# Five valuable tips before you franchise in India

Srijoy Das provides some useful advice for franchisors looking to develop in this dense, emerging market

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With a population nearing 1.4 billion and a rapidly growing middle class of 500 to 600 million, with rising incomes, India offers tremendous potential for international franchisors to expand their systems and concepts.

Consumers are attracted to strong international brands in a variety of sectors, with food and beverage, retail, wellness and healthcare, online education, and coaching leading the way.

To succeed in the Indian market, it is critical for companies to understand the key commercial, regulatory, and legal challenges that they are likely to face while commencing or conducting business in India. Here are five crucial issues, including challenges being faced due to the ongoing pandemic.

## 1 Selecting business partners

Too often, foreign brands are caught out because potential Indian partners offer to pay whatever it takes to become their master franchisee in India. With the allure of these brands, coupled with cash-rich Indian businesses, it's often the case that Indian companies with no background or expertise in the specific sector attempt to obtain the rights to a brand without the ability to enhance its systems in India.

Paying the franchise fees isn't a problem – they are happy to do that to gain access and control of the brand. The problem arises when it's time to expand and develop the market. In addition, there are thousands of small, closely-held, family-run businesses in India which don't necessarily have the resources to do justice to an ambitious brand.

It thus becomes critical for a brand owner to conduct a financial, business, and legal diligence exercise, including a background check on the promoters, shareholders, and directors, to ensure the shortlisted party is capable of enhancing their brand.

## 2 Protect your brand

There are two options to file for protection: by filing directly with the Trademark Office in India, or by using the international convention (Madrid Protocol). A system doesn't need to be operating in India to obtain protection; one can file with the intent to use.

Even after obtaining registration, the "use" requirements only kick in around five years later. Applications filed directly in India are being examined very quickly now, and many multinationals are preferring this route, rather than filing internationally.

Trademark protection is essential because it isn't uncommon to see Indian infringers or squatters getting wind of a brand's proposed expansion into India, or just of their global reputation, and trying to cash in by adopting/filing an identical or similar brand first. Eventually, one must also

consider applying to the Trademark Office to obtain "well-known" status within India.

## 3 Assess your options

Because of the size of the market and the vast cultural and regional differences within India itself, one must consider multiple options before determining their business structure. A "partner" in India must have the ability to expand the business – for instance, a company based in North India won't always have the capability and the network to operate in other parts of the country, and vice versa.

Brands are thus considering regional franchising, giving smaller territorial rights to partners, as opposed to the rights for the entire country. This also allows the foreign franchisor to obtain franchise fees and royalties from multiple sources, and reward those that perform better over time.

Some concepts choose the direct franchising route which establishes a more direct connection, while others choose to incorporate a wholly-owned subsidiary in India which is given the rights to develop the brand. With each option come legal, regulatory, and tax compliances which must be analyzed before a final decision is made.

## 4 Understand the economy

Getting money out of India is always a bit of a challenge. There are fairly complex procedures to follow for remittance of franchise fees, royalties, management fees, advertising levies, and training fees.

India's Foreign Exchange Management Act is reasonably liberal in permitting Indian parties to pay foreign companies, but there are several requirements in terms of documentation and processes before payments can be made. While negotiating agreements, particular attention must be paid to these and contracts must account for them; an understanding of tax and banking law and processes must also be obtained. One shouldn't end up in a situation where after all the hard work of expanding a brand to a new country, one can't reap the monetary benefits.

## 5 Cover all bases

While there is no specific franchise law in India, it is essential to have a detailed contract covering key legal issues, including the ability to enforce guarantees. Most companies take a personal guarantee from their key contact within the partner company without realizing the legal implications of doing so, and are therefore unable to enforce such guarantees at a later date.

> ***"Getting money out of India is always a bit of a challenge"***

It is critical to obtain legal advice on personal, corporate, and bank guarantees. Similarly, dispute resolution provisions including governing law of the contract, the choice of forum, and mode of dispute resolution are critical. Most foreign companies insist on their home country's law being the governing law, with arbitration outside India, but there are implications to each and one must understand the limitations on enforcement of rights within India, if these decisions are taken.

For instance, the partner may be violating intellectual property rights within India – to counter situations like these, it may not be wise to exclude the jurisdiction of Indian courts. Other legal and regulatory issues such as product liability, consumer rights, customs regulations, and real estate laws will also have to be considered before finalizing contracts.