iFA INTERNATIONAL FRANCHISE ASSOCIATION

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Franchise Law without Borders

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Agenda

Introduction
How will the quiz work?
Franchise Disclosure and Registration Laws: International Update. *Mike Santa-Maria*
Competition Laws: Safe harbor for franchisors? *Babette Marzheuser-Wood*
Labor laws and joint employer *Mo Alturk*
Commercial Agency Laws *David Bligh-Smith*
Anti-Bribery and Sanctions *Mo Alturk*
Trade issues and tariffs, impact on franchising *Mike Santa Maria*
Regulation of E-Commerce *David Bligh-Smith*
Practical check list

International Franchise Disclosure and Registration Laws update

Best practices for managing disclosure and registration jurisdictions

- First Step – confirm whether you're dealing with a disclosure and/or registration jurisdiction and what actions would trigger compliance
- If possible, use a pre-contractual document (letter of intent, MOU) in a non-binding basis
- If possible and it doesn't trip disclosure/registration rules, try to get a deposit at LOI/MOU (nonrefundable, if possible) to cover legal fees
- If using "prior art" from US or other jurisdictions, ensure your disclosure is tailored to the country in question
- Ensure cooling off periods are appropriately documented
- Ensure any negotiated changes to documentation made during cooling off period don't require redisclosure
- Ensure you have written acknowledgements of timely disclosure and registration

Test your knowledge

How many countries in the world have franchise disclosure laws?

a. 30
b. 40
c. 50

Which country first introduced pre-contractual disclosure obligations?

a. California
b. Germany
c. Spain

Franchising around the globe: levels of regulations

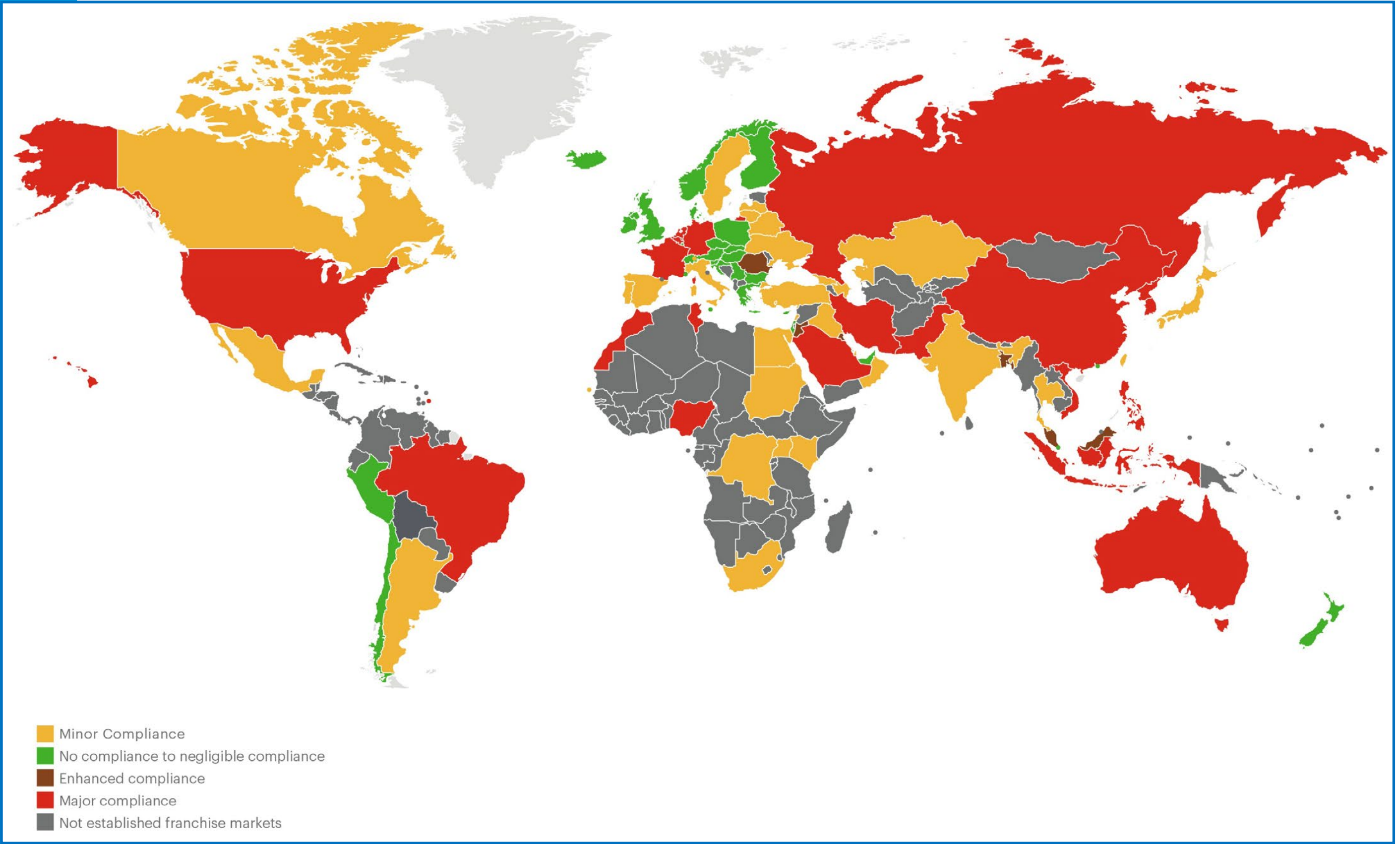
Argentina
Azerbaijan
Belarus
Cabo Verde
Canada
Democratic Republic of the Congo
Egypt
Georgia
India
Iraq
Italy
Japan
Kazakhstan
Kenya
Latvia
Lebanon
Liechtenstein
Lithuania
Mexico
Oman
Portugal
Qatar
South Africa
Spain
Sudan
Sweden
Taiwan
Thailand
Turkey
Uganda
Ukraine
Austria
Bahrain
Bulgaria
Chile
Croatia
Cyprus
Czech Republic
Denmark
Finland
Greece
Hong Kong
Hungary
Iceland
Ireland
Israel
Luxembourg
Malta
Monaco
New Zealand
Norway
Peru
Poland
Serbia
Singapore
Slovakia
Slovenia
Switzerland
United Arab Emirates
United Kingdom

Enhanced compliance

Bangladesh
Jordan
Kuwait
Malaysia
Romania

Major compliance

Australia
Barbados
Belgium
Brazil
China
France
Germany
Indonesia
Iran
Morocco
Netherlands
Nigeria
North Korea
Pakistan
Philippines
Russia
Saudi Arabia
South Korea
Tunisia
United States of America
Vietn



Quick takeaways - managing disclosure and registration jurisdictions

- Use experienced counsel for international matters
- Definitely rely on "prior art" but modify for local use in each new jurisdiction
- Periodically update your enforceability analysis of your franchise documentations in your key commercial jurisdictions
- When amending, modifying or extending (specially when assigning), a "belt and suspenders" check in with counsel on whether the changes or assignment require redisclosure
- If using a master franchise model, ensure the master follows local disclosure/registration requirements and that you get confirming documentation

Competition Laws: Emergence of a Safe Harbor for Franchisors?

Test your knowledge questions

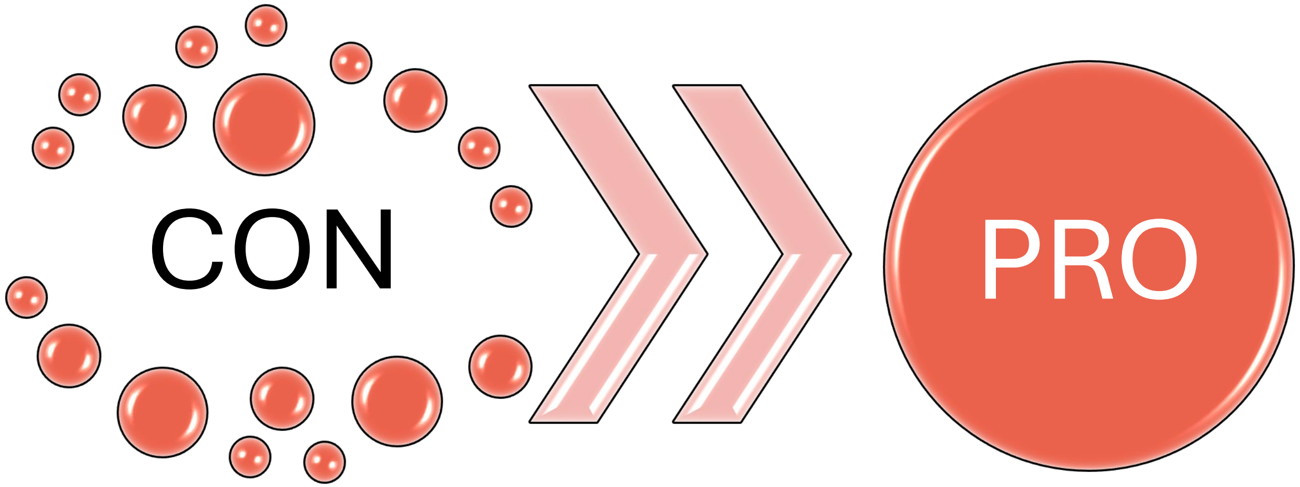
What is the name of the first law regulating monopolies?

a. The Sherman Act
b. The Statute of Monopolies
c. The French Chapelier Law

What is the permitted duration of a post-termination restriction in Europe?

a. Not permitted
b. 1 year
c. 2 years

Competition Laws and Franchising



- Price fixing
- Information sharing
- Artificial boundaries

- Uniform System
- Quality Standards
- Enables small traders to compete

The trend is to insulate franchise systems from anti-trust liability

1989

EU Block Exemption Regime since 1989

2007

USA: Rule of Reason, Leegin 2007

2026

China: Block Exemption 2026

USA: Rule of Reason

Leegin Creative Leather Products v. PSKS, Inc.

The Leegin Court noted that allowing restrictions of certain aspects of intra-brand competition **may lead to greater consumer benefit** than allowing unfettered intra-brand competition

Minimum and maximum resale price maintenance to be evaluated using the "rule of reason" approach weighing "all of the circumstances of a case in deciding whether a restrictive practice should be prohibited"

EUROPE: Safe harbor regime

- smaller scale franchise, Market share below 5 % /EUR 40 m
- De minimis notice 10-15 % market share
- Up to 30 % block exemption

Exempted Categories of Restrictions

- Purchase ties up to 80 %
- No active sale into exclusive territories
- Non-competes up to 5 years

Pronuptia of Paris decision

- Purchase ties up to 100%
- Non-competes for the entire term

Blacklisted

- Price Fixing
- Internet selling restriction

Countries that provide a safe harbor

- UK
- Indonesia
- China
- Switzerland
- Turkey
- Israel
- Finland
- Japan
- Norway

Countries that provide an exemption process

- Philippines
- Australia
- South Africa
- New Zealand

Safe Harbor Checklist

How long is the Franchise Agreement

- Up to 5 years
- More than 5 years

Purchase of products and services

- Franchisor
- Nominated Suppliers
- Other franchisees
- Any quality supplier

Exclusive Territory

- Active sales
- passive sales
- reserve free territories

Post Term Non-Compete

- From the Unit
- In the Territory
- In the Country
- Worldwide
- Duration?

Checklist for local counsel

- Is the franchisee permitted to operate another business?
- Are exclusive territories permitted in the target jurisdiction?
- How is a "competing business" defined? Is that definition reasonable in view of the target market
- Which persons are subject to the restrictions? Have you gone too broad
- Duration of the restrictions, in term and post-term
- Is the franchisee required to purchase certain products only from the franchisor and its affiliates? Can these purchase ties be enforced locally.
- Is the franchisee allowed to sell online ?

Test your knowledge questions

What did the US Supreme Court rule in Leegin?

a. That retail price maintenance is permitted in franchise systems
b. That the franchisor may set a minimum price
c. That price fixing is not automatically unlawful

Which country introduced a safe harbour for restrictions on competition in franchise agreements in 2026

a. Germany
b. Australia
c. China

Labor Laws
and Joint Employer

Test your knowledge question

The joint employer standard under the NLRB is best described as:

a. A stable foundation for long-term planning

b. A narrow rule with minor tweaks

c. A pendulum swinging with each administration

d. A problem only for other franchisors

Joint Employer: A Moving Target

- NLRB standard shifts with political cycles, but...
- The American Franchise Act to the rescue?
- Global analogues
  - Canada
  - Australia
  - Europe

Joint employer checklist

- Keep a close eye on elections and resulting policy changes
- Be aware of local nuances
- Focus on substance over structure

Commercial Agency Laws

- GCC a very attractive opportunity and prosperous picking ground for US and other international Franchisors (retail economy/high disposable income/mall lifestyle/experienced operators/good commercial returns/legal necessity for local operating partner).

- Originate from a culture of protectionism towards local citizens/business.

- Restrictive rules on foreign companies/nationals which still continue today, although a degree liberalization (including 100% ownership by foreign franchisor – particularly in UAE).

- Confer entrenched rights such as longevity of tenure, compensation for termination and prevention of importation.

Reality and Franchise Laws

- Commercial agency is becoming more of a rarified concept and is resisted by Franchisors.
- Potential taxation implications for Franchisor "principals" if Franchisee is considered an agent.
- Franchise Agreements tend to be governed by US/UK or other non GCC laws and invariably contain very restrictive and onerous provisions effectively resisting and avoiding the application of commercial agency.
- GCC countries do not have specific franchise laws with the exception of KSA ("Franchise Law" and its "Implementing Regulations" which require (i) a franchise disclosure document (in a specific format - US FDD's cannot be used); and (ii) a separate territory franchise agreement that has to be registered. Arabic translation required and there are also requirements around notarisation, apostilling and legalization.

Test your knowledge question

What are the principal risks a Franchisor must consider in respect of any potential commercial agency regime ?

a) that the Agreement can't be terminated without a court order

b) that the Franchisor must pay compensation to its "Agent" (franchisee) upon termination

c) that the Agreement is invalid if it is not registered

d) that the Franchisor might be deemed to have a taxable presence in the relevant market

How are the risks of a commercial agency best avoided ?

a) include a "no agency" clause

b) withhold consent to registration

c) register a trademark license

d) permit your franchisee to act fully independently

Anti-Bribery Laws

- **Primary anti-bribery laws with extraterritorial reach –**
  - The US Foreign Corrupt Practices Act (enacted 1977)
  - The UK Bribery Act (enacted 2010)
  - The EU Anti-Corruption Directive (enacted April 2026)
  - An array of country-specific corruption laws are on the books
- **Primary takeaways –**
  - Franchisors may be vicariously liable for franchisee wrongdoing
  - Offenses may lead to criminal and financial penalties
  - Having strong compliance programs that are actually implemented is key
    - Written Policy; Training from C-Suite on down; Substantiating training at all levels

Trade Sanctions

- **Sanctions and Tariffs are not new concepts**
  - Trade sanctions first use in 423 BC by Athenian Empire
  - Of more recent vintage, the League of Nations use trade sanctions post WWI and Nato Allies used them against the Soviet Union post WWII
  - Office of Foreign Asset Control (OFAC) created in 1950
    - Role greatly expanded after 9/11/2001
    - US companies subject to retaliatory sanctions and economic measures
  - The WTO was established in 1995 and China admitted in 2001
    - After a country enters the "WTO Club" it becomes more dependent on trade with member countries, making Trade Sanctions an effective tool against them
- **Impact of Trade Sanctions on Franchising**
  - Doing business in a sanctioned country, directly or indirectly, may violate sanction laws and expose the franchisor and its executives to criminal and financial penalties

Test your knowledge questions

What makes the FCPA particularly relevant to global franchise systems?

a. It only applies inside the U.S.
b. It focuses exclusively on employees
c. It reaches global operations and requires internal controls
d. It applies only to public companies

Why do anti-corruption laws around the world look increasingly similar?

a. Coincidence
b. Copy-paste legislation
c. Converging expectations around corporate compliance and liability
d. Requirements imposed by franchisors

How Do Trade Sanctions impact franchising?

a. They don't – franchise away anywhere because the franchisees are the ones operating locally
b. They may, depending on the sanction and the country in question – best to check with experienced counsel
c. If you were franchising before the sanctions were implemented, you are grandfathered and all is well!

Compliance Has No Borders

- US anti-corruption framework
  - FCPA
  - OFAC
- Regulatory convergence – OECD, UN, Canada, UK, Brazil, France
- Cross-border enforcement cooperation
- Extraterritorial reach + 3rd party risk = global compliance exposure

Sanctions checklist

- Franchise agreement is a start, but not the whole picture
  - Reps & warranties
  - Training
  - Certifications
  - Audit and termination rights
- Additional tools help establish a culture of compliance
  - Diligence questionnaires and background checks
  - Compliance policies
  - Oversight
  - Supply chain data

Trade Issues and Trade Tariffs

- First use of tariffs in the US – The Tariff Act of 1789
  - Half dozen acts in the US implementing tariffs until 1917
  - Trading with the Enemy act passed in 1917
  - GATT implemented in 1948
  - 1977 – International Emergency Economic Powers Act (IEPA) enacted
- Modern Day Trump Tariffs
  - First term – notably marked by China Trade War and tariffs on EU, Canada and Mexico
  - Second term – Liberation Day Tariffs; Fentanyl Tariffs; various others
- Impact on franchising
  - possibly impacting product-based franchises
  - sourcing of products, FF&E, supplies
  - possible dampening of enthusiasm for US brands

Test your knowledge question

Which US president enacted the first US Tariffs:

A) FDR

B) Donald Trump

C) JFK

D) George Washington

How do tariffs impact franchising?

A) May outlaw US concepts in certain countries

B) May raise the costs of setting up franchised units

C) Will definitely not impact anything related to franchised operations

Regulation of E-Commerce

- Franchise retailing in GCC is all about the omni channel. Stores, travel retail, delivery, multi-brand outlets, tele sales and E-Commerce.
- E-Commerce becoming very regulated, particularly around Data Protection largely modeled on GDPR principles but are very specific local rules. Privacy Policy must be comprehensive and available.
- Joint Controller regime often applies and franchisee is invariably the Data Processor.
- Stakes are high-major reputational and business risks associated with data breach, or infringement of regulations (including around consent to data transfer, direct marketing and integrity of personal data).
- Detailed provisions regulating pricing, invoice contents (language), returns and refunds and cool off periods.
- Consumer Protection – product recalls, "harmful terms and conditions", warranties, discount rules, sales practices, completeness and accuracy of E-Commerce platform.

Test your knowledge questions

What are the key legal factors to consider in relation to a) to d) below devising an effective omnichannel / E Commerce Strategy for key GCC markets ?

a) data protection legislation (how advanced is it?)

b) the contents of the e commerce platform itself

c) marketing and promotions

d) pricing

Does a Franchisor need to be aware of any particular “quirks” or “trips” in establishing a E Commerce business in UAE or KSA, relating to, for example,

a) “Rating Box” and 24/7 customer complaints system

b) Rules around Promotions and Discounting

c) Product Recalls

d) “Harmful” or Unfair Terms and Conditions

e) Business of Sales Practices

As a Franchisor, what would be your International Compliance Checklist?

International Compliance Checklist

Pre-contractual disclosure	Yes/No	FDD prepare by [name] on [date]
Franchise Registration	Yes/No	Before or after execution of contracts?
Can you take a deposit	Yes/No	When can a deposit be taken
Background Checks on Franchisee		Completed by [name] on [date]
Trade tariffs applicable to franchised goods	Yes/No	
Legal Red Flag Review		Completed by [name] on [date]
Joint Employer Risk	Yes/no	Mitigation measures
Commercial Agency Risk	Yes/No	Mitigation measures
E-Commerce	Yes/No	Compliance checks completed