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Basics Track: International

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IFA Fundamentals of International Franchising

Contents

AUTHORS' NOTE

"Basics Track: International Expansion" has been a recurring workshop at the International Franchise Association ("IFA") Legal Symposium, as a "bridge" program for the IBA/IFA Joint Conference that follows the next day. Our mandate from the IFA was to update, revise and supplement, as necessary, the previous paper prepared for this session by Noah Leszcz, Kyle Lennox, and Melissa Murray in 2024, which was itself an amalgamated update of previous papers authored on the topic by Mark Siebert, Adiya Dixon, and Alan Greenfield in 2016; Marc Mushkin, Dominic Mochrie, and Robert Smith in 2015; Lisa Greenlees, Debi Sutin, and Kendal Tyre in 2017; Francesca Turitto, Larry Weinberg, Donald P. Wray Jr., and Tao Xu in 2019; Liz Dillon, Andraya Frith and Larry Oberly in 2022; and Mohammad M. Alturk, Arthur J. Anastos, and Ahnnah Fotsch in 2023. The comprehensiveness of this 2025 edition of this paper, is a credit to the collective expertise and contributions of all past and present authors, and those who helped them.

We also wish to thank Paul Wood and Ann Chen, Associates with Dentons LLP for their assistance with the current paper.

I. Introduction

For many successful franchisors, international expansion represents the next logical step in scaling their brand. The appeal is clear - entering new markets can unlock substantial revenue growth, diversify risk across geographies, and enhance global brand recognition. Franchising, in particular, offers a relatively capital-light and scalable method of international expansion, allowing franchisors to leverage the local knowledge, capital, and operational capacity of franchise partners abroad. As global demand for recognizable and proven business models continues to rise, franchisors frequently receive unsolicited interest from potential partners in neighboring or strategically aligned jurisdictions.

However, while international franchising presents significant opportunities, it also comes with a unique set of legal, operational, and cultural challenges. Success requires careful planning and a deep understanding of the commercial and regulatory landscape in target markets. In this paper, we outline the key steps a franchisor must take to prepare for and execute a successful international expansion strategy through franchising.

We begin by examining what it means to *prepare your business for international franchising*, including critical foundational steps such as trademark protection, local domain registration, and feasibility assessments. This stage should also include a review of local cultural, linguistic, CSR, and privacy standards, which may necessitate updates to training materials and operational manuals.

Once a business has been properly prepared for international expansion, franchisors must turn their attention to *selecting the best expansion model for each target market*. The optimal structure will depend on a variety of factors, including the franchisor's internal resources, market size and complexity, legal environment, and long-term strategic objectives. In the paper we explore some of the most common structures, including direct, multi-unit, area development, master franchising, and hybrid or joint venture arrangements. Each option presents different levels of control, investment, and risk, and should be evaluated accordingly to make an informed decision.

Next, we turn to the critical step of *identifying and vetting the right franchise partner*. The success of any international franchise venture hinges on the capabilities and commitment of the local operator. A rigorous selection process—comprising application forms, background checks, interviews, and market visits—is essential to ensure alignment of values, capabilities, and long-term vision.

We then address the importance of *carefully drafting and negotiating international franchise agreements*. While domestic franchise agreements—particularly in the U.S.—may be relatively standardized, international transactions typically involve more negotiation. Key commercial and legal terms will often be challenged by sophisticated franchisee candidates and must be tailored to comply with local requirements.

Finally, we review *compliance with international franchise laws*, which can vary significantly across jurisdictions. More than 40 countries impose franchise-specific disclosure and registration requirements, while other jurisdictions have laws that may prohibit or conversely mandate the inclusion of certain specific provisions in franchise agreements. We also touch on other essential legal considerations such as tax implications, foreign exchange controls, dispute resolution mechanisms, and governing law clauses.

Together, these five pillars form the backbone of a robust international franchising strategy. Throughout this paper, we aim to provide franchisors with practical guidance on navigating the complexities of cross-border franchising while mitigating legal risk and maximizing long-term success.

II. Getting Ready to Franchise Internationally

When getting ready to franchise internationally there are multiple factors to consider. These include the registration of trademarks, domain names and social media, market feasibility assessments, supply chain considerations, and local document adjustments to, for example, the operating manual.

A. Ensure your trademarks are protected in key international markets

1. Core trademarks

When entering a new international market, you should ensure you register your core trademark(s) as soon as possible[1]. This may be via a country registration, however, if possible, it could also be done via market wide registrations such as an EU wide registration. Trademark registrations can be expensive and can face opposition proceedings and or other issues such as local law assessments as to what type of trademarks can and cannot be registered (i.e. such as differences as to what is considered a generic trademark). With this being the case it is important to differentiate your core trademarks as against your other trademarks so as to obtain the "biggest bang for your buck". This can be especially important if you are looking to enter the market with a specific local operator where there is a chance that the deal might fall through. By registering only your core marks you can avoid wasted costs if the deal doesn't materialize. To avoid disappointment, trade mark searches should be conducted well ahead of making any filings. The best approach would be to map out the markets that the franchisor intends to enter in the next 3 years so that searches can be run and filings made 6-12 months before you sign a term sheet for the market. It is important to achieve a balance between filing multiple marks in future markets too early on a speculative basis against leaving it too late. If you file too early and do not use the trademarks after 3-5 years, those trademarks may be vulnerable to cancellation actions. If you leave it too late, local trademark pirates may register your trademarks in their country and this could become a major obstacle to the expansion of your business.

2. Local market considerations

Language and cultural considerations - When considering registration of your core trademarks, you should also consider conducting a brand survey of the market into which you are entering.[2] This can be important if the local market has different language, different letters (for example Chinese, Japanese) or cultural aspects. Some markets may require translation and adaptations

[1] See generally on the topic of trademarks in franchising, Babette Märzheuser-Wood, 'Dentons Franchise Guide: Seven steps to a successful franchise business', p.16. (*Dentons*) <Dentons - Dentons Franchise Advisory >, (accessed 22 April 2025). https://www2.deloitte.com/content/dam/Deloitte/global/Documents/dttl-digital-international-franchise-handbook-deloitte-legal.pdf, https://www.great.gov.uk/learn/categories/prepare-sell-new-country/routes-to-market/setting-franchise-abroad/

[2] Warren Pengilley, International Franchising Arrangements and Problems in Their Negotiation, 7 Nw. J. Int'l L. & Bus. 185 (1985-1986)

to your existing trademarks and logos. You may also want to check the market for local competitors who may be using similar trademarks and or logos, and who may thereby create a barrier to entry into the market via filing an opposition to your trademark registrations. There is also the danger that squatters have already registered your trademark.

Trademark squatters - The risk of trademark squatters varies from market to market, however, a market survey and local trademark search will serve to identify them so that appropriate actions can be taken prior to market entry. If squatters are not dealt with early on, they can become a big obstacle to closing a deal with local operators. Solutions to dealing with squatters can involve challenging their right to use the trademarks or can involve paying them off. The chosen solution should be based on a commercial assessment of the time and effort it would take to remove the squatter from the trademark as against the amount they are asking for selling the trademark.

3. Pop-up shops

In consideration of the earlier points, a pop-up shop could be considered to test local market conditions prior to establishing a full franchise model. This can help establish your trademark and name whilst serving as a limited time market study for sales data and for brand recognition surveys.

B. Register domain names and social media accounts

When entering a new market, you should ensure you obtain local domain names as soon as possible. Domain names are usually cheap to acquire and can be a good way of "planting your flag" in that market. The same can be said of social media handles. Early acquisition and protection of these items can also assist in assessing the local market sentiment towards your brand.

1. Local market considerations

Language and Cultural considerations – When entering a new market, it is important to ensure domain names and social media handles and posts reflect local languages and the local culture. This may involve engaging translators or a local media agency to ensure that posts meet these requirements.[3]

Domain name and social media squatters – Squatters can also sit on domain names and social media handles. Just as for trademark squatters, the solutions must be looked at from a commercial point of view. Whether it is easier and simpler to pay off the squatters or whether one can contest their use of the domain names and social media handles through the operator of the search engine and social media sites.

Local operator social media – after acquiring domain names and social media handles there should be an assessment of who will operate the local marketing. The franchisor or the local operator. This is a commercial consideration based on how many resources the franchisor can commit to, for example, creating appropriate translated posts. If the local operator is to make posts a thorough monitoring and approval system should be built into the franchise agreement.

[3] Martin Mendelsohn, How to Franchise Internationally, published by HSBC in 2004

C. Red flag reporting. Is your business model feasible in your target market?

An important exercise to consider when entering a new market is a market survey. [4]This should cover population demographics and local tastes, cultural considerations[5] (especially for food businesses where halal or kosher foods may be required or whether alcohol can be sold or requires special licenses), real estate opportunities, competitive landscape, restrictions and laws on advertising, local taxes (including withholding taxes).

Documents - A franchisor may have to adapt their operating system to local laws, rules and customs[6] which may require changes to the operating manual or standards. Translations may also be required of the franchise agreement, the operating manual and standards. In most cases, local adaptations to the manual are suggested by the franchisee, however, the final approval of any changes must sit with the franchisor as it is the franchisor's brand and system that is impacted. The franchisor needs to consider how flexible they are willing to be as regards local adaptations. Some franchisors allow a limited local product or menu range (not more than 10-20%), others form local market committees and others allow the franchisee to propose a local standards manual for review and approval. Franchisors also need to be mindful of copyright ownership in translations.[7]

Technology – A franchisor will have to consider whether the technology they use in their business can also be used in that local market, or whether new technology needs to be sought to properly operate in that market. This can involve checks into whether such local technology is compatible with the franchisor's existing technology and systems or whether other solutions need to be found. Franchisors also need to check if their existing technology licenses permit the use of the technology in the new market. A local operator may want to suggest technologies, however, this may present a challenge to the franchisor in monitoring the local operator. Special interfaces may need to be built at an additional cost.

Competition Law – local competition rules should be checked to ensure that the franchisor's restrictions on the local operator are legal. Key items may include what the local market deems to be price fixing and passive sales restrictions.

D. Does the market meet minimum standards on anti-bribery and corruption, data privacy, human rights etc.

A local law review should be conducted to check whether local standards on corruption law are sufficient. When engaging a local operator, it is also important to check them against sanctions lists (for example OFAC). A good way to conduct a preliminary check to see what the regulatory landscape is like in the local market is to check which other brands are operating in that market.

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[4] Warren Pengilley, International Franchising Arrangements and Problems in Their Negotiation, 7 Nw. J. Int'l L. & Bus. 185 (1985-1986)

[5] Martin Mendelsohn, Effective Business and Professional Practices in Franchising, Middlesex University, July 1999

[6] See for example some example countries with prohibitions on unfair terms as discussed in Babette Märzheuser-Wood, 'Franchising, a win-win model for hotel brands?', (*Dentons*, November 20 2024), <Dentons - Franchising, a win-win model for hotel brands? > (accessed 22 April 2025).

[7] Brian Duckett, Three steps to successful international franchising; https://www.global-franchise.com/insight/3-steps-to-successful-international-franchising.

Regulatory landscape - A local law review will also serve to provide details on what the regulatory landscape is like on paper as against what it is in practice. It may be that the local law is strong on corruption, but that there is a high risk that local operators accept bribes or are involved in other corrupt practices that would be caught by the franchisor's own local regulatory regime. The franchisor must, in this case, make sure that they have done all that they can to prove that they have vetted the local operator and have included appropriately broad provisions in the franchise agreement to restrict the local operator from conducting such activities.

Environmental / sustainability considerations – consideration should be given to local market environmental and sustainability laws and practices. If there is high regulation in the local market, then the agreements with the local operator need to reflect these requirements to avoid franchisor liability for the franchisees' failure to meet these. If there is lower regulation in the local market the franchisor may still want to include their higher standards to avoid brand damaging conduct.

Child Labor Laws, respect for human rights and safe working conditions for staff are amongst the other regulatory items on the check list of most franchisors.

The above points should be periodically reviewed to ensure that the franchised business is being operated in compliance with local laws and standards.

E. Supply Chain. Are you permitted to import your products

There are several key steps to assessing how to establish and regulate the supply chain for the new market.

Step 1 – A franchisor should identify what needs to be sourced from the franchisor and or the franchisor's approved suppliers as against what can or must be sourced locally. This assessment should consider (a) economic feasibility (i.e. what is the impact on product quality and what are the local rules, import duties, customs, and taxes); (b) whether the local operators can procure cheaper products and or ingredients; and (c) the adaptability of the franchisor sourced products to the market.

Step 2 – The processes and registrations for importing products and equipment into the local market need to be evaluated. A franchisor should consider whether sourced products and equipment must be (a) registered with or approved by a local authority; (b) if there is anything in the products that is banned in the local market (for example traces of alcohol); and (c) what the local considerations are for standards of identity (for example, Switzerland for chocolate or Germany for beer); (d) whether there are there high import duties that make importing products prohibitively expensive.

Step 3 – Protection of trade secrets – a franchisor should consider their trade secrets and how their supplies team should approach this topic when being pushed to reveal data when sourcing products. It is often the case, that franchisors reveal some trade secrets before the franchise agreement is signed, this occurs in connection with market assessment and financial feasibility reviews. Franchisors should ensure, at a minimum, that a non-disclosure agreement is put into place. This needs to be considered on a case by case basis. A franchisor could for example consider (a) giving ranges; (b) creating rules for the supply team on what information they can share and what not (remembering that the supply team are not usually legal experts and may unwittingly share information beyond what is required).

Step 4 – Commercial considerations on what can be brought in and what is easier to do locally. Also, considerations concerning:

a. Equipment
b. Costs
c. Shipping times
d. Other time considerations.

It may be that the cheapest and or most efficient supply chain does not work for the franchisor because the franchisor (a) makes its profit via supplying certain items over its own supply chain; (b) has strict rules on sourcing. The local operator may, especially if larger than the franchisor, push for local supply chains and local suppliers.

F. Updating the Manual and your systems to service foreign markets

The manual, standards, and systems have been referred to under the previous headings. However, it is worth noting the key points to consider when entering a new market: (a) language requirements; (b) access (online and or physical) plus when and how to provide updates; (c) compatibility of technology including point of sale systems; (d) whether the current reporting system can function internationally; (e) whether the manual, standards, and or systems need adjustment for local requirements[8].

III. Deal Structure: Selecting the Best Expansion Model for the Target Market

In international franchising, the structuring of deals is a key factor that directly influences the level of control a franchisor maintains over its foreign operations, as well as the financial and operational risks it takes on. Franchisors looking to expand internationally must carefully evaluate the trade-offs between exerting control over their brand and operations and the financial investment required for such control. On the one hand, franchisors may choose to invest substantial resources to retain more direct oversight, which could involve maintaining a physical presence, employing local staff, and directly managing operations in the target market. On the other hand, if the franchisor is not prepared or able to make such an investment, it may delegate certain responsibilities to third parties in exchange for sharing some of the initial franchise fees and ongoing royalties. This delegation of authority, however, comes with its own set of challenges. Specifically, franchisors may face difficulties in selecting local franchisee operators, maintaining the quality of products, services, and overall brand standards, since the third-party designees are largely responsible for managing these aspects of the franchise operations.

In today's increasingly uncertain global environment, with fluctuating economic conditions, shifting geopolitical landscapes, and varying levels of regulatory oversight in different markets, these decisions have become more complicated. Political instability, changing trade policies, and economic recessions or growth spurts can alter market dynamics quickly, making it harder to predict the viability of certain markets or the success of specific deal structures. The unpredictability of the global economy and the geopolitical climate, such as the rise in

[8] https://franchising.eu/franchise-guide/27/international-franchising/

protectionist policies or new trade tariffs , can affect international expansion and the cost/benefit analysis and risks associated with each franchise expansion model. For instance, economic volatility in one country may prompt a franchisor to reconsider its level of investment, opting for a less resource-intensive model or even delaying expansion plans. Similarly, changes in the political landscape may force franchisors to reassess their strategy for managing international relationships, potentially moving away from more centralized control in favor of local partnerships that can navigate the local regulatory and economic challenges more effectively.

There is no one-size-fits-all approach to structuring international franchise deals, as each market has its own unique characteristics and each franchisor has its own set of priorities and resources. As a result, franchisors often utilize a mix of different development models to suit the diverse markets in which they are expanding. The decision on which structure to adopt is also driven by multiple factors, including the level of control the franchisor desires, the financial resources available for expansion, the nature of the target market, and the legal or regulatory environment. Moreover, the choice of model can have significant long-term implications for the brand's success in the foreign market, as it will shape how local relationships are formed, how brand standards are maintained, and how risks and rewards are shared between the franchisor and local partners. In this volatile climate, adaptability and flexibility are key for franchisors to safeguard their interests and ensure sustainable international growth.

The following section provides a detailed overview of the most common franchise structures used for international expansion, examining the benefits and risks of each model, the factors that influence their selection, and how they align with various expansion strategies. Specifically, we will be discussing: the single unit franchise model, the multi-unit franchise model, the area development model, the area representative model, the master franchise model and joint-venture models. By understanding these different deal structures, franchisors can make informed decisions that best suit their objectives in each international market, while also remaining agile in response to shifting global dynamics.

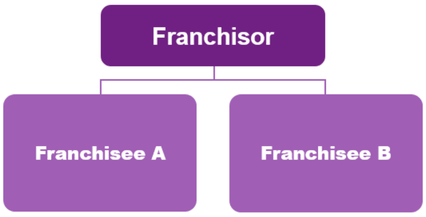
A. Single Unit Franchise Model

The single unit franchise model is one of the most straightforward and commonly used structures in domestic and often international franchising, particularly for markets with limited demand or where the franchisor prefers a slower, more focused investment or for markets where a broader expansion strategy may not yet be viable. Under this model, the franchisor enters into a direct franchise agreement with the franchisee, granting the franchisee the right to establish and operate a single franchise outlet in a specified location. The franchisor performs its obligations under the franchise agreement directly, including providing training, operational support, inspections, and system compliance. Accordingly, to execute this model effectively, the franchisor must either establish a local presence within the country or region of the unit franchise or assume the risks of attempting to manage the system remotely.[9]

From the franchisor's perspective, this model is attractive because it provides a low-risk entry point into a new international market, offering an opportunity to test markets as a precursor to

[9] Noah Leszcz, Kyle Lennox and Melissa Murray, "Basics Track: International Expansion" (Paper delivered at the International Franchise Association 56th Annual Legal Symposium, May 5-7, 2024) [unpublished] at 25.

a larger roll out (using the same or a different model), or it may also be used for other purposes, such as a temporary franchise pop-up to secure or maintain trademark registrations.[10] Additionally, in markets with smaller populations, niche customer bases, or geographic limitations, the single unit model offers a way to introduce the brand without overextending resources. In these cases, the franchisor may want to focus on building brand recognition in a single location before expanding further.

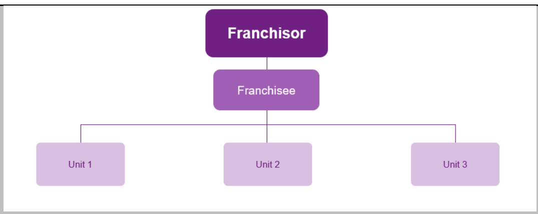


Single Unit Franchise	
Benefits	**Risks**
Lower Financial Risk: Franchisor's commitment is limited to a single or a few locations, minimizing initial investment and financial exposure.	**Slow Expansion:** Limits the speed of growth in the market, as units are developed one at a time.
Market Testing / Local Adaptation: Allows franchisors to "test" the market with minimal investment before committing to larger-scale expansion.	**Longer ROI:** Lower fees and longer financial return on investment compared to other international franchise models as rate of expansion is slower.
Local Adaptation: Provides an opportunity to adapt the product/service to local market preferences and understand cultural nuances.	**Supply Chain & Distribution Limitations:** It can be more challenging and more expensive to source and transport limited volumes of goods for only a few locations (unless goods can be sourced locally)
Increased Control: The franchisor maintains direct oversight of location(s), ensuring adherence to brand standards and operational guidelines.	**Higher Commitment:** Requires direct commitment of franchisor's resources, including regular supervision and support of franchisees.
Profitability: Franchisors don't need to share fees with other parties.	**Limited Market Penetration / Potential for Failure:** By only opening one or a limited number of locations, the franchisor may struggle to establish brand recognition or compete with local brands.
Easier Exit: Easier to terminate individual franchise agreements and exit the market if the expansion does not proceed as planned.	**Higher Legal and Financial Risk:** Increased exposure to legal and financial liability, including third party claims, due to direct nature of relationship.

[10] Gordon Drakes and Kate Williams, "International franchising : key structures for expansion" (19 September 2023), online: <https://www.fieldfisher.com/en/services/franchising/franchise-commercial-law-blog/international-franchising-expansion-key-structures>.

B. Multi-Unit Franchise Model

Under the multi-unit franchising model, a franchisor grants a single franchisee the right to open and operate multiple franchise units within a specific territory or region. This model is often structured to encourage the franchisee to develop several outlets over a set period of time, with performance targets and deadlines attached. For the franchisor, the multi-unit franchise model allows for faster market penetration, leveraging a single franchisee's investment and operational expertise to establish a stronger, more widespread brand presence. The provisions regarding each outlet operated by the franchisee (i.e., site selection, operation, franchise fee, royalties, termination, etc.) are negotiated into a single multi-unit franchise agreement and executed up front, instead of in separate unit franchise agreements for each location.[11] Therefore, while a multi-unit franchise model may demand more time and strategic negotiation initially, it can afford greater administrative efficiencies in the future by eliminating the execution of multiple, individual franchise agreements, and the corresponding disclosure obligations that would attach to same. As a result, multi-unit franchise agreements are often preferred over single unit grants and area development grants (discussed below), in jurisdictions with strict or onerous disclosure requirements.[12]



Multi-Unit Franchise

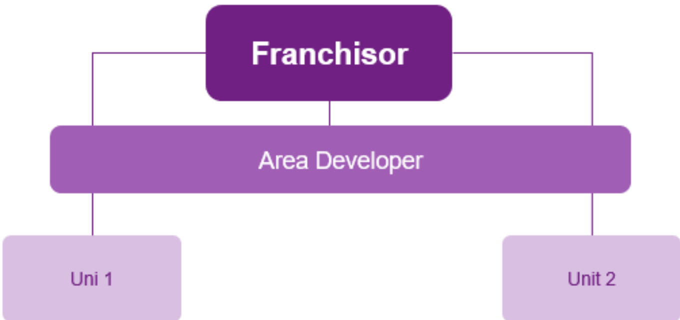
Benefits	Risks
Faster Expansion: Enables rapid market penetration by opening multiple units in a shorter period.	**Operational Complexity:** Managing multiple units under one franchisee can introduce operational challenges and require more oversight.
Economies of Scale: With multiple units under one franchisee, the franchisor can achieve cost efficiencies in supply chain, marketing, and operations.	**Risk of Overextension:** If the franchisee is unable to manage all units effectively, it could harm brand reputation and overall performance.
Increased Brand Visibility: Establishing several outlets quickly improves brand recognition and presence in the market.	**Quality Control Issues:** Ensuring that all units meet the franchisor's standards and maintain brand consistency may require greater effort and resources.
Reduced Franchisee Management: Fewer franchisees to manage, which allows the franchisor to focus on strategic support for a select group.	**Dependence on Franchisee Performance:** The success of multiple units depends on the performance of a single franchisee, increasing risk if they underperform.
Local Knowledge and Expertise: Multi-unit franchisees often bring valuable local market knowledge, helping to navigate cultural, legal, and economic complexities.	**Risk of Non-Performance:** If the franchisee fails to meet expansion targets or manage multiple locations effectively, it can delay further expansion plans or result in financial losses.

[11] Leszcz, *supra* note 9 at 21.
[12] *Ibid*.

C. Area Development Model

An area development agreement ("ADA") allows a franchisee to secure the rights to develop and operate a specified number of franchise units within a defined area over a certain period.[13] The developer may be granted exclusive, sole or non-exclusive rights with the territory and/or within certain channels.[14] An area development agreement can fall away after development schedule has been met, unless there are reasons for it to persist, such as ongoing obligations between the parties. Under an ADA, the developer may be assigned certain operational and management responsibilities in addition to development obligations, however, the developer or its affiliate(s) will still sign separate franchise agreements with the franchisor for each location developed pursuant to the ADA. The developer may be the franchisee itself or it will often incorporate separate affiliated entities to serve as the franchisee for each of the locations it is obligated to develop pursuant to its obligations under the ADA. Unlike the master franchise model (discussed below), the developer has no sub-franchise rights, and all locations must be developed by it directly or through an affiliate.

From a franchisor's perspective, this model provides a balanced approach to international expansion, offering the benefits of rapid growth without the need for direct investment or the complexities of managing a large number of individual franchisees. The area development agreement model is particularly well-suited for international markets where there is strong potential for growth, but where franchisors are looking for local expertise and a lower degree of direct involvement in day-to-day operations. It is also useful in markets where there is significant cultural, regulatory, or logistical complexity. For example, in large markets like China, India, or the Middle East, where there may be numerous regional variations and differing regulations, the area development agreement model allows the franchisor to delegate much of the site selection, development and day to day operational responsibilities to experienced local operators while still retaining direct contractual privity with the developer and each franchised location.



[13] Helen Fotinos et al, "Ask a Legal Expert: What's the difference between area development agreements and master franchise agreements? Which one is right for me?" (March 4, 2025), online: <https://cfa.ca/franchisecanada/area-development-vs-master-franchise-agreements/>.
[14] Drakes, *supra* note 10.

Area Development Agreements	
Benefits	**Risks**
Faster Market Penetration: Allows for rapid growth in a specific territory with multiple units developed by a single developer/franchisee.	**Developer's Resources & Experience:** Difficult to find developers with sufficient capital, resources and experience to directly develop a territory, and also operate the individual franchises. Franchisor may need more time and money to identify, vet and secure suitable, well -funded, experienced local partners.
Local Expertise: Developer's knowledge of local market conditions, culture, and regulations can improve the chances of successful market entry and ongoing operations.	**Dependence on Single Developer:** Reliance on a single developer for an entire country or region can compromise an entire market if developer fails to meet development obligations, encounters development, financial, legal or operational challenges, including potential litigation with the franchisor that could tie-up development for years.
Reduced (Post-Sale) Administrative Burden: Fewer independent franchisees to manage, with the developer responsible for overseeing the development and operation of multiple units, but see risks associated with same.	**Administratively Burdensome & Riskier:** The execution of separate agreements, with corresponding ancillary agreements and FDDs is more labour intensive, more costly and increases the risk of error/liability on disclosure.
More Control: Franchisor retains a high level of control over the brand and operations (if it elects to do so). Franchisor may delegate more operational responsibilities to developer if it wishes.	**Higher Resource & Time Commitment for Both Parties:** Requires more franchisor resources than MFA and ADA models, including training, regular monitoring and support by franchisor. Developer will also incur higher capital costs to develop and operate each unit.
Exclusive Territory – The developer may gain exclusive rights to a specific territory, which incentivizes them to invest in market development and protect the brand.	**Reputational Risk:** A poor performing developer/franchisee who fails to meet development goals, adhere to system standards, policies etc.. can damage the Franchisor's brand and reputation in the entire territory, potentially even beyond the territory.
Economies of Scale: Both franchisor and developer/franchisee benefit from efficiencies in supply chain, marketing, and operations due to multiple units in the same area.	**Higher Legal Exposure:** Franchisors still required to understand legal and regulatory requirements of applicable local laws and customs. Higher risk of exposure and liability to third-party claims due to the direct contractual relationship.

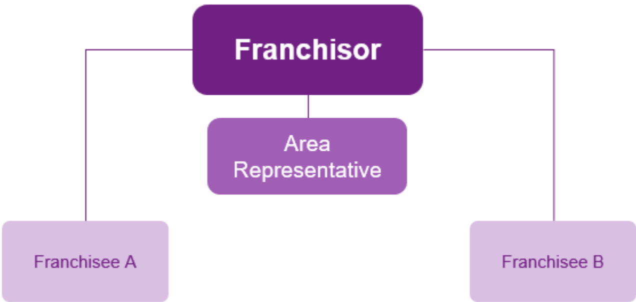
Regional Consistency: The franchisee is tasked with maintaining brand standards and operational consistency across multiple units in the same region.	
Higher Fees: Higher initial fee often paid to franchisor upon execution of ADA as a licensing fee for rights to the territory and an advanced franchise fee for units to be developed under ADA. Franchisor may also retain full amount of initial fees, royalties, ad fees etc. collected under unit agreements, unless otherwise agreed by the parties.	
Easier to Terminate: Easier to terminate than a master franchise relationship because there are no third party sub-franchisees. Franchisor may therefore terminate AD and selectively terminate a few or all franchised locations if it wishes to do so.	

D. Area Representative Model

An area representative agreement is a franchise model in which a franchisor appoints a representative (often referred to as an "area representative" or "development agent") to oversee the development and operations of multiple franchise units within a specific territory. The area representative acts as a "broker" of sorts and is responsible for recruiting, screening, training, and supporting individual franchisees within the defined region, and in many international arrangements, also assisting with the franchisor's post-sale duties, such as site selection, overseeing construction, providing training, and offering ongoing support and inspections.[15] In exchange, the area representative receives a portion of the initial franchise fees and, if they continue to provide ongoing services to franchisees post-sale, they may also receive a percentage of ongoing royalties paid by the franchisees to the franchisor within their territory.

The franchisor typically engages in two separate agreements: an area representative agreement with the area representative and either a unit franchise agreement or an area development agreement with the franchisee who intends to operate the franchised outlet(s).[16] Unlike the master franchise model, there is no direct contractual relationship between the area representative and the unit franchisees. This model is often used for international expansion, where franchisors may prefer to work with a local partner who has a deep understanding of the regional market. By using an area representative, franchisors can extend their brand presence without having to directly recruit franchisees, source locations and manage each franchisee themselves. This arrangement combines elements of both master franchising and area development, and offers a flexible solution for regions where direct franchisor involvement at all levels is impractical or cost-prohibitive, but allows the franchisor to retain direct contractual privity with the franchisee operator.

[15] Leszcz, *supra* note 9 at 25.
[16] *Ibid*.



Area Representative Agreements	
Benefits	**Risks**
Local Expertise: The area representative brings valuable knowledge of the local market, including premium sites, real estate relationships, local supplier relationships, consumer behavior, regulations, and cultural nuances. This local knowledge may also allow the franchisor to scale more rapidly in the territory.	**Dependence on Area Representative:** Poor performance or loss of area representative can seriously compromise expansion and/or damage operations in an entire market, resulting in franchisor having to suddenly replace area rep or assume responsibility for servicing franchisees in a territory without appropriate resources or local knowledge.
Retain Contractual Privity with Franchisee: Franchisor retains some control by entering into franchise agreement directly with franchisees.	**Less Profitable:** Franchisor makes less money because of ongoing fee sharing or commissions paid to area representative on initial franchise fees, royalties and/or additional fees payable to the franchisor under the unit franchise agreement. Further, depending on scope of responsibilities delegated to the area representative, the franchisor may still incur ongoing costs monitoring and supporting the area representative and/or the franchisees directly.
Resource & Cost Investment: Franchisors can expand into new territories with reduced financial and operational risk by delegating some of these responsibilities to the local area representative, however, note associated risks of doing some.	**Regulatory and Legal Risks:** The area representative must navigate local franchise laws and regulations, however, a franchisor may be held liable for the acts of its agents, thereby potentially exposing the franchisor to significant legal and financial liability, as well as reputational damage and the ability to operate in the region.

E. Master Franchise Model

A master franchise agreement ("MFA") is an agreement whereby the franchisor provides the master franchisee the exclusive or non-exclusive right to expand, establish and operate the franchise concept in an assigned territory.[17]The master franchisee is permitted to open and operate corporately owned sub-franchises through one or more of its affiliate(s) and/or to sub-franchise to authorized third parties within the territory, ultimately "stepping into" the shoes of the franchisor. The master franchisee will often (but not always) begin by developing one or more corporate franchises to serve as flagships to introduce the brand to the market and help it sell locations to prospective third party franchisees or to serve as a training facility, as needed. Pursuant to the terms of a typical master franchise agreement, the master franchisee will pay the franchisor an initial fee, called a master franchise fee, to acquire the rights to the territory. The MFA will include a defined development schedule requiring the master franchisee to open a specific number of locations in the territory within a specific timeline, failing which the disciplinary actions may be taken by the franchisor, including the termination of the MFA. The master franchisee will also share with the franchisor revenues and fees generated in the territory from all sub-franchises pursuant to a revenue sharing formula agreed to by the parties in the MFA.. The master franchisee will be responsible for collecting all such revenue in the first instance, including, but not limited to initial franchise fees and ongoing advertising and royalty payments from sub-franchisees in the territory and forwarding a set percentage of that revenue to the franchisor in accordance with the revenue sharing formula and process agreed to by the parties in the MFA.[18]

The key distinction in a master franchise agreement is that the franchisor has no direct contractual relationship with the sub-franchisees. Instead, the sub-franchisees enter into agreements directly with the master franchisee. While the franchisor may retain the right to approve or reject sub-franchisee candidates presented by the master franchisee (note, this may expose the franchisor to potential liability in certain jurisdictions), specify or approve the form of sub-franchise agreement to be used, and reserve the ability to enforce the master franchisee's obligations under the sub-franchise agreement if the master franchisee fails to do so, the franchisor essentially delegates all franchise activities in the assigned territory to the master franchisee. In this model, the master franchisee effectively assumes the role of the franchisor within the designated territory. Master franchise agreements can be effective in international expansion, particularly when the franchisor lacks the resources or is unwilling to invest heavily in supporting franchise operations abroad.

However, given the level of autonomy potentially afforded master franchisees under this model, international franchisors must be careful when selecting master franchisees, as the success of the expansion depends heavily on selecting the right partner – as the master franchisee's experience, resources and ability to manage the market effectively will dictate the success of the expansion. This is especially true in markets with complex or evolving regulatory environments, where the master franchisee must be capable of adapting the franchise model to comply with local laws and norms. Franchisors may also face challenges with intellectual property protection, local competition, or political instability in certain regions, all of which must be considered when structuring the agreement.

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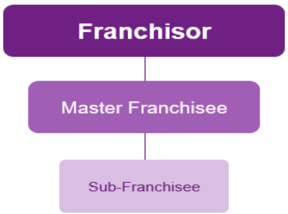
[17] Edward (Ned) Levitt and Richard Schuett, "Key Franchising Considerations: Overview (Canada)" (last modified 1 September 2024), online: <https://ca.practicallaw.thomsonreuters.com/w-034-8090>.

[18] Daniel F. So, *Canadian Franchise Law: A Practical Guide*, 2nd ed (Ontario: LexisNexis Canada, 2010) at Chapter 3 - III. Multiple Unit Franchising - B. Master Franchising.



Master Franchise Agreements	
Benefits	**Risks**
Reduced Financial and Operational Risk: The master franchisee bears much of the cost and operational responsibility for developing, expanding and operating the brand in their territory, which reduces the franchisor's direct capital investment, resources and financial exposure.	**Loss of Direct Control:** The franchisor has limited control over day-to-day operations within the master franchisee's territory, which can lead to inconsistencies in brand standards, operations, and customer experience.
High Upfront Fees and Ongoing Revenue: Franchisor can collect a high initial fee for the rights to a territory, and retains a steady stream of revenue throughout the relationship with low to no direct operational involvement required.	**Revenue Sharing:** money because splits fees/royalties and may have little visibility over sub franchisee payments made to master franchisee
Market Adaptation: The master franchisee is better equipped to adapt the brand to fit local needs, regulatory requirements, and consumer preferences, ensuring a smoother market entry.	**Potential Conflicts of Interest:** The master franchisee may prioritize their own financial interests over the franchisor's long-term brand goals, potentially leading to misalignment in strategic objectives or market development.
Operational Efficiency: The franchisor can focus on overarching strategic goals and brand management, while the master franchisee handles day-to-day operations and sub-franchisee relationships.	**Quality Control Issues:** Since the franchisor does not have direct relationships with sub-franchisees, enforcing consistent brand standards and operational procedures can be challenging, leading to potential quality issues.
Flexibility in Expansion: The master franchisee can adjust development schedules and market penetration based on local conditions, giving the franchisor flexibility in its expansion strategy.	**Cultural and Operational Disconnects:** Differences in business practices, operational expectations, or communication styles between the franchisor and master franchisee can lead to misunderstandings or inefficiencies.
Reduced Risk of Liability: The delegation of development and operational responsibility to master and the absence of any contractual privity with sub-franchisees (and other local suppliers/vendors), reduces liability and exposure to third-party claims.	**Challenging to Terminate:** Can be difficult to terminate the relationship if the master franchisee granted sub franchises in the territory because franchisor may suddenly be required to appoint a new master, directly manage sub franchisees in the territory without appropriate resources or local knowledge or terminate the sub franchise agreements and withdraw from the market.

F. Joint Venture Model

A joint venture ("JV") in franchising involves a partnership between a franchisor and a local entity, often in a foreign market, where both parties share control over the operation of the franchise business. In this model, the franchisor typically provides the brand, business model, and ongoing support, while the local partner contributes knowledge of the local market, access to local networks, and the resources necessary to navigate the complexities of operating in the region. The joint venture entity typically acts as the local franchisee, holding the rights to develop outlets within a specified territory.[19] This development can occur either directly through the joint venture itself or by granting sub-franchises to third-party sub-franchisees.[20] Typically, franchisors require the joint venture franchisee to sign a franchise agreement, through which the franchisor collects initial franchise fees and royalties. Alternatively, the franchisor may enter into a license agreement with the joint venture entity, granting them the right to use the intellectual property of the franchise system, such as trademarks, operational manuals, trade dress, recipes, equipment, etc., within the designated territory.[21] While franchisors may also invest capital in the joint venture, it is more common for them to rely on the local partner for the necessary funding. Regardless of the structure, the franchise or license arrangement with the joint venture entity will likely be considered a franchise (or master franchise) in countries with franchise regulations, triggering required disclosure obligations and other regulatory requirements, however, certain exemptions may exist, depending on the jurisdiction and applicable laws.[22]

In an international context, joint ventures are often used by franchisors who wish to expand into new markets but require a local partner's expertise to navigate local laws, regulations, consumer preferences, and business practices. Unlike other franchising models such as master franchising, where the franchisor delegates substantial control to a master franchisee, a joint venture involves shared responsibility and decision-making between the franchisor and the local partner.

Exiting a joint venture can be complex, so it's crucial to carefully draft the agreement to define each party's rights and obligations upon termination. The agreement should address how franchises operated under the JV will be handled, including ownership, ongoing operations, and any related fees or royalties. Clear provisions should also be made regarding intellectual property, brand rights, and any non-compete or non-solicitation clauses to prevent future disputes. A well-planned exit strategy ensures a smooth transition and minimizes legal or operational risks.

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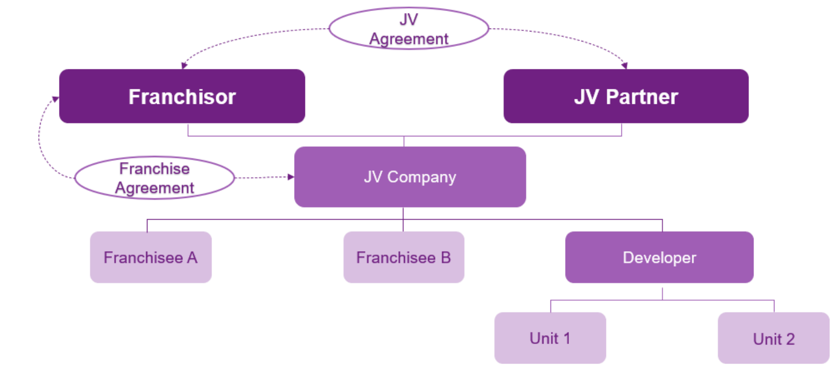
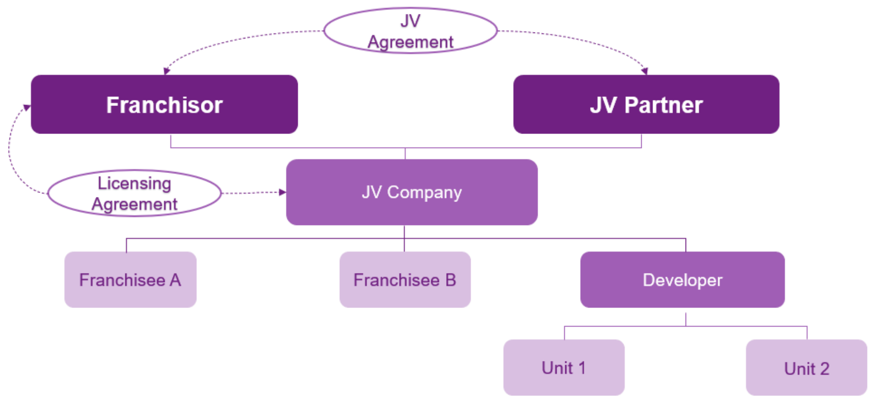
[19] Leszcz, *supra* note 9 at 27.
[20] *Ibid*.
[21] *Ibid*.
[22] *Ibid*.





Joint Ventures	
Benefits	**Risks**
Access to Established Networks and Resources: Partnering with a local entity allows the franchisor to benefit from the partner's market knowledge, established business networks, suppliers and resources, including insights into consumer behavior, local regulations, and cultural preferences, which can expedite franchise development and enhance the franchise's chances of success in a new market.	**Complex Legal and Regulatory Structure:** The JV structure and underlying agreements can raise complex legal and regulatory franchise disclosure, corporate law and tax issues, requiring strategic advice and more negotiation than other structures, which can result in higher legal costs (including retaining local counsel and accountants to advise on local corporate and tax issues)
Faster Market Entry: Partnering with a local company can speed up the entry process into new markets, especially in foreign countries, where regulatory approval, real estate acquisition, and staffing may be more challenging. The local partner can navigate these hurdles more efficiently.	**Complex Financial Arrangements:** JVs often involve intricate financial agreements, including cost allocations and profit-sharing structures, that can be difficult to manage and require continuous oversight. Additionally, if one partner is more financially or operationally invested than the other, it can lead to tensions and imbalances in decision-making, risk-sharing or liquidity pressures if a partner seeks to exit the relationship which can complicate the financial stability, operation and success of the JV.

Regulatory Compliance: In some markets, partnering with a local company may be required by law, ensuring that the franchisor meets all local legal and regulatory requirements for doing business.	**Management Conflicts**: Since a JV involves multiple parties, conflicts can arise over management decisions, operational control, and strategic direction. Differing business philosophies and objectives between partners may complicate and delay the decision-making process, lead to disputes affecting the operation of the business and hinder the flexibility and responsiveness of the franchise, particularly in fast-moving markets.
Local Financing & Capital Flexibility: The local partner may have access to financing options or incentives that may not be independently available to a foreign franchisor on its own or at all in some jurisdictions. Often the local partner will provide much of the necessary capital, allowing the franchisor to reduce their capital investment.	**Diluted Brand Control:** Franchisors may have less control over how their brand is represented and operated within a JV, especially if the local partner has more operational control. This can lead to inconsistencies in brand standards, which could harm the franchise's reputation.
Shared Financial Risk: Both parties in a JV share the financial risks and costs involved in expanding the franchise. This reduces the burden on each partner and allows for a larger capital base to support expansion.	**Risk of Shared Liability:** In a JV, both parties share liability for the venture’s actions. This can put both parties at risk if the business encounters financial or legal problems. One partner’s poor decisions or failure to meet obligations could impact the other partner's financial and legal standing. JVs also carry increased exposure to third-party claims and applicable laws of the territory, including corporate and tax laws.
Increased Resources and Expertise: Both the franchisor and local partner can pool their resources, financial capital, and expertise, which can improve overall operational efficiency and increase the likelihood of long-term success.	**Exit Strategy Challenges:** Ending or restructuring a JV can be legally and financially challenging, especially if disagreements arise between the partners and the agreement does not clearly outline exit strategies, buyout terms, or dispute resolution mechanisms. If the relationship between the partners sours, it may be hard to dissolve the JV without incurring significant costs or legal complications.
Risk Sharing: Financial and operational risks are shared between the franchisor and the local partner, reducing the franchisor’s exposure to market and investment risks (but see shared liability risks).	

IV. Franchisee Selection and Due Diligence

When selecting a local operator there are some key considerations to factor in. These include background checks, franchisee application forms, references, market visits, interviews, and discovery days.

A. Background Checks

When identifying local operators to partner with a franchisor will want to consider running background checks on those interested parties[23]. In conducting a background check on an interested party there are several considerations to take into account. The level of diligence required in conducting these checks will depend on the market in question. This means that costs may vary depending on the level of searches required. Markets where it is more difficult to conduct checks and searches will be countries that are not fully digitized, or which have less stringent regulations on record and bookkeeping.

Checks against local operator group[24] – key checks to run will include checks against financial history, criminal history and publicity of the local operator. This may not only involve checking official government and regulatory sources but also articles, newspapers and other commercial sources. Another key check will be against the ownership of the local operator. A franchisor will want to confirm who owns the local operator. If the owner of the local operator is a legal entity, then who owns that legal entity and so forth until the final owners are found. The full ownership structure of the local operator may lead to further information and a broadened search against the affiliate entities and or entities controlled by the ultimate beneficial owners. It is especially important that the local operator, none of its affiliated entities, and none of its affiliated persons or owners are sanctioned or otherwise prohibited persons. A good way to ensure proper due diligence here is to engage a background check company and align properly with it about the extent of the background checks required. If issues are uncovered these should be raised with the local operator to procure an explanation. In any case, as a sweeper provision, the local operator should fill out a schedule in the franchise agreement whereby its full business interests are disclosed (and warrant that this is true and accurate).

Local operator funding – a franchisor should also seek to understand how the local operator seeks to fund its investment into the franchised business. It is important to ensure that the local operator has the financial capability to run the franchised business, especially if they are obtaining any exclusivity in that local market because (a) it is brand damaging when a local operator fails and stores close; and (b) better alternative local operators may be locked out of the local market due to exclusivity provisions.

Permissions – a local law review should be run and should include information on any permissions required by the local operator. The local operator should be responsible for procuring any required permissions. These permissions can sometimes include, for example, permissions to operate a franchised business and or import relevant products.

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[23] Babette Märzheuser-Wood, 'Dentons Franchise Guide: Seven steps to a successful franchise business', p.17., (*Dentons*), <Dentons - Dentons Franchise Advisory>, (accessed 22 April 2025).
[24] James Walker CFE, How to spot the ideal international franchisee https://www.franchise.org/2016/06/how-to-spot-the-ideal-international-franchisee/

B. Application Form

When receiving submissions of interest from local operators a franchisor can opt to have candidates fill in application forms. When receiving application forms there are some important points to bear in mind. These application forms should be suitable for the market in question and should contain disclaimers concerning any information the local operator will receive. The application forms should also obtain approval from the candidates for the franchisor to perform background checks on them. In this regard there should also be an assessment of local data protection laws.

It will be important to control the sources that the applications are coming from. The franchisor will not want to be inundated with applications from unviable candidates.

C. References (credit checks and references from existing franchisors)

References - Often local operator groups will already be / or have been franchisees for other brands. It can be a valuable insight for the franchisor to ask the local operator to provide references from those other pre-existing franchisors[25] that the local operator is engaged with / was engaged with in order to ascertain an understanding of the local operator's level of competence and quality standards, as well as whether they pay their fees on time. This can also involve checking whether they have had regulatory issues (such as food safety concerns). If the local operator group is active in other markets the franchisor can also check how they are performing in those markets.

Credit Check – it is important to ensure the local operator, and the local operator group is credit worthy and provides evidence of this.

For the above references and checks the legal team of the franchisor (or the franchisor's legal counsel) should be involved. The development team of the franchisor may miss key details which arise from the findings which need to be properly vetted and or further questioned.

D. Market visit

If the local operator is already running other businesses (franchised and owned) the franchisor can visit those businesses in the local market in order assess first-hand the standards with which those businesses are being run.[26][27]

E. Interview Process

Another key part of franchisee selection is the interview process. The interview process serves a broad array of different functions to support the franchisor in vetting the local operator. The franchisor should formulate standard written responses to certain questions and consider

[25] Babette Märzheuser-Wood, 'Franchise due diligence and preparation, when to enter a new market', (*Dentons*, September 13 2023), <Dentons - Franchise due diligence and preparation, when to enter a new market>, (accessed on 22 April 2025)
[26] https://franchising.eu/franchise-guide/27/international-franchising/
[27] Walker ibid 22

putting together a report after each interview. The questions in the interview should be about getting to the core of what the franchisor is trying to understand about the local operator.[28]

A crucial point to bear in mind is that the franchisor's team that are set to interview the local operators should be carefully trained in what information they can disclose during such an interview. This training can be critical when the franchisor team are responding to questions from the local operator around financials including targets and projected market performance. If misleading financial information is given (even inadvertently) to a party that goes on to become a franchisee this could become a serious problem in the event that a dispute arises.

F. Discovery Day

In addition to the interview process, if the franchisor is seriously considering a local operator, then the franchisor would be well advised to conduct a discovery day for the local operator to see and experience the franchise business model. Such a discovery day should have a clear agenda, with "dos and don'ts". The discovery day should aim to give the local operator an authentic view of the franchise business. This serves as a two-way street. It helps the local operator learn about the business, and in return helps the franchisor learn more about the local operator.

On a case-by-case basis it may be good to allow some flexibility into the discovery day process in order to get to know the team of the local operator on a more informal level. A personable relationship with the team of the local operator can be valuable in creating a good working relationship going forward. It can also help build an understanding between the parties as to what is expected.

On both a formal and informal level a discovery day should aim to establish (a) whether the franchisor and local operator have aligned interests and goals; (b) how the local operator sees the investment (is it a passive investment for them or will they be active in building the brand in the market); (c) whether the local operator is questioning and challenging too many points of the franchised business model – i.e. whether they may be better off running their own business where they have control over the brand (in this case it is important to make sure they are not simply trying to acquire information on how the franchisor's franchise business functions); (d) the level of knowledge of the local operator concerning the business model and whether they are suited to operating the franchise business in the local market.

V. Key Terms

Once you have selected your local franchisee and have determined the structure that you wish to use, the next task is reaching agreement on the contract. Before diving into the specific contractual terms – many of which are quite similar to the terms negotiated domestically – a note on the influence of culture in contract negotiations is warranted. In general, the process of negotiating an international franchise arrangement is not wholly dissimilar from the process in the United States. The franchisor and potential franchisee may meet in person, in a video conference call, or over the phone to discuss a framework, and, after a series of follow up interactions, marked up documents, and visits, the deal is reached.

[28] Joyce Mazero and Michael Seid, Finding the Right Overseas Franchisee to Take your Business Abroad; https://www.franchising.com/articles/finding_the_right_overseas_franchisee_to_take_your_brand_abroad.html

For international deals, particularly in emerging markets, it is important to be sensitive to local expectations regarding the negotiation process. Many cultures will try to negotiate many of your standard provisions, and will favour face-to-face negotiations rather than discussions over phone, video conferences, or email. Expectations for communication and negotiation style also vary widely from territory to territory. A good local counsel or business advisor will be able to guide you concerning the local protocol to help ensure your negotiations are smooth and successful. Moreover, franchisors who can effectively communicate how and why the key provisions of their standard franchise agreement serve the purpose of protecting their brand will greatly improve their chances of bridging the cultural gaps that inevitably will arise in a cross-border negotiation. And, of course, the domestic laws of the target country affecting the formation, interpretation and enforceability of contracts in general must be considered by the franchisor when negotiating the deal.

What follows is a brief introduction of the key business issues to be negotiated in your international deal.

A. Territory and Exclusivity

When expanding a brand into international markets, it may seem tempting to grant an entire country to one franchisee in an effort to establish a presence in that country and catering to the interested prospective franchisee. However, granting a smaller area and/or with less exclusivity may be more beneficial to the franchise system in the long run. Depending on your long-term outlook and plan for market development, you will need to determine the size of the market to be granted to your franchisee. Franchisors should have general familiarity with the cultural differences, language differences, and demographic changes within the geographic regions in which they are expanding, and local embassies, local counsel, and individual franchisee prospects can all provide key information in this regard. Franchisees will likely negotiate for exclusivity throughout the country, as having the entire countries would give them the security of operating free from competition and entire country. They may also argue that supply chain issues arise when additional groups are allowed to develop, own, or operate in the same market, and the surest way to mitigate these is to have a single franchisee in the country. Additionally, they will likely make the point that a single franchisee in the country streamlines your administration and support as you will have a single contact in the market to manage long term.

While these are all valid points, a franchisor is typically well-advised to refrain from granting at the outset rights (exclusive, limited exclusive or otherwise) in and to an entire country, especially for larger countries. This is especially true in major markets such as China and India. Except in the case of a well-established franchisee with a wealth of successful experience in your industry and in the country, most local franchisees will find the learning curve steeper than expected and the path to profit materially longer than they anticipate. Along the way they may seek to slow down on development or, worse, cease to develop altogether while they reset their efforts at refining the business model. While franchisors should be sympathetic and supportive of the experience of franchisees who are taking all the right actions to break into the market, franchisors should not have to suffer the lost opportunity cost incurred by stalled development or false starts. Just as a sound investor may diversify its investment portfolio, a smart franchisor should consider structuring a deal that allows for additional franchisees to participate in expanding the brand in the market. Instead of an all-at-once approach, a staggered grant of pieces of the territory – whether key cities or key trade areas within a city, for example – contingent upon the local franchisee's meeting key milestones may give the franchisee a meaningful carrot to work towards and at the same time prevent jeopardizing development and operation in an entire country. Such an approach may also help to focus the franchisee on successfully building out the country step by step instead of a scattershot approach. As noted above under our discussion of fees, any grant of exclusivity or limited exclusivity should be reciprocated by a payment of an appropriate fee. If a franchisee will be assigned a territory that spans multiple territories, regions, languages, or countries, you should be assured that they have the experience and connections required to be successful in each area.

Most franchisors also are well-advised to consider potential alternative distribution models in the local market and whether they wish to reserve such rights to themselves separately and distinct from the contemplated franchisee relationship. Such rights, which can vary from internet sales to the operation of stores in non-traditional locations (such as airports, hospitals, military bases, and college campuses) or channel sales (e.g., supermarket and big box retail channels in the case of restaurant brand products) should be clearly reserved to the franchisor in the franchise agreement.

B. Reservation of Rights

In franchising, a common practice is for the franchisor to reserve certain rights, even when granting exclusive territories to franchisees. This means that while a franchisee may have the exclusive right to operate within a specific area, the franchisor can still retain the right to sell through other channels like the internet or through other franchise units, even within that territory. A franchisor may reserve, on its behalf and on the behalf of its affiliates, the right to:

1. Advertise and promote the brand within and outside of the franchisee's territory;

2. Operate, and license others to operate, locations at any location outside the franchisee's territory, including at locations that are adjacent to the franchisee's territory despite the proximity of such locations to the franchisee's territory or the site of the franchised business or their actual or threatened impact on sales at on the franchised business;

3. Offer and sell, and authorize others to offer and sell, approved collateral products and services, including those offered and sold at the franchised business under the franchisor's trademarks or other marks at or from any location or through any channel of distribution (e.g. grocery stores, catalogs, the Internet, other retail or restaurant locations and other food service facilities such as kiosks, concessions, food trucks, or multi-brand facilities);

4. Establish and operate, and license others to establish and operate, any business, other than the franchised business, under the franchisor's trademarks or under other marks, whether or not located within the franchisee's territory and despite the proximity of such businesses to the franchisee's territory or the site of the franchised business or their actual or threatened impact on sales at the franchised business;

5. Establish and operate, and license others to establish and operate, any other businesses that franchisor or its affiliates may operate or license as a result of any acquisition, consolidation or merger, whether or not located within the franchisee's territory and despite the proximity of such restaurants to the franchisee's territory or the site of the franchised business or their actual or threatened impact on sales at the

franchised business, whether or not such other restaurants or businesses operate under the franchisor's or under other marks; and

6. Establish and operate, and license others to operate, locations in non-traditional sites, which typically include airports and other transportation facilities, universities, military bases, reservations, office buildings, hospitals, hotels, stadiums, train stations, ferry/cruise line terminals, exhibition centers, sports stadia/centers, and other mass gathering locations or events.

Reserving rights is an effective way for the franchisor to maintain a footprint in or near the existing franchisees without stepping on any toes.

C. Duration and Renewal

In general, it is common to have an initial term and then one or more renewal terms of the franchise agreement. The start date of the term can be either (a) the date that the franchise agreement is fully executed or (b) some other date, such as the date the franchisee enters into a lease or opens for business. Typically, initial terms of franchise agreements are five, ten or twenty years.

For the renewal term, typically franchise agreements provide a franchisee with the right to continue operating the franchised business for one, two or three renewal periods. In order to qualify for a renewal term, a franchisee generally has to meet certain conditions, such as providing notice, payment of a renewal fee (which is generally less than the initial franchise fee), being in compliance with the terms of the franchise agreement and franchisor's standards, executing a general release in franchisor's favor, remodeling or refurbishing of the franchised business, having the right to occupy the same real estate, and entering into the then-current franchise agreement, among others. Shorter terms allow franchisors to revise the obligations and requirements of the franchise agreement on a more frequent basis, require franchisees to meet certain conditions to continue operating on a more frequent basis (e.g., modernization and upgrading the franchised business), and prevent legacy franchisees from operating under an outdated franchise agreement. Longer terms allow franchisees to have more time to recoup their investment before renewing (and paying a renewal fee) and get the benefit of the value of the franchise fees that they have paid.

D. Non-Competition Covenants

In your partner selection process, you no doubt will have sought out partners with the level of resources and business acumen that suggests they will be successful in the enterprise. The good news is, if you are targeting emerging markets, you are more likely to find a partner with the financial resources necessary to handle a franchise. Your potential partners may also be more enthusiastic, energetic, creative and have a longer-term view of the business, given the youthful demographic of the emerging market partner pool. Still, and particularly in emerging markets, you may find it more difficult to find a partner that has the type of experience that you may typically require of a domestic partner. The obvious concern any franchisor will have in a situation like this is how to prevent your franchisee from taking all the skills and know-how you've shared with them over the course of the relationship and applying it to support or grow a rival brand. For this reason, a franchisor should include strict non-competition language in their agreement. The enforceability of noncompetition covenants varies by jurisdiction, and franchisors should consult with local counsel to ensure any such covenants would be enforceable in the event they are brought before a court. Noncompetition covenants should be reasonable both as between the parties and in reference to the public interest. When considering reasonableness, a non-competition covenant must protect a proprietary interest of the franchisor, such as the goodwill of the business, and must not be broader in geographical area, time period or scope of the activities covered than is necessary to protect such interests effectively and should be clear in their scope and duration. Generally, there are five key points to think about in the drafting of noncompetition covenants: (a) the definition of competing business, (b) the scope of the limitation during the term of the agreement, (c) the scope of the limitation after the term of the agreement, (d) the duration of the limitation, and (e) the consequences for breach.

1. Defining "Competing Business"

The definition of "Competing Business" goes toward the proprietary interests the franchisor is seeking to protect. In a truly emerging market with minimal competing businesses, you have the luxury of drafting this language more broadly as your franchise partner will not likely have available a host of other businesses in which to engage. Further, the franchisor may have a broader proprietary interest, given the lack of similar businesses. By contrast, in more saturated markets where competition is tight, you will likely face resistance from franchisees who have interests in other businesses and seek to narrowly define what constitutes competition for your brand, and the truly proprietary aspects of your business may be more limited. In either event, it is important for you to be well educated about the market before you propose your definition. Understanding the competitive landscape – the number and reach of your competitors as well as the products or services they offer – will help you determine the types of businesses that pose a threat, may become a threat as your brand takes shape in the market, or pose a minimal threat to your business.

2. Scope of Noncompetition during the Agreement

Once you have defined what constitutes a competing business, you will need to determine the scope of the noncompetition covenant. Do you want to limit the restrictions to the individual/entity that is your franchisee? Perhaps you want to include all owners and operators of the business? A wider net would include key employees of the business. In addition to the group to which the noncompetition agreement applies, what sorts of activities will trigger your noncompetition restrictions?

The obvious answer is that the partner should be prohibited from developing or operating a competing business. But the definitions and limitations get hazy when you consider the myriad ways in which an individual or entity could potentially contribute to a business. For example, would your partner offering guidance to a friend who is starting a competing business constitute a breach of the noncompetition covenant? Or again, if the partner has an interest in a bank and that bank issues a loan to a competing brand, would you consider that a threat to your business? Ultimately, therefore, the scope of your noncompetition agreement will be heavily dependent on the nature of your business and the partner, as well as your views on where the line should be drawn between permissible and prohibited activities. You may find that these questions are more complicated in the international context, given the likelihood that your partner is an individual or entity with a wide variety of business experiences, past and continuing, and a network of connected friends and family that may be in direct competition with your brand.

3. Scope of Post-Term Noncompetition Covenant

You will likely want a noncompetition provision that covers activities of the franchisee after the agreement is terminated. In general, as with domestic noncompetition agreements, limitations must be narrowly drafted to avoid being overly restrictive. You may find a noncompetition agreement that applies to the entire territory, depending on your definition of competing business and the individuals to which it applies, is unenforceable under local law. In that event, depending on the jurisdiction, you may risk having the entire provision invalidated by a court. In businesses that are heavily dependent on real estate and located in jurisdictions where real estate opportunities are tight, a broad noncompetition provision can prevent your former partner from flipping your locations into the hands of competitors, which itself could do damage to your brand image and make growing your brand a challenge.

4. Duration of Post-Term Noncompetition Covenant

Some jurisdictions will require a noncompetition covenant to clearly set forth a reasonable timeframe during which the restrictions apply to be enforceable. Restrictive covenants should be conservatively drafted, and a perpetual noncompetitive covenant is not likely to be enforceable. What is considered reasonable will depend on many of the considerations set forth above

E. Purchase Ties and Approved Suppliers

Franchisors generally have strict standards when it comes to purchasing products or services to be used in connection with the franchised business. Without strict standards, it would be more difficult for the franchisor to control the quality of the franchisee's operations. The goal for the franchisor is to control the uniformity and quality of goods and services used, sold or distributed in connection with the development and ongoing operation of the franchise business, maintain the confidentiality of franchisor's confidential information (e.g. recipes for secret sauce), and protect the reputation and goodwill associated with the franchise system and franchisor's trademarks.

For these reasons, franchise agreements tend to have strict provisions related to approved suppliers, such as requiring the franchisee to purchase or lease all products and services from designated or approved suppliers. Franchisors may also limit the number of approved suppliers and designate itself or any of its affiliates as an approved supplier, including as a sole supplier.

Purchase ties in franchising refer to contractual obligations that require franchisees to buy certain products, services, or supplies exclusively from the franchisor or from approved suppliers. These ties help ensure consistency in product quality, brand standards, and customer experience across all franchise locations. For example, a fast-food franchise might require all franchisees to purchase ingredients, packaging, or uniforms only from designated sources. While purchase ties can support brand integrity and simplify supply chain management, they can also be a point of contention if franchisees feel they are being charged more than market rates or denied the opportunity to source more competitively. In some jurisdictions, these arrangements are regulated to prevent anti-competitive practices.

Practically speaking, it may be difficult to enforce the standards related to purchasing if the designated or approved suppliers are less available in the designated country. See Section II.E of this paper for a more detailed discuss of supply chain issues.

F. Targets and Minimum Quotas

In the franchising context, franchisor may impose minimum targets or quotas on the franchisee, commonly related to development quotas and minimum royalties. These types of requirements can help franchisors ensure compliance with brand standards and consistent performance across the franchise system.

A franchise development schedule is a timeline outlined in the franchise agreement that sets specific milestones for the franchisee to meet in terms of opening new locations or expanding operations within a defined territory. It ensures that the franchisee actively develops the market and does not sit on exclusive rights without progressing. The schedule typically includes deadlines for securing sites, completing build-outs, and launching each unit, along with consequences for failing to meet those deadlines, such as loss of territorial exclusivity or termination of development rights. For the franchisor, this schedule helps drive brand growth and market presence, while for the franchisee, it provides a clear roadmap for expansion and investment planning. Deciding how many locations to open should be an open discussion between the franchisor and franchisee to make sure that both sides understand the expectations and goals of the other. An aggressive schedule may seem like a great idea at the start, but it can quickly crush a struggling franchisee if they are failing to meet the schedule early on. But, a schedule that is too long between openings can leave the territory underdeveloped for a time that is not ideal for the franchisor's expansion plans.

Another way for a franchisor to set concrete goals is with a minimum royalty. Minimum royalties in a franchise agreement refer to a minimum amount that a franchisee is required to pay the franchisor, regardless of the franchise's actual performance or revenue. These payments ensure that the franchisor receives a guaranteed income to support ongoing services such as brand development, training, operational support, and marketing efforts. Minimum royalties are typically set as a fixed amount or a minimum percentage of projected sales and are often paid on a regular basis—monthly or quarterly.

Equally as important as setting these goals is to address the consequences of your franchisee's failure to meet the development schedule or minimum royalty. Typically, a failure to timely meet the either obligation is a default of the franchise agreement, requiring cure within a fixed period of time (typically 30 days). In some systems, the consequence for failing to cure the default is (a) loss of whatever exclusivity in the market was provided, (b) loss of development rights, (c) requirement of additional training, or (d) termination of the franchise agreement and all units developed pursuant to the franchise agreement. Other franchisors may use non-compliance with the to raise royalty rates for the period of default, or the right to immediate repayment of any financial obligations owed by the franchisee to the franchisor. There is no one formula or method to developing a development schedule or setting a minimum royalty, but a market analysis and an understanding of the commercial realities of the local market and the pull demand of the franchisor's business are two key factors.

G. Global Marketing

Marketing funds are generally used to pay for expenses related to the marketing and advertising of a franchise network. As with domestic franchise systems, it is possible for a franchisor to set up a global marketing fund to promote and advertise the franchise system and brand on either a country-by-country basis or a worldwide basis. Franchisors may impose the obligation on a franchisee to contribute a certain percentage of the franchised business's gross sales into the marketing fund on a weekly, monthly or annual basis.

Typically, franchisors use marketing fund fees to pay for the costs of research, creation and production of video, audio, electronic, and written advertising and marketing programs; administration of regional, multiregional, and national advertising and marketing programs, product and customer research and surveys, and testing and related development activities; promotional events; purchasing, participating in, developing, maintaining, and updating online, social media, radio, television, and billboard advertising and programming; employing marketing, social media, advertising and promotional agencies to assist therewith; conducting community relations activities; supporting public relations, creation and maintenance of the System websites, and online presence; and such other advertising, marketing. Importantly, franchisors generally maintain significant control over the collection of and spending of marketing funds.

When entering a new country, a franchisor may wish to collaborate with its local franchisees to get a better understanding of what consumers in the particular country would resonate with the most. Cultural, religious and general consumer preferences may require a change in the way that a franchisor may wish to expend the fund fees.

Obviously, a franchisor may use a global marketing fund to coordinate and finance larger scale advertising and promotional efforts. By pooling resources across borders and therefore collecting from an increased pool of franchisees, franchisor can invest in higher cost, but higher impact, marketing and advertising campaigns such as national (in multiple countries) television programming, digital strategies, social media promotions or brand partnerships that it might not otherwise been able to afford without the benefit of the additional funds from additional franchisees.

With international expansion, it is important to decide whether each country will have its own separate marketing fund or if the franchisor will combine the funds into one global fund. When deciding, franchisors should consider whether any country's law regulates the collection of marketing funds. For example, in Australia, in addition to the common disclosure requirements, franchisors are required to keep marketing fund contributions (as they are considered payments into a "specified purpose fund") in a separate bank account from the rest of franchisor's funds.[29]

H. Quality Control and Step-in

Maintaining the quality of the brand is always of utmost importance to the franchisor. This issue is even more critical during international expansion as the brand may not yet have the goodwill in the new country that it has in the home country. In an effort to protect the brand,

[29] Competition and Consumer (Industry Codes-Franchising) Regulations 2024 – Part 7, Section 61. *Note that compliance is currently delayed until November 1, 2025.*

the franchisor has to have very strict quality control procedures and provisions in its franchise agreement.

First, with respect to procedures, the franchisor should be prepared to spend time, effort and money traveling to and inspecting the franchised businesses regardless of geographic location. These obligations may require the franchisor to hire additional personnel that are able to travel to the additional franchised businesses across borders or overseas.

Second, when drafting the franchise agreement, it is important that the franchisor has the right to not only inspect the franchisee and franchised business, but also the ability to hire mystery shoppers, review the day-to-day operations, review franchisee's books and records, sampling and testing products, examining retail items, contacting franchisee's landlord, customers and/or employees, accessing the point of sale system and/or computer system. Further, the franchise agreement should have mechanisms for correcting violations and terminating for failing to meet quality standards.

In extreme cases, the franchisor may want the ability to step in and manage the franchised business on behalf of the franchisee. "Step-in rights" in a franchise agreement allow a franchisor to take over the operation of a franchisee's business under specific circumstances, often when a franchisee defaults or violates the agreement. These rights are a mechanism to protect the franchisor's brand, reputation, and investment. Step-in rights are usually triggered by events like the franchisee's default on payments, a breach of contract, or failure to meet operational standards. Once triggered, the franchisor can assume management of the business, ensuring it continues to operate according to the franchise system's standards. In the U.S., there are concerns that, under the current legal framework, a franchisor having step-in rights may contribute to creating a joint employer relationship between the franchisor and franchisee, so these types of provisions have fallen out of favour in recent years. However, in other countries, this issue may not impact the relationship in the same way.

I. Buy Out Options

Franchise agreements in the United States often include a provision allowing the franchisor to purchase the assets associated with the franchised business and/or otherwise take over a franchised location. Often this provision applies upon termination or expiration of the franchise agreement, though some franchise agreements are drafted to grant the franchisor an in-term purchase option. Domestically, the ability to purchase and takeover a franchised location may be administratively and practically easy. But, when a franchisee is half-way across the world, the option to take over may be less feasible.

There are, however, several options that a franchisor may consider including in its franchise agreements in an effort to maintain the location of the foreign franchised business. First, where a franchisee seeks to sell the assets of the franchised business and/or its rights under the franchise agreement to a third party, franchisors often have the ability to purchase such assets upon the same terms offered to the third party and therefore prevent the franchisee from proceeding with its transfer.

Second, franchisors often also have a right of first refusal ("ROFR"), under which the franchisor can buy the assets of the franchised business on the terms offered to the franchisee by a third-party upon certain triggering events, such as a proposed transfer. ROFRs usually work as follows: (a) the ROFR is triggered by a bona fide offer from a third-party to buy the business; (b) the franchisee must provide the franchisor with notice of the bona fide offer; and (c) the franchisor will have period of time to evaluate the terms of the offer and determine whether or not to exercise the ROFR.

Although less common, some franchisors also have the right to purchase the assets of the franchised business without a triggering event (i.e., not only at the time a franchisee wishes to sell, or upon termination or expiration of the franchise agreement).

J. Personal Guaranties and Letters of Credit

It is common for franchisors to require a personal guaranty from the individual owners of a franchisee entity (and sometimes from their spouses) so that the individual owners remain personally liable for the franchisee's obligations under the franchise agreement. While a personal guaranty is generally acceptable in foreign jurisdictions, there are some exceptions of which franchisors should be aware, such as in the Canadian province of Alberta. Under Alberta's Guarantees Acknowledgment Act[30] ("GAA"), a personal guaranty does not have effect unless the guarantor appears before a lawyer and both the guarantor and the lawyer acknowledge in a signed certificate (in the required form) that they understand the contents of the guaranty. While Alberta's GAA is not the norm, if a franchisor is concerned about the overall financial viability of the local franchisee, it should seek guidance from local counsel regarding the enforceability of a personal guaranty in the territory, as well as any formalities that must be followed.

In addition, franchisors often find that mature international franchisee conglomerates are unwilling to provide personal guaranties from its owners or even a corporate guaranty. In such instances, franchisors often rely on a letter of credit in lieu of a personal guaranty. Where a franchisor is concerned that it may face challenges enforcing the terms of the franchise agreement in certain jurisdictions, it may be prudent to obtain a letter of credit in every instance as the letter of credit can later be used as leverage to encourage the franchisee to comply with the agreements and, ultimately, to participate in arbitration if the parties are unable to resolve the dispute. It is recommended that the letter of credit be issued from an international financial institution with a presence in the U.S., and a draft of the proposed letter of credit should be reviewed by experienced counsel to confirm that it was issued correctly so that no further action will be required if the franchisor wishes to draw upon it.

VI. Local Franchise Laws

When determining whether to expand internationally, franchisors must consider the possibility of different franchise disclosure and/or registration requirements in each particular country. Even if the franchisor's home country has a disclosure or registration law, it may have vastly different requirements than in the expansion target country. For example, there are more than thirty countries that have franchise disclosure requirements and, although there may be some similarities in what is required to be disclosed, many of the requirements vary from country to country.

A franchisor and its counsel should be aware of any franchise disclosure and/or registration requirements in the country(ies) relevant to the potential deal. Additionally, they should be aware of any franchise relationship laws that may affect the franchisor's rights on an ongoing basis, such as laws that restrict when a franchisor may terminate a franchise agreement or laws

[30] Guarantees Acknowledgment Act, RSA 2000, c G-11, <https://canlii.ca/t/56fck> retrieved on 2025-04-21.

that require certain terms in a franchise agreement. At a minimum, being aware of these laws gives the franchisor the opportunity to account for the increased costs of having to comply with local franchise disclosure and/or registration requirements when determining the initial franchise fee it wishes to charge for the rights to the territory, as well as the increased time that compliance with local franchise disclosure and/or registration requirements adds to the deal timeline. Franchise laws vary widely around the world, and countries continuously institute new laws or amendments to existing laws.

In Japan, the list of franchise disclosure requirements is relatively short compared to the disclosure requirements in the United States.[31] Also, in Japan and unlike in the United States, the franchise disclosure laws do not require the disclosures to be in any particular order or with any particular headings.[32] On the other hand, in the United States, the FTC Franchise Rule requires the franchise disclosure document to include very specific information in a particular order and format (e.g. the estimate initial investment disclosures must be included in the franchise disclosure document in a chart with four particular columns).[33] And, in Indonesia, the franchise disclosure document must include not only current information about the franchisor and franchise system, but also a projection of financial earnings for the next five years of a franchisee.[34]

Below is a chart that captures franchise disclosure and relationship laws (excluding civil code requirements) around the world as of the publication of this paper:

Country	Disclosure Laws	Relationship Laws
Albania	✓	✓
Angola		✓
Argentina	✓	✓
Australia	✓	✓
Azerbaijan	✓	✓
Belarus		✓
Belgium	✓	
Brazil	✓	
Canada (only the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Ontario, Prince Edward Island)	✓	✓
China	✓	✓
Ecuador		✓
Estonia		✓
France	✓	
Georgia	✓	✓
Indonesia	✓	✓
Italy	✓	✓
Japan	✓	✓

31 Medium and Small Retail Commerce Promotion Act and JFTC Franchising Guidelines.
32 Id.
33 16 CFR Part 436.5(g).
34 Government Regulation No. 35 of 2024 on Franchising (Indonesia).

Country	Disclosure Laws	Relationship Laws
Kazakhstan		✓
Kingdom of Saudi Arabia	✓	✓
Kyrgyzstan		✓
Latvia	✓	✓
Lithuania		✓
Macau	✓	✓
Malaysia	✓	✓
Mexico	✓	✓
Moldova	✓	✓
Mongolia	✓	✓
Netherlands	✓	✓
Romania	✓	✓
Russia		✓
South Africa	✓	✓
South Korea	✓	✓
Spain	✓	
Sweden	✓	
Taiwan	✓	
Thailand	✓	✓
Tunisia	✓	✓
Turkmenistan	✓	✓
Ukraine		✓
Vietnam	✓	✓

In addition to the countries with franchise disclosure laws set forth in the chart above, certain countries have civil codes which effectively impose a disclosure requirement. For example, Austria, Germany and the Canadian province of Quebec all impose a duty of good faith on parties to an agreement to disclose provisions that may impose significant obligations.

When investigating foreign laws and regulations, franchisors should consider how these legal frameworks impact their expansion plans, including:

1. timing of expansion (e.g., by requiring the franchisor to obtain licenses, permits and other such authorizations);
2. costs of expansion, particularly in countries that require the development and operation of a specified number of corporate stores before franchising is permitted; and
3. trends in courts that would favour domestic franchisees over foreign franchisors.

Although this paper cannot detail the disclosure and registration laws of every country, the sections below give an overview of what a franchisor may be expected to disclose.

A. Disclosure Laws and the Typical Contents of a Disclosure Document

As expected, franchise disclosure documents almost always include information about the franchisor, its business model, the franchise system, the intellectual property of the franchisor and certain key rights and obligations between the parties. The degree of specificity or further detail varies by country. Also, in some countries, information about the industry of the franchise system is a requirement, as in Vietnam.[35] Often, a franchisor is required to disclose the number of existing company-owned and franchised locations in the franchise disclosure document. In Ontario, Canada, a franchisor is required to disclose only those locations in operating in Canada, unless there are less than 20 franchises in Canada, in which case the list must include those franchises which are geographically closest to each of the six regulated provinces with franchise disclosure legislation, until information on at least 20 franchises is provided.[36] But, in Vietnam, for example, a franchisor must disclose world-wide locations.[37] This information may be difficult to gather for franchise systems that have long lists of a franchisees and company-owned locations.

Also, the financial statements of the franchisor are typically required. In some countries, three or fewer years are required, as with as with Canada where a new franchisor is permitted to issue an FDD with only an opening balance sheet, if the franchisor has operated for less than one fiscal year or if 180 days have not yet passed since the end of the first fiscal year of operations and a financial statement for that year has not yet been prepared[38] and China (two years),[39] and Indonesia (two years).[40] But, in Japan, three years is required.[41]

Not only do the disclosure contents vary from country to country, but the waiting period (during with the franchisee must review the franchise disclosure document prior to executing a franchise agreement or paying to franchisor any initial fees) varies from country to country as well. For example, in the United States[42] and Indonesia[43], the required waiting period is 14 calendar days. But, in China, the waiting period is thirty calendar days[44] and in Spain, the waiting period is twenty business days.[45] Also, when counting business days, franchisors need to research the public holidays in other countries when ascertaining the correct waiting period end date. It is possible that public holidays may affect the counting of "business days" differently in one country versus another.

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[35] Vietnam Circular No. 09 (09/2006/TT-BTM), Appendix III, Part B, Point VII.
[36] General, O Reg 581/100, Part II, s. 17.
[37] Vietnam Circular No. 09 (09/2006/TT-BTM), Appendix III, Part B, Point IX.
[38] Section 3(3), O. Reg. 581/00: GENERAL, under the *Arthur Wishart Act (Franchise Disclosure), 2000,* S.O. 2000, c. 3. This reference is to the Ontario statute, however, similar provisions exist in the franchise statutes of all 6 regulated Canadian provinces.
[39] 《商业特许经营管理条例 (Shangye Texujingying Guanli Tiaoli)》 /Commercial Franchise Administrative Regulation, Ordinance No. 485, adopted at 167th Regular Meeting of the State Council on January 31, 2007, came into force on May 1, 2007, Art. 22(9).
[40] Government Regulation No. 35 of 2024 on Franchising (Indonesia).
[41] Medium-small Retail Business Promotion Act, Act no. 101 of 29 September 1973, as amended April 2002, Section 10, Item 4 of the Ministerial Order.
[42] 16 CFR Part 436.2(a).
[43] Government Regulation No. 35 of 2024 on Franchising (Indonesia).
[44] 《商业特许经营管理条例 (Shangye Texujingying Guanli Tiaoli)》 /Commercial Franchise Administrative Regulation, Ordinance No. 485, adopted at 167th Regular Meeting of the State Council on January 31, 2007, came into force on May 1, 2007, Art. 21-23.
[45] Royal Decree of February 26, 2010, regulating the commercial activities of franchising and the communication of data to the franchisor registry.

B. Registration Laws

As stated above, certain countries require franchisors to submit the franchise disclosure document and/or franchise agreement to a government agency for substantive review, translation and approval before the agreement can become effective. These countries tend to regulate various provisions of the franchise agreement, such as choice of law, dispute resolution, termination, restrictive covenants, and fees and currency. In some countries, this registration process can take months (e.g., Malaysia). In addition, government approval of the franchise agreement may be required in some countries with respect to trademark issues or customs requirements, but the franchisor can include language in the franchise agreement so that its effectiveness is contingent on obtaining such approvals. Certain countries require that the franchisor maintain a franchise registration issued by the relevant government authorities to engage in franchising activities in the country. Much like in the United States, some countries require registration with the government of the franchise disclosure document or franchise agreement on an initial basis and annual basis. For example, such countries include Australia,[46] China,[47] Malaysia,[48] Saudi Arabia,[49] South Korea[50] and Vietnam.[51]

C. Relationship Laws

In addition to the disclosure and registration laws in certain countries, franchisors should also consult with local counsel regarding relationship laws or other laws that may influence the franchise relationship so that the franchisor has the appropriate expectations when attempting to enforce its rights under the franchise agreement. Generally, international relationship laws are like those laws that franchisors encounter in the U.S., which require the franchisor to have good cause to terminate (with a cure period), to not renew, or to disapprove the transfer of a franchise agreement. In addition, many international relationship laws also require that certain provisions are covered in the franchise agreement. For example, China's relationship law provides that the franchisee must not transfer the franchise without the franchisor's approval.[52] And, Malaysia's franchise law stipulates that the franchisee and its employees must not carry on any business similar to the franchised business both during the franchise agreement term and for two years after the expiration or termination of the franchise agreement.[53]

In domestic franchise agreements, the franchisor's grounds for termination are often broken down into three categories based on the severity of the default committed by the franchisee – defaults that are grounds for automatic termination without notice from the franchisor, defaults that are grounds for immediate termination upon written notice from the franchisor and defaults

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46 Competition and Consumer (industry Codes-Franchising) Regulation 2014 (Australia).

47 《商业特许经营管理条例 (Shangye Texujingying Guanli Tiaoli)》/Commercial Franchise Administrative Regulation, Ordinance No. 485, adopted at 167th Regular Meeting of the State Council on January 31, 2007, came into force on May 1, 2007.

48 The Franchise Act (1998) and Franchise (Forms and Fees) Regulations 1999.

49 Saudi Arabia Cabinet Decision No. 122/1441 on the approval of the Commercial Franchise Law.

50 Act of Fairness in Franchise Transactions (effective from November 1, 2002, last amended on August 13, 2013).

51 Vietnamese Commercial Law (Law No. 36/2005/QH11) and Decree No. 35/2006/ND-CP, Arts. 5.2 and 17.

52 《商业特许经营管理条例 (Shangye Texujingying Guanli Tiaoli)》/Commercial Franchise Administrative Regulation, Ordinance No. 485, adopted at 167th Regular Meeting of the State Council on January 31, 2007, came into force on May 1, 2007.

53 The Franchise Act (1998) and Franchise (Forms and Fees) Regulations 1999, Art. 27.

that are grounds for termination only if the franchisee fails to cure the default within a defined period of time after the franchisor provides written notice of that default to the franchisee.

In international franchising, the practical and legal issues involved with terminating the franchisee often warrant a more conservative approach to termination. Simply put, the franchisor may not be able to timely and efficiently enforce the termination of the franchisee in the territory (that may be halfway around the world) and, as a practical matter, the franchisor may not be able to take over the franchisee's operations in the territory even if the termination can be effectuated. The latter is especially a concern where the franchisor is using the master franchise model because the franchisor will often be forced to consider how to handle the sub franchisee agreements that the franchisee entered with sub franchisees in the territory. Where there is no potential alternative franchisee in the market, terminating the franchisee in this instance may mean the franchisor would need to operate its concept in the territory on a long-term basis, or face the implications of a full market exit. It also more common for an international franchisee to simply ignore the franchisor. Also, having a letter of credit in place can be great leverage for the franchisor to encourage compliance and avoid termination.

There are certain actions on the part of the franchisee that should always be grounds for automatic termination of an international franchise agreement (e.g., bankruptcy or attempted illegal transfer) or termination by the franchisor without an opportunity to cure (e.g., abandonment, serious criminal conviction, violation of in-term covenants against competition, attempt to file trademark applications for franchisor's brand, and/or violation of franchise sales laws). However, the franchisor should be careful as to how it treats other defaults under the agreement given the increased costs and uncertainty involved in terminating an international franchise relationship – especially if the franchisee is responsible for administering the system in the territory and the franchisor is not in a position to take over that system.

The post-termination obligations of the franchisee under an international franchise agreement should require that the franchisee:

1. immediately cease all offers and solicitations of sub franchisees, as well as all franchise sales, in the territory (if applicable);
2. promptly de-identify its stores, discontinue its use of the franchisor's proprietary marks, and cease holding itself out as a former or existing franchisee or licensee of the franchisor or the system;
3. pay all amounts due and owing the franchisor under the agreement as of the date of termination (including interest, if any), which may include reimbursing the franchisor for the legal costs it incurred in terminating the agreement;
4. return all proprietary materials and materials that display the franchisor's proprietary marks to the franchisor, including the translated version of any documents that the franchisee may have translated for use within the territory (e.g., an operation manual);
5. immediately cease all use of the materials listed in (4); and
6. comply with all post-term covenants against competition.

In addition to relationship laws, in certain countries, particularly in the Middle East, Spain, Latin America, and those that follow civil law, franchisees that are independent contractors and generally outside of the scope of labor laws may be the franchisor's sales representatives or commercial agents, which would subject the franchisor to local agency laws. Such agency laws protect the franchisee from an "unjust" termination by the franchisor and may provide "extra-contractual indemnification to a franchisee in the event of termination, modification, or non-renewal of the relationship by the franchisor without "just cause" (as defined under such laws), even when such termination, modification or non-renewal is done strictly in accordance with the terms of the agreement." These agency laws may apply to any local person or entity that acts as an independent, commission-based sales representative (which is generally outside of the scope of a typical franchise agreement) or to a buy-sell distributor (which may be outside of a franchise arrangement, depending on whether the type of franchise includes a distribution element), or to a person or entity that promotes or offers products and/or services of a principal entity (in which case the application of the law to a franchise agreement may be proper). The stringency of international agency laws tends to vary widely, and application of the laws can be fact-specific; therefore, franchisors should consult with local counsel regarding the possible application of any agency laws in the territory.

D. Taxes and Foreign Currency Controls

International tax law presents a complex and multifaceted landscape that poses significant challenges for businesses operating across borders. At the heart of these challenges are tax treaties, which are bilateral or multilateral agreements designed to prevent double taxation and promote cooperation between countries. These treaties require careful navigation to ensure compliance and optimize tax liabilities. Additionally, transfer pricing, which involves setting prices for transactions between related entities in different jurisdictions, is a critical area that demands meticulous attention to align with the arm's length principle and avoid disputes with tax authorities. Multinational corporations often employ sophisticated tax avoidance strategies, leveraging differences in national tax systems to minimize their global tax burden. Understanding these issues is crucial for businesses to effectively manage their tax obligations, mitigate risks, and maintain a competitive edge in the global market. As such, a comprehensive grasp of international tax law is indispensable for any enterprise engaged in cross-border operations.

Your international franchise agreement will need to address issues of tax treatment and responsibility. For this reason, it is critical to consult with tax advisors – both domestic and local to the jurisdiction in question – to determine what liabilities you may have in the arrangement and what portion of that responsibility may be appropriate for your local partner to share. Such considerations should be an important first step in any franchisor's financial analysis of a particular market's viability for the sale of its products or services. More specifically, issues such as whether (i) the target market has a tax treaty with the United States, (ii) a withholding tax is imposed on royalties and other fees in the target market (and if so, at what rate) and/or (iii) the target market imposes other quasi-taxes (such as a stamp tax) are likely to be featured in any such analysis. Your tax advisors and attorneys will also be able to tell you the types of filings and other documentation necessary for you to complete and assist in processing those documents.

In addition to tax issues, there may also be restrictions on the payments made from the franchisee to the franchisor, covering both initial and recurring payments. Currency controls may come in the form of (i) restrictions on inbound and outbound transfers, (ii) limits on outbound investment, (iii) limits on transactions of foreign investments, (iv) high taxes on currency exchange, (v) limits on remittances. Some countries also regulate the maximum amount of the royalties and other fees payable under franchise agreements, and/or mandate that certain items be sourced solely from other local businesses (most often in businesses that are especially important to the local economy or culture). The potential costs related to each of these issues must be considered by the franchisor in deciding whether to enter a new market.

For example, China, Argentina, Azerbaijan, Iceland, Iran, Russia, Brazil, Pakistan, Egypt, South Africa, Saudi Arabia all have restrictions in their respective laws regarding the transfer of money out of their countries. More specifically, China's foreign exchange controls, specifically the State Administration of Foreign Exchange (SAFE)'s rules, limit the amount of money Chinese individuals and businesses can convert into foreign currencies and remit overseas.[54] This limit, set at $50,000 per person, per year, which impacts international franchise agreements where payments are made to a foreign franchisor.[55]

E. Consequences for Failure to Comply with Disclosure or Registration Obligations

As is expected, failing to comply with disclosure or registration requirements in various countries can result in serious consequences. For example, in Vietnam where the franchisor must register prior to offering or selling franchises in the country, penalties include administrative sanctions and administrative fines.[56]

In addition, franchisees operating in these countries may bring actions against the franchisor and seek rescission of the franchise agreement and a refund of their fees paid to the franchisor or reimbursement of amounts paid in pursuing the franchising opportunity. Or, from the other direction, a franchisor may find that its franchise agreement terms are unenforceable against the franchisee in the country where the franchise documents were not properly registered. In Indonesia, for example, its newly revised franchise law (as of September 2024), provides for escalating stages of administrative sanctions to including warning letters, a 14-day suspension from business activities and revocation.[57]

F. Dispute Resolution and Governing Law

While franchisors in the United States generally have wide latitude to determine dispute resolution, governing law, and venue provisions in franchise agreements (subject to franchise laws in certain states), local counsel in other countries is essential in identifying any restrictions or limitations on these provisions that may exist within the territory, as these types are of restrictions are more common outside the United States. For example, pursuant to the franchise laws of the applicable Canadian provinces,[58] a franchisor cannot avoid a statutory claim based on a breach of such laws by choosing a foreign law to govern the franchise agreement and any provision in a franchise agreement purporting to restrict venue to a forum outside the relevant province is void with respect to a claim the franchisee has under the franchise legislation. Also, when operating in Islamic countries, franchisors need to be aware of Sharia law, or the religious law and Code of Islam that governs the local judicial system. Further, while many U.S. franchisors choose litigation to resolve their domestic disputes, arbitration is typically recommended for resolving disputes with international franchisees because, provided the franchisee's home country is a party to the 1958 Convention on the Recognition and

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[54] Paul Jones and Jiahui (Jennifer) Zhang, *Franchise Laws and Regulations China 2025*, (Apr. 21, 2025), https://iclg.com/practice-areas/franchise-laws-and-regulations/china.
[55] Id.
[56] Vietnamese Commercial Law (Law No. 36/2005/QH11) and Decree No. 35/2006/ND-CP, Art. 24.
[57] Government Regulation No. 35 of 2024 on Franchising (Indonesia).
[58] Joseph Adler, Idan Erez, Stephanie Chong, *Franchise Laws and Regulations Canada* 2025, (Apr. 21, 2025), https://iclg.com/practice-areas/franchise-laws-and-regulations/canada.

Enforcement of Foreign Arbitral Awards[59] (the "New York Convention"), it is generally much easier to enforce an arbitration award than a court award. And, to further complicate things, even if the country allows for arbitration outside the country, enforcement of the decision may need to be governed by local law, which may allow for collateral attacks under the country's law.

G. Formalities and Experience Requirements

In addition to registration and disclosure requirements, some countries require a franchisor entity to have a certain level of experience prior to offering or selling franchises in that country. The purpose of these requirements is generally to protect potential franchisees from purchasing a franchise from a franchisor with an unproven model and ensure that the franchisor has a mature or established system prior to offering or selling franchises to third parties in the respective country.

For example, in China, the franchisor must first operate two company-owned units under the franchised brand for more than one year prior to being able to offer franchising in China.[60] This rule is intended to confirm that the franchisor owns and operates a mature system, and that it has the adequate resources and experience to support the franchisees effectively in China. If a franchisor conducts franchising activities without satisfying this experience requirement, then it may be subject to the following administrative penalties: (i) order to rectify; (ii) confiscation of proceeds obtained from the franchising activities; (iii) fines between RMB 100,000 to RMB 500,000 (approximately $13,000 to $68,000); and/or (iv) publication of the violation and penalty.[61] The "two store" criterion can be satisfied by an affiliate provided that the affiliate is a direct subsidiary of the franchisor and the franchisor holds a majority requite interest in the subsidiary.[62]

In Indonesia, a franchisor seeking registration of its franchise documents must demonstrate three years of continuous operation and provide evidence of profitability through audited financial statements for the last two years.[63] The experience requirement is a reduced requirement that came into effect in September 2024. Prior to the new regulation, franchisors were required to demonstrate five years of continuous operation.[64]

In Saudi Arabia, franchisors must have at least one year of operational experience before offering franchises in the country.[65] This requirement is aiming to ensure that the franchisor has established a viable business model before expanding through franchising.[66]

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[59] 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

[60] 《商业特许经营管理条例 (Shangye Texujingying Guanli Tiaoli)》/Commercial Franchise Administrative Regulation, Ordinance No. 485, adopted at 167th Regular Meeting of the State Council on January 31, 2007, came into force on May 1, 2007, Art. 7.

[61] Shuting Zhang, *Special Pre-qualifications for Franchising in China: 2+1 Rule*, (Apr. 21, 2025), https://www.dlapiper.com/es-pr/insights/publications/2022/05/special-prequalifications-for-franchising-in-china.

[62] Id.

[63] Government Regulation No. 35 of 2024 on Franchising (Indonesia).

[64] Government Regulation No. 42 of 2007 on Franchising (Indonesia).

[65] Royal Decree No. M/22 in 2019 (Saudi Arabia).

[66] Id.

H. Other Local Law Issues

In addition to the laws that impact the franchise sales process and ongoing relationship, franchisors must also examine the logistical feasibility of setting up a franchise system in a foreign jurisdiction and the related costs. Establishing a supply chain is a key factor for almost every type of franchise system – franchisees will need a way to procure proprietary and other products utilized or sold by the franchised business (such as ingredients and other goods), as well as any required computer and POS systems and related hardware and software, uniforms, signage, and other components of the franchisor's brand standards. To avoid import/export issues, franchisors may be able to find local sources for the goods and services franchisees need to establish their franchised business; however, this may prove difficult depending on the type of goods and services used in the franchise system (particularly any proprietary goods and services) and/or the current state of the local economy. Franchisors will likely need to invest considerable time and money investigating local resources and import restrictions if they wish to establish a possible supply chain in the territory, as well as sending personnel to the territory to explore the local resources (or engaging a local person with relevant experience).

Certain countries may have restrictions on importing or exporting the products franchisees may need to establish and operate their franchised business, either based on the type of good, the destination or origination country, or quotas. Further, the cost of shipping goods to or from the territory, including import or export duties, and any applicable taxes must be borne by someone – either the franchisor or the franchisee – which could have a huge impact on the viability of the franchise system, if many of the goods used to establish a unit franchise cannot be locally sourced or must be shipped to or from other countries. Import and export duties can be significant, although there may be trade agreements in place that can reduce the amount of the import duty or waive it altogether. Further, if products are imported into another country prior to the importation into the country of final destination, it is possible that duties may have to be paid twice: once in the intermediate country; and again, when imported into the country of final destination.

Another piece of the import/export puzzle is currency, and the ability to buy and sell goods at the prevailing currency rate in the territory. Currency rates affect the calculation and payment of fees under the franchise agreement both in the host country and repatriating such fees to the franchisor's home country.

Especially in emerging markets for product-based franchisors, exporting from the foreign jurisdiction to other, high-cost markets is an opportunity for the most trusted, local franchise partner.

VII. Conclusion

International expansion through franchising represents a natural and strategic progression for many successful brands seeking to scale. The benefits are compelling—access to new markets, diversified revenue streams, and increased global brand recognition make international franchising an attractive growth strategy. Franchising offers a scalable and relatively low-risk pathway to international growth, allowing franchisors to tap into the capital, local expertise, and market knowledge of well-positioned partners abroad. As consumer awareness grows, intellectual property regimes modernize, and digital platforms broaden reach, franchisors are encountering more opportunities—and more unsolicited interest—from potential partners worldwide.

Yet, the path to successful international franchising is far from straightforward. Legal systems, cultural norms, and commercial landscapes vary greatly from one jurisdiction to the next, and must be navigated with care. International franchising is fundamentally a contractual endeavor, but one that requires a deep understanding of foreign regulatory frameworks, local customs, and evolving business practices. Franchisors must be proactive in preparing their businesses for global expansion—securing intellectual property rights, conducting market feasibility assessments, and adapting operations to suit cultural and legal differences.

Choosing the right expansion model—whether through master franchising, area development, multi-unit agreements, or joint ventures—is a foundational decision that will shape control, risk, and scalability. Once the model is set, identifying and vetting the right franchise partner becomes critical. The success of an international relationship hinges on a shared vision, strong operational capacity, and cultural alignment.

Equally important is the negotiation of international franchise agreements, which must be tailored to reflect both the commercial realities of the arrangement and the legal requirements of the target market. Compliance with local franchise laws—such as disclosure and registration rules, tax obligations, and foreign currency regulations—requires diligence and the guidance of experienced local counsel.

Ultimately, while international franchising presents immense potential, it demands a thoughtful, flexible, and well-informed approach. Franchisors must evaluate the commercial rationale behind their global ambitions, consider operational logistics, and prepare for regulatory complexity. A wide array of tools—from trade shows and online platforms to due diligence providers and legal advisors—can support this process. But above all, a franchisor's ability to recognize its own strategic strengths, adapt its model, and engage meaningfully with global markets will be the key to long-term success.

By following the core principles outlined in this paper, franchisors can confidently position themselves for sustainable growth in a dynamic and increasingly interconnected global marketplace.

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