

# Considerations in Adopting Franchise Legislation: Pros and Cons

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**Kendal Tyre**, Nixon Peabody LLP  
**Esmari Jonker**, Smit & Van Wyk Inc.

**Martine de Koning**, Kennedy Van der Laan  
**Philip Zeidman**, (retired) DLA Piper

# History of Franchise Regulation

## Early Development:

Franchising became prominent post-World War II.

Initial growth was largely unregulated until the late 1960s.

California adopted the first franchise law in 1971.

Federal regulation in the U.S. emerged in 1979 with the FTC Rule.

# U.S. Franchise Regulation



## Federal Level:

- FTC Rule mandates a detailed disclosure document before entering into a franchise agreement.



## State Level:

- Some states require registration of the FDD.
- Many states have relationship laws regulating termination, renewal, and transfer of franchises.

# International Expansion



- **Global Research:**

- Franchising has expanded to across the globe.
- U.S. franchisors lead the global expansion, with most of the world's largest franchisors being U.S.-based.
- France was the first non-North American country to regulate franchising in the 1980s.

- **1990s Onwards:**

- Significant regulatory activity in Mexico, Brazil, and several European and Asian countries.
- China, Indonesia, and Malaysia have comprehensive franchise laws.

# Elements of Franchise Regulations

- **Disclosure Requirements:**

- About 37 jurisdictions require pre-sale disclosure documents.
- Some countries have specific but less detailed disclosure requirements.

- **Registration:**

- Rare outside the U.S., but required in countries like Australia, China, and South Korea.

- **Relationship Laws:**

- Regulate ongoing franchisor-franchisee relationships, including termination, renewal, and transfer.

# Recent Legislation

Topic	South Africa	The Netherlands
<b>Legislation / regulations</b>	Franchisee included in definition of a “consumer” Consumer Protection Act (CPA). “Franchise Agreements” defined in CPA	Mandatory law applies to franchisees established in the Netherlands “Franchise agreement” defined by trademark / know how license, fees, franchise system, uniformity
<b>Registration required</b>	No	No
<b>Disclosure obligations</b>	Mandatory disclosure requirements in an FDD with prescribed information.	Mandatory disclosure requirements in the form of an FDD with prescribed information. Ongoing disclosure obligations
<b>Cooling off periods</b>	14 calendar days after receipt of FDD and draft of franchise agreement, and 10 business days after signature of franchise agreement	Four weeks after providing FDD unless changes are favorable to franchisee
<b>Franchise Agreement</b>	In writing and signed by franchisee Plain & understandable language Specific information to be included	Method for calculating goodwill attributable to franchisee, if any, if franchisor takes over franchisee business Non competes must be written, limited to one year and to products/services and geographic scope
<b>Good faith / fair dealing</b>	CPA provides for fair and reasonable terms, conditions and conduct. Franchisors prohibited from making misleading or deception representation.	Reasonableness and fairness is a defined legal concept. It is explicitly stated in Act as the obligation to behave as a good franchisor and good franchisee.

# Recent Legislation

Topic	South Africa	The Netherlands
<b>Marketing fund</b>	<p>Separate bank account</p> <p>To provide management accounts and financial statements</p> <p>Franchisors not entitled to use monies on marketing of new franchise businesses for sale, or to receive benefit if not afforded to franchisees.</p>	<p>Franchisor informs franchisee annually regarding mark ups or financial contributions paid by franchisee as to how these cover the costs or investments franchisor had intended to be covered.</p>
<b>Industry Code</b>	<p>Franchise Industry Code</p> <ul style="list-style-type: none"> <li>• Industry code under the CPA</li> <li>• Standards of behavior</li> <li>• Awaiting approval</li> </ul>	<p>Act includes a legal basis to adopt further rules regarding the nature, the content and the way of meeting the precontractual and contractual information obligations</p>
<b>Dispute Resolution</b>	<p>Franchise Industry Ombud</p> <ul style="list-style-type: none"> <li>• Robust mediation process &amp; mechanisms for alternate dispute resolution</li> <li>• Awaiting approval from Department of Trade &amp; Industry</li> </ul>	<p>Code of civil procedure applies unless the parties have agreed on arbitration (or mediation)</p>
<b>Positive</b>	<p>Basic structure and framework</p> <p>Provides for certainty and transparency</p> <p>Promotes ethical franchising</p>	<p>Franchisors welcome disclosure obligations</p>
<b>Negative</b>	<p>Fairly “new” legislation, no history of tested case law</p> <p>Uncertainty in terms of enforcement and consequences of non-compliance</p>	<p>The question is whether the situation prior to introduction of the Dutch Franchise Act was ‘unbalanced’ or in need of repair.</p>

# Future of Franchise Legislation







# **“A significant country in which there is no franchise legislation”**

## **Countries**

- With largest GDP
- With largest populations
- Most desirable places to do business
- Members of World Franchise Council

# Top 25 Jurisdictions Ranked by GDP<sup>1</sup>

Ranking	Jurisdiction	Franchise Law		
		Disclosure Law	Relationship Law	Registration Law
1	United States <sup>2</sup>	X	X	X
2	China	X	X	X
3	Germany			
4	Japan	X	X	
5	India			
6	United Kingdom			
7	France	X		
8	Italy	X	X	
9	Brazil	X		
10	Canada <sup>3</sup>	X		
11	Russia		X	
12	Mexico	X	X	
13	Australia	X	X	X
14	South Korea	X	X	X
15	Spain	X		
16	Indonesia	X	X	X
17	Netherlands	X	X	
18	Turkey			
19	Saudia Arabia	X	X	X
20	Switzerland			
21	Poland			
22	Argentina	X	X	
23	Belgium	X		
24	Sweden	X		
25	Ireland			

1. According to the World Bank as of December 31, 2023
2. Laws vary at the federal and state levels
3. Laws vary by province



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# Top 25 Jurisdictions Ranked by Population<sup>1</sup>

Ranking	Jurisdiction	Franchise Law		
		Disclosure Law	Relationship Law	Registration Law
1	India			
2	China	X	X	X
3	United States <sup>2</sup>	X	X	X
4	Indonesia	X	X	X
5	Pakistan			
6	Nigeria			
7	Brazil	X		
8	Bangladesh			
9	Russia		X	
10	Mexico	X	X	
11	Ethiopia			
12	Japan	X	X	
13	Philippines			
14	Egypt			
15	DR Congo			
16	Vietnam	X	X	X
17	Iran			
18	Turkey			
19	Germany			
20	Thailand	X	X	
21	United Kingdom			
22	Tanzania			
23	France	X		
24	South Africa	X	X	
25	Italy	X	X	

1. According to United Nations Statistics Division as of July 1, 2023
2. Laws vary at the federal and state levels



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# Top 25 Jurisdictions Ranked by Edwards Global Services, Inc. as Places to Do Business<sup>1</sup>

Ranking	Jurisdiction	Franchise Law		
		Disclosure Law	Relationship Law	Registration Law
1	Spain	X		
2	United Kingdom			
3	United States <sup>2</sup>	X	X	X
4	France	X		
5	Canada <sup>3</sup>	X		
6	Ireland			
7	Japan	X	X	
8	Singapore			
9	Australia	X	X	X
10	Indonesia	X	X	X
11	New Zealand			
12	Philippines			
13	Poland			
14	United Arab Emirates			
15	Netherlands	X	X	
16	Saudi Arabia	X	X	X
17	Thailand	X	X	
18	Chile			
19	India			
20	Panama			
21	Sweden	X		
22	Taiwan	X		
23	Turkey			
24	Vietnam	X	X	X
25	China	X	X	X

1. As of December 2024
2. Laws vary at the federal and state levels
3. Laws vary by province

# World Franchise Council Members

Ranking	Jurisdiction	Franchise Law		
		Disclosure Law	Relationship Law	Registration Law
1	Argentina	X	X	
2	Australia	X	X	X
3	Belgium	X		
4	Brazil	X		
5	Canada <sup>1</sup>	X		
6	Colombia			
7	Costa Rica			
8	China	X	X	X
9	Croatia			
10	Czech Republic			
11	Egypt			
12	El Salvador			
13	Finland			
14	France	X		
15	Greece			
16	Guatemala			
17	Hong Kong			
18	Hungary			
19	India			
20	Indonesia	X	X	X
21	Italy	X	X	
22	Japan	X	X	
23	Malaysia	X	X	X
24	Mexico	X	X	
25	Netherlands	X	X	
26	New Zealand			
27	Peru			
28	Philippines			
29	Poland			
30	Portugal			
31	Singapore			
32	Slovenia			
33	South Africa	X	X	
34	South Korea	X	X	X
35	Sweden	X		
36	Taiwan	X		
37	Turkey			
38	United Arab Emirates			
39	United Kingdom			
40	United States <sup>2</sup>	X	X	X
41	Venezuela			

1. Laws vary by province
2. Laws vary at state and federal level



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# Some conclusions about international franchise regulation



- **Uniformity**
- **Testing the Waters**
- **Protecting only those who need protection**
- **The UNIDROIT efforts**
- **Inquiries legislators should be urged to make**
- **The challenges to the international franchise community and to its lawyers**



# Thank You