

Franchise 2022

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Franchise

2022

Contributing editor**Mark Kirsch**

Lathrop GPM

Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Franchise*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Australia, India and United States.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Mark Kirsch of Lathrop GPM, for his assistance with this volume.



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MARKET OVERVIEW

Franchising in the market

- 1 | How widespread is franchising in your jurisdiction? In which sectors is franchising common? Are there any economic or regulatory issues in the market that are more or less hospitable to franchising or make it economically viable in your jurisdiction?

With a population of approximately 1.35 billion people, India has one of the biggest franchise markets in the world. Several market studies estimate that the market has been growing at a rate of over 30 per cent over the past five years. The current market is valued at approximately 3.5 trillion rupees and is expected to grow at a rate of over 25 per cent year-on-year, despite the covid-19 pandemic.

In India, franchising is common in the food and beverages, hotels, healthcare and wellness, and education sectors.

India does not have any franchise-specific laws or bodies to regulate franchise businesses and franchise agreements are mostly contractual in nature. Currently, there are no perceived regulatory or economic issues that impede the growth of franchises in India, although legislation applies to any business operating in India, including franchises. The Indian Contract Act 1872, the Foreign Exchange Management Act 1999 and the Income-tax Act 1961 are some of the main pieces of legislation that regulate franchise arrangements in India.

Associations

- 2 | Are there any national or local franchise associations? What is their role in franchising, including any impact on laws or regulations? Are there any rules of conduct or membership requirements?

Yes, there are several privately run franchising associations in India, membership of which is voluntary. The Indian Franchise Association and Franchising Association of India are two such associations.

The franchise associations primarily provide a platform for stakeholders to network and discuss issues facing the industry. Certain franchising associations also assist stakeholders in finance-raising, and provide market insights and business solutions.

Generally, each association has its own code of conduct or by-laws for its members.

BUSINESS OVERVIEW

Types of vehicle

- 3 | What forms of business entities are relevant to the typical franchisor?

The choice of business entity relevant to a franchisor depends on the residential status of the franchisor.

A company established under the Companies Act 2013 (CA) or a limited liability partnership (LLP) established under the Limited Liability Partnership Act 2009 (the LLP Act) are the two most common forms of business entity used by Indian franchisors. An Indian franchisor may also conduct business by setting up a partnership firm under the Partnership Act 1932 or as a sole proprietorship firm. Several factors are considered when deciding on the form of business entity, including the need for external investments, ease of regulatory compliance and taxation.

It is not mandatory for foreign franchisors to form a business entity in India to grant franchise rights to Indian parties. Foreign franchisors can enter into a direct franchise agreement with Indian franchisees. However, some foreign franchisors prefer to establish an Indian entity for better management of franchise rights. The government's Foreign Direct Investment Policy (the FDI Policy) prescribes the forms of business entity that foreign parties can establish in India. Under the FDI Policy, a foreign franchisor may set up a company under the CA or an LLP under the LLP Act.

Regulation of business formation

- 4 | What laws and agencies govern the formation of business entities?

The CA and the LLP Act govern the formation of companies and limited liability partnerships respectively. The Ministry of Corporate Affairs is the primary government agency responsible for administration of the CA and the LLP Act.

In addition to the CA and the LLP Act, the FDI Policy and the Foreign Exchange Management Act 1999 and its accompanying regulations are relevant as they prescribe the conditions subject to which foreign investments can be made in India, including the forms of business entity that can be established.

Indian franchisors may also set up a partnership firm under the Partnership Act 1932, which governs partnership businesses in India.

Requirements for forming a business

- 5 | Provide an overview of the requirements for forming and maintaining a business entity.

Each form of business entity is governed by separate legislation that prescribes the specific requirements for forming and maintaining such an entity. For the purposes of this section, we will briefly discuss the

requirements for the incorporation of a private limited company in India, which is the most common form of business undertaking.

The CA regulates the incorporation of companies. There are different categories of companies, such as private limited companies, public limited companies and one-person companies. There could be further classifications within these categories depending on the liability of the company's members.

At least two shareholders are required to set up a private limited company. The shareholders can be an individual or a body corporate. Furthermore, the CA requires a private limited company to have at least two directors, one of which must be an Indian resident.

The incorporation process for a company under the CA involves submitting an application to the Ministry of Corporate Affairs to obtain a director identification number for the directors of the prospective company. An application must also be submitted to reserve the prospective company's name. The articles of association (AOA) and the memorandum of association (MOA) must be prepared and submitted to the jurisdictional Registrar of Companies. The AOA contain the by-laws of a company and the MOA provides for business objects, the authorised and paid-up share capital of the prospective company, and the shares subscribed by the initial shareholders of the company. The process for incorporation is exhaustive and several declarations and undertakings must be provided by the directors and shareholders of the prospective company. The declarations primarily relate to the directors' interest in any other business outside the company and any prior conviction of the proposed directors and shareholders in any offence in connection with the promotion, formation or management of any other company in India. Each of the proposed directors and shareholders are required to state that they will not accept deposits from the public in violation of the CA. It takes between 30 days and two months to form a company in India.

Once a company is established, it must comply with the CA, which, inter alia, requires a company to hold at least four meetings of directors and one annual meeting of shareholders in a fiscal year. All companies are required to maintain statutory registers, including registers of shareholders, directors, fixed assets, share transfers, directors' interests in other businesses, and the minutes of the directors' and shareholders' meetings. In addition to the CA, a company is subject to other legislation covering labour and employment, foreign exchange, indirect tax and income tax.

Restrictions on foreign investors

6 | What restrictions apply to foreign business entities and foreign investment?

The FDI Policy set out by the Department for Promotion of Industry and Internal Trade dictates the sectors that are open for foreign investments and the conditions subject to which foreign investments can be made in India, including the business entities that can be established by foreign residents in India. There are certain sectors that are prohibited from receiving foreign investments. These sectors include real estate, lottery and chit fund businesses. Although the government has liberalised the FDI Policy and most sectors are open for foreign investment up to 100 per cent without any need for prior government approval, there are certain sectors where prior approval is required. For example, government approval is required for foreign investments in a business operating in the defence sector when the overall foreign investment in the business exceeds 74 per cent. Similarly, any foreign investment of over 51 per cent in a multi-brand retail trading business requires prior government approval. There are certain sectors in which foreign investment is not permitted beyond a prescribed threshold, such as the print media sector, where foreign investment is capped at 26 per cent.

The FDI Policy should be studied prior to making any foreign investments or setting up an entity to understand any restrictions that may be applicable to the proposed transaction.

Taxation

7 | What aspects of the tax system are relevant to franchisors? How are foreign businesses and individuals taxed?

The Income-Tax Act 1961 (the IT Act) is the primary legislation on income taxes. The IT Act requires Indian franchisees to deduct the prescribed withholding tax on royalties and requires service fees to be paid to franchisors. Tax must be deducted before making any payments to franchisors, including to foreign franchisors.

The IT Act prescribes different withholding tax rates for different categories of services and these rates change from year to year.

India has signed double taxation avoidance agreements (DTAA) with various countries. Regarding payments to foreign franchisors, the IT Act provides that that withholding tax should be deducted at the rate prescribed in the IT Act or that of the DTAA of the home country of the foreign resident, whichever is more beneficial to the foreign resident.

Goods and services tax (GST), which is the primary indirect tax, applies uniformly across India. GST is applicable on royalties and service fees. In an arrangement where both the franchisor and the franchisee are Indian, the franchisor charges GST from the franchisee along with royalty or service fees, and subsequently deposits the GST with the tax department. However, in a cross-border franchise agreement between an Indian franchisee and a foreign franchisor, the foreign party is not required to charge or collect GST, but the Indian franchisee is liable to pay GST directly to the Indian tax department under the reverse charge mechanism.

Labour and employment

8 | Are there any relevant labour and employment considerations for typical franchisors?

No, unless the franchisor establishes an entity in India and employs people directly. Typically, employment and labour laws do not apply in a franchisor – franchisee relationship. It is unlikely that a franchisee would be deemed an employee of its franchisor.

Intellectual property

9 | How are trademarks and other intellectual property and know-how protected?

There are various ways in which intellectual property (IP) can be safeguarded in India, with both common law and domestic legislation covering the protection and enforcement of IP rights. For instance, trademarks are protected under the Trade Marks Act 1999, and copyrights, patents and industrial designs have their own dedicated statutes. However, the Trade Marks Act 1999 does not formally define a licensee or a franchisee and franchisors are not required to register or disclose their licences under Indian trademark law. That said, the Trade Marks Act 1999 does provide for the recordation of a registered user, which is a party other than the brand owner itself authorised to use a registered trademark in India. The Trade Marks Act 1999 lays out actions for the infringement of registered trademarks and for the passing-off of unregistered marks under common law. Remedies for infringement and passing off typically include injunctions, damages, account-of-profits and search-and-seizure in anti-counterfeiting cases. Interestingly, in India, trademark infringement can be subject to both civil and criminal action.

There is currently no dedicated legislation for the protection of know-how. Instead, know-how and trade secrets are generally protected and enforced through contractual arrangements. A typical franchise

agreement with an Indian franchisee should contain robust confidentiality obligations, as well as provisions setting out what constitutes the franchisor's trade secrets and the consequences of their misuse. Separate non-disclosure agreements can also be considered during the process of vetting and negotiating with potential franchisees.

Real estate

- 10 | What are the relevant aspects of the real estate market and real estate law? What is the practice of real estate ownership versus leasing?

Indian franchisors are free to either own or lease business premises. The property price or lease rent for business space varies from city to city depending on supply and demand.

The major legislation that regulates real estate transactions are the Transfer of Property Act 1882, the Registration Act 1908, the Indian Contract Act 1872, and state-specific stamp duty and rent control legislation. The law requires in most cases that real estate agreements be made in writing and registered with the local authority after payment of the appropriate stamp duty or tax.

In many franchise agreements, the franchisor retains the right to acquire the assets of the franchise business upon termination of the franchise agreement. The Foreign Exchange Management Act 1999 and the regulations described therein prohibit a foreign entity from acquiring any immovable property in India without setting up a local entity in India. A foreign franchisor that wants to acquire immovable property for the Indian franchise must establish a business entity in India.

Competition law

- 11 | What aspects of competition law are relevant to the typical franchisor in your jurisdiction? How is competition law enforced in the franchising sector?

The Competition Act 2002 is the primary antitrust legislation in India. Although the Act does not have any express provisions in the context of franchisor – franchise relationships, it prohibits enterprises or persons at different stages of the production chain from entering into an arrangement for production, supply, distribution acquisition or control of goods, or the provision of services that will cause an appreciable adverse effect on competition.

Exclusive supply and distribution supply agreements, agreements for refusal to deal, or agreements for resale price maintenance between enterprises at different stages or levels of the production chain can be declared void when such agreements cause an appreciable adverse effect on competition.

The restrictions commonly imposed under a franchise agreement are not deemed anticompetitive per se if they are reasonable and aim to enhance the standard, efficiency and uniformity of a franchise system. However, the Competition Commission of India, on receipt of complaints, may examine the reasonableness of the restrictions contained in a franchise agreement on a case-by-case basis.

OFFER AND SALE OF FRANCHISES

Legal definition

- 12 | What is the legal definition of a franchise?

There is no legal definition of a franchise under Indian law.

Laws and agencies

- 13 | What laws and government agencies regulate the offer and sale of franchises?

There is no law or government agency that regulates the offer and sale of franchises in India.

Principal requirements

- 14 | What are the principal requirements governing the offer and sale of franchises under the relevant laws?

There are no specific laws governing the offer and sale of franchises in India. The Indian Contract Act 1872 has provisions regarding the offer and acceptance of a contract that would generally apply.

Franchisor eligibility

- 15 | Must franchisors satisfy any eligibility requirements in order to offer franchises? Are there any related practical issues or guidelines that franchisors should consider before offering franchises?

No, Indian law does not prescribe any specific eligibility requirements that a franchisor should meet before offering franchises in India. However, franchisors should meet the general requirements regarding competency to contract. The Indian Contract Act 1872 requires a person to be of sound mind, to be at least 18 years of age and must not be disqualified from entering into a contract under any other specific law of the land to which he or she is subject. Additionally, the contract should be made for a lawful consideration and lawful object, and with free will of the involved parties.

Franchisee and supplier selection

- 16 | Are there any legal restrictions or requirements relating to the manner in which a franchisor recruits franchisees or selects its or its franchisees' suppliers? What practical considerations are relevant when selecting franchisees and suppliers?

No, Indian law does not prescribe any requirements relating to the manner in which a franchisor should recruit franchisees or select suppliers.

Pre-contractual disclosure – procedures and formalities

- 17 | What procedures and formalities for pre-contractual disclosure are required or advised in your jurisdiction? How often must the disclosures be updated?

Franchisors are not required to make any pre-contractual disclosures to franchisees or government agencies prior to the sale of a franchise in India. However, franchisors must not make false representations regarding the franchised business.

Pre-contractual disclosure – content

- 18 | What information is the disclosure document required or advised to contain?

Franchisors are not required to make any pre-contractual disclosures to franchisees or government agencies prior to the sale of a franchise in India.

Pre-sale disclosure to sub-franchisees

- 19 | In the case of a sub-franchising structure, who must make pre-sale disclosures to sub-franchisees? If the sub-franchisor must provide disclosure, what must be disclosed concerning the franchisor and the contractual or other relationship between the franchisor and the sub-franchisor?

No such disclosures are required to be made to sub-franchisees.

Due diligence

- 20 | What due diligence should both the franchisor and the franchisee undertake before entering a franchise relationship?

Although Indian law does not mandate any due diligence, it is recommended that franchisors carry out proper due diligence on a prospective franchisee to ensure that it:

- meets the franchisor's eligibility conditions for the business in the relevant territory;
- has good standing and is legally compliant with applicable laws; and
- has adequate net worth to operate and scale the franchise business.

The franchisee should ensure that the franchisor is solvent and that there is no pending litigation or any adverse event known to the franchisor that may affect business in the applicable territory.

Failure to disclose – enforcement and remedies

- 21 | What actions may franchisees or any relevant government agencies take in response to a franchisor's failure to make required disclosures? What legal remedies are available? What penalties may apply?

Indian law does not require a franchisor to make any pre-sale disclosure to its franchisees or to any government agencies regarding the sale of a franchise business. However, if any false representations are made, the franchisee has the option of civil action and may claim damages.

Failure to disclose – apportionment of liability

- 22 | In the case of sub-franchising, how is liability for disclosure violations shared between franchisor and sub-franchisor? Are individual officers, directors and employees of the franchisor or the sub-franchisor exposed to liability? If so, what liability?

Indian law does not require franchisors or sub-franchisors to make any disclosure to sub-franchisees regarding the sale of a franchise business.

General legal principles and codes of conduct

- 23 | In addition to any laws or government agencies that specifically regulate offering and selling franchises, what general principles of law affect the offer and sale of franchises? What industry codes of conduct may affect the offer and sale of franchises?

There is no specific law in India that regulates the offer and sale of a franchise. The franchise agreement is purely contractual. Under Indian law, a contractual arrangement must not be based on misrepresentation, fraud or undue influence.

Fraudulent sale

- 24 | What actions may franchisees take if a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises?

Under the Indian Contract Act 1872, a franchisee that is subject to any misrepresentation, fraud or undue influence may set aside the franchise agreement and make a claim for damages.

The franchisee may also file a complaint against the franchisor for an offence of cheating under the Indian Penal Code where there is adequate evidence to prove that the franchisor acted fraudulently or dishonestly with criminal intent.

FRANCHISE CONTRACTS AND THE FRANCHISOR/ FRANCHISEE RELATIONSHIP

Franchise relationship laws

- 25 | What laws regulate the ongoing relationship between franchisor and franchisee after the franchise contract comes into effect?

There is no franchise-specific law in India and franchisor – franchisee relationships are governed by the franchise agreement. In addition to the franchise agreement, involved parties are subject to a number of other laws, such as foreign exchange control regulations, antitrust laws, intellectual property laws, tax regulations, data privacy laws and anti-corruption legislation.

Operational compliance

- 26 | What mechanisms are commonly incorporated in agreements to ensure operational consistency and adherence to brand standards?

Franchisors incorporate a number of provisions in the franchise contract to protect brand and quality standards and bring about uniformity in operational efficiencies. Such provisions include the franchisor's right to inspect the franchisee's business and premises, the right to audit the franchisee's books of accounts, conditions for the appointment of suppliers and conditions that should be met prior to opening new locations.

Amendment of operational terms

- 27 | May the franchisor unilaterally change operational terms and standards during the franchise relationship?

Under Indian law, a franchisor cannot unilaterally change operational terms and standards during the franchise relationship. Any change must be recorded in writing with mutual consent.

Policy affecting franchise relations

- 28 | Do other government or trade association policies affect the franchise relationship?

The policies of trade associations do not affect the franchise relationship.

However, changes in government policy could have an impact on franchise relationships. For example, a change in tax policy or payment regulations may impact the franchise relationship.

Termination by franchisor

- 29 | In what circumstances may a franchisor terminate a franchise relationship? What are the specific legal restrictions on a franchisor's ability to terminate a franchise relationship?

The franchisor – franchisee relationship is contractual and a franchisor can terminate the franchise agreement under the provisions of the agreement. Any termination of the franchise agreement outside the framework of the franchise agreement may be deemed a breach of the agreement.

Termination by franchisee

- 30 | In what circumstances may a franchisee terminate a franchise relationship?

The franchisor – franchisee relationship is contractual and a franchisee can terminate the franchise agreement under the provisions of the agreement. Any termination of the franchise agreement outside the framework of the franchise agreement may be deemed as a breach of the agreement.

Renewal

- 31 | How are renewals of franchise agreements usually effected? Do formal or substantive requirements apply?

Because the franchisor – franchisee relationship is contractual, the terms for the renewal of a franchise agreement are usually provided in the agreement. In cases where a franchise agreement does not contain any provisions for the renewal of the agreement, both parties must mutually agree to renew the agreement. Substantive law does not prescribe any conditions for the renewal of agreements.

Refusal to renew

- 32 | May a franchisor refuse to renew the franchise agreement with a franchisee? If yes, in what circumstances may a franchisor refuse to renew?

Many franchise agreements contain legally binding renewal provisions that require the franchisor to renew the agreement if the franchisee meets the renewal conditions. A franchisor can refuse to renew the franchise agreement when the agreement does not obligate the franchisor to do so or in cases where the franchisee has failed to meet the eligibility criteria prescribed for renewal of the franchise agreement.

Transfer restrictions

- 33 | May a franchisor restrict a franchisee's ability to transfer its franchise or restrict transfers of ownership interests in a franchisee entity?

Yes, a franchisor may contractually restrict its franchisee from transferring the business. The franchisor may also restrict the owners of the franchise entity from transferring their ownership interest in the franchise entity. Such restrictions should be unequivocally and expressly stated in the franchise agreement.

Fees

- 34 | Are there laws or regulations affecting the nature, amount or payment of fees?

Currently, Indian law does not regulate the nature or amount of fees that could be paid by Indian franchisees to their franchisors in India and overseas.

Usury

- 35 | Are there restrictions on the amount of interest that can be charged on overdue payments?

Although there is no restriction on the amount of interest that can be charged on overdue royalties, the Reserve Bank of India (RBI) prescribes the maximum amount of interest that can be charged by a foreign party in respect of overdue service fees. The maximum interest rate that can be charged on overdue payments for services is the benchmark rate plus 250 basis points spread. The benchmark rate is the six-monthly London Interbank Offered Rate of different currencies or any other six-monthly interbank interest rate applicable to the currency of the transaction. The maximum permissible rate of interest is occasionally adjusted by the RBI and is therefore subject to change.

Foreign exchange controls

- 36 | Are there laws or regulations restricting a franchisee's ability to make payments to a foreign franchisor in the franchisor's domestic currency?

The prevailing Foreign Exchange Management Act 1999 its accompanying regulations and notifications do not restrict a franchisee from making payments to its foreign franchisor in the franchisor's domestic currency.

Confidentiality covenant enforceability

- 37 | Are confidentiality covenants in franchise agreements enforceable?

Confidentiality covenants in franchise agreements are generally enforceable, provided such covenants are reasonable and have a well-defined scope.

Good-faith obligation

- 38 | Is there a general legal obligation on parties to deal with each other in good faith during the term of the franchise agreement? If so, how does it affect franchise relationships?

The Indian Contract Act 1872 does not expressly incorporate the doctrine of good faith. However, some courts, for instance the Gauhati High Court in the case of *The Food Corporation of India and others v M/s Anup Trade And Transport (P) Limited and others* (Case No. WA 36/2020) have opined that every contract inherently includes the principle of good faith. Franchisors and franchisees should generally deal in good faith.

Franchisees as consumers

- 39 | Does any law treat franchisees as consumers for the purposes of consumer protection or other legislation?

The Consumer Protection Act 2019 (CPA) is the primary consumer protection legislation in India. The term 'consumer' as defined in the CPA expressly excludes persons who purchase goods or services for commercial purposes. Therefore, it is improbable that franchisees could be treated as consumers.

Language of the agreement

- 40 | Must disclosure documents and franchise agreements be in the language of your country?

There is no such legal requirement for a disclosure document. Furthermore, the law does not require franchise agreements to be in a specific local language. The agreement can be drawn in any language mutually agreed on by the parties.

Restrictions on franchisees

41 | What types of restrictions are commonly placed on the franchisees in franchise contracts?

The restrictions that are commonly imposed on franchisees are contractual in nature and include:

- restrictions on business activities outside the applicable territory;
- non-compete restrictions;
- confidentiality obligations;
- restrictions on transfer of ownership interest in the franchise entity;
- restrictions on transfer of assets and franchise business to a third party without first offering to the franchisor; and
- restrictions on the franchise to procure raw material from unauthorised vendors.

Courts and dispute resolution

42 | Describe the court system. What types of dispute resolution procedures are available relevant to franchising?

India has a unified judicial system, with the Supreme Court at the top of the hierarchy followed by the high courts of each state. The district court is positioned below the state's high court and is followed by various subordinate courts. In addition to the regular civil courts, various tribunals (including appellate tribunals) have been set up for specialised matters, such as income taxes, debt recovery, intellectual property and company law. Appeals from the orders of these tribunals lie with either the designated appellate tribunals, the state's high court or the Supreme Court, as the case may be.

Each court in India, except the Supreme Court, has a defined territorial limit over which it can exercise its jurisdiction. Furthermore, a pecuniary limit has been prescribed for all district and subordinate courts, and a court cannot exercise jurisdiction over a matter whose value exceeds the pecuniary limit set for that court. Generally, subject to the applicable pecuniary limit, a suit should be filed in the court that has jurisdiction over the place where the cause of the action arose, or where the defendant resides or carries on its business. Appeals from subordinate courts lie with the state's district court. Similarly, an appeal from a district court can be filed with the state's high court and then with the Supreme Court.

There is a huge pendency of cases in India. On average, it takes approximately five to seven years for the disposal of a suit by the original court and approximately three years in appeal cases.

Indian law does not prescribe a separate set of procedures for the resolution of franchise-specific disputes. If parties to a franchise agreement decide to resolve their dispute in court, then all such disputes will be resolved according to the Code of Civil Procedure 1908, which applies to all contractual and other civil cases.

Governing law

43 | Are there any restrictions on designating a foreign governing law in franchise contracts in your jurisdiction? How does the governing law affect the contract's enforceability?

Although Indian law does not expressly prohibit a foreign franchisor from agreeing to a foreign governing law in a contract with an Indian party, Indian courts are not comfortable adjudicating disputes under such contracts due to their lack of familiarity with foreign law.

However, a foreign franchisor may opt for a foreign governing law should it decide to resolve disputes through arbitration seated in India or in a foreign country.



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Arbitration – advantages for franchisors

44 | What are the principal advantages and disadvantages of arbitration for foreign franchisors considering doing business in your jurisdiction? Are any other alternative dispute resolution (ADR) procedures particularly favoured or disfavoured in your jurisdiction?

Resolution of disputes in Indian courts is likely to result in a protracted litigation owing to a huge backlog of cases and slow disposal rates. Therefore, arbitration of disputes, as opposed to litigation in court, is preferred.

The Arbitration and Conciliation Act 1996 (the Arbitration Act) governs domestic arbitration, international commercial arbitration and the enforcement of foreign arbitral awards. The Arbitration Act defines an international commercial arbitration as an arbitration involving commercial disputes arising from a legal or contractual relationship between two or more parties, wherein one of the parties is a foreigner.

The parties to an international franchise agreement may opt to arbitrate either in India or outside India in any country that is:

- a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the Geneva Convention on the Execution of Foreign Arbitral Awards; and
- notified as such by the Indian government.

There are no effective or binding alternative dispute resolution mechanisms in India other than arbitration.

National treatment

45 | In what respects, if at all, are foreign franchisors treated differently (legally, or as a practical matter) from domestic franchisors?

Indian law does not treat foreign franchisors any differently from domestic franchisors. However, in cross-border franchise agreements, foreign exchange laws apply that may impose certain additional conditions and restrictions relating to payments, the acquisition of assets by the franchisors in India and the establishment of an entity in India by foreign residents.

UPDATE AND TRENDS**Legal and other current developments**

46 | Are there any proposals for new legislation or regulation, or to revise existing legislation and regulation? Are there other current developments or trends to note?

Caps on royalty payments to foreign franchisors

There have been several media reports stating that the government is reviewing a proposal seeking to impose a cap on the maximum royalty amount that an Indian franchise could pay to its foreign franchisor. The government is considering imposing a cap on royalty payments in the range of 1 per cent to 4 per cent of the franchise's turnover in a staggered manner.

Recommendations for franchise protection laws in India

The Parliamentary Standing Committee has recommended that the government introduce a law on franchise protection to regulate the relationships between automobile manufacturers and their dealers. The recommendation has been made because of the hardship suffered by a number of automobile dealers after a manufacturer abruptly ceased operations in India, which resulted in the dealers incurring huge financial losses.

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Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security Procurement			
Dispute Resolution			

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