WHEN SIGNING ON THE DOTTED LINE IS NOT ENOUGH: EXECUTING BINDING AND ENFORCEABLE FRANCHISE AGREEMENTS IN INTERNATIONAL TRANSACTIONS

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WHEN SIGNING ON THE DOTTED LINE IS NOT ENOUGH: EXECUTING BINDING AND ENFORCEABLE FRANCHISE AGREEMENTS IN INTERNATIONAL TRANSACTIONS

I. INTRODUCTION

While the global economy continues to face challenges, the international franchise industry remains on track for record growth in markets across the globe. According to the International Franchise Association, in its Franchise Business Outlook 2016 report, franchise businesses are forecasted to grow for the sixth consecutive year at rates that exceed economy-wide growth of their respective regions, crossing over 300 different lines of business. As a result, franchising continues to be a particularly attractive model for a wide range of businesses seeking to expand their concepts into global markets.

While there is significant opportunity for growth, the success of an international franchise expansion venture is not a foregone conclusion and is dependent on a myriad of factors, including the skills, attributes and resources of the parties, the reception of the goods or services associated with the brand by the local market and the ability of the system to evolve and adapt to local market forces. For counsel, preparing and negotiating an iron-clad franchise agreement is of utmost importance. However, in international markets, that may not be enough. When expanding internationally, a franchisor, and counsel advising it, must be sure that their franchise agreements are in fact binding and enforceable, sufficient to protect the franchisor’s rights expressly reserved under those carefully constructed agreements. For anyone interested in expanding internationally, an appreciation for, and understanding of, specific legislation and regulations that impact such “extra-contractual” considerations is essential.

As a reference for the international franchise practitioner, and as a means of identifying and analyzing certain extra-contractual considerations, this paper will survey the laws and practices that impact the execution and enforcement of franchise agreements in sixteen countries, namely: Argentina, Australia, Brazil, Canada, China, Colombia, France, Germany, Italy, Japan, Mexico, Russia, South Korea, the United Arab Emirates, the United Kingdom, and the United States of America using the following analytical framework. In particular, we will discuss the five following variables for each of the aforementioned countries:

Part A will examine issues regarding execution authority, namely whether there are requirements or restrictions regarding: (a) foreign ownership, (b) the stated corporate purpose and signing authority of a contracting party, (c) the requirement, if any, for franchisor’s prior experience in the market, and (d) any foreign trade sanctions or other political impediments restricting commercial relations.

Part B will examine the applicable country’s execution formalities, namely whether there are any: (a) obligations to have agreements or documents notarized, legalized, or witnessed, (b)

1 The authors express their sincere gratitude for the significant contribution to this paper made by Sam Sokoloff, a Summer Law Student, and Patricia Wood, an Articling Student, with Cassels Brock and Blackwell LLP, and the contributors from each of the countries discussed in the following Sections. We could not have produced this paper without their invaluable contributions. See Exhibit A for a complete list of the contributors and their contact information.


3 See Exhibit B for a chart that summarizes the laws and practices of each country discussed in this paper.
requirements surrounding the manner by which agreements are signed, and (c) legal or payment processing restrictions for initial or on-going fees.

Part C will examine the registration and recording requirements, if any, which government agencies recognize before a company may begin to franchise.

Part D will examine enforcement considerations, namely: (a) the designation of governing law and jurisdiction, (b) the use of dispute resolution mechanisms, and (c) any currency exchange control restrictions.

Part E will examine certain other important considerations, including, translation requirements, stamp taxation, and other similar fees.

Exhibit B attached to this paper includes a chart that will summarize this information and provide a quick reference to each subject.

II. ARGENTINA

Argentina has developed a strong, but competitive, franchise sector in recent years. It accounts for two percent of the nation’s GDP. At the moment, the country does not have franchise specific legislation. Franchising is governed under the basic rules of contracts pursuant to the Argentine Civil and Commercial Code, which was enacted in August 2015. The Civil and Commercial Code has a specific definition for what constitutes a franchise and imposes specific requirements that must be met prior to entering into a franchise agreement, including a mandatory disclosure requirement.

A. Execution Authority

1. Non-Resident Party’s Ability to Contract

There are no restrictions concerning a non-resident party’s ability to contract in Argentina.

2. Stated Corporate Purpose of a Contracting Party

There are no restrictions concerning the stated corporate purpose of a contracting party in Argentina.

3. Signing Authority of a Contracting Party

International contracts in Argentina must be signed by either the contracting parties or by an agent of the parties based on the doctrines of agency. An agent will, therefore, have authority to sign on behalf of the contracting party if, either explicitly or implicitly, it has been granted actual authority or has been indirectly granted with apparent authority. Officers, directors and, generally, any other signatories for corporations in Argentina will be authorized in the corporate by-laws or shareholders’ agreements.

4 Supra note 2.

4. **Franchisor’s Experience Prior to Signing**

In Argentina, the franchisor must have a proven franchise system before it may offer a franchise concept to potential franchisees. A proven concept is evidenced by the operation of at least two units similar to the one offered to the prospective candidate for two full years before the date that the offer is made. Additionally, the franchisor must provide for the delivery of financial information supporting the sufficiency of the franchise in Argentina or abroad. False information submitted to the other party may cause the voidance of such an agreement by franchisee in court and a claim of damages.

5. **Foreign Trade Sanctions and Other Political Trade Impediments**

In Argentina, there are certain government enforced trade regimes that affect imports into Argentina. Since 2009, Argentina has commonly mandated restrictions on importers, such as imposing limits over imports, to balance imports with exports, to increase local production facilities in Argentina, and to control or freeze prices to limit international transfer benefits. Such restrictions may prove to be challenging for franchise systems that feature a high volume of foreign supply inputs.

**B. Execution Formalities**

1. **Obligations for Documents to be Notarized, Legalized, or Witnessed**

Documents do not need to be notarized, legalized or witnessed in Argentina. However, it is customary for a notary public to certify the identity of the persons signing such agreements. In the case of a foreign party, a lawyer will normally be the one who certifies the authority of the signor, but a notary will verify the identity. The bylaws and particularly the power of the attorney to act on behalf of a foreign company must also be legalized.

2. **Signing Agreements Electronically, by Counterpart or by Fax**

The Digital Signature Law 25,506 permits agreements to be signed electronically or by fax. Furthermore, Civil and Commercial Code bylaw 26,994 permits agreements, such as a franchise agreement, to be signed by counterpart.

3. **Payment Processing Restrictions**

There are no payment processing or legal restrictions in regard to the manner of payment of any initial or on-going fees in Argentina.

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7 *Ibid*.

8 *Ibid*.


11 *Supra* note 5.
C. **Registration and Recording**

1. **Registration of Franchise Agreements**

There are no requirements to have franchise agreements or the franchisor register with any regulatory or professional body before entering into an international franchise agreement in Argentina. However, registering with the National Institute of Intellectual Property (“INPI”) may allow the local Argentine company to receive tax benefits, as the franchisee cannot validly deduct any royalty payments from its fiscal income taxes if the franchise agreement is not validly registered with INPI.

2. **Registration of Intellectual Property**

While there are no formal requirements to register intellectual property before entering into an international franchise agreement in Argentina, it is a practical necessity to receive protection for certain forms of intellectual property. This is because Argentine law does not permit anyone to deduct royalty payments or any form of technical assistance made abroad from fiscal income taxes without being registered with INPI. In addition, the Argentinean Franchise Association recently declared that it shall not consider applications for membership of franchisors if they do not have a valid trademark duly registered, as the lack of registration of a trademark implies that the franchise agreement is not duly protected. Pending trademark applications are not sufficient for this requirement, as applications do not ensure the trademark shall be granted.

3. **Registration of Other Agreements**

There are no requirements to have other agreements registered with any regulatory or professional body before entering into a franchise agreement in Argentina.

D. **Enforcement Considerations**

1. **Limitations over Governing Law and Jurisdictions.**

Parties to an international franchise agreement in Argentina may include provisions that specify the choice of law which governs their agreement, subject to certain restrictions, such as if the provision is inconsistent with public order in Argentina. Sections 2599 and 2600 of the Civil and Commercial Code, supra note 5; see also Emilio N Vogelius, Gonzalo Garcia Delatour and Victoria Rabasa, “Litigation and Enforcement in Argentina: Overview,” Practical Law, March 2016, online: <http://ca.practicallaw.com/7-519-1010>.

2. **Dispute Resolution Mechanisms in Franchise Agreements**

In Argentina, formal litigation in court remains the primary forum for settling disputes, although alternative dispute resolution mechanisms, such as arbitration and mediation, are also available. In some jurisdictions in Argentina, such as in Buenos Aires, there is a mandatory pre-trial mediation requirement for all pecuniary disputes, pursuant to the National Code of Civil and Commercial Procedure.

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13 Supra note 10.
14 Supra note 12.
15 Ibid.
16 Ibid.
Commercial Procedure and similar provincial legislation. Mediators may be selected by the parties or formally appointed by the court.

3. **Currency Exchange Control Restrictions**

There are no currency exchange control restrictions in Argentina. Supra note 5.

E. **Other Requirements**

1. **Language Requirements**

There are no formal requirements for franchise disclosure documents or agreements to be translated into the local language. However, it is common for agreements that are meant to be used in Argentina to be prepared in both Spanish and the foreign language.

2. **Stamp Taxes or Other Signing Fees**

There are no federal stamp taxes or other similar fees required to be paid to government authorities when agreements are signed in Argentina. However, each province has a different stamp tax system, which varies between 0.75% up to 1.50% of the economic value of the agreement payable normally upfront within a certain term after its signature.

III. **AUSTRALIA**

In Australia, the Australia Competition and Consumer Commission has regulated franchising since 1998. At present, all franchisors and franchisees in Australia are required to comply with the Franchising Code of Conduct, which applies to conduct on or after January 1st, 2015 regarding any franchise agreement entered into, transferred, renewed or extended on after October 1st, 1998. Aside from laws of general application, the Franchising Code of Conduct is the sole franchise legislation in the country. It also sets out the procedure for the offer and sale of franchises in the country and otherwise governs the relationship of the parties. The Franchising Code of Conduct is divided into four parts: Part 1 provides legal definitions and interpretation of the Franchising Code of Conduct and contains an obligation to act in good faith; Part 2 features disclosure obligations for franchisors; Part 3 concerns the provisions which may be within a

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18 Supra note 5.

19 Supra note 5.

20 Supra note 6.

21 Ibid.


23 Competition and Consumer (Industry Codes—Franchising) Regulation 2014.

franchise agreement; and Part 4 outlines the rules surrounding dispute resolution between the contracting parties.

A. **Execution Authority**

1. **Non-Resident Party's Ability to Contract**

   Foreign business entities are not restricted from entering into franchise agreements or creating an Australian corporate entity in Australia, as long as they comply with Australian law. Australian law places additional residency requirements on corporate directors under its federal corporate legislation. The Corporations Act, 2001 requires that private corporations have at least one director reside in Australia. Public corporations are similarly required to have at least three directors, two of which reside in Australia.

2. **Stated Corporate Purpose of a Contracting Party**

   There are no restrictions concerning the stated corporate purpose of a contracting party in Australia.

3. **Signing Authority of a Contracting Party**

   Agreements in Australia may be signed by the contracting parties or by an agent of the parties based on the doctrines of agency. An agent will therefore have authority to sign on behalf of the contracting party if the agent has, either explicitly or implicitly, been granted actual authority or has been indirectly granted with apparent authority. Officers, directors and generally any other signatories for corporations in Australia will be outlined in the corporate by-laws or shareholders agreements.

4. **Franchisor's Experience Prior to Signing**

   The franchisor does not need prior experience in the franchise industry or otherwise before signing a franchise agreement in Australia.

5. **Foreign Trade Sanctions and Other Political Trade Impediments**

   Australia has foreign trade sanctions with several countries and terrorist entities which can impact or prevent the ability to transact with parties within or connected to such countries or entities. These sanctions consist of United Nations Security Council (UNSC) sanctions, as well as autonomous Australian sanctions. The countries and entities affected by these sanctions include Central African Republic, Crimea and Sevastopol, Democratic Republic of the Congo, Eritrea, Former Federal Republic of Yugoslavia, Guinea-Bissau, Iran, Iraq, ISIL (Da’esh) and Al-

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27 **Supra** note 25.


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Qaida, Lebanon, Libya, Myanmar, North Korea, Russia, Somalia, South Sudan, Sudan, Syria, the Taliban, Ukraine, Yemen, and Zimbabwe.29

B. Execution Formalities

1. Obligations for Documents to be Notarized, Legalized, or Witnessed

In Australia there is generally no formal requirement for documents or agreements to be notarized, legalized, or witnessed. However, it is recommended to have documents witnessed for evidentiary purposes if a party to a franchise agreement denies the signature on the document is their signature.30

2. Signing Agreements Electronically, by Counterpart or by Fax

Counterpart, electronic and faxed signatures are generally accepted as authentic signatures by Australian courts.31 The federal Electronic Transactions Act, 1999 (Cth)32 allows documents and agreements to be signed electronically or by counterpart. An electronic form will be accepted if used to (i) give information in writing, (ii) provide a signature, (iii) produce a document, (iv) record information, or (v) retain a document.33

3. Payment Processing Restrictions

There are no payment processing or legal restrictions with respect to the manner of payment of any initial or on-going fees in Australia. However, where a foreign franchisor is a party to a franchise agreement with a local Australian franchisee, the franchisee is required to pay a withholding tax to the Australian Taxation Office.34 The amount of such tax varies from country to country, although several countries have a similar rate. For example, the amount of withholding tax on payment of royalties to the United Kingdom, France or the USA is 5 percent.35

C. Registration and Recording

1. Registration of Franchise Agreements

There are no requirements to have franchise agreements or the franchisor register with any regulatory or professional body before entering into an international franchise agreement in Australia.

29 Ibid.


33 Section 4, Ibid.


2. **Registration of Intellectual Property**

There are no requirements for a franchisor to register its intellectual property with a government agency to execute a franchise agreement, as noted below with respect to other countries, and as would be the case when franchising into any foreign jurisdiction. It is, however, strongly recommended that at the very least the trademarks be protected by seeking a federal trademark registration in Australia.\(^{36}\) Certain forms of intellectual property, however, must be registered under IP Australia, a government agency, in order to receive protection under Australian law. This includes, but is not limited to, trademarks,\(^ {37}\) patents,\(^ {38}\) designs\(^ {39}\) and plant breeder’s rights.\(^ {40}\) Copyright, by contrast, does not require formal registration for protection under Australia’s Copyright Act.\(^ {41}\)

3. **Registration of Other Agreements**

There are no requirements to have other agreements registered with any regulatory or professional body before entering into a franchise agreement in Australia.

D. **Enforcement Considerations**

1. **Limitations over Governing Law and Jurisdictions**

Franchise agreements entered into, transferred, or varied on or after January 1, 2015 cannot contain clauses designating an non-Australian jurisdiction or venue.\(^ {42}\) If such clauses do exist, they will not be enforceable.

2. **Dispute Resolution Mechanisms in Franchise Agreements**

Dispute resolution mechanisms are permitted in Australian franchise agreements. Section 34 of the Franchising Code of Conduct requires franchise agreements to contain a complaint handling procedure that must comply with procedural rules outlined in ss. 38 and 39. Mediation is specifically prescribed under the Franchising Code of Conduct and is the most common form for dispute resolution for franchise agreements in Australia.\(^ {43}\) Arbitration is also permitted, but is uncommon in Australia for franchise situations.\(^ {44}\)

3. **Currency Exchange Control Restrictions**

There are no currency exchange control restrictions in Australia.

\(^{36}\) Supra note 25.


\(^{42}\) Section 21(2) of the Franchising Code of Conduct, supra note 24.


\(^{44}\) Supra note 25.
E. **Other Requirements**

1. **Language Requirements**

There are generally no formal language requirements for agreements and other documents in Australia. The mandatory franchise disclosure documents, however, must be written in English.

2. **Stamp Taxes or Other Signing Fees**

There are no stamp taxes or other signing fees in Australia.

IV. **BRAZIL**

Brazil’s franchise sector is one of the largest and most sophisticated in the world, according to the International Franchise Administration’s Top Markets Report 2016. The most significant law applicable to franchise agreements in Brazil is Law 8,955, which outlines the rules for the offer and sale of franchises and imposes a mandatory obligation on franchisors to provide a franchise disclosure document (“FDD”) to potential franchisees at least ten days before the execution of any binding agreement and/or Franchisor receiving any payment from franchisee. The Brazilian Franchise Association also plays an important role over franchising in Brazil as a self-regulatory body that consists of all major franchisors.

A. **Execution Authority**

1. **Non-Resident Party’s Ability to Contract**

There are no restrictions concerning a non-resident party’s ability to contract in Brazil.

2. **Stated Corporate Purpose of a Contracting Party**

There are no specific restrictions concerning the stated corporate purpose of a contracting party in Brazil, provided that each party’s articles of incorporation or bylaws contemplate a corporate purpose which enables them to perform their contractual obligations.

3. **Signing Authority of a Contracting Party**

As a general rule, the signatory of any binding agreement must be the proper legal representative of each contracting party. For international franchise agreements, the legal representatives of the parties must report their position in the company to the Brazilian National Institute of Industrial Property (“BINPI”). The BINPI will generally accept execution from legal representatives with management powers, such as officers and directors, without requesting any

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45 Supra note 2.


additional document evidencing the powers to sign. If the signatories do not hold such titles in the company, the BINPI may request documents evidencing the signatory’s ability to represent the company or a specific power of attorney (“POA”) granting executory powers.

4. **Franchisor’s Experience Prior to Signing**

The franchisor does not need previous experience in the franchise industry prior to signing a franchise agreement or other documents.

5. **Foreign Trade Sanctions and Other Political Trade Impediments**

In Brazil, there are certain technical sanctions that make trade practices more difficult for foreign parties. For example, in telecommunications, the Brazilian National Telecommunications Agency requires all testing of telecommunication products as of 2002 to occur locally in Brazil, and not abroad, unless the products are too costly or large to transport.49 There are also restrictions over certain countries’ importation of beef and pork products, and a requirement for all importers in Brazil to register with the Secretariat of Foreign Trade (SECEX) to access the SECEX’s computerized documentation system.50

B. **Execution Formalities**

1. **Obligations for Documents to be Notarized, Legalized, or Witnessed**

There are certain requirements for a franchise agreement to be witnessed, notarized and legalized in order for it to be enforceable and for recordal purposes at the BINPI. The franchise agreement must be witnessed by two parties, and the initials of the parties and witnesses must be placed on each page of the agreement.51 The signature of the foreign party must also be notarized. Brazil very recently adhered to the Hague Apostille Convention. As of August 14, 2016, consequently, the so-called “Apostille” replaced the legalization of documents whenever the document is issued in a country party to the Convention; for documents issued in a non-member country, the legalization remains necessary. The requirement for legalization, however, may be waived in accordance with certain international treaties between Brazil and the foreign country, such as France. Furthermore, the franchise agreement must specify the full name and title of the representatives of the parties, the witnesses’ identification document number (such as passport number for a foreign witness, for instance), and the place and date of execution.

2. **Signing Agreements Electronically, by Counterpart or by Fax**

In Brazil, the use of electronic signatures is regulated under Medida Provisória Nº 2.200-2, (“MP2.200-2”).52 Under MP2.200-2, basic electronic signatures are not sufficient to execute a franchise agreement. However, electronic signatures that utilize the Brazilian public key infrastructure (PKI), which is a government-authorized encryption for electronic signatures, are permitted under Article 10 of MP2.200-2.


50 Ibid.


52 Medida Provisória 2.200-2, online: <https://www.planalto.gov.br/ccivil_03/MPV/Antigas_2001/2200-2.htm>.
3. **Payment Processing Restrictions**

No payment from a franchisee to a foreign franchisor can be legally remitted until the franchise agreement is recorded with the INPI and then registered with the Brazilian Central Bank (“BACEN”). The INPI has 30 days to decide whether to record a franchise agreement presented for recordal, although this may take up to 50-60 days in practice. If accepted, the INPI will then either issue the Certificate of Recordal or request further details of the agreement from the applicant party, which may either by franchisor or franchisee. The INPI, however, adopts a liberal position over the recordal of franchise agreements and will focus its assessment on (i) the validity of the trademarks in Brazil, (ii) the inclusion in the agreement of the INPI serial number, and (iii) the approval of the applicable rate for tax deductibility and remittances. After the Certificate of Recordal is issued, the agreement will then need to be registered at the BACEN to allow for the remittance of payments to foreign parties. Following recordal and registration with the INPI and BACEN, a payment schedule will need to be issued within the BACEN system, stating the exact timing and sums to be remitted each time. Registration at BACEN is a simpler procedure and can usually be concluded within 2 days.

C. **Registration and Recording**

1. **Registration of Franchise Agreements**

   All franchise agreements require prior recordal at the INPI and registration at the BACEN, as described in Part B, Section 3 of this paper prior to the payment of any fees to the franchisor.

2. **Registration of Intellectual Property**

   Prior to entering into a franchise agreement in Brazil, the primary trademark and all intellectual property licenses require prior recordal at the INPI and registration at the BACEN, as described in Part B, Section 3 of this paper.

3. **Registration of Other Agreements**

   All technical assistance services and other transfer agreements require prior recordal at the INPI and registration at the BACEN, as described in Part B, Section 3 of this paper to be effective. There are no requirements, however, for commercial sales agency agreements to be registered at a government agency prior to entering into a franchise agreement in Brazil.

D. **Enforcement Considerations**

1. **Limitations over Governing Law and Jurisdictions**

   In Brazil, contracting parties are able to determine the governing law to be used to govern the relationship in an international franchise agreement. In addition, foreign decisions are able to be enforced in Brazil through what is often a complex and time-consuming process in the Superior Court of Justice which requires, amongst other considerations, that: (a) the parties prove that the decision attends to all legal formalities; (b) the decision be final with no possibility of further revision, notarized by a Brazilian Consul in the country where it was delivered and translated into Portuguese; and (c) in order to receive the exequatur from the Superior Court of Justice, the foreign decision be contrary to the Brazilian public order and local practices. Although the case should not be retried, the approval of decision may take some time locally.
2. **Dispute Resolution Mechanisms in Franchise Agreements**

Dispute resolution mechanisms are permitted in Brazil and are strongly recommended due to the complex nature of the court system. To facilitate the arbitration process, there has been a growing trend in arbitration centers to deal with lower-profile cases and decisions. Using these centers allows for more timely decisions and for the use of specialized arbitrators who are more familiar with certain topics than formal judges.  

3. **Currency Exchange Control Restrictions**

Please refer to “Payment Processing Restrictions” in Part B, Section 3 of this paper for an explanation of the currency exchange control restrictions for international agreements in Brazil.

E. **Other Requirements**

1. **Language Requirements**

As informed in Part B, Section 1, Brazil very recently adhered to the Hague Apostille Convention. As of August 14, 2016, consequently, the so-called “Apostille” replaced the legalization of documents whenever the document is issued in a country party to the Convention; for documents issued in a non-member country, the legalization remains necessary. Translation into Portuguese will be required for all documents executed in foreign language that will be presented for recordal at the INPI. Local law sets forth that the disclosure document should be in a clear and precise language to the prospect franchisee. Since Portuguese is the official language in Brazil, it is possible to assume that it should be in this language. However, as long as the Brazilian party knows English fluently and expressly acknowledges that fact in writing, the parties in international franchising may decide to adopt the English language for the disclosure document as well, in order to avoid translation of such document. Although for the purposes of recordal at the INPI simple translations are sufficient, if a document executed in a foreign language is to be used in Brazilian courts, its sworn translation into Portuguese by a certified translator who is officially recognized by the Board of Trade in Brazil must be obtained.

2. **Stamp Taxes or Other Signing Fees**

There are no stamp taxes or other signing fees in Brazil.

V. **CANADA**

Canada, as a federation and legislative power, is divided between federal and provincial governments. While there are no federal franchise-specific laws in Canada, the federal government has jurisdiction over other related matters, such as intellectual property protection and competition law. Franchise specific legislation, however, has been enacted in five of the ten Canadian provinces. At the time of publication, the five provincial statutes governing the offer and sale of franchises in Canada are:


55 Additionally, the province of British Columbia has passed Bill 36 – 2015: Franchises Act, online <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/40th-parliament/4th-session/bills/first-
• The Ontario Arthur Wishart Act (Franchise Disclosure) 2000,\textsuperscript{56}

• The Prince Edward Island Franchises Act,\textsuperscript{57}

• The New Brunswick Franchises Act,\textsuperscript{58}

• The Manitoba Franchises Act,\textsuperscript{59} and

• The Alberta Franchises Act.\textsuperscript{60}

These franchise-specific statutes define and govern the relationship between a franchisor and franchisee, and, primarily, impose a pre-sale franchise disclosure obligation on franchisors,\textsuperscript{61} with a right of action for franchisees in the case such obligations are not properly met.\textsuperscript{62} In addition to these legislative rules, the Canadian legal structure (excluding Quebec) is based on the common law system, which, amongst other things, outlines the law of contracts which governs the franchise relationship. By contrast, Quebec operates through the civil law tradition. While there is no franchise-specific legislation in Quebec, the Civil Code of Quebec broadly outlines the law of contracts, which applies to franchise agreements in that province.\textsuperscript{63} As a result, the laws and practices surrounding franchise agreements in Canada require an appreciation of the law in each targeted province(s).

A. Execution Authority

1. Non-Resident Parties’ Ability to Contract

While there are no per se restrictions over non-resident parties’ ability to contract in Canada, certain residency requirements apply to corporate directors under both federal and provincial corporate legislation. For instance, the Canadian Business Corporations Act requires that 25 percent of a corporation’s directors, or at least one if less than four, be a Canadian

\textsuperscript{56} Arthur Wishart Act (Franchise Disclosure) 2000, S.O. 2000, c. 3, online: <http://canlii.ca/t/306c> [AWA].

\textsuperscript{57} Franchises Act, R.S.P.E.I. 1988, C. F14.1, online: <http://canlii.ca/t/8d7t>.

\textsuperscript{58} Franchises Act, S.N.B. 2014, c 111, online: <http://canlii.ca/t/8tp9>.

\textsuperscript{59} Franchises Act, C.C.S.M. c. F156, online: <http://canlii.ca/t/8n95>.

\textsuperscript{60} Franchises Act, R.S.A. 2000, c. F-23, online: <http://canlii.ca/t/820b>.

\textsuperscript{61} Section 5 of the AWA, \textit{supra} note 56.

\textsuperscript{62} Section 6 of the AWA, \textit{supra} note 56.

\textsuperscript{63} Civil Code of Québec, C.Q.L.R. c. C-1991, online: <http://canlii.ca/t/z35>.
residents. Similar provisions are found in the Ontario Business Corporations Act and other provincial corporate legislation in Alberta, Saskatchewan, Manitoba, and Newfoundland. Some provincial corporate structures do not contain such residency requirements, such as British Columbia or Nova Scotia.

Additionally, foreign entities engaged in transactions that result in the direct or indirect acquisition of a Canadian business (except for “cultural businesses”) must comply with the Investment Canada Act (“ICA”). And, according to George N. Addy et al, the ICA acts as the framework for regulating foreign investment over the acquisition and creation of Canadian businesses by foreign entities. As such, it would apply in the case where a foreign entity purchases an interest in an existing franchise business in Canada. The ICA requires the foreign entity notify the Investment Review Division of the acquisition through a standard, prescribed form within 30 days of acquiring the Canadian business. In addition, transactions falling under the ICA will be deemed to be subject to review and approval if the transaction surpasses certain financial thresholds.

2. **Stated Corporate Purpose of a Contracting Party**

There are no restrictions concerning the stated corporate purpose of a contracting party in Canada.

3. **Signing Authority of a Contracting Party**

Agreements in Canada may be signed by the contracting parties or by an agent of the parties based on the doctrines of agency. An agent will have authority to sign on behalf of the contracting party if, either explicitly or implicitly, it has been granted with actual authority or have been indirectly granted with apparent authority. Officers, directors and generally any other signatories for corporations in Canada will be outlined in the corporate by-laws or shareholders agreements. Additionally, the “indoor management rule” applies under Canadian and many provincial corporation legislation, such as in Ontario. This rule holds that if one contracting party receives a contract executed by an officer or director of a corporation, the first contracting party may assume that the contract is enforceable against the corporation.

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64 Section 105(3) of the Canadian Business Corporations Act, R.S.C., 1985, c. C-44, online: <http://canlii.ca/t/7vf1> [CBCA].

65 Section 118(3) of the Ontario Business Corporations Act, R.S.O. 1990, c. B.16, online: <http://canlii.ca/t/82> [OBCA].

66 Section 105(3) of the Business Corporations Act, R.S.A. 2000, c. B-9, online: <http://canlii.ca/t/81qq>.

67 Section 100(3) of the Business Corporations Act, RSS 1978, c B-10, online: <http://canlii.ca/t/52gzm>.

68 Section 100(3) of the Corporations Act, C.C.S.M. c C225, online: <http://canlii.ca/t/8gjb>.

69 Section 174 of the Corporations Act, R.S.N.L. 1990, c C-36, online: <http://canlii.ca/t/89sd>.

70 Investment Canada Act, RSC 1985, c 28 (1st Supp), online: <http://canlii.ca/t/7vbt>.


72 Section 18 of the CBCA, supra note 64.

73 Section 19 of the OBCA, supra note 65.
4. **Franchisor’s Experience Prior to Signing**

Neither a domestic nor foreign franchisor needs previous experience in the franchise industry prior to signing a franchise agreement in Canada. For example, the franchisor does not have to have been in business for a minimum period, to have operated a minimum number of franchisor-owned operations, or to have operated in Canada with franchisor-owned operations for a minimum period. That being said, in provinces with franchise disclosure laws, a franchisor will be required, in its franchise disclosure document, to disclose its franchising and corporate history.

5. **Foreign Trade Sanctions and Other Political Trade Impediments**

Canada has foreign trade sanctions with Belarus, Burma, Central African Republic, Côte d’Ivoire, Democratic Republic of the Congo, Eritrea, Iran, Iraq, Lebanon, Liberia, Libya, North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Tunisia, Ukraine, Yemen, Zimbabwe and other countries pursuant to the United Nations Act, the Special Economic Measures Act and other legislation.

B. **Execution Formalities**

1. **Obligations for Documents to be Notarized, Legalized, or Witnessed**

In Canada, there is generally no formal requirement for documents or agreements to be notarized, legalized, or witnessed. In Alberta, however, there is a unique requirement for personal guarantees under the Guarantees Acknowledgement Act. Under this law, any personal guarantee governed by Alberta law will only be enforceable if the guarantor appears before a lawyer to complete a certificate (which must be attached to the guarantee) indicating that the guarantor is aware of the contents of the guarantee.

2. **Signing Agreements Electronically, by Counterpart or by Fax**

In Canada, both federal and provincial legislation allow for documents and agreements to be signed electronically or by counterpart. The Ontario Electronic Commerce Act, for example, allows any business and/or person to contract and sign agreements in electronic form. While

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74 For further discussion, see Andrew P Loewinger and Michael K Lindsey, *International Franchise Sales Law* (USA: American Bar Association, 2015).


76 United Nations Act, RSC 1985, c U-2, online: <http://canlii.ca/t/7vm5>.

77 Special Economic Measures Act, SC 1992, c 17, online: <http://canlii.ca/t/7vqz>.


80 For further discussion, see Jillian Friedman, Signing Your Next Deal with Your Twitter @Username: The Legal Uses of Identity-Based Cryptography, 13 Can. J. L. and Tech. 33.

81 Electronic Commerce Act, 2000, S.O. 2000, c. 17, online: <http://canlii.ca/t/2zo>.
Alberta remains the only province to not specifically permit electronic franchise disclosure, it is common for parties in Canada to execute franchise and other commercial agreements by way of exchange of electronic signatures, even in Alberta.

3. **Payment Processing Restrictions**

There are no payment processing or legal restrictions in regard to the manner of payment of any initial or ongoing fees in Canada.

C. **Registration and Recording**

1. **Registration of Franchise Agreements**

There are no requirements for a franchisor to register its franchise agreements with a government agency in order to execute a franchise agreement in Canada.\(^82\)

2. **Registration of Intellectual Property**

There are no requirements for a franchisor to register its intellectual property with a government agency in order to execute a franchise agreement in Canada.\(^83\) Certain forms of intellectual property, however, must be registered in order to receive protection under Canadian law. For instance, patents require formal registration for protection in Canada under the Patent Act.\(^84\) While common law trademarks are recognized under Canadian law, such protection is limited to the geographic area where consumers recognize their goodwill. In franchising, where the trademarks are perhaps a brand’s most valuable asset, they are often not nearly a good enough protection. For this reason, formal registration of trademarks under the Trade-marks Act\(^85\) is always recommended to increase protection and limit risk. By contrast, no formal registration is required for copyrighted work under the Copyright Act.\(^86\)

3. **Registration of Other Agreements**

There are no requirements for a franchisor to register its commercial sales agreements or other agreements with a government agency in order to execute a franchise agreement in Canada.\(^87\)

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\(^83\) *Ibid.*

\(^84\) Patent Act, R.S.C. 1985, c P-4, online: <http://canlii.ca/t/7vkn>.

\(^85\) Trade-marks Act, R.S.C. 1985, c T-13, online: <http://canlii.ca/t/7vlwc>.

\(^86\) Copyright Act, R.S.C. 1985, c C-42, online: <http://canlii.ca/t/7vdz>.

D. Enforcement Considerations

1. Limitations over Governing Law and Jurisdictions

In Canada, contracting parties are permitted to expressly designate foreign governing law to be used in the franchise agreement, provided that it is not fraudulent.⁸⁸ That being the general principle, the provinces of Canada with franchise statutes provide that any provision in a franchise agreement purporting to restrict the application of the law of that province or to restrict jurisdiction or venue to a forum outside that province is void with respect to a claim otherwise enforceable under that statute.

2. Dispute Resolution Mechanisms in Franchise Agreements

Generally, Canadian courts enforce dispute resolution clauses, allowing for the use of mediation and arbitration as alternatives to litigation. In fact, most provinces have enacted commercial arbitration legislation, and Ontario, British Columbia and Saskatchewan have all incorporated mandatory pre-trial mediation into their procedural statutes.⁸⁹ In franchising, dispute resolution mechanism clauses are increasingly common in Canadian franchise agreements, though the actual approach and structure employed should be revised to account for unique Canadian common law and procedural rules. The designation of applicable law and venue of the arbitration mechanism is subject to the application of the various provincial franchise statutes, which, practically, will require arbitration to be conducted pursuant to the laws, and within the borders of, each province. Where the New Brunswick Franchises Act applies, section 8 of that statute includes a mandatory mediation provision which requires all parties to a franchise agreement to participate in mediation pursuant to the regulations made under the statute.

3. Currency Exchange Control Restrictions

There are no currency exchange control restrictions in Canada.

E. Other Requirements

1. Language Requirements

While English and French are the official languages in Canada, there are generally no formal language requirements for franchise agreements and other documents in Canada, with the exception of Quebec.⁹⁰ In Quebec, the Charter of French Language requires businesses to prepare franchise agreements and other agreements in French, unless otherwise expressly agreed upon by both parties.⁹¹ In practice, parties will often include a clause which provides that they have agreed that the agreements will be prepared in English only.

2. Stamp Taxes or Other Signing Fees

There are no stamp taxes or other signing fees in Canada.

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⁸⁸ Supra note 21.


⁹⁰ Supra note 17 at 128.

⁹¹ Section 55 of the Charter of the French Language, C.Q.L.R. c. C-11, online: <http://canlii.ca/t/xhc>.
VI. CHINA

In recent years, there has been a growing trend toward international franchise expansion in the Chinese market due to China’s large and expanding population and economic prospects.\(^9^2\) In China, franchising is regulated under the Regulation on the Administration of Commercial Franchises (the “Regulations”),\(^9^3\) and two administrative measures, namely: the Administrative Measures for the Information Disclosure of Commercial Franchises\(^9^4\) and the Administrative Measures for Archival Filing of Commercial Franchises.\(^9^5\) In addition, franchises in China are subject to general laws governing commercial transactions and foreign investment.\(^9^6\) When franchisors also hold shares in local entities, the laws and regulations governing foreign investments also apply.

A. Execution Authority

1. Non-Resident Party’s Ability to Contract

There are no restrictions concerning a non-resident party’s ability to contract in China.

2. Stated Corporate Purpose of a Contracting Party

In China, companies are not permitted to operate beyond the specified business purpose in their respective business licenses. This restriction, however, only applies to Chinese legal entities and will generally not affect the validity of an executed franchise agreement. This is because Chinese entities are usually able to secure the necessary administrative approvals to amend and expand their stated business purpose, unless the business fits within a “restricted” or “prohibited” category, such as telecommunications, media, book publications, and medical services.\(^9^7\)

3. Signing Authority of a Contracting Party

When a foreign party contracts with a Chinese legal entity, an agreement is generally deemed as executed when it is stamped with the company seal of the contracting party and/or


\(^9^6\) For further discussion, see Claudio D’Agostino and Paula Cao, Franchise 2016 (London, UK: International Comparative Legal Guides, 2016), online: <https://www.iclg.co.uk/practice-areas/franchise/franchise-2016/china#chaptercontent1>.

signed by its “legal representative”, which is an official position in the company structure. In relatively rare situations where limited partnerships are involved, the general partners (i.e. the managing partners stated in the business license) also have signing authority.

4. **Franchisor’s Experience Prior to Signing**

A franchisor must have a mature business model, the capability of providing continuing services to franchisees, and the operational history of running at least two direct units for at least one year before it can commence franchising activities.

5. **Foreign Trade Sanctions and Other Political Trade Impediments**

There are several long-term or short-term foreign trade sanctions against certain products that prohibit commercial relations between China and other foreign countries. Due to the particular nature of these sanctions, it is recommended to seek advice in this regard at the planning stage of the franchise agreement.

**B. Execution Formalities**

1. **Obligations for Documents to be Notarized, Legalized, or Witnessed**

Under the Administrative Measures for the Archival Filing of Commercial Franchises, documents created outside of China must be translated, notarized and certified by a notary officer in the country where the documents are created, and legalized by the Chinese consulate in that country or region. This applies to franchise agreements signed outside of China and other official documents, such as incorporation documents of franchisors or World Intellectual Property Organization registration certificates.

2. **Signing Agreements Electronically, by Counterpart or by Fax**

In China, documents signed electronically are legally recognized and enforceable, provided that they meet the requirements under the Electronic Signature Law of the People’s Republic of China (ESLPRC). Articles 7 and 8 of the ESLPRC provide the general rules governing the admissibility of electronic signatures.

3. **Payment Processing Restrictions**

Before payments can be made to a foreign franchisor in currency other than Yuan, the Chinese tax authority should be contacted to determine what, if any, requirements exist. Otherwise, the application may not be approved.

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99 Article 7 of the Regulations, supra note 93.


101 Supra note 97.
C. Registration and Recording

1. Registration of Franchise Agreements

Pursuant to Article 8 of the Regulations and Article 7 of the Administrative Measures for the Archival Filing of Commercial Franchises, the franchisor is required to register with the Ministry of Commerce (MOFCOM) within 15 days after the execution of the first franchise agreement in China. The registration process involves submitting documents (including but not limited to incorporation documents of the franchisor, registration certificates or licenses of the related intellectual property rights, sample franchise agreements, and operation manuals) to MOFCOM for approval. Once approval has been received, the documents must be uploaded to MOFCOM’s online portal. For documents from foreign countries, translation, notarization and legalization requirements must be satisfied.

2. Registration of Intellectual Property

Although the franchise legislation in China does not expressly state that intellectual property must be registered, like in other jurisdictions, it is highly recommended and a necessity in practice to prevent intellectual piracy. In addition, government agencies, such as MOFCOM, expect registration certificates during the franchisor recordal process described below.

3. Registration of Other Agreements

Although there is no express recordal requirement for franchise agreements other than the obligation to record the first executed franchise agreement in the system in China, MOFCOM may ask to examine the franchise agreements with any new franchisee in China when updating such information in the MOFCOM franchisor online portal. Other agreements, such as agreements for the importation of technology, may also need to be registered or recorded with local authorities before they become enforceable under Chinese law.

D. Enforcement Considerations

1. Limitations over Governing Law and Jurisdictions

The general position in China is that, if there is a reasonable nexus with a foreign jurisdiction with respect to the transaction, the parties are allowed to choose a non-Chinese governing law and jurisdiction. However, if there is a law or regulation in China that is directly relevant to the issue at hand, Chinese law will generally prevail if the matter is handled by a Chinese court.

2. Dispute Resolution Mechanisms in Franchise Agreements

Parties may use dispute resolution mechanisms as an alternative to the courts in China. Parties may use arbitration if there is an arbitration clause in the franchise agreement or if a valid arbitration agreement is entered into. Arbitration requires the use of an accredited arbitral body, which is expressly identified in the arbitration agreement or clause, otherwise the agreement or clause will be invalid.

102 Supra note 97.
3. **Currency Exchange Control Restrictions**

For transactions regarding the general trading of goods and services where remittance is $50,000 (USD) or less, there are no currency exchange controls imposed. For payments over $50,000 (USD), there is a requirement to submit certain specific supporting documents, such as the subject agreement of the transaction and receipt of payment of withholding taxes, to the bank when processing the payment.

E. **Other Requirements**

1. **Language Requirements**

   In China, all governmental agencies, banks and courts require Chinese translation for any document that is not written in Chinese. While there are no formal requirements to translate disclosure documents, the documents should be translated to minimize the risk of misrepresentation claims by the franchisee.

2. **Stamp Taxes or Other Signing Fees**

   Franchise agreements are subject to stamp taxes in China. Contracts for the following will be subject to stamp taxes: purchase and sale, processing/manufacturing, design and construction, property leasing, transportation of goods, warehousing, loans, property insurance, technology, property title, corporate accounting books and records, and licenses or rights certificates. These stamp taxes range between 0.003% and 0.10%.

3. **Other Considerations**

   Franchise agreements in China must include a provision for a “cooling-off” period that cannot be waived by the parties. Failure to include such clause may give rise to a right to rescind the franchise agreement by the franchisee at any time. As there are no requirements over the length of the “cooling-off” period, parties are free to determine the length of time as they deem appropriate, which is generally around seven to fourteen days.

VII. **COLOMBIA**

In Colombia, there is no franchise specific or other legislation that specifically pertains to franchise. For this reason, franchises are largely regulated under the Civil and Commercial Codes of Colombia that outline the rules for contract law and other agreements. The franchise

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103 Please note that this is a general requirement in China. For documents to be used in Chinese courts, the translation must be done by a court-appointed translation house before it could be admitted to the court.


105 Ibid. Appendix: Stamp Tax Schedule of Tax Items and Tax Rates.

industry in Colombia is strong and was recently ranked in the top ten countries for US exporters by the International Trade Administration in their 2016 Top Markets Report.  

A. Execution Authority

1. Non-Resident Party’s Ability to Contract

   There are no restrictions concerning a non-resident party’s ability to contract in Colombia.

2. Stated Corporate Purpose of a Contracting Party

   There are no restrictions concerning the stated corporate purpose of a contracting party in Colombia.

3. Signing Authority of a Contracting Party

   Agreements in Colombia may be signed by the contracting parties or by an agent of the parties. An agent will therefore have authority to sign on behalf of the contracting party if the agent has, either explicitly or implicitly, been granted actual authority or has been indirectly granted apparent authority to bind the party. Officers, directors and generally any other signatories for corporations in Colombia will be outlined in the corporate by-laws or shareholders agreements.

4. Franchisor’s Experience Prior to Signing

   The franchisor does not need previous experience in the franchise industry or otherwise prior to signing a franchise agreement in Colombia.

5. Foreign Trade Sanctions and Other Political Trade Impediments

   In Colombia, there are specific prohibitions over the import of certain chemicals and products, including: dieldrin, aldrin, chlordane, endosulfan, heptachlor, lindane, gasoline that contains tetraethylene, and weapon-type toys. The Colombian Government has compiled a list of countries that are to be considered tax havens. If revenues are transferred to a country considered as a tax haven, there will be a withholding tax at a maximum rate of thirty three percent (33%). As a result, it is useful to seek advice from a tax expert as early as possible.

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107 Supra note 2.
108 Supra note 106, 47.
B. Execution Formalities

1. **Obligations for Documents to be Notarized, Legalized, or Witnessed**
   
   There are no obligations for documents to be notarized, legalized, or witnessed in Colombia.\(^{112}\)

2. **Signing Agreements Electronically, by Counterpart or by Fax**
   
   Documents in Colombia may be signed electronically, by counterpart or by fax, pursuant to Law 527 of 1999, which indicates that a handwritten signature can be deemed as a signature provided that it identifies the signatory, indicates approval, is reliable, and is appropriate for the agreement's purpose.\(^{113}\)

3. **Payment Processing Restrictions**
   
   There are no payment processing or legal restrictions in regard to the manner of payment of any initial or on-going fees in Colombia.

C. Registration and Recording

1. **Registration of Franchise Agreements**
   
   There are no mandatory requirements for franchise agreements, or other documents, to be registered prior to enforcing an international franchise agreement in Colombia. However, all agreements involving the importation of technology can be registered with the National Tax Authority, which will allow the franchisee to receive some tax benefits regarding the payment of income tax.\(^{114}\) Those benefits may include the right to deduct the amount of royalty payments made to a foreign party pursuant to a technology import agreement from income taxes (normally at the rate of 33%). The franchisee must complete the National Tax Authority Form 020 to register and attach the Form to the agreement, which must be in Spanish.

2. **Registration of Intellectual Property**
   
   Pursuant to Article 154 of the Decision 486 of 2000,\(^{115}\) trademarks must be registered with the Colombian Trademark Authority prior to executing an international franchise agreement, otherwise the trademark license will not be recognized as part of the agreement. Additionally, pursuant to Article 162 of the Decision 486 of 2000, any assignment or transfer of a registered trademark must be filed with the Superintendence of Industry and Commerce.

3. **Registration of Other Agreements**
   
   As mentioned in Part C, Section 1, above, there are generally no formal requirements for documents or other agreements to be registered. However, Article 1320 of the Colombian Commercial Code mandates that commercial sales agency agreements be registered with the

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\(^{112}\) Supra note 106, 47.


\(^{115}\) Ibid.
Chamber of Commerce. Accordingly, it is necessary to determine whether the agreement at issue qualifies as a commercial sales agency agreement under applicable law.

D. **Enforcement Considerations**

1. **Limitations over Governing Law and Jurisdictions.**

   According to Article 869 of the Colombian Commerce Code, the agreements are to be governed by the laws and regulations of the country where they will be performed. Accordingly, if an agreement is to be performed in Colombia it must be governed by Colombian law. If the agreement is to be performed elsewhere, the parties may select another jurisdiction for their choice of law, provided that the chosen jurisdiction’s law complies with Colombian law.\(^\text{116}\)

2. **Dispute Resolution Mechanisms in Franchise Agreements**

   Parties to an international franchise agreement in Colombia may use various forms of dispute resolution, such as arbitration, which is recognized under the Colombian Constitution and other relevant commercial legislation.\(^\text{117}\) Since 2011, it is necessary to have a form of conciliation process before filing a civil or commercial dispute to a court in Colombia.\(^\text{118}\)

3. **Currency Exchange Control Restrictions**

   There are no currency exchange control restrictions in Colombia.\(^\text{119}\)

E. **Other Requirements**

1. **Language Requirements**

   There are no formal requirements to have any of the agreements or other materials translated into the local language in Colombia. However, if the parties register the agreements involving the transfer, assignment or importation of technology, the agreements must be translated into Spanish. As previously mentioned in Part C of this Section, it is not mandatory to register these agreements.

2. **Stamp Taxes or Other Signing Fees**

   There are no stamp taxes or other signing fees in Colombia.

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\(^\text{118}\) For further discussion, see Alejandro Alvarez de la Campa, “The Private Sector Approach To Commercial ADR: Commercial ADR Mechanisms In Colombia,” online: <https://www.wbginvestmentclimate.org/advisory-services/regulatory-simplification/alternative-dispute-resolution/upload/Private-Sector-Approach-to-Commercial-ADR_-_the-case-of-Colombia.pdf>.

\(^\text{119}\) *Supra* note 106, 49.
VIII. FRANCE

There are no franchise-specific laws or regulations on franchise agreements in France. Franchise agreements are subject to the general contractual and commercial requirements under the French Civil Code and the Commercial Code. In addition, there are pre-contractual disclosure obligations, which apply to all agreements involving the transfer of trademarks or trade names.  

A. Execution Authority

1. Non-Resident Party’s Ability to Contract

There are no restrictions concerning a non-resident party’s ability to contract in France.

2. Stated Corporate Purpose of a Contracting Party

There are no restrictions concerning the stated corporate purpose of a contracting party in France.

3. Signing Authority of a Contracting Party

There are no restrictions over the signing authority of a contracting party in France.

4. Franchisor’s Experience Prior to Signing

The franchisor does not, by law, need prior experience in the franchise industry or otherwise before signing a franchise agreement in France. However, case law in France describes a franchise as the ‘reiteration of commercial success. As a result, the franchisor must prove that it has operated at least one similar business to be considered a success before offering a franchise.  

5. Foreign Trade Sanctions and Other Political Trade Impediments

France is a member of the European Union, which implements UN sanctions in all member states through regulations. The countries impacted by these financial trade sanctions are Belarus, Burma / Myanmar, Burundi, the Congo, North Korea, Egypt, Eritrea, Guinea-Bissau, Guinea (Republic of), Iran, Iraq, Lebanon, Liberia, Libya, Macedonia, Central African Republic, Somalia, Sudan, South Sudan, Syria, Transnistria (Moldova region), Tunisia, Ukraine, Russia, Yemen, and Zimbabwe.

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121 Ibid.


B. EXECUTION FORMALITIES

1. Obligations for Documents to be Notarized, Legalized, or Witnessed

There are no obligations for documents to be notarized, legalized, or witnessed in France.

2. Signing Agreements Electronically, by Counterpart or by Fax

Agreements in France can be signed electronically or by fax. Electronic signatures are governed under Article 1316 of the Civil Code in France, which allows any business or person to contract and sign agreements in electronic form. In addition, it authorizes a signature by any means in commercial transactions, including fax. However, documents are unable to be signed by counterpart, and in doing so the franchise agreement may not be valid or enforceable.

3. Payment Processing Restrictions

There are no payment processing or legal restrictions in regard to the manner of payment of any initial or on-going fees in France.

C. Registration and Recording

1. Registration of Franchise Agreements

There are no requirements for recordal or registration of a franchise agreement before or at the time of franchising in France.

2. Registration of Intellectual Property

A trademark must be validly registered prior to any agreement that includes exclusivity provisions for trademark licenses. The Intellectual Property Code regulates trademarks in France.

3. Registration of Other Agreements

There are no requirements to have other agreements registered with any regulatory or professional body before entering into a franchise agreement in France.

D. Enforcement Considerations

1. Limitations over Governing Law and Jurisdictions.

Parties are permitted to select the law that governs their contract under two primary international instruments: (i) the Rome Convention and (ii) Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I). The Rome Convention applies to contracts created before December 17th, 2009, and Rome I applies to contracts created after that date. Both Rome I and the Rome Convention hold that the choice of law specified in a contract will apply if it is expressly agreed upon or demonstrated with reasonable certainty. Where that is not the case, the contract or agreement will be governed by the law of the country most closely connected to

124 Article L330-3 of the Commercial Code, supra note 120.

the agreement. French courts will also generally respect the parties’ contracted choice of forum. If the contracting parties have elected to have the governing jurisdiction within an EU member country, then the Brussels Regulation will apply. Under the Brussels Regulation, whether a forum selection clause will be enforceable will be determined based on the law of the EU member state identified in the jurisdiction agreement.

2. **Dispute Resolution Mechanisms in Franchise Agreements**

In France, dispute resolution mechanisms are authorized under the Civil Procedure Code of France. Agreements that elect to use arbitration for dispute resolution mechanisms are able to bring the issue before a variety of international organizations, such as the French Arbitration Association, the International Criminal Court and the French Arbitration Committee.

3. **Currency Exchange Control Restrictions**

There are no currency exchange control restrictions for international franchise agreements in France.

E. **Other Requirements**

1. **Language Requirements**

There are no requirements to have any of the agreements or other materials translated into the local language in France.

2. **Stamp Taxes or Other Signing Fees**

There are no stamp taxes or other signing fees in France.

IX. **GERMANY**

In Germany, franchise relationships are not governed by franchise-specific legislation and are subject to the same requirements as other contracts or agreements. Despite the lack of franchise-specific legislation, franchisors in Germany are regulated heavily by other general, overarching common law principles and statutes. The common law principle of *culpa in contrahendo*, for example, creates a mandatory duty for pre-contractual disclosure. There are also two significant self-regulating franchise associations in Germany, namely, the German Franchise Association and the German Franchisee Association.


127 Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [Brussels Regulation].

128 Article 25, Ibid.

129 Supra note 120.


A. Execution Authority

1. **Non-Resident Party’s Ability to Contract**
   
   There are no restrictions concerning a non-resident party’s ability to contract in Germany.\(^{132}\)

2. **Stated Corporate Purpose of a Contracting Party**
   
   There are no restrictions concerning the stated corporate purpose of a contracting party in Germany.

3. **Signing Authority of a Contracting Party**
   
   In Germany, it is imperative for parties to have sufficient authority to sign an international franchise agreement. The national Commercial Register lists who has actual authority to sign on behalf of a German corporation.\(^{133}\) Signatories’ authority may also exist through having either (i) “organ” / implied authority, or (ii) specific forms of authority that can be granted through the German Commercial Code.

4. **Franchisor’s Experience Prior to Signing**
   
   While there are no statutory requirements for the franchisor to have experience prior to entering into a franchise agreement in Germany, the German Franchise Association’s guiding principles state that the franchisor must have “successfully run a business concept for an appropriate period of time and with at least one pilot project before founding his franchise network”.

5. **Foreign Trade Sanctions and Other Political Trade Impediments**
   
   Between the period from 2005 to 2014, Germany imposed trade sanctions on over 20 countries, namely: Cote d’Ivoire, Congo, Uzbekistan, Lebanon, Belarus, North Korea, Conoros, Guinea, Eritrea, Tunisia, Libya, Egypt, Iran, Afghanistan, Syria, Guinea-Bissau, Myanmar, Russia, Central African Republic and Sudan.\(^{134}\) Since then, at least two of those sanctions have been lifted.\(^{135}\) Due to the nature of these foreign trade sanctions, it is recommended to seek advice at the planning stage of the franchise agreement.


\(^{133}\) For further discussion, see Frank D Chaiken and Michael Nellen, “Comparing Signature Authority in the U.S. and Germany,” online: <http://www.thompsonhine.com/publications/comparing-signature-authority-in-the-us-and-germany>.


\(^{135}\) *Supra* note 130.
B. Execution Formalities

1. Obligations for Documents to be Notarized, Legalized, or Witnessed

In Germany, there are certain requirements for notarization, legalization and witnessing. For example, a franchisor in Germany will most commonly be formed as a private limited liability corporation, which requires having a shareholder agreement that must be certified by a notary and registered with the Commercial Register.136

2. Signing Agreements Electronically, by Counterpart or by Fax

Documents and agreements may be signed electronically or by fax in Germany under the Framework Conditions for Electronic Signatures, which adopted most of the regulations in the European Electronic Signature Directive 1999/93/EC. Additionally, the German Civil Code includes provisions authorizing the use of electronic signatures in Germany.

3. Payment Processing Restrictions

There are no payment processing or legal restrictions in regard to the manner of payment of any initial or on-going fees in Germany.

C. Registration and Recording

1. Registration of Franchise Agreements

There are no requirements for franchise agreements to be registered in Germany.137

2. Registration of Intellectual Property

Certain forms of intellectual property require registration in Germany. This includes trademarks and patents, which require registration with the Patent and Trademark office under the Trademark Act.138 Copyright, by contrast, does not require registration with a governmental body or agency.

3. Registration of Other Agreements

As mentioned in Part B, Section 1, there will be requirements for registration with the Commercial Register for all private limited liability corporations, the most common form of incorporation for franchisors in Germany.139 Additionally, any assignment of ownership of real


137 For further discussion, see Thomas Salomon and Dr. Michael Dettmeier, "Franchising Country Questions: Germany," 5 July 2013, online: <http://us.practicallaw.com/6-102-2116?source=relatedcontent>.


estate must be both notarized and registered with the Land Register ("Grundbuch"). Until registration is complete, no title will pass to the purchaser of land.\textsuperscript{140}

D. Enforcement Considerations

1. Limitations over Governing Law and Jurisdictions.

German law authorizes agreements to be governed under foreign jurisdiction and law, unless there is a specific law requiring exclusive jurisdiction in Germany (such as for disputes relating to real property or antitrust law).\textsuperscript{141}

2. Dispute Resolution Mechanisms in Franchise Agreements

The use of dispute resolution mechanisms, such as arbitration, is authorized under German law. Mediation, for example, is increasingly recognized in Germany as a form of joint dispute resolution. However, due to the non-binding nature of mediation, most international franchise agreements will only require mediation proceedings for initial first stages of dispute resolution.\textsuperscript{142}

3. Currency Exchange Control Restrictions

There are no currency exchange control restrictions for international franchise agreements in Germany.

E. Other Requirements

1. Language Requirements

German law does not require an international franchisor to draft documents in the German language. However, it is often recommended for franchisors to provide a translation of the agreement or disclosure document to avoid future disputes or misunderstandings. Additionally, German courts require a German translation of the agreement or document if there is a dispute between the parties. Therefore, if Germany is the specified jurisdiction in the franchise agreement, a translation of the relevant documents is recommended and may be required by law.

2. Stamp Taxes or Other Signing Fees

There are no stamp taxes or other signing fees in Germany.

X. ITALY

Franchising in Italy is regulated under both the Law 129 of May 6, 2004, which regulates the franchise agreement and relationship, and Decree 204 of September 2, 2005, which outlines the disclosure obligations for foreign franchisors.\textsuperscript{143} Franchisors have the ability to be certified by

\textsuperscript{140} For further discussion, see DLA Piper, “Registration of Title,” 2016, online: <http://www.dlapiperrealworld.com/law/index.html?sale-and-purchaseands=transactional-processandq=registration-of-titleandc=DE>.

\textsuperscript{141} Supra note 139.

\textsuperscript{142} Ibid.

\textsuperscript{143} Legislative Decree 204 of March 15, 1996 on Amendments and Additions to Legislative Decree 685 of 16 November, 1994 concerning Right of Lease and other Copyright-Related Rights, online:
the national franchise association of Italy, called “Assofranchising”. Membership with Assofranchising is not mandatory, but provides franchisors with the opportunity to demonstrate a level of quality by abiding by the association’s Code of Ethics.144

A. Execution Authority

1. Non-Resident Party’s Ability to Contract

There are no restrictions concerning a non-resident party’s ability to contract in Italy.

2. Stated Corporate Purpose of a Contracting Party

There are no restrictions concerning the stated corporate purpose of a contracting party in Italy.

3. Signing Authority of a Contracting Party

Agreements in Italy may be signed by the contracting parties or by an agent of the parties. An agent will therefore have authority to sign on behalf of the contracting party if, either explicitly or implicitly, the agent has been granted with actual authority or has been indirectly granted with apparent authority. Officers, directors and generally any other signatories for corporations in Italy will be identified in the corporate by-laws or shareholders agreements.145

4. Franchisor’s Experience Prior to Signing

While there are no formal specified requirements for franchisors to have experience prior to signing an international franchise agreement in Italy, there is a mandatory pre-sale disclosure obligation to list the franchisor’s current franchisees and company operated outlets, which requires that the franchisor disclose whether or not it has experience before offering franchises in Italy.146 Furthermore, members of the national franchise association may have to abide by additional obligations for prior experience. For example, a member of Assofranchising must, as a condition of membership, have first tested its franchise in the market successfully for at least one year.147

5. Foreign Trade Sanctions and Other Political Trade Impediments

Italy is a member of the European Union’s harmonized trade system, meaning that its import and export regulations are covered under the European Commission’s Regulations.


B. EXECUTION FORMALITIES

1. **Obligations for Documents to be Notarized, Legalized, or Witnessed**

There are no obligations to have agreements notarized, legalized or witnessed in Italy.\(^\text{148}\)

2. **Signing Agreements Electronically, by Counterpart or by Fax**

International documents and agreements are permitted to be signed electronically in Italy under the Electronic Identification and Authentication Services Regulation (910/2014/EC), which came into effect on July 1\(^{st}\), 2016. In particular, all electronic signatures shall be admissible in legal proceedings as evidence.\(^\text{149}\)

3. **Payment Processing Restrictions**

There are no legal or payment processing restrictions in regard to the manner of payment of any initial or on-going fees in Italy.\(^\text{150}\)

C. **Registration and Recording**

1. **Registration of Franchise Agreements**

There are no registration requirements for franchise agreements outlined in either Law 129 of May 6, 2004 or other legislation.\(^\text{151}\)

2. **Registration of Intellectual Property**

While there are no formal requirements for intellectual property to be registered prior to executing an international franchise agreement in Italy, it is a practical necessity to receive protection for certain forms of intellectual property. Trademarks and patents are protected under the Decree-Law 30/2005 and are both required to be registered in Italy with the Italian Trademarks and Patents Office.\(^\text{152}\) Copyright, by contrast, is protected under the Law 633 of April 22, 1941 and does not require formal registration.

3. **Registration of Other Agreements**

There are no registration requirements for other agreements outlined in either Law 129 of May 6, 2004 or other legislation.

\(^{148}\) Supra note 145.


\(^{150}\) Supra note 145.

\(^{151}\) Supra note 143.

\(^{152}\) Ibid.
D. Enforcement Considerations

1. Limitations over Governing Law and Jurisdictions.

In Italy, contracting parties are permitted to use a choice of law clause, as long as the provision does not conflict with Italian public policy.\(^{153}\) The use of choice of law provisions is regulated under two primary international instruments: (i) the Rome Convention and (ii) Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I). The Rome Convention applies to contracts created before December 17\(^{th}\), 2009, and Rome I applies to contracts created after that date. Both Rome I and the Rome Convention hold that the choice of law specified in a contract will apply if it is expressly agreed upon or demonstrated with reasonable certainty. Where that is not the case, the contract or agreement will be governed by the law of the country most closely connected to the agreement, which – pursuant to Article 4 of the Rome I Regulation – is the law of the country where the franchisee has his place of residence.\(^{154}\) If the contracting parties elect to have the governing jurisdiction within an EU member country, then the Brussels Regulation\(^{155}\) will apply. Under the Brussels Regulation, whether a jurisdiction agreement will be enforceable will be determined based on the law of the EU member state identified in the jurisdiction agreement.\(^{156}\) Law 218/1995 governs jurisdiction as well as recognition and enforcement of judicial decisions with reference to relations between Italian parties and parties of non EU countries.

2. Dispute Resolution Mechanisms in Franchise Agreements

Parties to an international franchise agreement in Italy may include alternative dispute mechanisms in their agreements.\(^{157}\) There are, however, specific rules for arbitration outlined in the Italian Code of Civil Procedure, which should be considered when drafting the franchise agreement. Moreover, Assofranchising provides franchisors with a specific system of alternative dispute resolution focused on the franchise industry.\(^{158}\) International arbitration represents an alternative solution to the jurisdiction of national courts, since Italy is part of the 1958 New York Convention arbitration.

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\(^{154}\) For further discussion, see Elizabeth Oger-Gross, et al., "Litigation and Enforcement in France: Overview," January 2016, online: <http://ca.practicallaw.com/9-502-0121#a1047924>.

\(^{155}\) Brussels Regulation, supra note 127.

\(^{156}\) Article 25, Ibid.


3. **Currency Exchange Control Restrictions**

There are no currency exchange control restrictions for international franchise agreements in Italy.

E. **Other Requirements**

1. **Language Requirements**

There are no formal requirements in Italy for documents or agreements to be translated into Italian.\(^{159}\) However, the Ministry of Industry Decree mandates that the franchisor, on the request of the franchisee, must offer disclosure information (which also includes the text of the franchise agreement) in Italian.\(^{160}\)

2. **Stamp Taxes or Other Signing Fees**

In Italy, there are stamp duty taxation fees that apply to deeds executed in Italy.\(^{161}\) The amount of stamp duty tax depends on the type and purpose of the document and generally amounts to 14.62 Euros for every four pages or 100 lines of the documents.\(^{162}\) Since the franchise agreement is never executed as a deed, these rules do not normally apply to franchise agreements, allowing both parties to register the agreement (paying the relevant tax) if they wish (e.g. for providing the agreement with a “certain date”). Contracts concerning either the transfer or the rent of business (“azienda”), which are sometimes executed in connection with franchise agreements, need to be registered, and the relevant tax must be paid.

XI. **JAPAN**

In Japan, there is no franchise specific legislation, but there are several statutes and associations that may affect the franchise relationship. In addition, a franchise may fall under the definition of a “specified chain business” under the Medium and Small Retail Commerce Promotion Act,\(^{163}\) which will require the franchisor to abide by certain disclosure obligations that are regulated by a range of governmental ministries, depending on the goods or services offered.\(^{164}\) Competition law, as well as the Guidelines Concerning the Franchise System under the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade, may apply to franchise contracts. Additionally, franchisors may elect to join the Japan Franchise Association.

\(^{159}\) Supra note 145.

\(^{160}\) Supra note 143.

\(^{161}\) For further discussion, see Bic Sardegna, *In-Depth Guide to The Italian Stamp Duty (Imposta Di Bollo)*, online: <http://www.sardegnaimpresa.eu/sites/default/files/g11_the_stamp_duty_en_0.pdf>.


which applies voluntary rules for members, including a Code of Ethics and disclosure standards.\textsuperscript{165}

A. \textbf{Execution Authority}

1. \textbf{Non-Resident Party’s Ability to Contract}

There are no restrictions concerning a non-resident party’s ability to contract in Japan.\textsuperscript{166} However, foreign corporations and other business entities must register with the Legal Affairs Bureau in Japan prior to engaging in business activities in Japan.\textsuperscript{167} The required information to be registered is outlined in Article 933 of the Companies Act, which include the branch office, the representative of the entity in Japan, the date of establishing a branch office, and other requirements.\textsuperscript{168}

2. \textbf{Stated Corporate Purpose of a Contracting Party}

There are no formal restrictions concerning the stated corporate purpose of a contracting party in Japan. However, the franchise agreement should fall under any of the stated purposes listed in the articles of incorporation, which must be registered at the Legal Affairs Bureau, as the courts in Japan have historically strictly held that contracts that fall outside of the literal meanings of the stated corporate purposes are void. However, the courts now broadly construe the stated purpose of for-profit corporations, and it is rare, as a matter of practice, for contracts that fall outside of the stated corporate purposes to be void.

3. \textbf{Signing Authority of a Contracting Party}

In Japan, it is possible for a company to appoint a representative or agent to execute documents on its behalf. However, this will most commonly be a person who is an employee in a managing position of the contracting entity. It is also common in the case of important agreements to issue a POA for the appointment of a representative of the corporation, although this is not a formal requirement.\textsuperscript{169}

4. \textbf{Franchisor’s Experience Prior to Signing}

The franchisor does not need previous experience in the franchise industry or otherwise prior to signing a franchise agreement in Japan.


\textsuperscript{167} Ministry of Justice, Japan, online: <http://www.moj.go.jp/ENGLISH/index.html>.


5. **Foreign Trade Sanctions and Other Political Trade Impediments**

In Japan, there have been specific foreign trade sanctions restricting commercial transactions with North Korea that are outlined in the Foreign Exchange and Foreign Trade Act. Furthermore, Japan places high tariff on the import of beef, citrus, dairy, processed food and more that hinder exporters, like the US, from exporting to Japan. Due to the nature of these foreign trade sanctions or restrictions, it is recommended to seek advice in this regard at the planning stage of the franchise agreement.

B. **Execution Formalities**

1. **Obligations for Documents to be Notarized, Legalized, or Witnessed**

   In Japan, there are generally no formal requirements for business documents to be notarized, legalized or witnessed.

2. **Signing Agreements Electronically, by Counterpart or by Fax**

   Under the Electronic Signatures and Certification Business Act, an agreement entered into by electromagnetic record shall be presumed to be established authentically if the “Electronic Signature” is performed by each of the parties.

3. **Payment Processing Restrictions**

   There are no payment processing or legal restrictions in regard to the manner of payment of any initial or on-going fees in Japan.

C. **Registration and Recording**

1. **Registration of Franchise Agreements**

   There are no requirements for franchise agreements to be registered in Japan prior to entering into a franchise agreement.

2. **Registration of Intellectual Property**

   Certain forms of intellectual property must be registered in order to be legally protected in Japan. Trademarks and patents must be registered to the Japan Patent Office by submitting an application. Copyright, by contrast, does not need to be formally declared or registered to be protected in Japan.

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172 *Supra* note 164.

3. **Registration of Other Agreements**

There are no requirements to have other agreements registered with any regulatory or professional body before entering into a franchise agreement in Japan.

D. **Enforcement Considerations**

1. **Limitations over Governing Law and Jurisdictions.**

   In Japan, a franchise agreement can contain a forum selection and choice of law clause, provided that such provisions comply with Japanese public policy.\(^{174}\) If the clauses conflict with public policy, then they will not apply.\(^{175}\) For example, if the statute of limitations in the foreign country is significantly larger than the five year period set in Japan, then the court of Japan may hold that the foreign country’s law shall not apply to the franchise agreement, as that excessively long statute of limitation period is against public policy of Japan. In addition, if the provisions of the foreign law are incompatible with Japanese laws, such as the Anti-Monopoly Act, then the court of Japan may hold that such provisions are against public policy of Japan and may not apply.

2. **Dispute Resolution Mechanisms in Franchise Agreements**

   In Japan, disputes may be settled through alternative resolution mechanisms. Arbitration, while permitted under the Arbitration Law, is not a particularly common form of dispute resolution in Japan.\(^{176}\) Rather, conciliation, which is unique to the Japanese legal system, is a more widely used form of dispute resolution. Conciliation involves a simple, inexpensive means of compromise between both parties with the assistance of a judge or “judicial officer”, or a conciliation committee. Conciliation is available to settle almost all forms of civil disputes.\(^{177}\)

3. **Currency Exchange Control Restrictions**

   There are generally no currency exchange control restrictions for international franchise agreements in Japan.\(^{178}\)

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\(^{175}\) Article 42, *Ibid*.


\(^{177}\) *Ibid*.

E. Other Requirements

1. Language Requirements

Japanese law does not formally require an international franchisor to draft documents in the local language. However, franchisors should provide a translation of the agreement or disclosure document to avoid future disputes or misunderstandings.

2. Stamp Taxes or Other Signing Fees

In Japan, there are stamp tax requirements outlined in the Stamp Tax Act. The Stamp Tax Act lists certain specified categories of business documents that have stamp taxes imposed, including agreements for real estate, loans, transportation, mergers, articles of incorporation and more.\(^{179}\) If a franchise agreement is to establish a long-term, continuous sales relationship, then a stamp tax of 4,000 Japanese Yen will be payable for each written contract (approximately US $40.00).\(^{180}\)

XII. MEXICO

In Mexico, franchise agreements are governed by the Mexican Institute of Industrial Property ("IMPI") pursuant to the Mexican Industrial Property Law ("IPL") and its associated regulations. The franchisor-franchisee relationship, however, is governed by the Commercial Code and the Mexican Civil Code. Mexican law holds that franchisors and franchisees are free to contract generally on a wide range of issues as long as the parties comply with the IPL on franchising matters and do not violate public order law or moral standards.

A. Execution Authority

1. Non-Resident Party's Ability to Contract

There are certain activities specifically reserved to Mexican entities, such as national ground transportation of passengers, certain professional and technical services, tourism, and cargo-related activities, excluding courier and package services. Mexico is, however, generally open to free trade. Consequently, foreign entities contracting in franchising operations would generally not be subject to restrictions or limitations.\(^{181}\)

2. Stated Corporate Purpose of a Contracting Party

According to Mexican law, the corporate purpose of an entity dictates its legal capacity to contract and perform its activities. The corporate purpose of an entity must be broad enough to capture the operations contemplated under the franchising agreement for it to be enforceable.\(^{182}\)

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\(^{180}\) Supra note 166; IT Station, "Revenue Stamp and Stamp Duty," 2012, online: <http://www.oooka.gs/insi/>.


\(^{182}\) Ibid.
3. **Signing Authority of a Contracting Party**

Under the Mexican Civil Code, an action taken by a Mexican company will only be legally binding if it is signed by a POA.\(^{183}\) A POA must be granted expressly and with sufficient powers to bind the corporation in order for the franchise agreement to be enforceable. If an agreement is signed by a party who does not have a valid POA, the corporation will not be held liable to perform the contract. Except for some specific cases, any POA and authority granted must be contained in a public deed granted by a notary public in Mexico.

4. **Franchisor’s Experience Prior to Signing**

The franchisor does not need previous experience in the franchise industry or otherwise prior to signing a franchise agreement in Mexico.

5. **Foreign Trade Sanctions and Other Political Trade Impediments**

Mexico is a member of the North American Free Trade Agreement and generally is open to trade with international countries. However, Mexico imposes a number of tariffs and duty rates which are constantly revised.\(^{184}\) Due to the particular nature of these sanctions, it is recommended to seek advice in this regard at the planning stage of the franchise agreement.

**B. Execution Formalities**

1. **Obligations for Documents to be Notarized, Legalized, or Witnessed**

Under Mexican law, franchise or license agreements are not required to be notarized, legalized or witnessed in order to be enforceable.

2. **Signing Agreements Electronically, by Counterpart or by Fax**

Agreements in Mexico may be signed electronically, by counterpart or by fax. For counterpart agreements to be enforceable, they must be signed with original signatures for all of the parties involved in the transaction. Each party must keep at least one original fully executed counterpart of the relevant agreement. Moreover, it has become common practice in Mexico for each of the contracting parties to initialize each page of each counterpart of the document.

3. **Payment Processing Restrictions**

There are no legal or payment processing restrictions in regard to the manner of payment of any initial or on-going fees in Mexico.

**C. Registration and Recording**

1. **Registration of Franchise Agreements**

While there are no legal requirements for the franchisor to register its franchise agreements and intellectual property licences prior to executing a franchise agreement in Mexico, a franchisor must register its franchises with IMPI to prove the use of its licensed trademarks in

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Mexico. Otherwise, an interested third party may commence an action to terminate the franchise agreement. Consequently, a trademark application should be filed with IMPI before entering into any license or franchise agreement.\textsuperscript{185}

\begin{enumerate}
  \item \textbf{Registration of Intellectual Property}

  As mentioned in Part C, Section 1 above, a franchisor must register its intellectual property licenses and franchises with the IMPI to prove the use of its licensed trademarks in Mexico. Otherwise, an interested third party may commence an action to terminate the franchise agreement. As a result, a trademark application should be filed with IMPI before entering into any license or franchise agreement. Intellectual property will also need to be registered with the IMPI in order to receive protection under Mexican law.

  \item \textbf{Registration of Other Agreements}

  There are no requirements to have other agreements registered with any regulatory or professional body before entering into a franchise agreement in Mexico.

\end{enumerate}

\section{D. Enforcement Considerations}

\begin{enumerate}
  \item \textbf{Limitations over Governing Law and Jurisdictions}

    Mexican law allows parties to include choice of law and forum selection clauses in their contracts. If a particular jurisdiction is not explicitly agreed upon, the civil court of the defendant’s domicile will have primary jurisdiction over the matter.\textsuperscript{186} Mexican law will also generally recognize the parties' choice of law clause. If the choice of law is not specified in the contract, Mexican law dictates that that the duties or obligations are to be performed in Mexico.

  \item \textbf{Dispute Resolution Mechanisms in Franchise Agreements}

    In Mexico, dispute resolution mechanisms are available as an alternative to courts. Awards issued under the law of a country that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards will be recognized and enforced in Mexico as long as such awards are not contrary to Mexico’s public order laws.\textsuperscript{187}

  \item \textbf{Currency Exchange Control Restrictions}

    There are generally no currency exchange control restrictions for international franchise agreements in Mexico.

\end{enumerate}


\textsuperscript{186} For further discussion, see Dennis Campbell, International Agency and Distribution Law, 2009, online: <https://books.google.ca/books?id=yBvbAgAAQBAJ&dq=governing+law+in+mexico+agreement+jurisdiction&source=b landslide=88D61mvlgandsig=9VQkm1qoftCmVXegTyrWWDOHvEandh=envandved=0ahUKEwiW457r5sbNAnYVr74MKHaq0ATgQ6AEIWTAJ#v=onepage&q=governing%20law%20in%20mexico%20agreement%20jurisdictionandf=false>.

\textsuperscript{187} Supra note 181.
E. **Other Requirements**

1. **Language Requirements**

   Any license agreement or franchise agreement to be registered with IMPI must be submitted in either Spanish or in a bilingual format.

2. **Stamp Taxes or Other Signing Fees**

   There are no stamp taxes or other signing fees in Mexico.

XIII. **RUSSIA**

Franchising in Russia has grown in recent years, with 4,817 franchise agreements registered in 2014 according to the Russian Federal Service for Intellectual Property (Rospatent). Franchise agreements in Russia are primarily regulated by Chapter 54 of the Russian Civil Code, and there are no government agencies involved in governing the franchise relationship. Under Russian law, a franchise is defined as a “commercial concession”, and the key element of the franchise agreement is a registered trademark. Without a registered trademark, the international franchise agreement may not be considered a franchise as defined under the Russian Civil Code. A franchising agreement that is not registered with Rospatent will not be enforceable in Russia.

A. **Execution Authority**

1. **Non-Resident Party’s Ability to Contract**

   There are no restrictions concerning a non-resident party’s ability to contract in Russia.

2. **Stated Corporate Purpose of a Contracting Party**

   There are no restrictions concerning the stated corporate purpose of a contracting party in Russia.

3. **Signing Authority of a Contracting Party**

   The contracting party must have valid authority to execute and perform a contract in Russia, including franchise agreements. Agreements in Russia may be signed by the contracting parties or by an agent of the parties. An agent will therefore have authority to sign on behalf of the contracting party if the agent, either explicitly or implicitly, has been granted with actual authority or has been indirectly granted with apparent authority. Officers, directors and generally any other signatories for corporations in Russia will be outlined in the corporate by-laws or shareholders’ agreements.

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4. **Franchisor’s Experience Prior to Signing**

The franchisor does not need previous experience in the franchise industry or otherwise prior to signing a franchise agreement in Russia.

5. **Foreign Trade Sanctions and Other Political Trade Impediments**

With respect specifically to franchising, there have been no sanctions or impediments issued against Russia or Russian companies/persons. However, several countries have imposed trade sanctions against Russia, and due to the particular nature of these sanctions, it is recommended to seek advice in this regard at the planning stage of the franchise agreement.

**B. Execution Formalities**

1. **Obligations for Documents to be Notarized, Legalized, or Witnessed**

There are no legal requirements for documents to be notarized, legalized or witnessed in Russia. In many cases, the parties will stamp/seal the originals of the franchise agreement. Corporate seals will help the parties to authenticate/validation their signatures but are not legally necessary.

2. **Signing Agreements Electronically, by Counterpart or by Fax**

Agreements may be signed electronically and in counterpart in Russia. However, since every franchise agreement must be registered with Rospatent, the original counterpart of the agreement must be filed with the Rospatent, as the latter does not accept electronic copies or fax documents.

3. **Payment Processing Restrictions**

There are no payment processing or legal restrictions in regard to the manner of payment of any initial fees in Russia. However, the franchise must be registered with Rospatent in order to process on-going franchise fees and royalties.

**C. Registration and Recording**

1. **Registration of Franchise Agreements**

Any franchise agreement must be registered with Rospatent, which takes approximately two months.

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192 Supra note 189.


194 Supra note 191.

195 Article 1028 of the Russian Civil Code, supra note 190.
2. **Registration of Intellectual Property**

The franchisor must also be the registered owner of trademark rights to be permitted to franchise those rights. Other intellectual property rights, such as copyrights, do not need to be registered.

3. **Registration of Other Agreements**

Commercial sale agency agreements, contracts of supply and other commercial agreements do not require registration in Russia.

D. **Enforcement Considerations**

1. **Limitations over Governing Law and Jurisdictions**

There are no requirements to have franchise documents or agreements governed under Russian law. However, Russian law will apply in the absence of a choice of law provision in an agreement. Moreover, the law of the country more closely related to the agreement may be applicable.

2. **Dispute Resolution Mechanisms in Franchise Agreements**

Arbitration may be conducted in any jurisdiction in Russia and by any forum chosen by the parties. In terms of the dispute resolution process, certain pre-trial actions must be complied with before litigation. For instance, before suing a franchisee in court, a franchisor must serve a letter on the franchisee and give the franchisee the opportunity to cure the breach within 30 days.

3. **Currency Exchange Control Restrictions**

There are no currency exchange control restrictions for international franchise agreements in Russia.

E. **Other Requirements**

1. **Language Requirements**

If the franchise agreement is submitted to the Russian IPO for registration purposes, the agreement must be translated into Russian. Therefore, in these situations, bilingual documents are used by the parties.

2. **Stamp Taxes or Other Signing Fees**

There are no stamp taxes or other signing fees in Russia.

196 Article 1211 of the Russian Civil Code, supra note 190.

197 Article 1211 of the Russian Civil Code, supra note 190.

198 Supra note 193.
XIV. SOUTH KOREA

South Korea's franchising sector has continued to grow in recent years, with over 3,500 registered franchisors representing 4,300 brands. The primary statute governing franchise transactions in South Korea is the Fair Transactions in Franchise Business Act, which came into force in 2002 and has been amended twice since. Additionally, the franchise industry in South Korea is regulated by the Korean Civil Act and Commercial Act, which dictates the general principles of contract and tort law in the country.

A. Execution Authority

1. Non-Resident Party's Ability to Contract

There are no restrictions concerning a non-resident party's ability to contract in South Korea.

2. Stated Corporate Purpose of a Contracting Party

There are no restrictions concerning the stated corporate purpose of a contracting party in South Korea.

3. Signing Authority of a Contracting Party

The individual who signs the contract must have authority to represent and bind the individual or particular legal entity to the contract through actual authority outlined in the corporate by-laws or articles of incorporation, or through apparent authority. This area of law is predominantly governed by the Korean Civil Act and Commercial Act.

4. Franchisor's Experience Prior to Signing

The franchisor does not need previous experience in the franchise industry or otherwise prior to signing a franchise agreement in South Korea.

5. Foreign Trade Sanctions and Other Political Trade Impediments

A foreign company may freely carry out its business activities in South Korea. However, the Foreign Investment Promotion Act and other related laws and regulations, prevent a foreign company from conducting its business activities in a way that (i) interferes with the safety of the South Korea or maintenance of public order, (ii) causes harm to the health and safety of Korean nationals or contravenes the public morals or decency in a marked manner, or (iii) violates Korean laws and regulations. While this generally would not impact a franchise system, it is important to recognize for a foreign franchisor.

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200 For further discussion, see Sun Chang and Terry Kim, "When Signing on the Dotted Line is Not Enough," 2016, American Bar Association.

201 Foreign Investment Promotion Act, online: <http://english.kotra.or.kr/downdocu/statute_01.doc>. 
B. **Execution Formalities**

1. **Obligations for Documents to be Notarized, Legalized, or Witnessed**

Under South Korean law, franchise or license agreements do not need to be notarized, legalized or witnessed to be enforceable.

2. **Signing Agreements Electronically, by Counterpart or by Fax**

A contract that is agreed to orally, electronically, or in any other physical format (e.g., in counterparts or by fax) is valid under Korean law, and a written signature, though normally recommended in each case, is not required for a valid and enforceable contract. Electronic signatures, in particular, have been accepted as proof for signing a contract since 2013. The relevant laws governing this area include the Korean Civil Act, Digital Signature Act, and Electronic Transactions Act.

3. **Payment Processing Restrictions**

There are no payment processing or legal restrictions in regard to the manner of payment of any initial or on-going fees in South Korea.

C. **Registration and Recording**

1. **Registration of Franchise Agreements**

Pursuant to the Fair Transactions in Franchise Business Act, which is the primary statute governing franchise transactions, a franchisor must register its disclosure document with the Korean Fair Trade Commission and provide such registered disclosure document to the prospective franchisees. A franchisor must provide the disclosure documents at least fourteen days before the franchisor, and the franchisee can execute a franchise agreement. If the franchisor fails to provide the registered disclosure document, or until fourteen days have lapsed from the date of providing the disclosure document, the franchisor may not collect franchise fees or execute a franchise agreement with the prospective franchisee. The fourteen day period stated above will be reduced to seven days if the prospective franchisee receives consultation on the disclosure document from an attorney or a franchise broker.

2. **Registration of Intellectual Property**

While there is no formal requirement for intellectual property to be registered prior to executing a franchise agreement in South Korea, it is a practical necessity to do so to be protected under South Korean law. Patents and trademarks require formal registration in South Korea under the Patent Act and the Trademark Act, respectively. Registration for trademarks can be completed by applying to the Korean Intellectual Property Office (KIPO), or by applying through the Madrid Protocol to obtain a national trademark in multiple jurisdictions simultaneously. For patents,
registration must be made at KIPO. Additionally, while copyright does not need formal registration, KIPO recommends applying for optional registration of copyright materials.\(^{205}\)

3. **Registration of Other Agreements**

There are no requirements to have other agreements registered with any regulatory or professional body before entering into a franchise agreement in South Korea.

D. **Enforcement Considerations**

1. **Limitations over Governing Law and Jurisdictions**

Parties to a contract in South Korea may include provisions that specify the applicable governing law for the contract.\(^{206}\)

2. **Dispute Resolution Mechanisms in Franchise Agreements**

While it is still more common for disputes to be settled in a South Korean court, alternative dispute resolution is permitted and growing in popularity.\(^{207}\)

3. **Currency Exchange Control Restrictions**

There are no currency exchange control restrictions for international franchise agreements in South Korea.

E. **Other Requirements**

1. **Language Requirements**

There are no formal requirements for documents or agreements to be translated into the local language in South Korea.\(^{208}\) However, to register the franchise, the disclosure documents must be translated into Korean.

2. **Stamp Taxes or Other Signing Fees**

There are no stamp taxes or other signing fees in South Korea.

**XV. UNITED ARAB EMIRATES**


\(^{205}\) *Ibid.*

\(^{206}\) Article 25 of the Korean Conflicts of Law, online: <http://space.snu.ac.kr/bitstream/10371/85045/1/8.%20New%20Conflict%20of%20Laws%20Act%20of%20the%20Republic%20of%20Korea.pdf>.

\(^{207}\) For further discussion, see also in Yeong Chung and Sungjean Seo, “Litigation and Enforcement in South Korea: Overview,” Practical Law, June 2016, online: <http://ca.practicallaw.com/8-381-3681>.

\(^{208}\) *Ibid.*
contracts that are optionally registered with the Federal Ministry of Economy of the UAE (the "Ministry").

A. Execution Authority

1. Non-Resident Party’s Ability to Contract
   There are no restrictions concerning a non-resident party’s ability to contract in the UAE.

2. Stated Corporate Purpose of a Contracting Party
   There are no restrictions concerning the stated corporate purpose of a contracting party in the UAE.

3. Signing Authority of a Contracting Party
   It is important to ensure the relevant signatory has authority to bind the company to the contract and most importantly the arbitration provision, given the specific UAE Civil Procedure rules where the signatory must have specific authority to enter into an arbitration provision. In the UAE, this requires that the agreement be signed by the corporate entity’s authorized representative (which will be outlined in the corporate bylaws or articles of incorporation) or by a person with apparent authority.

4. Franchisor’s Experience Prior to Signing
   The franchisor does not need previous experience in the franchise industry or otherwise prior to signing a franchise agreement in the UAE.

5. Foreign Trade Sanctions and Other Political Trade Impediments
   There are several long-term and short-term foreign trade sanctions against certain products that prohibit commercial relations between the UAE and other foreign countries. Due to the particular nature of these sanctions, it is recommended to seek advice in this regard at the planning stage of the franchise agreement.

B. Execution Formalities

1. Obligations for Documents to be Notarized, Legalized, or Witnessed
   There are no obligations in the UAE for documents to be notarized, legalized or witnessed.

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210 UAE Civil Procedure Rules, online: <http://www.diac.ae/idias/rules/uae>.


212 Ibid.
2. **Signing Agreements Electronically, by Counterpart or by Fax**
   
   In the UAE, documents are able to be signed electronically and by fax under the UAE’s Electronic Transactions and E-Commerce Law.\(^{213}\)

3. **Payment Processing Restrictions**

   There are no payment processing or legal restrictions in regard to the manner of payment of any initial or on-going fees in the UAE.

C. **Registration and Recording**

1. **Registration of Franchise Agreements**

   There are no registration or recordal requirements for franchise agreements with any government agency prior to franchising in the UAE.

2. **Registration of Intellectual Property**

   There are no registration or recordal requirements for intellectual property with any government agency prior to franchising in the UAE. However, franchisors should register their intellectual property and trademarks under the Federal Law 37 of 1992 to receive protection.\(^{214}\)

3. **Registration of Other Agreements**

   Registration with the UAE Ministry of Economy is required for an agreement to be considered a commercial sales agency agreement. In order to register the franchise agreement as a commercial sales agency agreement, the franchisee should be entirely owned by citizens of the UAE; the agreement should be exclusive; and the agreement must be translated into Arabic.

D. **Enforcement Considerations**

1. **Limitations over Governing Law and Jurisdictions**

   There are certain limitations in the UAE with respect to choice of forum and governing law. The UAE courts will not uphold a provision that provides for jurisdiction outside of the UAE if jurisdiction would normally fall within the UAE courts. This occurs, for instance, in situations involving: (i) the ownership of properties within the UAE, (ii) proceedings for a transaction that was made or formed within the UAE, and (iii) an event occurring within the UAE.\(^{215}\)

2. **Dispute Resolution Mechanisms in Franchise Agreements**

   The UAE permits alternative dispute resolution.\(^{216}\) The main forum for arbitration in the UAE is the Dubai International Arbitration Centre, which is used by international parties that include provisions for dispute resolution in their agreements. Under the Civil Procedure Law, an

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\(^{216}\) UAE Civil Procedure Law, supra note 210; see also Herbert Smith, Guide to Dispute Resolution in the Middle East, 2011, online: <http://ghazzwilawfirm.com/files/Guide_to_dispute_resolution_in_the_Middle_East.pdf>.
arbitration agreement will only be enforceable if it is in writing and clearly indicates the subject matter of the dispute.

3. **Currency Exchange Control Restrictions**

There are no currency exchange control restrictions for international franchise agreements in the UAE.

**E. Other Requirements**

1. **Language Requirements**

There are no requirements for documents and agreements to be translated into local language in the UAE. However, if the conflict arises between the contracting parties that is to be litigated in the court system, the agreements will need to be translated into Arabic. Furthermore, in order to register the franchise agreement as a commercial agency, the agreement must be translated into Arabic.

2. **Stamp Taxes or Other Signing Fees**

There are no stamp taxes or other signing fees in the UAE.

**XVI. UNITED KINGDOM**

There are three legal systems in the United Kingdom: English law (England and Wales), Northern Ireland law, and Scots law (Scotland). English and Northern Ireland law are based on common law principles, while Scots law is based on a combination of civil and common law. While there is no franchise-specific legislation in the United Kingdom, franchises remain subject to the general laws and principles that govern other business entities and commercial transactions. Additionally, franchising in the United Kingdom is self-regulated by the British Franchising Association (“BFA”) through the British Franchising Code of Ethics (“BFA Code”), which adopts provisions from the European Code of Ethics. The BFA is a voluntary organization, and franchisors wishing to be accredited under the BFA must follow the BFA Code.

**A. Execution Authority**

1. **Non-Resident Party’s Ability to Contract**

There are no restrictions concerning a non-resident party’s ability to contract in the United Kingdom.

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217 Supra note 211.

218 This section was written before the United Kingdom voted to leave the European Union. If this occurs, it will be at least two years after the UK invokes an agreement called Article 50 of the Lisbon Treaty.


221 For further discussion, see supra note 221.
2. **Stated Corporate Purpose of a Contracting Party**

There are no restrictions concerning the stated corporate purpose of a contracting party in the United Kingdom.\(^{222}\)

3. **Signing Authority of a Contracting Party**

There are certain legal requirements applicable to the signing authority of entities entering into franchise agreements in the United Kingdom. For instance, if a contracting party is a limited liability company, the franchise agreement for that entity should be signed by the managing director or, if not, by a director or senior employee of that entity supported by a board minute authorising signature.\(^{223}\) If it is a partnership, all partners should sign in the absence of authority from all the partners.

4. **Franchisor’s Experience Prior to Signing**

The franchisor does not need previous experience in the franchise industry or otherwise to signing a franchise agreement in the UK.\(^{224}\) However, the BFA Code adopts the European Code of Ethics which requires the franchisor to have operated at least one pilot business at arm’s length, be the owner over the business’s branding, and provide initial and on-going training.\(^{225}\)

5. **Foreign Trade Sanctions and Other Political Trade Impediments**

The United Kingdom has foreign trade sanctions with several countries and terrorist entities which can impact or stop a transaction with parties within or connected to such countries or entities. As of the date of writing, sanction laws are outlined in the Export Control Order 2008 (Schedule 4).\(^{226}\) The countries and entities affected by these sanctions include Albania, Belarus, Benin, Bosnia-Herzegovina, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Colombia, Congo, Dubai, East Timor (Timor-Leste), Eritrea, Ethiopia, Gambia, Georgia, Ghana, Guinea, Guinea Bissau, Haiti, Hong Kong Special Administrative Region, Jamaica, Kenya, Libya, Kyrgyzstan, Libya, Mali, Mauritania, Moldova, Montenegro, Morocco, Nepal, Niger, Nigeria, Oman, Pakistan, Russia, Senegal, Serbia, Sri Lanka, Syria, Taiwan, Tajikistan, Togo, Trinidad & Tobago, Turkmenistan, Ukraine, Venezuela, and Yemen.\(^{227}\)

B. **Execution Formalities**

1. **Obligations for Documents to be Notarized, Legalized, or Witnessed**

In the United Kingdom, there is generally no formal requirement for documents or agreements to be notarized, legalized, or witnessed.\(^{228}\) It is, however, necessary for deeds, wills

\(^{222}\) Ibid.

\(^{223}\) Ibid.

\(^{224}\) Supra note 222.

\(^{225}\) Supra note 219.


\(^{228}\) Supra note 221.
and other property documents to be witnessed if they are being entered into by an individual, or if there is only one director of a company who will require a witness signature.

2. **Signing Agreements Electronically, by Counterpart or by Fax**

   Documents can be signed electronically, by fax or by counter-part in the United Kingdom. An electronic signature is anything in electronic form which: (i) is incorporated into or otherwise logically associated with any electronic communication or electronic data, and (ii) is certified as such by the signatory. To certify the electronic signature, the signatory must make a statement that the signature is a valid means of establishing the authenticity, integrity or both of the electronic communication.

3. **Payment Processing Restrictions**

   There are no payment processing or legal restrictions in regard to the manner of payment of any initial or on-going fees in the United Kingdom.

C. **Registration and Recording**

1. **Registration of Franchise Agreements**

   There are no requirements for a franchisor to register its franchise agreements with a government agency in order to execute and enforce a franchise agreement in the United Kingdom.

2. **Registration of Intellectual Property**

   There are no requirements for a franchisor to register its intellectual property with a government agency in order to execute and enforce a franchise agreement. Certain forms of intellectual property, such as trademarks, are able and should be registered with the United Kingdom Intellectual Property Office’s trade mark registry.

3. **Registration of Other Agreements**

   There are no requirements for a franchisor to register commercial sales agreements or other agreements with a government agency in order to execute and enforce a franchise agreement.

D. **Enforcement Considerations**

1. **Limitations over Governing Law and Jurisdictions**

   At present, contracting parties in the United Kingdom are permitted to choose the law that governs their contract under two primary international instruments: (i) the Rome Convention and (ii) Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I). The Rome Convention applies to contracts created before December 17th, 2009, and Rome I applies to contracts created after that date. Both Rome I and the Rome Convention hold that the choice of law specified in a contract will apply if it is expressly agreed upon or demonstrated with reasonable

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230. For further discussion, see "What is an Electronic Contract: General Issues Regarding Electronic Contracts," online: <http://www.inbrief.co.uk/contract-law/electronic-contracts/>. 
certainty. Where that is not the case, the contract or agreement will be governed by the law of the country most closely connected to the agreement. If the contracting parties have elected to have the governing jurisdiction within an EU member country, then the Brussels Regulation\textsuperscript{231} will apply. Under the Brussels Regulation, whether a jurisdiction agreement will be enforceable will be determined based on the law of the EU member state identified in the jurisdiction agreement. That being said, due to the United Kingdom's recent decision to exit the European Union, it is unclear how these international agreements and conventions will affect the United Kingdom in the future.

2. **Dispute Resolution Mechanisms in Franchise Agreements**

According to David Bond, Chris Wormald and Vicky Reinhardt, dispute resolution mechanisms are generally encouraged as an alternative to litigation in the United Kingdom, and most franchise agreements include a clause requiring the parties to consider mediation before seeking litigation.\textsuperscript{232}

3. **Currency Exchange Control Restrictions**

The United Kingdom does not place exchange control or restrictions on foreign currency payments.

E. **Other Requirements**

1. **Language Requirements**

There are generally no formal language requirements for agreements and other documents in the United Kingdom. Pursuant to the BFA Code, however, “franchisors should seek to ensure that they offer to franchisees contracts in a language in which the franchise is competent”. Breaching the BFA Code risks losing membership accreditation from the British Franchise Association.\textsuperscript{233}

2. **Stamp Taxes or Other Signing Fees**

There are no stamp taxes or other signing fees in the United Kingdom.

**XVII. UNITED STATES**

The United States is a federation and legislative power which is divided between the federal and state governments. Unless the federal government is granted the authority to regulate a subject, the power to regulate is reserved to the states.\textsuperscript{234} In many cases, such as franchising regulation, regulations can be adopted by states in an area where the federal government has the power to regulate; however, the state regulation cannot be less restrictive than the federal

\textsuperscript{231} Brussels Regulation, supra note 127.

\textsuperscript{232} Supra note 221.

\textsuperscript{233} British Franchise Association, “About the BFA,” online: <http://www.thebfa.org/about-bfa/about-the-bfa>.

\textsuperscript{234} Eleventh Amendment of the US Constitution, online: <https://usconstitution.net/const.pdf>; with fifty states, plus the Commonwealth of Puerto Rico and the District of Columbia, covering the laws of all of these jurisdictions is beyond the scope of this paper. References to state laws are, therefore, illustrative, and not meant to imply that similar laws exist in all or any other state.
Common law authorizes parties to a contract to determine the terms and conditions of the agreement unless contrary to existing law.

The Federal Trade Commission, an agency of the federal government has adopted regulations that govern the franchise sales process. It also has primary jurisdiction over other related matters, such as intellectual property protection and antitrust law. Franchise specific legislation, however, has been enacted in many states. Fourteen states require that any franchise offer, including master and unit franchises, be registered with a state agency prior to a franchisor offering to sell franchises in the state and that a disclosure document containing certain information be provided to prospective franchisees prior to entering into the franchise agreement. Eighteen states and Puerto Rico have laws that govern the relationship between the franchisor and franchisee and require certain terms in the franchise agreements with residents of their states and for franchises operated in those states. These requirements include restrictions on a franchisor’s ability to terminate or not renew a franchise, purchase requirements and dispute resolution procedures. Five states require business opportunity exemption filings.

These franchise-specific statutes define and outline the requirements necessary to be classified as a franchise in their respective states. In addition to these legislative rules, the US legal system is based on the common law system, which outlines the law of contracts that governs the franchise relationship. As a result, the laws and practices surrounding franchise agreements in the US requires examining the law in each targeted state prior to drafting an international franchise agreement.

A. Execution Authority

1. Non-Resident Party’s Ability to Contract

Non-resident contracting parties can enter into binding agreements with persons or entities in the United States, unless prohibited under the USA Patriot Act.

2. Stated Corporate Purpose of a Contracting Party

Franchising legislation in the United States does not place restrictions on the stated corporate purpose of the entity that owns or operates the franchise. Any corporation, limited liability company, partnership or other entity formed to be a franchisor or a franchisee must be created under state law. The federal government, with very limited exceptions that are not applicable to franchising, does not have the power to authorize the creation of any entity. Normally, the entity is created under the laws of the state where the business of the entity will be conducted. However, sometimes, especially where the entity is or may be publicly-held, the entity will be created in a state such as Delaware; then, authorized to do business in the state where it maintains its primary place of business. Franchisors are not required to be authorized to do business in a state where it grants a franchise unless some other reason, such as having a company-owned location, is present.


236 See Part C.1 of this Section.

237 Public Law 107–56—OCT. 26, 2001, online: <http://www.gpo.gov/fdsys/pkg/PLAW-107publ56/pdf/PLAW-107publ56.pdf>; see also Section Part B.5 of this Section.
3. **Signing Authority of a Contracting Party**

Agreements in the United States may be signed by the contracting parties or by an agent of the parties based on the doctrines of agency. An agent will therefore have authority to sign on behalf of the contracting party if, either explicitly or implicitly, they have been granted with actual authority or have been indirectly granted with apparent authority. When the agreement is signed by an officer on behalf of an entity, then the governing body of the entity must authorize the officer to execute the agreement. This is done through the organizational documents, which grant authority to officers to exercise certain powers, or through specific resolutions.

4. **Franchisor’s Experience Prior to Signing**

The franchisor does not need previous experience in the franchise industry, minimum number of units or even experience in on the operation of the type of business being franchised prior to signing a franchise agreement or other documents. In some registration states, if the state registration authority does not believe the franchisor has a sufficient net worth to perform its duties and obligations to open the franchise, it has the authority to impose financial assurance obligations.238

5. **Foreign Trade Sanctions and Other Political Trade Impediments**

The United States Treasury Department Office of Foreign Asset Control (“OFAC”) administers and enforces economic sanctions imposed by the United States against foreign countries.239 Depending on the country, OFAC programs may freeze assets of embargoed countries, prohibit payment of funds to individuals and countries on the embargo list, or prohibit provision of services to countries subject to US sanctions. These sanctions may require obtaining OFAC approval before conducting research or other activities in or involving the sanctioned country. Some sanctions are more restrictive than others, and apply to the whole country, while others are specifically target certain individuals or entities within a country. Currently, sanctioned countries include the Balkans, Belarus, Burma, Cote D'Ivoire (Ivory Coast), Cuba, Democratic Republic of Congo, Iran, Iraq, Liberia, North Korea, Sudan, Syria, and Zimbabwe. The list of sanctioned countries is updated periodically and is available on OFAC’s website.240

As part of its enforcement efforts, OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called “Specially Designated Nationals” or “SDNs.” Their assets are blocked and U.S. persons are generally prohibited from dealing with them. More information on Treasury’s Sanctions Programs is available on the Treasury Department’s website.241 In addition, the Treasury Department’s

238 Financial assurance obligations include an affiliate guaranty, escrow of initial fees, security bond or deferral of initial franchise fees. See, Cal. Corp. Code § 31113, online: <https://leginfo.legislature.ca.gov/faces/codes.xhtml>; and 10 Cal. Admin. Code § 310.113, online: <http://www.osshpd.ca.gov/FDD/Regulations/Title-24%20part%201/2007%20Title%2024,%20Part%201%20with%20San%20thru%20Er010110.pdf>.

239 William and Mary, “Treasury Department’s Office of Foreign Asset Control,” 2016, online: <http://www.wm.edu/offices/techtransfer/ExportControls/Regulations/OFAC/>. 


B. **Execution Formalities**

1. **Obligations for Documents to be Notarized, Legalized, or Witnessed**

   In the United States, there is generally no formal requirement for documents or agreements, including franchise agreements, to be notarized, legalized, or witnessed.

2. **Signing Agreements Electronically, by Counterpart or by Fax**

   In the United States, both federal and state legislation allow for documents and agreements to be signed electronically or by counterpart. In addition, the agreement should authorize execution by the method chosen by the parties.

3. **Payment Processing Restrictions**

   Other than the sanction and SDN requirements explained above, the US does not impose any requirements on paying fees under franchise agreements.

C. **Registration and Recording**

1. **Registration of Franchise Agreements**

   A franchisor is required to register its franchise offering in California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, North Dakota, South Dakota, Rhode Island, New York, Virginia, Washington and Wisconsin before offering a franchise to a resident of the state or to a person or entity who will operate a franchise in the state. In addition, franchisors who have FDDs may be required to file a business opportunity exemption with a state agency in Florida, Kentucky, Nebraska, Texas and Utah to offer a franchise in those states. There may be additional state filing obligations if the franchise does not have a federally registered trademark.

   A franchisor that is not based in or otherwise required to qualify to do business in a state does not have to qualify to do business with a state to be able to offer franchises in one of the states that require registration of the franchise offer. If, however, the franchisor maintains a place of business, has property or employees based in a state, it may be required to qualify to do business in the state by registering the entity with a state agency.

2. **Registration of Intellectual Property**

   A franchisor is not required to have a federally or state registered trademark to be able to offer or sell a franchise in the US. A franchisor must disclose information about its trademarks, including whether they are registered with the US Patent and Trademark Office, whether there are any challenges to the registration or restrictions on the use of the trademarks. Therefore,

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244 **FTC Franchise Rule** CFR Part 436.5(m), online: <https://www.ftc.gov/sites/default/files/070330franchiserulefnotice.pdf>.
if the franchisor’s marks are not registered, it can prove to be an impediment to granting franchisors or require the franchisor to incur significant costs if a franchisee is required to change the trademarks it is using.

3. **Registration of Other Agreements**

Licenses of intellectual property, franchise agreements, commercial agency agreements and any other related agreements are not registered with any federal or state agency in the US.

D. **Enforcement Considerations**

1. **Limitations over Governing Law and Jurisdictions**

Generally, the parties to a franchise agreement have the right to designate the governing law for the agreement. However, the law chosen by the parties must have a rational relationship to the parties. Typically, the governing law selected by the parties is the law of the home jurisdiction of the franchisor or the franchisee. Choosing the law of a jurisdiction that has no relationship to the parties may be challenged and subject to being rejected by a court.

2. **Dispute Resolution Mechanisms in Franchise Agreements**

Other than some franchise registration states that require the franchisor to agree to resolve disputes in the state of the franchisee, dispute resolution procedures are generally not mandated, but are subject to the agreement of the parties. If the parties agree to use arbitration to resolve disputes, the Federal Arbitration Act will govern the arbitration procedures and can allow the parties to select the location for arbitration proceedings even though a state law requires litigation in the state.

3. **Currency Exchange Control Restrictions**

The US does not impose requirements on converting US Dollars into foreign currency or foreign currencies into US Dollars. All major banks in the US can handle currency conversion transactions.

E. **Other Requirements**

1. **Language Requirements**

While the official language in the United States is English, there are generally no formal language requirements for franchise agreements and other documents in the United States.

2. **Stamp Taxes or Other Signing Fees**

There are no stamp taxes or other signing fees in the United States.

3. **Other Important or Noteworthy Requirements**

A binding franchise agreement, or any other agreement between a franchisor and franchisee, cannot be entered into until the franchisee has been provided with a FDD that complies with the requirements of the FTC Franchise Rule at least fourteen days prior to entering


into the Agreement (or paying any money to the franchisor).\textsuperscript{247} Failure to comply with this requirement can make the agreement void and unenforceable.

XVIII. CONCLUSION

By bringing together the laws and practices that impact the execution and enforcement of international franchise agreements in these sixteen countries, it becomes evident that there are many differences and complications that must be considered when franchising abroad. We hope that this paper will help the international franchise practitioner navigate through these complex legal and regulatory considerations found in Argentina, Australia, Brazil, Canada, China, Colombia, France, Germany, Italy, Japan, Mexico, Russia, South Korea, the United Arab Emirates, the United Kingdom, and the United States of America.

\textsuperscript{247} FTC Franchise Rule 16 CFR Part 436.2, online: <http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5andnode=16:1.0.1.4.55>.
## EXHIBIT A - CONTRIBUTORS

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<th>Country</th>
<th>Contributor</th>
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<tr>
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<td>Osvaldo Marzorati</td>
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<td>South Korea</td>
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<td>Jorge Mondragon</td>
<td>Gonzalez Calvillo, S.C., Mexico City, Mexico</td>
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<td>Gorodissky &amp; Partners, Moscow, Russia</td>
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<td>United Arab Emirates</td>
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<td>United Kingdom</td>
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<tr>
<td>USA</td>
<td>Jeffrey A. Brimer</td>
<td>Alexius, LLC, Denver, Co</td>
<td><a href="mailto:jbrimer@alexius.co">jbrimer@alexius.co</a></td>
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## EXHIBIT B - SUMMARY CHART

### PART I: EXECUTION AUTHORITY

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<th>Country</th>
<th>Restrictions over non-resident party’s ability to contract?</th>
<th>Requirements over the stated corporate purpose of a contracting party?</th>
<th>Requirements over signing authority of a contracting party?</th>
<th>Requirements over franchisor’s experience in the market?</th>
<th>Foreign trade sanctions or political impediments over international commercial relations?</th>
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### PART II: EXECUTION FORMALITIES

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### PART III: REGISTRATION AND RECORDING

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### PART IV: ENFORCEMENT CONSIDERATIONS

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<th>Are there any limitations over specifying governing law in a franchise agreement?</th>
<th>Are there any limitations over designation of venue or jurisdiction?</th>
<th>Are there any limitations over the use of dispute resolution mechanisms?</th>
<th>Are there any currency exchange control restrictions?</th>
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## PART V: OTHER REQUIREMENTS

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Jeff Brimer
jbrimer@alexius.co

Jeff Brimer is the Chief Operating Office of Alexius, LLC, a managed legal services company based in Denver, Colorado USA. He was formerly with Faegre Baker Daniels LLP and Snell & Wilmer, LLP and was Vice President and General Counsel of Medicine Shoppe International, Inc. Jeff is a graduate of the University of Missouri-St. Louis and the University of Missouri-Columbia School of Law. He is a member of the American Bar Association, the Colorado and Missouri Bars and the International Bar Association. He also holds a Certified Franchise Executive designation from the International Franchise Association. He is a past member of the Governing Committee of the ABA Forum on Franchising; and, is a member of the International Franchise Association Legal-Legislative Committee; an Officer and Newsletter Co-Editor of the International Franchising Committee of the International Bar Association; and, a member of the International Chamber of Commerce Franchise Task Force. Jeff has written and spoken on a wide variety of franchise topics for the ABA Forum on Franchising, the International Franchise Association, the International Bar Association and at other franchise events. Jeff has been recognized for his expertise in franchising by The International Who’s Who of Franchise Lawyers, Franchise Times “Legal Eagles,” Chambers USA and Chamber’s Global: America’s Leading Lawyers for Franchising, Best Lawyers in America and Super Lawyers.

Frank Robinson
frobinson@casselsbrock.com

Frank Robinson is a partner in the Toronto, Canada office of Cassels Brock & Blackwell LLP. He advises Canadian and international companies on all matters relating to franchising, licensing and distribution, including structuring and expansion strategies, mergers and acquisitions of franchise companies, legal, regulatory and compliance with Canadian franchise disclosure legislation. He is a frequent speaker and participant at international and domestic franchise industry events, sits on steering committee of the ABA Forum on Franchising’s International Division and the Canadian Franchise Association Law Day committee, and has written extensively on franchise matters. Frank is recognized as a leading franchise lawyer in Canada by both Best Lawyers and Who’s Who Legal.