



# 2023 LEGAL SYMPOSIUM

MAY 7-9, 2023 | WASHINGTON, DC



Taking International Expansion to the Next Level



# Agenda

- 1 Business & Legal Strategies for International Expansion
  - 2 International Franchise Structures
  - 3 The Deal Process
  - 4 Laws and Legal Frameworks Affecting Franchising
  - 5 Scenarios
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# Speakers



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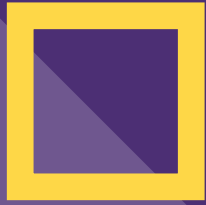
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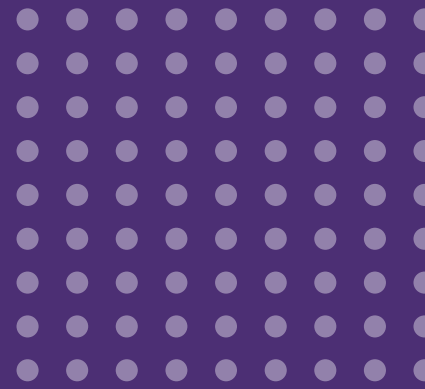
**Roman Kupchynsky  
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**Kevin Maher**  
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Baker McKenzie  
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# **Business & Legal Strategies for International Expansion**



# Business & Legal Strategies for International Expansion

## Why Choose to Expand Internationally?



### What is the business goal?

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- Increased market share
- Domestic market saturation
- Marketing / increased brand awareness
- Initial fee revenue (short term)
- Recurring fees (long term)



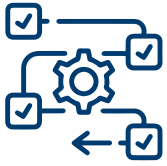
### Being clear-eyed about the business goal is critical

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- Important to undertake an **“honest self-assessment”** of company resources and capabilities when considering:
  - structure
  - target markets
  - timing
- Substantial investment required:
  - Capital investment
  - Time investment
  - Talent investment
- Distraction from existing business
- Understanding market for product/services

# Business & Legal Strategies for International Expansion

## Finding the Right International Franchisee



**Aligning the franchisee vetting process with the business goal**

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**Expected lifecycle with prospective franchisees and the prospective market?**

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**Analyzing the anticipated costs of the sales/disclosure process**

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- Is this potential franchisee “worth it”?
- Financial capacity of potential franchisees



**Other practical considerations**

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- Culture fit?
- Business acumen?
- True intentions as a steward of the brand?

# Business & Legal Strategies for International Expansion

## Assessing New Markets to Meet the Business Goal



### Franchise regulatory considerations

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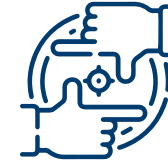
- Disclosure
- Registration
- Depending on the requirements in the market, this may be expensive and time-consuming
- Assess the regulatory risk



### Other legal or regulatory considerations

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- Cost to generate the necessary documentation for the deal
  - Easy to utilize existing documents? Or starting from scratch?
- Are there translation costs?
- Business or (non-franchise) legal risks lying elsewhere in a particular country



### Business-focused considerations

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- Can the brand's supply chain and operational structure function in a potential new market?
- Is brand able to provide adequate training/support
- Will a franchised location likely succeed in the potential new market?
- Business risk is always lurking no matter what

# Business & Legal Strategies for International Expansion

## Other Practical Considerations



### To take a deposit or to not take a deposit

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- Can be useful as a "seriousness" check on prospective international franchisees
- Can it be done under local laws?
- Is it worth it? Does taking a deposit align with the business goal and expected relationship with the prospective franchisee(s)



### Ability or desire to litigate

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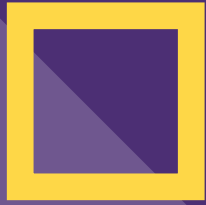
- Is the franchisor truly prepared to litigate?
- Careful selection of venue may mitigate cost, but the question remains
- Is it worth killing a deal over litigation/arbitration provisions?



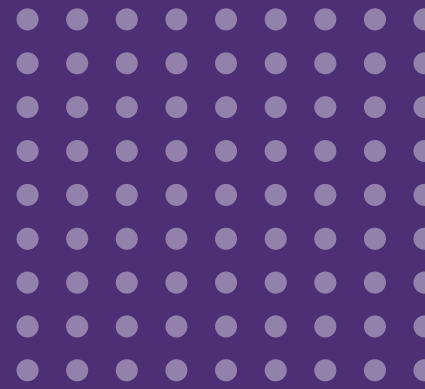
### Key commercial points

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- How to set fees /rates
- How to define exclusive territory
- Development commitments
- Site selection
- Level off in-market support needed
- Permissible localization of brand
- What's negotiable?



# International Franchise Structures



# International Franchise Structures



## Area Development Agreement/ Multi-Unit License Agreement

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- Contract directly with franchisee to own (directly or through an affiliate) more than one franchised restaurant in accordance with an agreed upon development schedule
- Typically involves some exclusivity in a defined territory
- Support provided directly by franchisor



## Area Representative Agreement

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- Contract directly with area representative to solicit prospective franchisees and service franchised restaurants in a specific territory
- Contract directly with franchisees to own one or more franchised restaurants in the territory that are serviced by the area representative

# International Franchise Structures

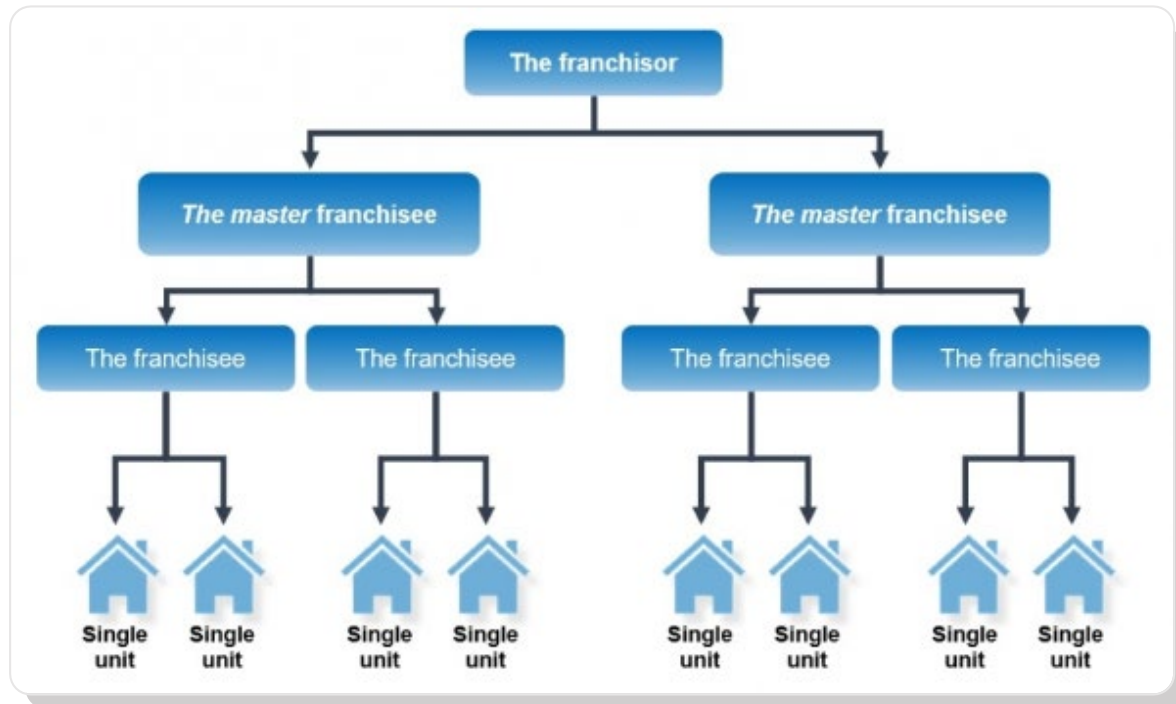


## Joint Venture and Joint Venture/Franchise

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- “Partner” or co-invest directly with a local party to form a new JV entity
- JV entity can develop restaurants directly with "partners" sharing in expenses and profits.
- JV entity that serves as the licensee, franchisee or the master franchisee
- Level of brand investment can vary from small minority to controlling interests
- Higher potential upside / higher risk
- Messy exit / divorce

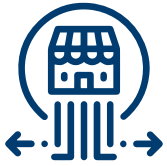
# International Franchise Structures



## Master Franchise Agreement

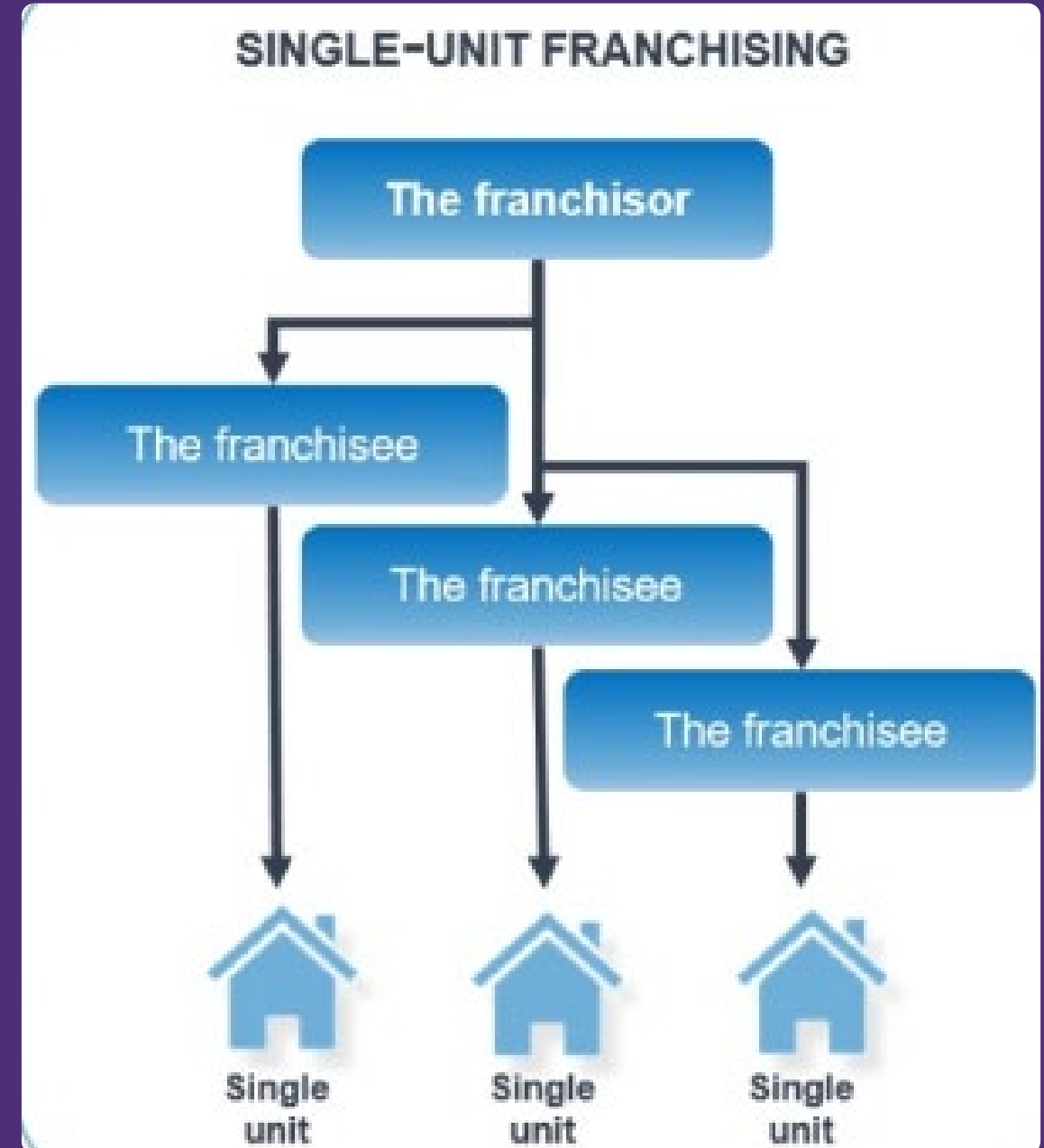
- Contract directly with master franchisee who serves as sub-franchisor in a designated territory
- Master franchisee enters into sub-franchise agreements with subfranchisees to own one or more franchised restaurants in the territory
- Promotes fast growth, but not suitable for all types of concepts
- Partner must have a franchisor skillset as well as an operator skillset

# International Franchise Structures



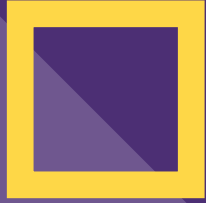
## Single Unit Franchise Agreement

- Contract directly with franchisee to own a single franchised restaurant
- Typically, higher need for in-market presence by franchisor
  - Recruiting
  - Supply chain
  - Training
  - Inspections

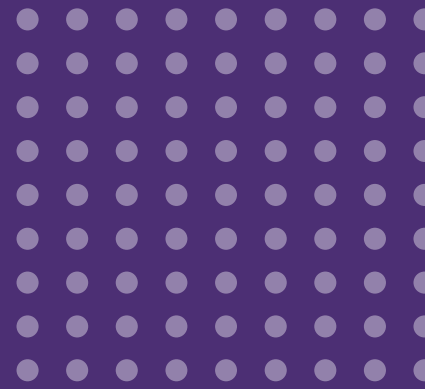


# International Franchise Structures

	<b>Area Development/ Multi-Unit Franchise Agreement</b>	<b>Area Representative</b>	<b>Master Franchise</b>	<b>Unit Franchise</b>	<b>Joint Venture</b>
Level of control over brand	High	Moderate	Moderate	High	High
Leverage Third Party Local Knowledge	More	More	More	Less	More
Franchisor Needs Local Knowledge	More	Varies	Less	More	Less
Recruiting Efficiencies	Yes	Yes	Yes	No	Varied
Ongoing Franchisor Resources (Capital)	Low	Low	Moderate	High	Moderate-High
Ongoing Franchisor Resources (Other)	Moderate	Low	Low	High	Varied
Receive Upfront Initial Fee	Yes	Yes	Yes	Yes	Varied
Fee Splitting	No	Yes	Yes	No	Varied
Ease of Termination	Moderate	Moderate	Difficult	Easy	Difficult
Level of Sophistication/Resources of Partner	High	High	High	Low	Varied
Exclusivity Typical?	Yes	Yes	Yes	No	Varied
Operational Control	Varies	Low	Low	High	Varied
Risk of Brand Damage/Liability	Higher	Higher	Higher	Lower	Higher
Possible Growth Rate	Fast	Fast	Fast	Slower	Varied



# Deal Process



# The Deal Process

## Due Diligence

- Country Diligence (Agreement Review, Local Law Diligence)
- Candidate Diligence (Credit, Background, Screening)

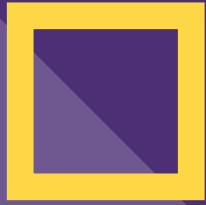
## Template Agreements

- Internationalization / Customization
- Choice of Law  
(Local Law vs. Franchisor's Law)
- Dispute Resolution  
(Arbitration vs. Litigation)
- Choice of Venue  
(Local Venue vs. Franchisor's Home)

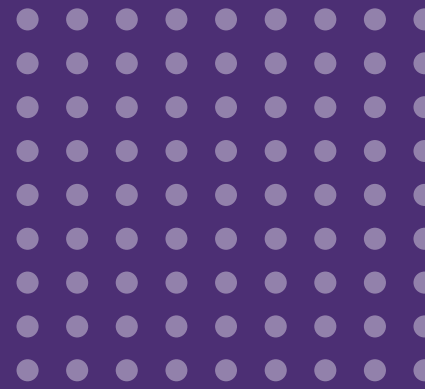


## Preliminary Deal Docs

- LOI or Term Sheet
- IDD
- Deposits



# Laws and Legal Frameworks Affecting Franchising



# Laws and Legal Frameworks Affecting Franchising

## Franchise Disclosure Laws

- More than 30 jurisdictions require disclosure
- Detail required varies greatly

## Franchise Relationship

- Commercial Agency
- Dealer Laws



## Registration

- Some require pre-sale others are post-execution
- Details and process vary

## Competition Laws

- Resale Price Maintenance
- Non-Competes
- Exclusivity

## "Compliance" Laws

- Anti-Corruption / Money Laundering
- Sanctions / Embargoes
- Human Rights / Environmental

# Laws and Legal Frameworks Affecting Franchising

## IP Laws

- Registration
- Technology Transfer Laws

## Tax Laws

- Withholding Taxes / Foreign Tax Credits
- Treaty Benefits
- VAT
- Income Tax

## Exchange Control Laws

- May delay or limit payments
- May require central bank registration

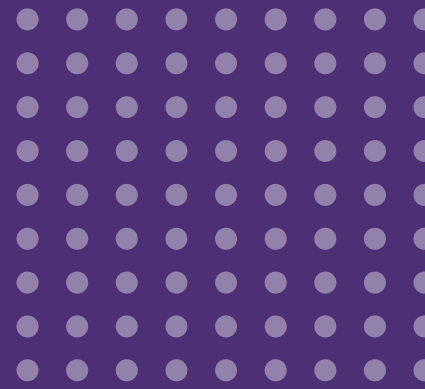
## Data Privacy / Cyber Laws

- May impact agreement provisions
- Data ownership / access





# Scenarios



# Scenario 1

Boss Biscuits is an established bakery-café concept in the United States that serves sports-themed baked goods, including their very popular secret-recipe shortbread cookies. Boss Biscuits has many company-owned locations in its home state of Kansas, and has developed a significant franchised presence in 27 additional states. Ted, the founder of Boss Biscuits, is seriously considering international expansion through franchising. Boss Biscuits has capital reserved to support a splashy market entry. The first country in which Ted wants Boss Biscuits to expand is England, where he lived for nearly a decade while going to university, during which time he developed the shortbread recipe Boss Biscuits uses today, using local ingredients. He hopes expansion to England will be quickly followed by additional European expansion.

You are in-house counsel for Boss Biscuits. Fortunately, you just attending an amazing session at the IFA Legal Symposium about expanding internationally via franchising.

- Remembering the need to make an “honest self-assessment”, what factors do you consider when advising on franchise structure(s) which best suit Boss Biscuits' expansion?
- Same facts as above, except that all of Boss's locations are presently company-owned with no franchise locations. Does this change anything?

## Scenario 2

With your sage guidance, Boss Biscuits determined to expand to England through an Area Development model. You have been tasked with preparing the documents necessary to implement the structure. Before you've even had a chance to start working on the documents, Ted calls you and says he's already found the perfect franchise partner for the UK expansion, his roommate from university, who also happens to be the son of President of the United Arab Emirates. Ted says that he'd also like to get the rights to the UAE and all of the Gulf Cooperation Council (GCC) countries in the Middle East. It's already May 6 and Ted says he wants to have all the "contracts" signed before Memorial Day weekend when he'll be visiting Dubai to sign everything in a ceremony with his friend at the Presidential Palace. Ted is giddy with excitement about this deal.

- What red flags do you see with Ted's plan?
- How could you satisfy Ted without skipping over important parts of the diligence, documentation and negotiation process?

## Scenario 3

Thanks to your hard work, Boss Biscuits successfully expanded to England and the Middle East last year under an area development model. Ted was so pleased that he elevated you to Chief Legal Officer. On your first day in the new position, Ted advises that he has a new prospects who would like to develop China, Korea and "Southeast Asia". Unbeknownst to you he's already been engaged in discussion with the proposed developer. According to Ted, all of the key issues have been agreed except for one "minor" legal point. The candidate wants all of the agreements to be governed by Chinese law with dispute resolution in Chinese courts. Ted presses and says this is the last point holding up the deal and that he would like for you to find a way to make it work.

- What should you tell Ted about this "minor" legal point?
- What other issues can you identify for Ted that would affect the proposed deal?



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