Franchise 2018

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India

Sharanya G Ranga, Laxmi Joshi and Aditi Rani
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Overview

1 What forms of business entities are relevant to the typical franchisor?

For a typical franchisor, the most relevant business entities in India are a private limited company and a limited liability partnership firm (LLP). Both of these entities have independent corporate existence, are well governed by a robust regulatory regime, and are amenable to foreign investment subject to relevant foreign exchange control norms and offer protection from unlimited liability.

Other business entities that may be considered by domestic franchisors are sole proprietorship concerns and partnership firms. A sole proprietorship concern is the most basic form of business entity. It is owned and operated by the individual owner having personal unlimited liability for all debts and liabilities incurred in the course of its business. A partnership firm, simply put, is an association of two or more persons jointly engaged in a business enterprise in which the profits and losses are shared proportionally as mutually agreed between them. A partner in a partnership firm is jointly and severally liable for all acts of the firm done while he or she is a partner. While these entities offer no liability protection, their key advantage is the ease of setting-up, simple operating structure and minimal compliance requirements. These options are not available, however, for foreign franchisors as foreign investment is not permitted in these entities.

A franchisor who wishes to enter the Indian market for a short period can also consider setting up a liaison office (LO) or a branch office (BO). An LO can act as a channel of communication between the foreign franchisor’s head office outside India and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India. A BO can represent the foreign parent in India and act as a buying or selling agent besides rendering professional services and exporting or importing goods. A BO has greater flexibility in terms of permitted activities over an LO, whose activities are limited to that of a liaison nature. For setting up an LO or a BO, approval from India’s central bank, the Reserve Bank of India (RBI), is required.

2 What laws and agencies govern the formation of business entities?

The laws governing the formation of the above-mentioned business entities are as follows:

• there is no specific law or registration required for the incorporation of sole proprietorship firms in India;
• partnership firms in India are governed by the Partnership Act 1932 and may be registered with the regional Registrar of Firms;
• LLPs in India are regulated by the Limited Liability Partnership Act 2008 and incorporated through registration with the concerned regional Registrar of Companies (RoC); and
• companies in India are governed by the Companies Act 2013 and incorporated by registration with the relevant regional RoC.

3 Provide an overview of the requirements for forming and maintaining a business entity.

The requirements for formation of different business entities are as follows:

• No registrations or licences are required for the formation and maintenance of a sole proprietorship;

• Formation of a partnership firm requires two or more natural persons to enter into a written or oral partnership agreement wherein the rights and obligations of the partners are clearly laid down. Registration is not a mandatory requirement; however, a registered partnership firm can sue the partners and third parties for enforcing contractual obligations and be sued accordingly.

• Setting up an LLP requires two or more persons, natural or body corporate intending to carry on a lawful business by entering into a written LLP agreement, recording their inter se rights and obligations and registering it with the concerned regional RoC. Registration of an LLP is an online process to be completed through the web portal of the Ministry of Corporate Affairs (MCA). It involves obtaining unique identification numbers for the designated partners of the LLP, e-filing of the prescribed forms for incorporation including the LLP agreement on the MCA web portal and payment of specified fees. Thereafter, the LLP can commence business on receipt of the certificate of incorporation from the RoC.

In addition to the above, all business entities in India are required to obtain direct and relevant indirect tax registrations. Further, depending on the nature of the business, the product or services being provided, and the number as well as the categories of personnel employed, a business entity may also be required to comply with the following requirements:

• obtain and keep valid licences or registration under relevant central and state business, product, environment and labour legislation; and
• file periodic returns, as required under applicable laws.

4 What restrictions apply to foreign business entities and foreign investment?

All foreign businesses looking to enter the Indian market or invest in Indian entities have to comply with the provisions of the prevailing Foreign Direct Investment Policy (FDI Policy) and the Foreign Exchange Management Act 1999 and rules made under it (FEMA).

As per the FDI Policy, foreign investors can invest in India either through the automatic or the government approval route. Under the automatic route, no prior approval is required for foreign investment, whereas in the case of the approval route, government approval is required to be obtained prior to making any foreign investment.
At present, foreign investment up to 100 per cent is permitted in a majority of sectors in India without any prior approval. Some specified sectors have sectoral caps where foreign investment is permitted only up to a certain limit (i.e., 26 or 49 per cent of the total capital infused), under the automatic or approval route. For instance, foreign investment in single brand retailing is permitted up to 49 per cent under the automatic route and thereafter up to 100 per cent through the approval route. In the case of multi-brand retailing, only 51 per cent foreign investment is permitted under the approval route.

There is a blanket ban on foreign investment in lottery business, gambling and betting including casinos, real estate business, construction of farmhouses, manufacture of tobacco or cigarettes and other sectors that are not open to private sector investment such as atomic energy. Additionally, foreign investment may also be subject to sector-specific norms such as entry conditions, end-use restrictions, lock-in period, etc.

5 Briefly describe the aspects of the tax system relevant to franchisors. How are foreign businesses and individuals taxed?

The Indian taxation regime can be divided into direct and indirect tax laws.

Direct taxation in India is governed by the Income Tax Act 1961 (ITA). The ITA provides for separate provisions for the taxation of residents and non-residents. Accordingly, the resident franchisors would be subject to tax in India on their worldwide income (being royalty, franchise fee, revenues shared), whereas the non-resident franchisors will be taxed only on their Indian income. Additionally, a non-resident franchisor may also avail itself of the benefits of any double tax avoidance treaty between India and the country of the foreign franchisor. These benefits will be available only if the non-resident franchisor does not have any permanent establishment in India.

Under the indirect taxation regime in place until 30 June 2017, service tax was charged on the amount paid for the services provided by the franchisor to the franchisee. Depending on the nature of the activities carried out, states would also levy additional value added tax on the consideration paid to the franchisor. The applicability of value added tax on franchise consideration over and above service tax has been challenged on a number of occasions, with the courts taking differing views on the issue depending on the facts and circumstances. However, with the implementation of the Goods and Services Tax (GST) (i.e., a unified goods and services tax regime throughout India) with effect from 1 July 2017, the issue of multiple indirect taxes is likely to be done away with.

6 Are there any relevant labour and employment considerations for typical franchisors? What is the risk that a franchisee or employee of the franchisee could be treated as the franchisor? What can be done to reduce this risk?

In the absence of dedicated laws or regulations for franchisee business in India, all aspects of franchise arrangement including labour and employment considerations are governed by the terms of the franchise agreement. It is therefore important to clarify the position as regards treatment of employees of the franchisee in the franchise agreement. In the event the franchise agreement is silent on the same, based on the facts and circumstances of the matter, there is a possibility that the franchisee may be construed to be an agent or employee of the franchisor and the employees of the franchisee may be deemed to be employees of the franchisor. Therefore, it is important to explicitly specify that the relationship between the franchisor and the franchisee will be on a ‘principal to principal’ basis in the franchise agreement, that the employees of the franchisee will not in any event be considered as employees of the franchisor and that the franchisee will be solely responsible for its employees and related compliances.

7 How are trademarks and know-how protected?

A trademark of a franchisor is generally protected by registration under the Indian Trademarks Act 1999. Upon such registration, the franchisor gets the exclusive right to use the mark in connection with the goods or services set out in the registration certificate. A trademark registration is valid only for a period of 10 years and must be renewed thereafter. Given the fact that a trademark right is territorial in nature, it is very important for a foreign franchisor to get its trademark registered in India as it ensures statutory protection to the trademark of the franchisor in India. If the trademark is not registered in India, it is possible for the franchisor to initiate an action for passing-off under common law and seek injunctive relief against the party infringing its trademark.

Courts in India have on several occasions in the past protected trademarks of foreign companies having a globally recognised brand name and reputation even if such companies were not carrying on any actual business in India.

India has adopted the provisions of the Madrid Protocol administered by the International Bureau of the World Intellectual Property Organization that permits a single application for trademark registration in all countries that have ratified the protocol. This is especially relevant for foreign franchisors as it enables them to simultaneously protect their trademarks across multiple jurisdictions.

A franchisor’s know-how and confidential information such as trade secrets, designs, copyrightable and patentable work are generally protected by registration under the following statutes:

- the Copyright Act 1957;
- the Patents Act 1970;
- the Geographical Indication of Goods (Registration & Protections) Act 1999; and

As trade secrets are not specifically dealt with in any of the above legislations, they are governed by the principles of equity laid down under common law.

Since the grant of rights to use a franchisor’s intellectual property (IP) rights is the crux of a franchise agreement, apart from statutory protections, it is recommended to incorporate comprehensive provisions as regards the licence, use and return of franchisor’s IP in the franchise agreement itself. Special care should be taken while drafting these provisions to ensure that all aspects related to the use of IP by the franchisee both during the subsistence of the franchise agreement and thereafter are adequately covered, with no room for ambiguity.

8 What are the relevant aspects of the real estate market and real estate law?

The relevant aspects of the real estate market and real estate laws in India for a franchisor would depend on the real estate policy of the franchisor. FEMA prohibits non-resident entities from acquiring immovable property in India without prior approval from RBI, other than lease for a period of less than five years. Thus it will not be possible for a foreign franchisor to directly purchase real estate in India. However, a domestic franchisor and an Indian entity set up by a foreign franchisor can buy property in India and the same can then be offered to the Indian franchisee on a lease or licence basis by entering into a separate lease or licence agreement. Typically, the franchisor will have to comply with the relevant central and state real estate laws for acquisition, leasing or licensing of immovable property such as entering into a written agreement for purchase of immovable property, payment of state-specific stamp duty on the agreement and registration of the same with the relevant authority in the prescribed manner. It is important to ensure that a lease or licence agreement with the franchisee suitably protects the rights of the franchisor in the immovable property through clauses prohibiting unauthorised use or sub-leasing of the immovable property and penalty provisions for delay in handing over vacant possession of such immovable property upon termination of the agreement.

In cases where the franchisee is required to acquire real estate for the franchise business, it is important to specify all obligations of the franchisee in that regard in the franchise agreement, including selection of the place of business best suited for the business and compliance with all applicable real estate laws for acquisition and maintenance of the property.

Laws and agencies that regulate the offer and sale of franchises

9 What is the legal definition of a franchise?

India does not have any specific legislation dealing with franchising. However, for taxation purposes, the term ‘franchise’ is defined under the (Indian) Finance Act 1999 as set out below:

An agreement by which the franchisee is granted representative right to sell or manufacture goods or to provide service or
undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol as the case may be, is involved.

10 Which laws and government agencies regulate the offer and sale of franchises?
While there is no franchise-specific legislation or exclusive government agency that regulates franchise business in India, the following laws are broadly relevant to a franchise business:

- the Indian Contract Act 1872;
- the Competition Act 2002;
- the Consumer Protection Act 1986;
- the Trade Marks Act 1999;
- the Design Act 2000;
- the Copyright Act 2000;
- the Income Tax Act 1961;
- the Specific Relief Act 1963;
- the FDI Policy, FEMA, and all regulations relating to foreign transactions issued by the RBI from time to time; and
- sector-specific legislation that may be applicable to a franchise business depending on the nature of franchise.

11 Describe the relevant requirements of these laws and agencies.

The Indian Contract Act 1872 is the primary law governing the formation of commercial contracts in India. It lays down the essentials of a valid contract and also identifies contracts that are per se invalid or voidable at the option of the parties.

The Consumer Protection Act 1986 seeks to provide remedies to consumers in the case of deficiency in services and defective products. It holds both the manufacturers and service providers liable. Therefore, the consumer may seek remedy from both franchisor and the franchisee but the product liability and claims will lie with the franchisee if it is expressly specified under the franchisee agreement.

The Competition Act 2002 prohibits arrangements with respect to production, supply, distribution, storage, acquisition or control of goods or provision of services that cause an appreciable adverse effect on competition within India.

The Trademarks Act 1999, the Patent Act 1970, the Design Act 2000 and the Copyright Act 1957 govern the protection of trademark, patent, design, copyright aspects involved in the franchise agreement.

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FEMA, FDI Policy and circulars issued by RBI from time to time govern all transactions involving inflow and outflow of foreign exchange from India, including rules and regulations for foreign investment in entities in India and the payments of royalty or franchise fees to the foreign franchisor.

The Specific Relief Act 1963 grants remedies such as injunctions and damages for the protection of rights of the parties in cases of breach of the franchise agreement.

The Income Tax Act 1961 governs the tax aspects of income generated through the franchising business in India.

12 What are the exemptions and exclusions from any franchise laws and regulations?
Since there are no laws specifically regulating franchise business in India, there are no specific exemptions and exclusions for franchise business.

13 Does any law or regulation create a requirement that must be met before a franchisor may offer franchises?
As there are no specific laws regulating franchise business in India, there are no specific statutory prerequisites for a franchisor in India. The requirements to be met by franchisors may be imposed as part of the contract between the parties.

14 Are there any laws, regulations or government policies that restrict the manner in which a franchisor recruits franchisees or selects its or its franchisees’ suppliers?
There are no legal restrictions on the franchisor with respect to recruitment of its franchisees or selection of its franchisees’ suppliers.

15 What is the compliance procedure for making pre-contractual disclosure in your country? How often must the disclosures be updated?

There is no statutory requirement or compliance procedure for making pre-contractual disclosure in the case of a franchise agreement in India. Disclosure requirements can be mandated as part of the franchisor’s obligations, representations and warranties under the franchise agreement.

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

This is determined as per the agreement between the franchisor and franchisee in the absence of specific legislation governing franchises in India.

17 What information must the disclosure document contain?
This is determined as per the agreement between the franchisor and franchisee in the absence of a specific legislation governing franchises in India.

18 Is there any obligation for continuing disclosure?
This is determined as per the agreement between the franchisor and franchisee in the absence of specific legislation governing franchises in India.

19 How do the relevant government agencies enforce the disclosure requirements?

In the absence of a statutory obligation for disclosure, enforcement by government agencies is not applicable. Indian courts will enforce the disclosure requirements set out under the franchise agreement based on the principles laid down by the Indian Contract Act 1872 and common law.

20 What actions can franchisees take to obtain relief for violations of disclosure requirements? What are the legal remedies for such violations? How are damages calculated?

If the franchisee can cancel or rescind the franchise contract, is the franchisee also entitled to reimbursement or damages? As already mentioned, there are no specific statutory remedies for violations of disclosure requirements by a franchisor other than the contractual remedies of franchisee under the franchise agreement and legal relief for violation of contractual obligations as set out under Indian contract law. Thus, if a franchisor violates the disclosure requirements under the franchise agreement or wrongfully cancels or rescinds the franchise contract, the same would amount to a breach of contract. In such cases, the franchisee can invoke the indemnity for the loss suffered (if provided in the franchise agreement), initiate legal proceedings seeking damages for such breach of contract and also consider instituting criminal proceedings against the franchisor for criminal breach of trust.

As regards damages, Indian contract law permits reasonable compensation for the loss suffered by a party arising from breach of contract by the other party. If damages for breach of contract are specified in the contract itself, the affected party would be entitled to reasonable compensation not exceeding the amount so fixed in the contract. Thus the actual damages awarded by the court may be less than the fixed amount under the contract. Courts in India have often emphasised that liquidated damages in a contract should be fair and a bona fide estimate of the damages arising from the breach, not merely a penalty for the breach.

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

Since there is no specific legislation for franchise or disclosure requirements in the case of a franchise business, the liability for violation of contractual disclosure requirements will be as agreed between the parties to a franchise agreement.
22 In addition to any laws or government agencies that specifically regulate offering and selling franchises, what are the general principles of law that affect the offer and sale of franchises? What other regulations or government agencies or industry codes of conduct may affect the offer and sale of franchises?

As mentioned above, there are no special laws or specific provisions regulating the offer and sale of franchises in India and they are broadly governed under general contract law. Therefore, the commercial principles agreed under the franchise agreement govern the grant of franchises in India subject to the provisions of Indian contract law. Additionally, other laws relating to the protection of the franchisor’s IP and the other legislation listed in question 10 will also be applicable to the offer and sale of franchises in India.

23 Other than franchise-specific rules on what disclosures a franchisor should make to a potential franchisee or a franchisee should make to a sub-franchisee regarding predecessors, litigation, trademarks, fees, etc., are there any general rules on pre-sale disclosure that might apply to such transactions?

As mentioned above, there are no franchise specific rules or pre-sale disclosure requirements mandated by statute for transactions of this nature in India. It is therefore important for the franchisor and franchisee to explicitly capture detailed representations, warranties, indemnities, liability allocation of various aspects relating to the franchise business, and disclosure requirements in the franchise agreement. Typically, representations of franchisors in a franchise agreement in India include information on predecessors, litigation, encumbrances, etc., among other customary representations.

24 What actions may franchisees take if a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises? How does this protection differ from the protection provided under franchise sales disclosure laws?

Franchise agreements are governed by Indian contract law, which permits defrauded parties to terminate a contract on account of fraud committed by the other party. Where the contract is capable of specific performance, the law will seek to put the defrauded party in the position in which it would have been if the fraudulent representations made were true. Where the contract cannot be specifically performed, the defrauded party can seek damages for such non-performance. A franchisee in such cases can also file a criminal complaint for fraud or criminal breach of trust by the franchisor under Indian criminal law.

Legal restrictions on the terms of franchise contracts and the relationship between parties in a franchise relationship

25 Are there specific laws regulating the ongoing relationship between franchisor and franchisee after the franchise contract comes into effect?

There are no specific laws in India that regulate the relationship between the franchisor and the franchisee except Indian contract law.

26 Do other laws affect the franchise relationship?

Yes, other laws as listed in question 10 may affect the franchise relationship.

27 Do other government or trade association policies affect the franchise relationship?

No, currently there are no mandatory government or trade association policies specifically affecting the franchise relationship.

28 In what circumstances may a franchisor terminate a franchise relationship? What are the specific legal restrictions on a franchisor’s ability to terminate a franchise relationship?

Either party to the franchise agreement may terminate a franchise relationship upon the occurrence of the events of termination specified in the franchise contract. Additionally, the franchisor may also terminate the franchise relationship in special circumstances identified under the Indian Contract Act 1872. These include:

- the franchisor being induced to offer and sell the franchise to the franchisee by fraudulent acts of the franchisee or under undue influence of the franchisee; and
- performance of franchisee’s obligations under the contract becoming impossible for reasons other than those caused by the franchisee itself or the franchisor.

While there are no specific legal restrictions on a franchisor’s ability to terminate a franchise relationship, the Indian insolvency law prohibits a corporate debtor undergoing liquidation from terminating any contract that would result in disposal of its rights during the pendency of the insolvency proceeding.

29 In what circumstances may a franchisee terminate a franchise relationship?

See question 28.

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

The franchisor may refuse to renew the franchise agreement if the contract does not provide for renewal or expressly prohibits renewal of the same or if renewal is subject to specific performance criteria that have not been complied with by the franchisee.

31 May a franchisee restrict a franchisee’s ability to transfer its franchise or restrict transfers of ownership interests in a franchisee entity?

Yes, a franchisor may restrict a franchisee’s ability to transfer its franchise or restrict transfer of ownership interests in a franchisee entity through the franchise agreement. Where the franchise agreement is silent on this issue, the general rule on assignment of rights and obligations under a contract would apply. Accordingly, the intention of the parties as regards assignment must be ascertained based on the nature of the contract and the facts and circumstances of the matter. If the contract is personal in nature (i.e., where a party has agreed to a contract with another party based on its personal credentials such as brand name, reputation, qualification and so on), there can be no intention to permit assignment of the contract to a third party.

32 Are there laws or regulations affecting the nature, amount or payment of fees?

Since there is no specific legislation on franchise, the nature, mode of payment and quantum of franchise fees, royalties, etc. are entirely governed by the franchise agreement. However, in the case of an international franchisor, the royalty payments must be in compliance with the relevant norms under FEMA and the FDI Policy. As per these norms, the franchisee is required to make payments to the foreign franchisor only through the authorised dealer banks in India by submitting relevant documents. These documents include the prescribed form for remittance and certificate issued by the auditor of the franchisee specifying the reason and nature of the payment and details of the tax compliance by the franchisee in respect of the franchise fees.
33 Are there restrictions on the amount of interest that can be charged on overdue payments?

There is no statutory interest rate specified under Indian contract law on overdue payment. Thus parties to a contract have the discretion to decide on the interest rate. However, under the Usurious Loans Act 1918, the courts are empowered to relieve a party to a contract from paying exorbitant interest where it is of the view that the rate of interest is excessive or the transaction is proven to be substantially unfair.

34 Are there laws or regulations restricting a franchisee’s ability to make payments to a foreign franchisor in the franchisee’s domestic currency?

There are no restrictions on making payments to the franchisor in its domestic currency provided such payments are made in conformity with the relevant RBI norms for overseas remittance and the provisions of FEMA applicable to payment of royalty, technical know-how fees and service fees.

35 Are confidentiality covenants in franchise agreements enforceable?

Yes, the confidentiality covenants in the franchise agreements are enforceable in India. The party affected by breach of confidentiality obligations can terminate the agreement on the basis of such breach if so provided under the contract. Additionally, the Information Technology Act 2000 provides for safeguarding and maintaining the privacy as well as the confidentiality of electronic data, and also stipulates civil and criminal liability for the breach of confidentiality of such information.

36 Is there a general legal obligation on parties to deal with each other in good faith? If so, how does it affect franchise relationships?

In line with the common law practice, Indian laws do not impose a general duty on the parties to deal with each other in good faith. Such good faith obligation may, however, be imposed by contract.

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

No, the definition of the term ‘consumer’ under the primary Indian consumer protection legislation specifically excludes persons who buy goods or avail themselves of services for resale or for any commercial purposes. By virtue of this definition, a franchisee will not qualify as a consumer under consumer protection law.

38 Must disclosure documents and franchise agreements be in the language of your country?

No, there is no requirement for any document to be prepared in a particular language in India. Contracting parties may mutually agree on the language of the documents. However, in India it is common practice to draft documents in English, as it is widely understood.

39 What restrictions are there on provisions in franchise contracts?

Given that there are no special laws for franchise business in India, there are no specific restrictions on the terms of franchise contracts other than those generally applicable to all commercial contracts under Indian contract law. These include restrictions such as prohibition on contracts in restraint of trade, contracts for an illegal purpose and contracts contrary or offensive to the public policy of India. As regards other provisions of a franchise agreement, Indian contract law generally allows the contracting parties full freedom to agree on matters such as pricing, duration, exclusive territories, non-compete restrictions, jurisdiction and dispute resolution.

40 Describe the aspects of competition law in your country that are relevant to the typical franchisor. How are they enforced?

A franchise arrangement would not generally attract any provision of Indian competition law unless the same causes an appreciable adverse impact on competition in India. Competition law in India prohibits transactions and practices that restrict free trade and result in abuse of dominant position by any business entity. It seeks to prevent anti-competitive practises and promote fair and healthy competition in the Indian market.

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

The Indian legal system is modelled on the common law system and has a three-tiered structure with the Supreme Court of India being the apex court of the country situated in New Delhi, followed by the High Courts at the state level and the district and session courts. A separate civil and criminal judicial system also exists in each district. The Indian court system follows the common law practice of giving weight to precedents, with the decisions of the appellate courts binding the lower courts.

The dispute resolution procedures relevant for franchise transaction would be conciliation, mediation, arbitration and litigation. However, arbitration is a preferred mode of dispute resolution for commercial contracts, especially international contracts as litigation in India is usually a highly cost- and time-intensive exercise. Conciliation and mediation mechanisms are non-binding in India and have therefore not been very popular in the commercial sphere.

42 Describe the principal advantages and disadvantages of arbitration for foreign franchisors considering doing business in your jurisdiction.

The key advantages of arbitration are as follows:

- It is often more cost and time-effective than dispute resolution through the court system. As per the recent amendments to the Indian arbitration law, an arbitral award in a domestic arbitration is required to be made in six months as against litigation, which can take anywhere between five and 10 years to conclude, depending on the complexity of the matter and the quality of legal counsel employed.

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• India being a signatory to the Geneva and New York Conventions, arbitral awards of most jurisdictions are enforceable in India as if they were made by an Indian court and the same can be challenged only on limited grounds specified by law. While Indian laws allow the choice of foreign jurisdiction in an international contract, only judgments made by superior courts of notified ‘reciprocating territories’ will be enforced. The reciprocating territories are Aden, Bangladesh, the Cook Islands (including Niue) and the Trust Territories of Western Samoa, Fiji, Hong Kong, Malaysia, New Zealand, Papua New Guinea, Singapore, Trinidad and Tobago, the UAE and the United Kingdom.

Some of the disadvantages of arbitration are as follows:
• International institutional arbitration is often more expensive than domestic arbitration and in some cases as expensive as litigation, if not more.
• Enforcement of foreign arbitral award in India can sometimes be a lengthy process, defeating one of the key objectives of adopting arbitration (i.e., expeditious resolution of disputes). Further, such enforcement can add to the overall cost of dispute resolution.
• Although court intervention in arbitral proceedings has significantly reduced over the years in India, it continues to be a major deterrent to Indian-seated arbitration.

43 In what respects, if at all, are foreign franchisors treated differently from domestic franchisors?

In India, a foreign franchisor and a domestic franchisor are treated on the same footing in all respects. All the rights and interests of a foreign franchisor are equally protected under the applicable Indian laws. The only difference is the requirement for foreign franchisor to additionally comply with the provisions of Indian foreign exchange control laws and norms as regards inward and outward remittance of funds.