apply when the business will not be located in the state and the franchisee is not residing in the state. • <u>Petroleum Marketers and Resellers</u>: The petroleum marketers and resellers exemption (or exclusion) applies to relationships covered by the Petroleum Marketing Practices Act and/or franchisors that sell petroleum products. Other conditions may apply. • <u>Renewal or Extension of Existing Franchise</u>: This exemption or exclusion applies to the renewal, or extension of an existing franchise, as long as there is no interruption in the business. Other conditions may apply. • <u>Sale by Existing Franchisee</u>: The sale by existing franchisee exemption covers the franchisee's sale of a franchise to a third party. Additional conditions may apply. • <u>Seasoned/Large Franchisor</u>: The seasoned/large franchisor exemption applies when a franchisor meets minimum net worth and experience requirements. Additional conditions, including filing requirements, may apply. • <u>Substantial Investment</u>: The substantial investment exemption requires a minimum investment of a specified amount (which in some jurisdictions may be adjusted periodically to reflect inflation). Other conditions may apply.
8.	Are there any types of agreements automatically deemed a franchise agreement?	Any agreement that contains the three federal definitional elements of a franchise set out in Question No. 5, or which meets a specific state franchise registration and disclosure law or franchise relationship law franchise definition is automatically deemed a franchise agreement. The parties cannot waive the application of any franchise law to such an agreement.
9.	Must the franchise agreement be governed by local law?	There is no general requirement for local law to govern. Franchise agreements typically contain a choice of law provision where franchisor and franchisee agree on the applicable law to govern the agreement terms. US courts generally will apply the foreign law agreed to in the contract unless there is no substantial connection between the jurisdiction of the foreign law and the parties or the subject of the agreement. However, some state franchise laws mandate that the law of their state take precedence over certain legal matters, e.g., venue for arbitration or litigation.
10.	Are foreign franchisors and domestic franchisors subject to different requirements?	No, foreign franchisors wishing to offer and sell franchises in the United States are subject to the same laws as domestic franchisors.

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
11.	Must the franchise agreement be in the local language?	Federal and state law require that the FDD be written in “plain English.” The franchise agreement may be written in English and translated.
12.	Are there any franchising laws which are bespoke to particular industries?	Yes, there are several laws that apply to particular industries: For example, the relationship between retailers and parties at higher levels in the petroleum distribution structure are regulated under the Petroleum Marketing Practices Act (PMPA), 15 U.S.C. § 2801 et seq., which imposes restrictions on the termination, non-renewal, and transfer of petroleum franchises. The Automobile Dealer Franchise Act, 15 U.S.C. § 1221 et seq., more commonly known as the "Automobile Dealers Day-In-Court Act," governs the manufacturer-dealer relationship in the automotive industry. This statute requires automobile manufacturers to deal in good faith—that is, to refrain from coercing or intimidating, and from threatening to coerce or intimidate. At the state level, the industries affected by statutes governing termination or other aspects of distribution relationships include car, truck and motorcycle dealers, farm equipment dealers, construction and industrial equipment dealers, liquor wholesalers, beer and wine distributors, boat and snowmobile dealers, appliance dealers, and garden equipment dealers, among others. The FTC Franchise Rule contains a specific exemption for a “leased department.” This exemption is relevant in retail scenarios where an independent retailer operates from a space leased within a larger retailer's store. This exemption applies as long as the independent retailer isn't obligated to buy goods or services from the larger retailer or its designated suppliers.
13.	Is 'trademark' defined by your franchise laws? If so, how? Does one need to have a trademark registration in order to enter into a franchise agreement?	U.S. law defines a trademark as “any word, name, symbol, or design, or any combination thereof, used in commerce to identify and distinguish the goods of one manufacturer or seller from those of another and to indicate the source of the goods.” See 15 U.S.C. § 1127. “The cornerstone of a franchise system must be the trademark or trade name of the product.” <i>Susser v. Carvel Corp.</i> , 206 F. Supp. 636 (S.D.N.Y. 1962), <i>aff'd</i> , 332 F.2d 505, 141 U.S.P.Q. 609 (2d Cir. 1964), <i>cert. dismissed as improvidently granted</i> , 381 U.S. 125 (1965). One of the key elements in creating a franchise is

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
		that the franchisee will obtain the right to operate a business that is identified or associated with the franchisor's trademark, or to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor's trademark. The trademark does not have to be registered in order to enter into a franchise agreement. However, commercial best practice prior to operating a franchise system in the United States is to clear the selected franchise mark or marks to make sure that they can be safely adopted, used, and registered in the United States. Once selected and cleared, the franchise mark(s) should be registered with the USPTO.
14.	Are other types of IP licences captured by the franchising laws?	The franchise laws do not apply to licensing of other intellectual property assets. But licenses to a franchisor's other intellectual property assets like copyrights, patents and trade secrets, as well as other proprietary information, can be, and generally are, covered by the franchise agreement.
15.	Are there any registration requirements relating to the franchise system?	The federal FTC Franchise Rule does not mandate federal registration of a franchise. Instead, it requires franchisors to comply with the FTC Franchise Rule's pre-sale disclosure requirements and additional prohibitions. However, in 14 states, franchisors must either apply to register their franchise or file a notice of intent with the relevant regulatory body before offering to sell franchise or multi-unit development rights in those states. Some states provide exemptions to the registration obligations that, depending upon the circumstances, may apply to a particular class of franchisors (e.g., those that meet certain net worth and experience requirements), franchisees (e.g., existing franchisees), or transactions (e.g., an isolated or single sale). For example, New York has a single sale franchise exemption which allows a franchisor to avoid registration and disclosure in New York provided that the franchisor does not offer to sell its franchise to more than 2 persons in New York, potential franchisees are not granted a right to resell, and other conditions are met. N.Y. Gen. Bus. Law § 684(3)(c). In addition, as described in Question 1 above, several states (including Connecticut, Florida, Kentucky, Nebraska, Texas, and Utah) require franchisors to submit one-time or annual business opportunity exemption filings.)
16.	Is there any overriding requirement for the parties to deal with each other in good faith (or for the franchisor to deal with the franchisee in good faith)?	Courts in most states consistently hold that the implied covenant of good faith and fair dealing exists in all commercial contracts, including franchise agreements. While the common law covenant of good faith and fair dealing assists in interpreting the intention of the parties where the contract is silent or incomplete, courts will not override express contractual provisions. See <i>Zuckerman v. McDonald's Corp.</i> , 35 F. Supp. 2d 135, Bus. Franchise Guide (CCH) ¶ 11,584 (D. Mass. 1999); <i>Burger King Corp. v. Weaver</i> , 169 F.3d 1310, Bus. Franchise Guide (CCH) ¶ 11,592 (11th Cir.

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
		1999); <i>Hobin v. Coldwell Banker Residential Affiliates</i> , Bus Franchise (CCH) ¶ 11,196 (N.H. Super Ct. 1997). In addition to the common law, certain state and federal franchise and dealership laws impose statutory duties of good faith.
17.	Is there a disclosure regime with pre-contractual disclosure obligations, or ongoing disclosure obligations?	Yes, every franchisor (domestic or foreign) has an obligation to provide a prospective franchisee with a Franchise Disclosure Document (FDD) before accepting any payment or signing any agreement for a franchise in the United States (including its territories). See FTC Franchise Rule 16 CFR Part 436. Fifteen states also require pre-sale disclosure. These states accept disclosure documents prepared in the federal format, with state-specific addenda in certain states.
18.	Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?	Yes. According to the FTC Franchise Rule, if a subfranchisor intends to sell a subfranchise for a U.S. unit, the subfranchisor must provide the prospective subfranchisee with an FDD. This document must include specific disclosures about the subfranchisor and its unit subfranchise offering as well as certain details about the franchisor, such as its officers and directors, relevant legal history, bankruptcy history, and audited financial statements. While franchisors and subfranchisors can decide between them who is responsible for creating the FDD for prospective subfranchisees, both share the joint obligation of ensuring timely delivery of the FDD to prospective subfranchisees. Moreover, under state registration laws, the subfranchisor is obligated to register its subfranchise offering. In most cases, franchisors at least maintain the right to approve the subfranchisor's FDD.
19.	Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?	The FTC Franchise Rule prescribes the format of disclosures. The FDD is comprised of 23 different sections called "Items": • Item 1: Information about The Franchisor, and any Parents, Predecessors, and Affiliates. • Item 2: Business Experience. • Item 3: Litigation. • Item 4: Bankruptcy. • Item 5: Initial Fees. • Item 6: Other Fees. • Item 7: Estimated Initial Investment. • Item 8: Restrictions on Sources of Products and Services. • Item 9: Franchisee's Obligations. • Item 10: Financing.

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
		• Item 11: Franchisor's Assistance, Advertising, Computer Systems, and Training. • Item 12: Territory. • Item 13: Trademarks. • Item 14: Patents, Copyrights, and Proprietary Information. • Item 15: Obligation to Participate in the Actual Operation of the Franchise Business. • Item 16: Restrictions on What the Franchisee May Sell. • Item 17: Renewal, Termination, Transfer, and Dispute Resolution. • Item 18: Public Figures. • Item 19: Financial Performance Representations. • Item 20: Outlets and Franchisee Information. • Item 21: Financial Statements. • Item 22: Contracts. • Item 23: Receipts. The franchisor is required to deliver the FDD to the prospective franchisee and allow at least 14 calendar days (or longer, depending on the state one is operating in) for the prospective franchisee to review the FDD before paying any money or signing any franchise agreement or other binding agreement relating to the franchise. According to the FTC Franchise Rule, franchisors are prohibited from disclaiming or requiring prospective franchisees to waive reliance on representations made in the FDD. The federal and state disclosure requirements pertain to "prospective" franchisees. There is no obligation to make continuing disclosure to existing franchisees (but note that an existing franchisee who is renewing a franchise or purchasing an additional franchise is a "prospective" franchisee for that transaction).
20.	If the franchisee is required to pay money to a marketing fund or other cooperative fund, what obligations apply?	In the United States, absent an express obligation in the franchise agreement, there is no requirement for a franchisee to pay money to a marketing fund or other cooperative fund. When such obligations are present in the franchise agreement, many franchisors typically require franchisees to allocate a percentage (usually between 1% to 4%) of their monthly or weekly gross revenue towards a system-wide advertising, marketing, and brand fund. For newly established

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
		franchise brands, the implementation of such a fund may not occur immediately. But franchisors often retain the right in their franchise agreement to establish, manage, and administer a brand/marketing/cooperative fund at a later stage as the franchise system expands. It's advisable for franchisors to hold such fund contributions in a separate account or entity and maintain regular accounting practices for transparency. This practice not only reassures franchisees about the proper use of their fund contributions but also serves as evidence of separate treatment for federal income tax purposes. Additionally, open communication between the franchisor and franchisees about the fund's financial status, as well as advertising, marketing, and promotional plans and strategies, helps alleviate any concerns and provides clarity to franchisees on the fund's operations.
21.	Is there a prescribed dispute resolution procedure?	No, although several state franchise laws specify that a party may bring an action for violation of the state law in the courts of that state. The franchise agreement normally specifies the procedures for resolving disputes between the franchisee and franchisor. Disputes in the United States may be resolved through the litigation in state and, in some cases, federal courts, in arbitration, or through mediation (whether informal or formal).
22.	Is there a cooling off period to terminate or transfer a franchise agreement once the parties have entered into the agreement?	There is no “cooling off” period during which a party can terminate or transfer the franchise agreement after the parties enter the relationship, but franchise agreements rarely permit either party to terminate the relationship at-will or without cause. In addition, most state franchise relationship statutes require a franchisor to have good cause (e.g., substantial noncompliance with the terms of the franchise agreement) before terminating a franchise. A number of those statutes also require a franchisor to provide advance written notice of the termination with the reasons for the termination and an opportunity for the franchisee to cure its noncompliance before terminating a franchise agreement, see e.g., California (60 days prior notice and an opportunity to cure is required. However, immediate termination without opportunity to cure is deemed reasonable in several circumstances such as the franchisee abandons the franchised business); Minnesota (90 days prior notice of termination is required, and the franchisee must have at least 60 days to cure. However, immediate termination is allowed in certain situations such as voluntary abandonment of franchise); New Jersey (Termination requires 60 days prior notice, except 15 days prior notice is permitted in the case of voluntary abandonment. Immediate notice is permitted where the grounds for conviction of the franchisee is an offense directly related to the franchise business. No opportunity to cure is required.) U.S. franchise agreements generally permit transfers but provide for varying degrees of control and approval rights in the franchisor over such transfers. The most stringent agreements provide that transfers may not be made or may only

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
		be made with the franchisor's consent, and such consent may be arbitrarily withheld. Other agreements simply state that consent may not be unreasonably withheld. Many agreements will also specify particular conditions that must be met in order to obtain the franchisor's consent (e.g., the transferee must meet the franchisor's qualifications for new franchisees and must sign the then-current form of franchise agreement). Several state franchise relationship laws include procedural requirements as well. In Arkansas, Iowa, Nebraska, and New Jersey, the franchisor has 60 days to reject the proposed transfer. In Hawaii, the franchisor has 30 days after notice of a proposed transfer to approve or disapprove the proposed transfer. In Minnesota, the franchisor cannot unreasonably withhold its consent to a transfer if the transferee meets the franchisor's qualifications and standards for new franchisees.
23.	Are there any market restrictions on whether foreign franchisors can enter the market? (i.e. foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a franchise business in the jurisdiction).	Generally, the United States embraces foreign franchisor participation and investment without significant restrictions, aligning with its pro-free trade stance. The U.S. federal government does have some specific industry restrictions on foreign investment. These include disclosure filing requirements and potential limits on foreign investment, mainly in highly regulated or sensitive industries like communications, broadcasting, banking, technology, weapons manufacturing, maritime, aircraft, and energy, particularly those with implications for national security. Given that franchise opportunities in the United States typically don't involve these industries, it's less likely that foreign franchisors will be impacted by such restrictions.
24.	What forms of business entity are typically used by franchisors?	There are many business entity forms and arrangements that a franchisor could take on to own or operate its franchise system. Traditional forms include corporations (which may be privately held or publicly traded), limited liability companies, and general or limited partnerships. Some non-traditional franchise business entity forms include private equity funds and ownership structures, joint ventures, trusts, non-profit organizations, ESOPs (equity stock ownership plans), and sole proprietorships.
25.	Does the applicable law permit class actions to be brought by a number of aggrieved franchisees?	Franchisees have the option to collectively file a multi-plaintiff or class action lawsuit, provided the potential class meets the relevant federal or state legal criteria for certification as a class. A franchisee association with proper standing may also sue the franchisor on behalf of its members. Alternatively, a franchisee association can establish a litigation fund to support a lawsuit initiated by one of its members.

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
		However, franchisees may be bound by their franchise agreements to pursue claims against the franchisor individually. Many franchise agreements include clauses that waive the right to participate in group or class action lawsuits against the franchisor. These class action waiver clauses may be part of provisions in the franchise agreement designating arbitration as the method for resolving disputes. Such waivers in agreements to arbitrate have been affirmed as enforceable in almost every circumstance by U.S. Supreme Court precedent. Standalone class action waiver provisions are generally enforceable as well, although they might not be upheld under specific state law restrictions on class action waivers in certain contexts or if deemed unconscionable under state law.
26.	Is there any overriding statutory or legal right for a franchisee to be entitled to the automatic renewal or extension of the franchise agreement at the end of the initial term, irrespective of whether the franchisor wishes to renew or extend? If the franchisee is refused a renewal or extension of its franchise agreement, will they be entitled to any compensation or damages?	In U.S. franchise agreements, automatic renewal rights may be granted to franchisees in the franchise agreements, provided they meet certain performance or other criteria set out in the agreement. There are, however, some franchisors that do not include automatic renewal rights in their franchise agreements. Some state franchise relationship statutes, however, permit franchisees to renew irrespective of the provisions of the franchise agreements. In some states, such as Delaware, Hawaii, Iowa, New Jersey, Rhode Island, and Wisconsin, non-renewals are not permitted absent good cause. This, in effect, may require a franchisor to continue a relationship beyond the bargained-for period. Other states, such as Missouri, impose procedural requirements upon the franchisor (e.g., 90 days advance notice of a decision not to renew). A third group of state statutes imposes various burdens on the franchisor if it elects not to renew. For example, the franchisor may have to compensate the franchisee under Washington law, and in Iowa, the franchisor must agree not to enforce the post-term noncompetition provision of the franchise agreement. California imposes a combination of these requirements for non-renewal—180 days' notice plus compliance with one or more of a list of additional requirements.
27.	Are there penalties for contravening the franchising laws?	Yes. Government agencies with enforcement authority may bring actions to enforce franchising laws. For violations of the FTC Franchise Rule, the FTC, through the U.S. Department of Justice, can bring an action to obtain injunctive relief as well as recovery of substantial civil penalties. Notably, there is no private right of action under the FTC Franchise Rule. States that regulate franchising provide franchisees with the right to pursue remedies for breach of the franchise laws. Penalties for such violations include financial penalties (which vary by state and are also higher for wilful and/or fraudulent acts), recovery of investigation costs and attorneys' fees, rescission and restitution, damages, criminal referral (if applicable), and other penalties. Penalties for violations of franchise laws may also arise in a private right of action under theories such as common law fraud.

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
28.	Are there any required provisions for a franchise agreement to be valid?	Franchise agreements generally must be in writing to be enforceable. There are no notarization, seal or registration requirements. The form of franchise agreement that the franchisor intends to offer to, and execute with, a franchisee must be included in the FDD. There are no required provisions for a franchise agreement to be "valid," but franchise agreements typically include provisions addressing the rights granted to and undertaken by the franchisee, site selection, opening and development requirements, territorial rights and restrictions, fee provisions, training, required purchases, the parties' respective obligations, confidentiality, advertising, term and renewal, transfer and termination provisions, trademark provisions, and dispute resolution, among other things.
29.	What is the minimum duration of a franchise term?	There is no minimum duration of a franchise term.
30.	Are there any laws that may prevent or interfere with termination of the franchise agreement?	Several state franchise relationship statutes impose requirements over and above those contained in the franchise agreements for termination. These statutory requirements differ dramatically among states, and include various combinations of required cure periods, required notice periods (whether or not cure is permitted), and conduct that would support termination. Most franchise agreements include a provision allowing the franchisor to terminate the franchise in cases of the franchisee's insolvency or bankruptcy. However, according to the U.S. Bankruptcy Code (11 U.S.C §365(e)(1)(A)), a clause permitting the franchisor to terminate the franchise agreement due to the franchisee's bankruptcy may not be legally enforceable. In the event of a franchisee's bankruptcy filing prior to the expiration or proper termination of the franchise agreement and/or lease, these agreements become part of the debtor-franchisee's "bankruptcy estate". Nevertheless, if the debtor (franchisee) files for either a Chapter 7 "liquidation" or a Chapter 11 "reorganization" and opts to "reject" the agreements (essentially consenting to their cancellation), the franchise agreement and/or lease may be terminated relatively swiftly.
31.	Can the franchisor or franchisee terminate the franchise agreement prior to the expiry of the agreement? Are there local rules that impose a minimum notice period that must be given to bring a business relationship that might have existed for	Both parties can usually terminate the franchise agreement prior to the expiration date. This may be done mutually, or by one party if it is simply unable or unwilling to meet its obligations under the franchise agreement. If the latter, that party may be sued for breach of the franchise agreement. Some franchise agreements provide for a right for the franchisor to recover liquidated damages from the franchisee if the franchisee terminates the agreement prior to its expiry (or if the agreement is terminated by the franchisor as a result of the franchisee's default of the agreement). Most

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
	a number of years to an end, which will apply irrespective of the length of the of notice period set out in the franchise agreement?	franchise agreements specify events of default which can trigger a right for the franchisor (and sometimes the franchisee) to terminate the agreement prior to its expiration. Several states have adopted franchise relationship laws that address whether "good cause" is required to terminate a franchise agreement, requirements or guidance as to what constitutes good cause, notice requirements for termination, and whether a franchisee must be afforded an opportunity to cure a default before termination. States that have franchise relationship laws that impose unique termination notice and/or good cause requirements are Arkansas, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, Rhode Island, Virginia, Washington, and Wisconsin. These requirements will generally supersede the terms of the franchise agreement with respect to the franchisor's right to terminate for any franchise agreement to which those state laws apply. Also worth noting is that in Puerto Rico, a commonwealth of the United States, the "Dealer's Contracts Law" applies to most franchise agreements and makes it extremely difficult to terminate a franchisee. This law prohibits franchisors from terminating their franchise agreements without "just cause," which essentially means either: 1) the franchisee did not perform an essential obligation under the franchise agreement; or 2) the franchisee did something that has a large negative impact on the franchisor's ability to market their brand. The Dealer's Contracts Law also limits the franchisor's ability to restrict a franchisee's ability to transfer or restructure the business.
32.	What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations?	The requirement to comply with the FTC Franchise Rule disclosure obligations can lead to significant consequences. First, government agencies with enforcement authority have brought actions to enforce disclosure requirements. The FTC exercises its authority under Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a) to take action in cases of alleged violation of the FTC Franchise Rule. Through the U.S. Department of Justice, the FTC can bring an action to obtain injunctive relief as well as recovery of significant civil penalties against the allegedly non-compliant franchisor as well as those persons (e.g., officers) that directed its actions. State governments can also bring cases to enforce state franchise laws. See, e.g., Cal. Corp. Code § 31400.

Region: THE AMERICAS		
Country: United States of America		
Co-Authors: Marc A. Lieberstein, Akerman LLP and the Partners, Plave Koch PLC		
Verifier: Max J. Schott II, Larkin Hoffman Daly & Lindgren Ltd.		
#	Question	Answer
		Second, parties claiming that they were sustained injury due to a franchisor's alleged violation of the FTC Franchise Rule may be able to impute that alleged violation into a claim under certain states' law. For example, claims might be raised under the Florida Deceptive and Unfair Trade Practices Act, <u>see, e.g., KC Leisure, Inc. v. Haber</u>, 972 So. 2d 1069 (Fla. Dist. Ct. App. 2008) (notably, limiting the plaintiff to recovering from only the franchisor entity, not its officers). Third, parties may raise a claim under theories such as common law fraud as well as proof that the franchisor failed to reveal material facts "with the intent to defraud another by inducing him or her to enter into a contract." <u>Dunhill Franchisees Trust v. Dunhill Staffing Systems, Inc.</u>, 513 F. Supp.2d 23, 27 (S.D.N.Y. 2007). Fourth, parties claiming a violation of state franchise law may be able to bring a claim directly under state law for damages that they sustained as a result of the violation. <u>See, e.g., Cal. Corp. Code § 31300</u>. Notably, however, there is no private right of action under the Federal Trade Commission Act, including the FTC Franchise Rule. <u>See, e.g., Holloway v. Bristol-Myers Corp.</u>, 485 F.2d 986, 988–89 (D.C. Cir. 1973).
33.	Is a franchisee entitled to rescind the franchise agreement and/or claim damages?	Although not common, a franchise agreement could provide for circumstances in which a franchisee may rescind the contract and/or claim damages. A franchisor could also offer such remedies on its own. Barring those circumstances, for violations of franchise laws, an enforcement agency may require rescission of the franchise agreement and/or the payment of damages to the franchisee. A franchisee may also seek rescission and damages in court.

INTA GLOBAL FRANCHISE LAW QUESTIONNAIRE SURVEY

ASIA PACIFIC

1. AUSTRALIA
2. CAMBODIA
3. CHINA
4. INDIA
5. INDONESIA
6. NEW ZEALAND
7. SINGAPORE
8. SOUTH KOREA
9. THAILAND
10. VIETNAM

EUROPE

11. FRANCE
12. GERMANY
13. ITALY
14. POLAND
15. UNITED KINGDOM

MIDDLE EAST AND AFRICA

16. ALGERIA
17. MOROCCO

18. SAUDI ARABIA

19. SOUTH AFRICA

THE AMERICAS

20. BRAZIL

21. CANADA

22. MEXICO

23. UNITED STATES OF AMERICA