



Global Franchise Regulation Update

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European Union

Trade Secrets

- EU Directive establishes standards for trade secrets protection for member states to adopt within 2 years.

Franchise Report

- EU Parliament Committee releases report blaming uncoordinated regulatory approach to franchising as reason for relative lack of success of EU franchising compared with U.S. and Australia. Calls for EU franchise law that preempts national law, national franchise codes, antitrust standards and regulation under commercial agency and good faith standards. Franchisors may not engage in (undefined) unconscionable conduct.

European Franchise Federation

Revised Code of Ethics

- Standards to be adopted and enforced by national franchise associations.
- Standards may be embraced by national legislatures:

Pose problems for franchisors, especially:

- Duty to have a successful business concept in the relevant market for at least one year and at least one pilot outlet before franchisor may offer franchises;
- Duty to provide full (undefined) disclosure of all material facts to prospective franchisees;
- Duty to resolve disputes, first through mediation and, if it fails, through arbitration “organized or approved by a European Franchise Federation National Association Member” or through litigation.

Argentina

Franchise Law

- 2 + 2 franchisor experience requirement
- Trademark must be registered and in place throughout term
- Presale disclosure required
- Minimum 4-year contract term
- “Onerous” contract terms may be disregarded
- Good cause termination only
- Presumption against joint employer liability of franchisors

Australia

Australian Consumer Act--Unfair Contract Terms

- Applies to all contracts in which either the franchisor or its franchisee employs 20 or fewer employees when the contract is signed, requiring payment to the franchisor of less than AU\$ 1 million for a term of more than 1 year, or less than AU\$300,00 for a contract with a term of less than one year. If the law applies, unfair contract terms (not clearly defined) are not enforceable.

Australian Fair Work Act of 2009 Amendment (Proposed March 1, 2017)

- Franchisors would be liable for labor law violations of franchisees’ when the franchisor has knowledge of or ought reasonably know about, and fails to prevent, such violation(s). Maximum civil penalties for certain violations would be increased.

Austria

Courts

- Individual prospective franchisees are treated as consumers and given protections under Consumer Protection Law until after Franchise Agreement is signed - then they are treated as a business

Brazil

Franchise Disclosure Law (Proposed)

- Extensive modifications to disclosure documents resembling U.S. FDDs
- Franchisees are not treated as joint employers or consumers
- Pending consideration in Senate committees. Already passed House.

Canada

British Columbia disclosure law now effective. Similar to franchise laws in five other provinces.

Ontario Parliament - committee studies Joint Employer issues in franchising

Quebec Courts - franchisors owe duty to protect and enhance brand. Supreme Court of Canada upheld Quebec court finding that Dunkin' Donuts had a duty to protect and enhance the brand and was liable to franchisees for not doing so

Ontario - trial court. Failure to disclose terms of a lease that was not negotiated or signed until after an FDD was delivered violated Ontario Franchise Law

Egypt

Franchise Disclosure and Relationship

- Comprehensive franchise disclosure and relationship regulation. (Proposed)

France

Macron Law

- All franchise “related agreements” between a franchisor and a franchisee must have the same expiration date
- All franchise and ancillary agreements must be coterminous
- “Related agreements” are agreements “whose common purpose is the operation of one or several retail outlets and include clauses which are likely to limit the freedom of the outlet’s operator to carry on its business”

- Post-term noncompete covenants are limited by the same standards applicable to franchise noncompete covenants under EU law
- Termination v. nonrenewal

El Khomri Law

- If franchisor and its franchisees employ 300+ in France
- And a labor union representative of any group of employees requests
- Applies if “franchise agreements contain clauses having an effect on the organization of work and working conditions in franchised companies”
- The franchisor must establish a “social dialogue body” comprised of representatives of the franchisor, its franchisees and their employees, which shall meet at least twice per year. The purpose is to discuss issues relating to staffing and working conditions
- The franchisor must inform the committee of decisions likely to affect the volume or structure of the workforce, work duration, conditions of hiring and training of employees
- The franchisor must notify franchisees of outlets that are opening or closing
- Awaiting a Decree to explain how costs are to be paid and other details of the operation of the “social dialogue committees”

Civil Code Amendments

- Courts may “rebalance” the terms of franchise agreements in case of “hardship” or to remove from adhesion contracts a term that creates an “imbalance”
- Application of the amendments may be waived in the contract itself

Japan

Franchise Law Amendments

- Would clarify remedies for breach of contract and specifically only permit franchise agreements to be terminated for material violations of a contract

Kuwait

Commercial Agency Law

- Was amended to specifically address franchises and to allow for non-exclusive agencies. Still unclear whether it is applicable to franchisees who do not distribute products sold to them by their franchisor

Netherlands

Voluntary Franchise Code (Proposed)

- Based in part on EFF Code
- Comprehensive statement of principles, what should and should not be in a franchise agreement, and restrictions on franchise relationship
- Highly criticized by franchisor community

Romania

Amendment of existing franchise law (Proposed)

- Reads like a statement of what the authors believe should characterize a franchise, but dwells too much on details that are not found in some major franchise programs
- Adds detail to the disclosure law, but requirements are ambiguous
- Requirement for franchisor to have a pilot unit and to have successfully operated it for over one year before franchising, and to have the right to franchise trademarks for the duration of the term of the franchise granted
- All franchise agreements must be prepared in compliance with a code approved by the Romanian Franchise Association, and all agreements must be registered with the association

Saudi Arabia

Comprehensive Franchise Regulation (Proposed)

- Consultative Council (Majlis Ash-Shura) would require franchisors to: (1) meet minimum experience standards, (2) satisfy mandatory contract terms, (3) register franchise agreements and comprehensive disclosure documents, and (4) adhere to regulations regarding termination, non-renewal and transfers of franchise agreements. The Ministry of Commerce and Investment would regulate franchising.

South Korea

Courts

- Pizza Hut fined \$5 million USD for violations of Korean Franchise Law
- Collected about \$5.6 million in “administrative fees” that were not specified in franchise agreements, and that were imposed unilaterally
- Collected initial training fees directly from franchisees, instead of either placing them in escrow in a financial institution as prescribed by Enforcement Decree or obtaining insurance or deferring collection until the franchisees were open or 2 months has passed

Vietnam

Disclosure Law Amendments (Proposed)

- Not yet introduced, plan is to revise existing disclosure and relationship laws to reflect changes in the business climate since 2005 when current law was adopted. Will clarify rights of subfranchisees, distinguish between a franchise and a standard trademark license, grant franchisors clearer enforcement rights under franchise agreements, and to confirm the franchisees and franchisors are independent contractors.

United States

- NLRB - McDonalds and Browning Ferris cases portend treatment of franchisors as joint employers with franchisees for purposes of labor negotiations and unfair trade practices. Over time Trump will appoint a majority of Republican/management commissioners, but decisions rendered before then will be in the courts and will be controlling until overturned by Congress or by another NLRB decision.
- Defense of Trade Secret Act adopted. Nationwide standards for protection of trade secrets, which were previously only protected under state laws.
- FTC/DOJ Antitrust Division - memorandum on anti-poaching (of employees) agreements. E.g., agreements prohibiting franchisees from recruiting the staff of other franchisees or the franchisor may be subject to civil or criminal prosecution. Unclear how Trump administration will view memorandum.
- Small Business Administration Franchise Finance Reform. Franchisors willing to sign a standard 2-page addendum to franchise agreements will have no review of their franchise agreements to determine if they are “affiliated” with their franchisees when evaluating the franchisee is a “small business” for purposes of obtaining SBA financing. Effective February 14, 2017, instead of the prescribed 2-page addendum, franchisors may qualify for SBA programs by using franchise agreement addenda approved by the SBA in 2015 or 2016.
- California AB 525 - franchise relationships. Unique law requires franchisors to purchase franchisees’ assets upon termination or nonrenewal if the franchisor has the right to control the premises from which the franchisee has operated - even if franchisor has good cause for terminating the franchise. When a franchisee requests approval of a transfer, franchisor must give the franchisee a list of its standards for approving new and renewing franchisees. If the proposed transferee meets the qualifications, franchisor must approve the transfer.
- State franchise/independent contractor laws - IFA has supported eight state laws that confirm that franchisees and franchisors are independent contractors, and expects up to 12 similar state bills to be introduced in 2017. Although they apply only to decisions affecting independent contractor status in the states, they are expected to provide evidence of a groundswell of opposition to federal regulations and decisions finding that franchisors are joint employers with franchisees.



- FTC Franchise Rule Review. Ten-year review of entire franchise disclosure rule slated for 2017 is subject to regulation freeze executive order signed by President Trump. Unclear whether/when review will take place.
- U.S. Regulation Review. President Trump's Executive Order of February 24, 2017 requires all federal departments and agencies to repeal, replace or amend regulations that adversely affect employment; are outdated, unnecessary or ineffective; impose costs that exceed benefits; create serious inconsistency or otherwise interfere with regulatory reform.
- State Franchise Relationships. Florida and Pennsylvania are considering comprehensive franchise relationship legislation.

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