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IFA Franchising without Borders: Navigating the Crosscurrents of Global Legal Trends

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Contents

I. Author's Note

The authors would like to thank Paul Wood of Dentons for his assistance with Chapter VII, Commercial Agency Laws.

II. Introduction

As Franchising expands across markets, legal and policy developments no longer stay confined within national boundaries. Emerging labor, disclosure, and compliance frameworks in the United States increasingly influence regulators and courts abroad. International reforms are in turn shaping US franchise laws and enforcement policies.

The exporting or influencing of regulation is something that the United States has been good at in its almost 250 years. Solely looking at the United States, from its initial foundation enshrined in the Declaration of Independence [1], the U.S. Constitution[2] and the Bill of Rights[3], American statutory frameworks and legal precepts and theory have been "exported" to one extent or another to other countries over time. As a simple example, one just needs to consider the "novel law" regulating monopolies passed in the U.S. that led to worldwide regulatory innovation that restricted certain anti-competitive behaviours and spawned other similar modern laws throughout the world that we tend to analyse in tandem with franchise laws – antitrust regulation (the United States law was The Sherman Antitrust Act of 1890[4]. While many in the United States like to see themselves as leading legal innovators and trendsetters, one must give proper recognition to English law, which was the forebearer of United States' laws in providing its Common Law roots (for example the first intellectual property law, The Statute of Monopolies of 1624[5] which laid the foundation for patent laws; and arguably the first labor laws, The Health and Safety of Apprentices Act of 1802[6]). More recently, the European Union in its capacity as legislative body for a multitude of countries, has also become a trend-setter with legislation such as GDPR[7] on data privacy and the regulation of AI as well as in the field of sustainability. Far before that, for true legal scholars, one could also point to, among other vintage precedents, the laws of Ancient Egypt where the Code of Hammurabi[8], circa 1754 BC, was enacted and included some of the earliest provisions imposing fair trade practices and consumer protections. Accordingly, throughout history, there many instances where a then-leading, ground-breaking economy "exported" its regulations.

[1] United States (1776)
[2] US Const.
[3] US Const. amend. I-X
[4] Sherman Antitrust Act, 15 U.S.C. §§ 1-7
[5] Statute of Monopolies, 21 Jam. 1, c. 3 (1624)
[6] Factory Act 1802, 42 Geo. 3, c. 73
[7] Regulation (EU) 2016/679, of the European Parliament and the of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119) 1, Art. 17
[8] *Code of Hamurabi* (L.W. King trans., 1910)

This paper, and the corresponding panel presentation that the authors will provide at the 2026 International Franchise Association's Legal Symposium in Washington D.C., will serve to provide examples of how prior regulations or current policies impact international franchising and provide practical examples and guidance on how to achieve legal compliance across multiple jurisdictions, whilst maintaining uniformity.

We note this is not intended to be an exhaustive treatise on the topic, and many laws and regulations are noted as examples for the sake of discussion and to stimulate further thought. The goal of our paper and presentation is to provide thoughtful examples and commentary on how certain key legal and policy developments have impacted global franchising.

III. Franchise Disclosure Laws

Many people believe that the creation of franchise disclosure laws started with the enactment by US Federal Trade Commission's Rule on Franchising in December of 1978[9]. In truth, the United States Rule on Franchising (or, in franchising legal circles, simply "the Rule" or the "FTC Franchise Rule") followed 8 years after the enactment in California of the Franchise Investment Law promulgated in 1970[10] (the "California Rule"). The California Rule imposed both a franchise state registration requirement as well as a disclosure obligation of an offering circular which needed to be approved by state regulators and registered with the state, similar in manner and approach to the then securities laws applicable in California. The FTC Rule did not, and does not to-date, require the registration of an offering document with the US FTC or any other agency. It merely specifies different items or areas of disclosure that must be met in order to satisfy the mandated disclosure requirements. As we set forth below, what began in California in 1970 started a wide-ranging regulatory trend that spanned many countries and has culminated in an extensive web of franchise regulations which exist today.

A. Retrospective on Franchise Disclosure Laws – the emergence of two models in the United States

As noted above, the inception of franchise regulations started in the United States with the passage of the California Rule in 1970 and the FTC Rule in 1978. As of the enactment of the FTC Rule, a bifurcated approach to franchise compliance arose in the United States. Franchisors that desired to "sell" franchises for their various business concepts, systems and brands were required to comply with federal disclosure requirements and applicable state enacted franchise sales regulations and registration requirements. Following the lead of California, other states enacted various registration/disclosure requirements (namely California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Oregon (disclosure only), Rhode Island, South Dakota, Virginia, Washington and Wisconsin, the "Registration States"[11]. Beyond the state imposed registration requirements, there were many states that enacted "relationship laws" intending to regulate the manner in which the franchisor-franchisee relationship was carried out in their states (namely, Alaska, Arkansas, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Louisiana, Michigan,

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[9] Statement of Basis and Purpose, 43 Fed. Reg. 59,614 (Dec. 21, 1978)
[10] Cal. Corp Code §31000 et seq. (West)
[11] *See* Bus. Franchise Guide (CCH)(2024) for applicable statutes and regulations

Minnesota, Mississippi, Missouri, Nebraska, New Jersey, Rhode Island, South Dakota, Virginia, Washington and Wisconsin[12]. The last item to note here, in order to have a complete treatment of the legal landscape affecting franchising transactions in the US, is to reference the various other laws that may impact a franchisor – business opportunity laws and possibly multi-level marketing laws (these are beyond the scope of this article, but need to be mentioned as they too provide some legal pitfalls that must be considered).The legal landscape is rife with legal considerations that apply to franchising. Accordingly, looking strictly at the United States' disclosure and registration framework developed primarily in the 1970s and 1980s, two models arose related to franchise regulations –

- Regulatory Classification Considerations –
    - Franchise disclosure only (offering documentation only)
    - Franchise disclosure and franchise registration (registration covering the franchisor and its offering documentation)
    - Franchise disclosure, franchise registration, and other related state laws.
- Geographic considerations –
    - Federal regulation only
    - Federal and state regulations

One practical consideration that was a key compliance element of the US disclosure laws was ensuring that franchisors provided their mandated disclosure documents to prospective franchisees with sufficient anticipation to comply with mandated "cooling off periods." Accordingly, providing a legally sufficient offering or disclosure document to a prospective franchisee on a pre-contractual basis became a central part of franchise sales compliance programs. While grounded in United States regulatory requirements, the use of pre-contractual disclosure requirement and corresponding cooling off periods has been adopted to varying degrees by many jurisdictions enacting disclosure requirements. Importantly, each jurisdiction will also have its own manner of counting applicable days (such as counting only business days or all calendar days or whether to count the day on which the disclosure document is delivered to the prospective franchisee) as part of the cooling off period.
As business format franchising took hold globally throughout the latter part of the 20th century, other requirements have been added and modified to the United States models as regulations were adopted in various countries (for example, mandating market studies, requiring registration of franchise agreements with central banks or intellectual property authorities for the purpose of foreign currency monitoring, tracking foreign investment and investors into a country or controlling the payments made abroad by local franchisees).
As an aside to mandatory federal or state regulated franchise disclosures and/or registrations, there is also an important strategic business/legal approach that certain large franchisors developed when entertaining global franchise transactions. These franchisors determined that, even in instances where certain jurisdictions did not require franchise disclosures, they would nonetheless deliver a timely disclosure document in all instances regardless of jurisdiction. These so called voluntary or "mea culpa" franchise disclosure documents were aimed at providing a consistent legal approach to all franchise transactions and addressing concerns relating to the perceived risk of non-disclosure in certain instances. While the practice is far from uniformly followed, it was advocated in certain cases as a means of providing one consistent approach to franchise disclosures. The ensuing

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[12] *Id*.

discussions on whether this amounted to excessive "over-disclosure" or appropriate legal risk management were, and continue to be, fodder for the legal franchise bar.
The foregoing is a summary view of how franchise regulations started in the United States and their corresponding impact on compliance requirements. There are yet a myriad of additional legal considerations surrounding enforceability of franchise agreements and protections of intellectual property and other rights and obligations that franchisors and franchisees need to consider when entering a franchise transaction. Accordingly, enlisting the assistance of experienced franchise legal counsel is paramount for both franchisors and franchisees alike.

B. Regional Overview of Current Franchise Regulations by Region

As noted above, various countries have followed the lead of the United States in its federal and state regulatory push over franchise transactions. The following is a brief, non-exhaustive list by region of the countries which have franchise disclosure and/or registration laws. We note that various jurisdictions have relationship and other laws affecting franchise transactions and these are not covered here. Again, appropriate local law review of franchise transactions and related documentation is strongly recommended.

<u>The Americas (in addition to the United States)</u>

- Argentina – disclosure requirement
- Barbados – registration requirement
- Brazil – disclosure and legal translation required
- Canada (certain provinces only) – disclosure only
- Costa Rica – pending enactment in 2026 – disclosure and voluntary registration
- Mexico – disclosure and registration

<u>EMEA</u>

- Belgium – disclosure requirement
- France – disclosure requirement
- Italy – disclosure only
- Lithuania – registration (if not waived by the parties)
- Latvia (disclosure)
- Netherlands – disclosure requirement
- Nigeria – registration requirement
- Poland – possible disclosure requirement under consideration
- Romania – disclosure requirement
- Russia – registration with relevant trademark authority
- Saudi Arabia – disclosure and registration requirements
- South Africa – disclosure and registration with the Reserve Bank of South Africa
- Spain – disclosure requirement
- Sweden – disclosure requirement
- Tunisia – disclosure requirement

Asia Pacific

- Australia – disclosure and registration requirements
- Cambodia – registration requirement
- China – disclosure and registration requirements
- Indonesia – disclosure and registration requirements
- Japan – disclosure only (with respect to certain chain and retail businesses)
- Korea – disclosure and registration requirements
- Macau – disclosure requirement
- Malaysia – disclosure and registration requirements
- Philippines – registration requirement under Technology Transfer Law
- Taiwan – disclosure requirement
- Thailand – disclosure requirement
- Vietnam – disclosure and registration requirements

C. Practical Strategies for International Franchising Rollout

Given the multifarious disclosure laws that a franchisor will have to encounter when undertaking a global franchise development program, one must give due consideration to implementing a structured approach in order to streamline compliance, safeguard important company processes and minimize costs. Starting with the underlying assumption that a franchisor has already complied with the FTC Franchise Rule and developed a franchise disclosure document and appropriate franchise agreements, the following is a streamlined approach to consider in implementing a global development program (we note that there are various strategies one can take to comply with franchise regulations, the key is to develop a "best practices" approach for each franchise company that takes into accounts its specific legal risk and works for its various stakeholders) –

- Preliminary country review – research whether there are franchise specific laws in the countries you desire to pursue, and determine any precontractual or registration requirements that impact the negotiations or timing of your transaction
- Understand whether you can obtain any upfront deposits, reservation fees, or other monies from prospective franchisees without violating pre-contractual disclosure rules, if any
- Consider using pre-contractual documents (such as non-binding letters of intents or memoranda of understanding) to flesh out key business details prior to engaging a lawyer to prepare locally compliant franchising documentation (though checking with counsel may be necessary to avoid missteps even with precontractual documents)
- Prepare local law compliant disclosure document as indicated by the preliminary review and secure any required registrations
- If timing and budgets allow, have your form documents reviewed for enforceability and franchise law compliance in each jurisdiction you contemplate in your program
- Observe any post-execution registration requirements, as applicable

There are variations on the foregoing approach, and each company and their respective counsel need to understand what suits them best, balancing risk, timing, and cost concerns.

IV. **Trade Issues and Tariffs – Geopolitics Take Center Stage**

A. **How did we get here?**

Modern day geopolitics develop and evolve at dizzying speeds. At the outset of preparing our remarks for this topic, the war between the United States, Israel and Iran had not started. As of our writing, oil prices have spiked over $100 per barrel, bombs are flying through the majority of the Middle East, and the world is careening in various directions. The impact on business in the Middle East was immediate and devastating. The intersection of geopolitics and business has clients and lawyers alike struggling to plan and anticipate outcomes. The only constant is the need to be ready, to reassess and to redirect. It was not too long ago when the constant assumption in business was the lowering of trade barriers, the harmonization of trade and regulation, the lowering of foreign investment regulations, and the tireless expansion of global business. In short, the ability for companies to be able to source, manufacture, sell, and, yes, license and franchise their business models, products and services throughout the world seemed to constantly allow for continued growth. Since the post World War II years, trade liberalization, the lowering of tariffs and the dissipation of protectionist regimes had been a business constant. The advent of centralizing important supply chain components in formerly far-flung yet low-cost jurisdictions became desirable and commonly accepted. At the same time, the inherent risks in the centralized, globalized supply chain became so routine that they became commonplace, assumed risks that were merely table stakes. Some primary themes emerged in the latter half of the 20th Century that were a setup for today's geopolitical dynamics and resultant business impact –

- With Toyota leading the way, just-in-time operations management and manufacturing processes came to the fore in the 70s and 80s and honed to perfection in the 90s and 00s. Gone were the days of Henry Ford in-market assembly line - stockpiling inventories and carrying bloated warehouses.
- Logistics planning and execution became the backbone of global business.
- Centralized manufacturing in lowest-cost jurisdictions became easily accessible and acceptable.
- The drive to lower costs drove manufacturers to do away with redundant manufacturing locations and suppliers. Single-source suppliers became the norm.
- The rise of the massive conglomerates, whether backed by Wall Street, private equity or sovereign wealth funds, provided arguably unlimited financial fodder for expansion.
- Interlocking banking systems, based on private and public credit markets, created tie-lines that pulled all countries in similar directions.

Post World War II globalization was accepted, encouraged, and pursued by politicians and businesses alike. The ability to expand both business and influence beyond all borders took hold at an unprecedented level with the prevailing assumption being that the continued liberalization of trade would always win over the status quo. The interconnected nature of globalization also made each country's economy inextricably tied to those of other countries. The two most recent examples of this were –

- The Great Recession/Financial Crisis of 2008-2009 – contagion from exposure to tainted financial assets and overleveraged companies and countries led us to a near Great Depression and global financial meltdown which impacted the world economy for years to follow.
- Covid 2020-2022 – globally interconnected travel and open borders allowed a virus to effectively close the global economy during this period.

An arguable third example may be the effects from the 2026 war in Iran, but that story is still being developed. In each case, the effects of the unfolding events and their impact were drastic, global, and almost immediate across borders. The magnifiers were all the same culprits – just-in-time manufacturing, reliance on cutting edge logistics, centralized single-sourced manufacturing, interlocking financial markets and the assumption that globalization would continue undeterred. The impact on businesses, economies and populations was uniformly brutal in certain instances. In the meantime, the notions of trade sanctions and tariffs, which have always lurked in the background of global trade, have had an increased resurgence during this period of unrelenting globalization. Almost from the beginning of commerce and trade, classical blockades, embargoes, and medieval commercial restrictions of one sort or another have existed side by side with geopolitics have been around. Particularly after World War I and World War ll, the use of sanctions arose as an alternate means of addressing geopolitical issues without needing to resort to armed conflict. With the interrelated and closeness of the globalized economies, trade sanctions and tariffs have become stronger tools to support diplomatic efforts.

B. The Groundwork for Sanctions as a Global Diplomatic and Political Tool

Though not an exhaustive list, the following occurred in the 20th Century setting the table for the last 25 years –

- The League of Nations[13] used sanctions and embargoes in various instances after World War I to sanction what were perceived bad actors.
- In the post-World War II Cold War Era, trade sanctions by the United States and its Western Allies against the former Soviet Union, and its retaliatory positions, attempted to embargo strategic goods from reaching Eastern Bloc countries.
- Regulations limiting the export or re-exporting of sensitive military technology and information were enacted in most all commercially developed countries.
- Notable embargoes and sanctions against Cuba[14], Iran[15], Iraq[16], Libya[17], and North Korea[18] among others in the latter part of the 20th century sharpened the use of such trade weapons, in each instance with varying degrees of success.

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[13] Covenant of the League of Nations, June 28, 1919, 225 Consol. T.S. 195
[14] Foreign Assistance Act of 1961, Publ. L. No. 87-195, §620(a), 75 Stat. 424,445 (as amended at 22 U.S.C. § 2370(a)
[15] International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1707 (2018)
[16] Exec. Order No. 12, 55 Fed. Reg. 31,803 (Aug. 2, 1990)
[17] Libyan Sanctions Regulations, 51 Fed. Reg. 1354 (Jan. 10, 1986) (codified at 31 C.F.R. Pt. 550)
[18] Trading with the Enemy Act, 50 U.S.C. §§ 4301-4341 (1950)

This all paved the way to what we can call the "modern day trade sanctions era" – where targeted sanctions and embargoes not only are aimed at countries and their regimes, but also against companies and individuals that are aligned with the sanctioned countries and regimes. Notably, the United States – consistent with theme of this paper on how the US "exports" its regulation – has led the way on the use of trade sanctions. We highlight the following –

- Through The US Department of the Treasury's Office of Foreign Asset Control ("OFAC")[19], sanctions passed by the United States Congress or the President are administered, as well as maintaining the Specially Designated Nationals and Blocked Persons Lists[20] (SDN List) and administers financial controls, among other things.
- The US Department of Commerce manages export controls and various end-user restrictions enacted by the United States Congress and the President.
- The US Department of State manages the diplomatic aspect of sanctions as well as helping to negotiate arms sales and manages foreign aid.
- With the growing use by United States Presidents of their executive action authority (which is very much in the press these days under the current administration), executive actions are able to be deployed very quickly with limited initial controls.
    - For context, since Ronald Reagan in the early 80s, most US presidents have issued 200 or so, give or take, executive orders.
    - Currently, for his second term alone, President Trump has issued in excess of 400 executive orders.

The modern-day trade sanctions era, from a United States perspective, focuses on imposing sanctions the following primary areas –

- Country-targeted sanctions – most notably
    - Iran – nuclear sanctions, terrorism related sanctions, financial restrictions, and trade embargoes[21]
    - North Korea – nuclear proliferation, cyber-attacks, other secondary sanctions[22]
    - Russia – following Crimea (2014)[23] and Ukraine invasions (2022)[24]
- Sectoral Sanctions and Export Controls –
    - Energy, defense, and dual use technologies[25]

[19] OFAC was established in the Trading with the Enemy Act, ch. 106, 40 Stat. 411 (1917) (codified as amended at 50 U.S.C. §§ 4301-4341)

[20] OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEP'T OF THE TREASURY, Specially Designated Nationals and Blocked Persons List (2026)

[21] Iran Sanctions Act of 1996: 50 U.S.C. § 1701 note (2018); *See also,* Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010: 22 U.S.C. §§ 8501-8551 (2018)

[22] Trading with the Enemy Act, 50 U.S.C. §§ 4301-4341 (1950)

[23] Exec. Order Nos. 13,660-2 and 13,685, 79 Fed. Reg. 13,493, 15.535, 16,169 and 77,357 (March 6, 17 and 20 and December 19, 2014)

[24] Exec. Order Nos. 14,024 and 14,066, 3 C.F.R. 14024 and 14066 (2022); Exec. Order No. 14, 114, 88 Fed. Reg. 89,271 (Dec. 26, 2023), codified at 22 U.S.C. § 9522

[25] *See, e.g.,* Office of Foreign Assets Control, Sectoral Sanctions Identifications List (Jan. 8, 2026)

- Focus on Chinese companies for varying covert and related activities and government related affiliations deemed uncompetitive[26]
- Targeted individual and entity sanctions
  - SDN lists for terrorists, drug traffickers, and weapons sales – blocking assets and restricting trade[27]
- Secondary sanctions –
  - Issued against third-party actors engaged with primarily sanctioned parties[28]
  - Financial sanctions against institutions trading with sanctioned parties[29]

C. Current Impact of Sanctions and Tariffs

Discussing the impact on business activity arising from the modern-day trade sanctions era would not be complete without a mention of the Trump presidency tariff policies.[30] Without getting into the various nuanced issues of the day in the United States related to tariffs (mainly, whether they are a tax; whether the US President unilaterally may impose them, and whether they are effective) it is a reality that they have been imposed aggressively by President Trump in both his first and second terms both as punitive measures and as a rebalancing of trade measures (it is only fair to note that many sanctions were maintained in place during the intervening Biden Presidency). Various reasons have been put forth to support the imposition of tariffs, ranging mainly from protecting industries, national security concerns or to rebalance seemingly unfair trade imbalances.

- From President Trump's first term (2017-2021) – the more notable tariff decisions were as follows:
  - China Trade War – multiple rounds of tariffs exchanged between the US and China covering a vast array of products[31]
  - Steel and aluminium imposed on various countries as a sector-wide tariff[32]
  - Washing machines, car parts, and solar panels – various countries[33]
  - Retaliatory tariffs were implemented on various US goods by other countries
- From the first 14 months of President Trump's second term (2025-March 2026) – the more notable tariff decisions were as follows (we note that many of these tariffs were recently struck down by the US Supreme Court, so these matters are in a state of flux[34]):

[26] *Id. See, e.g.,* Exec. Order No. 14,032, 3 C.F.R. 14,032 (2022)
[27] U.S. Dep't of Treasury, Specially Designated Nationals and Blocked Persons List (SDN) (2026)
[28] *See, e.g.,* Iran Sanctions Act of 1996, Pub. L. No. 104-172, § 5, 110 Stat. 1541, 1543 (codified as amended at 50 U.S.C. § 1701 note
[29] *See, e.g.,* Exec. Order No. 13,846, 3 C.F.R. 854 (2018), reprinted in 50 U.S.C. § 1701 note
[30] See, e.g., Exec. Order No. 14,257, 3 C.F.R. 14,257 (2025) (Regulating Imports With a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits)
[31] See, e.g., Regulations of the Peoples Republic of China on Import and Export Duties (promulgated by the St. Council, Nov. 23, 2003, effective Jan. 1, 2004), art 5 (China), and Decision on Amending the Regulations of the People's Republic of China on Import and Export Duties (promulgated by the St. Council, Mar. 20, 2022) (China)
[32] *See, e.g.,* Adjusting Imports of Steel Into the United States, Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 8, 2018); Adjusting Imports of Aluminium Into the United States, Proclamation No. 9704, 83 Fed. Reg. 11,619 (Mar. 8, 2018)
[33] *See, e.g.,* Proc. No. 10908, 90 Fed. Reg. 15041 (Apr. 7, 2025)(Auto Parts); Proc. No. 9694, 83 Fed. Reg. 3553 (Jan. 15, 2018) (Washers)

- Reciprocal Tariffs – the so-called Liberation Day tariffs – imposed by President Trump via executive order – set a baseline 10% tariff on nearly all imports to the United States, with significantly higher tariff rates imposed on countries deemed to have unfair trade surpluses with the United States
- Emergency Fentanyl Tariffs – tariffs on Mexico, Canada, and China ostensibly as a punishment for such countries' roles in the Fentanyl epidemic in the United States
- Industry Specific Tariffs – notable tariffs are:
  - Steel and Aluminium
  - Automobiles and Auto Parts
  - Copper
  - Lumber and furniture
  - Pharmaceuticals
- Country Specific Tariffs – notable tariffs are:
  - China – currently averaging 30% mostly across all products
  - India – secondary tariffs for purchasing Russian oil (this may be relaxed as a consequence of India being allowed to purchase oil from Russia during the war with Iran in 2026)
  - Brazil – tariffs imposed due to policies related to the trial of former President Jair Bolsonaro

These are just references to a handful of tariffs which have been central to the foreign policy and economic direction of the Trump administration as it has worked to recast trade globally as well as wield US economic power as a tool to augment diplomacy.

D. The not-so-subtle practical impact on franchising

While there is generally not a direct impact on franchising activity *per se* from the imposition of trade sanctions and tariffs, franchising will be impacted along with other business models and activity. The following summarizes the impacts on franchised concepts, from the most specific.

- The most immediately impacted franchised systems or companies will likely be those that are product based. The availability and cost of product-based franchise distribution systems will likely cause an increase in franchisee costs and a potentially corresponding slow-down in both supply and sales.
- Similarly, franchised systems that provide services that are based on products that have increased in prices will also be impacted by trade sanctions and tariffs. For example, rental car franchises have been impacted by both the general availability of vehicles and the elevated costs that tariffs have on vehicles and parts.
- Franchised businesses cannot avoid the general increase in costs and availability of products, components and raw materials that may be impacted by trade sanctions and tariffs.
- The overall slow-down in economic activity that is related with the uncertainty that strained trade relations may bring to various countries will likely slow down the desire in various countries for businesses to undertake new ventures.

- Lastly, the "Sell America Trade" may impact the general attractiveness of US brands and US franchises. The Sell America Trade generally refers to a growing trend in global markets and with global investors to sell US-linked assets, typically financial assets such as stocks and bonds. It is not farfetched to see an extension of the Sell America Trade to diminish the attractiveness of US brands, products, and services. While it is difficult to assess how much of an impact this general trade flow has on franchising, US based franchisors likely should keep this in mind particularly if they have non-US based competitors vying for the same pool of potential franchisees.

In summary, the impact that tariffs and trade sanctions have on franchising and franchised concepts will vary by type of offering and the salient elements which may be affected by these political tools being exercised in foreign commerce like never before. Board rooms and c-suites are perennially assessing global risks and determining how global developments impact local and foreign markets. While franchising is a formidable business model that allows companies to leverage financial and human capital and to navigate choppy economic times, it nonetheless remains susceptible to the economic seismic events caused in modern day geopolitics. To the extent there are any "winners" that arise from these developments, those companies will likely be the ones that focus on the executing their concepts and taking care of their respective teams in order to deliver on the value proposition that is central to their offering. In short, steadfastly focusing on business basics likely is the best strategy to follow.

V. The Globalization of U.S. Franchise Law Trends: Labor, Compliance, and Regulatory Spillover

A. Shifting Standards Under the National Labor Relations Board

Few areas of U.S. labor law have generated as much uncertainty for franchise systems as the evolving joint employer standard under the National Labor Relations Act (NLRA).[35] The central question is whether, and under what circumstances, a franchisor may be considered the employer of workers formally employed by a franchisee. Historically, the National Labor Relations Board (NLRB) applied a relatively narrow standard, focusing primarily on whether a company exercised direct and immediate control over essential terms and conditions of employment.[36] Under this approach, franchisors that limited their involvement to brand standards and operational guidance generally avoided employer status. Over the past decade, however, the standard has shifted repeatedly as presidential administrations have changed. During the Obama administration, the NLRB expanded the doctrine to include circumstances in which a company exercised indirect control or possessed reserved authority over employment terms.[37] This broader interpretation raised significant concerns within the franchise sector, where brand standards and operational oversight are inherent elements of the business model. Subsequent regulatory actions narrowed the standard during the first Trump administration, restoring a stronger emphasis on direct control.[38] During the Biden administration, the NLRB again moved toward a broader interpretation,

[35] National Labor Relations Act, 29 U.S.C. §§ 151–169.
[36] See TLI, Inc., 271 N.L.R.B. 798 (1984); Laerco Transportation, 269 N.L.R.B. 324 (1984).
[37] Browning-Ferris Industries of California, Inc., 362 N.L.R.B. 1599 (2015).
[38] Joint Employer Status Under the National Labor Relations Act, 85 Fed. Reg. 11184 (Feb. 26, 2020).

illustrating the degree to which administrative changes can reshape the legal landscape for franchise systems.[39] Most recently, as of February 2026, the NLRB formally rescinded the broader joint employer rule adopted in 2023 and reinstated the narrower 2020 standard, which requires a company to possess and exercise substantial, direct, and immediate control over essential employment terms (such as wages, hiring, or firing) to be considered a joint employer.[40] These shifts have created sustained regulatory uncertainty for franchisors operating both in the United States and internationally.

B. Legislative Response: The American Franchise Act

In response to this uncertainty, policymakers and industry stakeholders have proposed legislative reforms aimed at clarifying the boundaries of the franchisor–franchisee relationship. One such proposal, the American Franchise Act, seeks to codify the principle that franchisors are not employers of franchisee employees absent direct control over employment decisions.[41] The proposed legislation reflects a broader policy concern: that overly expansive interpretations of employer liability could undermine the economic structure of franchising. The franchise model relies on legally independent operators who assume responsibility for hiring, supervising, and compensating their own employees while operating under a shared brand. By establishing clearer statutory boundaries, proponents argue that the legislation would promote legal certainty while preserving worker protections within the traditional employer–employee framework. Although the proposal remains under consideration, its significance extends beyond domestic policy debates. The legislation reflects an emerging recognition within the United States that franchising constitutes a distinct business model that requires tailored legal treatment.

C. Emerging Global Analogues

While the joint employer debate has been particularly visible in the United States, courts and regulators in other jurisdictions are increasingly examining similar questions regarding franchisor liability.

Canada: Canadian courts have developed the common employer doctrine, under which multiple entities may be treated as a single employer where their operations and control structures are sufficiently integrated.[42] Although the doctrine is applied on a case-by-case basis, it has occasionally been invoked in disputes involving franchise relationships, particularly where franchisors exert extensive operational control.

Australia: Australia has adopted a more explicit statutory approach. Amendments to the Fair Work Act introduced provisions allowing franchisors to be held responsible for certain wage violations committed by franchisees where the franchisor knew, or could reasonably be expected to have known, of the misconduct and failed to take reasonable steps to prevent

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[39] Standard for Determining Joint Employer Status, 88 Fed. Reg. 73946 (Oct. 27, 2023).
[40] See NLRB Final Rule Rescission (Feb. 2026) (to be codified at 29 C.F.R. pt. 103).
[41] American Franchise Act (proposed legislation, 118th/119th Congress drafts).
[42] See Sinclair v. Dover Engineering Services Ltd., 1987 CarswellOnt 111; Downtown Eatery (1993) Ltd. v. Ontario, 2001 CanLII 8538 (ON CA).

it.[43] This development was influenced by high-profile wage underpayment scandals within franchise systems and reflects a broader policy trend toward enhanced worker protections.

Europe: While some EU-level regulations exist, labor laws are largely based on individual member state laws. These state laws tend to focus on whether the franchisor has actual control over the franchisee's personnel. For example, in Germany, courts have applied the concept of *mittelbare Arbeitnehmerüberlassung* (indirect employee leasing), under which a franchisor may be deemed a joint employer if it exercises operational control over hiring, task assignment, or working conditions.[44] Similarly, French labor law provides that a company may be held responsible for labor violations committed by contractors or franchisees if it exerts decisive influence over the economic and organizational functioning of the franchise.[45] Across the EU, the trend emphasizes functional control and economic reality over formal corporate separation, mirroring broader policy movements in North America and Australia. Collectively, these developments illustrate a growing willingness among regulators and courts to examine the economic realities of franchise relationships rather than relying solely on formal corporate structures. In conclusion, joint employer liability of franchisors under local labor laws should be on the checklist of every franchisor, looking to expand into new markets.

VI. Anti-Bribery, Sanctions, and the Global Diffusion of Compliance Norms

While labor law developments illustrate how U.S. regulatory debates can influence foreign policy discussions, anti-corruption and sanctions regimes demonstrate a second pathway through which U.S. law shapes global franchising: the international diffusion of compliance norms.

A. Foundations of the U.S. Anti-Corruption Framework

Two legal frameworks have been particularly influential. Together, they create compliance obligations that extend far beyond U.S. borders. First, the Foreign Corrupt Practices Act (FCPA) of 1977 prohibits U.S. companies and their affiliates from offering or providing anything of value to foreign government officials in order to obtain or retain business.[46] The statute also requires companies to maintain robust accounting controls designed to prevent and detect improper payments. Second, the U.S. sanctions regime, administered primarily by the Office of Foreign Assets Control (OFAC), restricts transactions involving sanctioned countries, entities, and individuals.[47] These restrictions often apply extraterritorially to U.S. companies and their global operations. The modern sanctions regime was largely solidified in the mid-1990s and early 2000s with country-specific, sectoral, and financial sanctions. While liability for acts of bribery under applicable anti-corruption laws most commonly arises for bribery committed by affiliates and employees, franchisors should recognize that

[43] Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 (Cth) (Austl.); Fair Work Act 2009 (Cth) § 558B.
[44] See German Temporary Employment Act (Arbeitnehmerüberlassungsgesetz – AÜG).
[45] Code du travail [C. trav.] arts. L.8222-1 et seq. (Fr.); see also Cass. soc. jurisprudence on co-employment.
[46] Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1 et seq.
[47] International Emergency Economic Powers Act, 50 U.S.C. §§ 1701–1707; see also 31 C.F.R. pts. 500–599 (OFAC regulations).

the acts of third parties, such as franchisees, can constitute an offence not only for the franchisee but also for the franchisor where the franchisor knew or was willfully blind to the likelihood that such conduct would occur, or did not take adequate precautions.[48] Interestingly, the authors are not aware of reported cases where a franchisor has actually been held criminally liable for unlawful payments made by one of its franchisees, but there are cases where US companies have been fined for acts of bribery committed by third parties with whom they had a contractual relationship. For example, in *SEC v. Alcoa Inc.*, the company was held liable for bribes paid by a third-party consultant to officials of a state-owned enterprise, notwithstanding the absence of direct involvement by company personnel.[49] Similarly, in 2020, Goldman Sachs agreed to pay more than USD 1 billion to settle charges brought the Securities and Exchange Commission for FCPA violations related to a bribe scheme carried out by a third-party intermediary.[50]

B. Enforcement Priorities and Political Transitions

Although the underlying statutes have remained largely stable, enforcement priorities have varied across presidential administrations. Changes in political leadership may influence factors such as the industries targeted for investigation, the scope of sanctions programs, and the allocation of enforcement resources. Across recent presidential administrations, US sanctions and anti-corruption enforcement priorities have evolved from a broadly rules-based, multilateral model toward a more selective, interest-driven approach. During the Obama administration, enforcement under the FCPA and sanctions administered by OFAC expanded in tandem, with a strong emphasis on international coordination and the use of anti-corruption tools to reinforce rule-of-law norms.[51] The first Trump administration maintained robust FCPA case volume despite rhetorical skepticism, while significantly increasing the use of sanctions as a unilateral instrument of geopolitical and economic pressure.[52] Under President Biden, corruption was expressly framed as a national security threat, producing a more integrated enforcement posture that aligned FCPA, sanctions, and export controls within a coordinated, multilateral strategy.[53] Under the second Trump administration, however, enforcement priorities have shifted again: FCPA activity has been curtailed or more narrowly targeted, and sanctions enforcement has been recalibrated to focus more directly on strategic competitors and transnational crime. Taken together, these developments reflect a broader transition from global norm-setting toward a model in which anti-corruption and sanctions tools are deployed more selectively to advance US national security and economic objectives. For multinational companies, including franchisors operating internationally, these shifts reinforce the importance of maintaining compliance programs capable of adapting to evolving regulatory expectations.

[48] See U.S. Dep't of Justice & SEC, *FCPA Resource Guide* (2d ed. 2020).
[49] SEC v. Alcoa Inc., No. 14-cv-06160 (W.D. Pa. 2014).
[50] SEC v. Goldman Sachs Group, Inc., Litigation Release No. 24871 (Oct. 22, 2020).
[51] DOJ FCPA Enforcement Plan and Guidance (2016).
[52] DOJ, *Evaluation of Corporate Compliance Programs* (2019 updates).
[53] White House, *United States Strategy on Countering Corruption* (Dec. 2021).

C. Legislative Borrowing and Regulatory Convergence

The influence of U.S. anti-corruption enforcement is also evident in the development of similar legislation in other jurisdictions. All major economies have enacted anti-corruption statutes that reflect comparable principles of corporate liability and compliance obligations. These include Canada's Corruption of Foreign Public Officials Act (1998)[54], the United Kingdom's Bribery Act (2010)[55], Brazil's Clean Company Act (2013)[56], and France's Sapin II legislation (2016)[57], as well as the Organization for Economic Cooperation and Development (OECD) Anti-Bribery Convention (1997)[58], which has been adopted by all 38 OECD members and some non-members, and the United Nations (UN) Convention Against Corruption (2003)[59], a global framework with near universal adoption. Like the FCPA, these statutes prohibit bribery of public officials (at a minimum), impose corporate liability for misconduct by employees and third parties, apply extraterritorially, and incentivize robust internal controls, risk assessments, and third-party due diligence. Several go further than US law.

For example, the UK Bribery Act extends to private-sector bribery and creates a "failure to prevent" offense that includes failure to prevent bribery by contractors and suppliers.[60] To minimize risk, the UK authorities recommend a systematic approach to due diligence and imposing a minimum compliance framework through mandatory policies. Due diligence could include use of a supply chain data gathering organization such as the Business Social Compliance Initiative26 or Sedex27, which gather basic information on thousands of suppliers globally, supported by self-assessment, site audits and capacity building.[61] Similarly, Brazil's Clean Company Act adopts a form of strict corporate liability (whereas strict liability under the FCPA is typically limited to its inaccurate books and records provisions, and not its anti-bribery provisions); and France's Sapin II mandates formal compliance programs for large companies (whereas the FCPA does not formally mandate compliance programs – even though they are practically essential to mitigate the risk of liability and penalties). Although each statute reflects local legal traditions, many incorporate similar expectations that companies implement comprehensive compliance programs designed to prevent bribery and other forms of corruption.

D. Cross-Border Enforcement Cooperation

A further indication of convergence is the increasing level of cooperation among enforcement authorities. Anti-corruption investigations now frequently involve coordination

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54 Corruption of Foreign Public Officials Act, S.C. 1998, c. 34 (Can.).
55 Bribery Act 2010, c. 23 (U.K.).
56 Lei No. 12.846/2013 (Brazil).
57 Loi n° 2016-1691 du 9 décembre 2016 (France).
58 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997).
59 United Nations Convention Against Corruption (UNCAC), adopted Oct. 31, 2003.
60 Bribery Act 2010, § 7 (U.K.); UK Ministry of Justice, *Guidance on Adequate Procedures* (2011).
61 Transparency International UK, Guidance on good practice procedures for corporate anti-bribery programmes.

among regulators from multiple jurisdictions, and corporate settlements may include penalties and monitoring obligations imposed by several governments simultaneously.[62] This collaborative approach effectively creates a global enforcement ecosystem in which regulatory expectations are shared and reinforced across borders.

E. Implications for International Franchise Systems: Practical Solutions for Franchisors through the use Contractual Compliance Mechanisms, Background Checks and Policies

These regulatory developments have important implications for franchise systems expanding across international markets. Many international franchise brands originate in the United States and therefore operate within the scope of U.S. anti-corruption and sanctions laws. As a result, franchisors frequently incorporate compliance policies and procedures designed to meet U.S. legal standards into their global operations. These policies may include anti-bribery training, internal reporting mechanisms, accounting controls, and sanctions screening procedures. Franchise agreements increasingly incorporate contractual provisions designed to manage these risks. Common provisions include:

- Anti-corruption representations and warranties
- Sanctions compliance
- Audit rights and compliance certifications
- Mandatory training requirements
- Termination rights in the event of violations

In addition to the use of contractual mechanisms, franchisors are well advised to employ background checks and auditing tools to demonstrate to the authorities that adequate procedures and internal controls were in place to require franchisees to prevent acts of bribery. Examples include

- The use of a compliance statement
- The use of a compliance questionnaire to be completed by the franchisee
- Conducting formal background checks
- Introducing a mandatory anti-bribery policy
- Using supply chain data gathering organisation such as the Business Social Compliance Initiative[63] or Sedex
- Compliance audits

Through these mechanisms, franchisors extend compliance expectations throughout their international networks. The practical effect is that franchisees operating in jurisdictions with relatively limited anti-corruption regulation may nevertheless be subject to compliance standards shaped by U.S. law. In this way, franchise agreements can function as instruments

[62] See OECD, *Resolving Foreign Bribery Cases with Non-Trial Resolutions* (2019); DOJ Corporate Enforcement Policy.

[63] www.bsci-eu.org/;
www.sedex.org.uk/sedex/go.asp?u=/WebSite/home&pm=6&location=Home 28. www.sa-intl.org/

of private regulatory influence, transmitting global compliance norms across borders through contractual relationships rather than formal legislation.

Conclusion

In an increasingly interconnected regulatory environment, U.S. legal developments often operate as an early signal of broader policy debates that later emerge in other jurisdictions. Labor law discussions surrounding joint employer liability illustrate how domestic regulatory shifts can influence foreign policy conversations about franchisor responsibility. At the same time, the global reach of anti-corruption and sanctions regimes demonstrates how compliance expectations developed in the United States can diffuse internationally through corporate governance structures and contractual relationships.

For international franchise systems, monitoring these developments is therefore not simply a matter of domestic compliance. It is an essential component of global risk management in a regulatory environment where legal norms increasingly travel across borders.

VII. Emerging trends for the treatment of franchise agreements under safe harbor regimes of Competition Laws

Anti-trust and competition laws increasingly recognize the pro-competitive nature of franchise agreements, resulting in the emergence of an increasing number of safe harbor regimes. The European Union has taken a leading role in shaping competition laws in respect of franchise and distribution agreement with the first ever franchise specific exemption from anti-trust laws enacted in 1989[64]. A significant number of countries have followed the EU exemption lead approach, whilst other jurisdictions continue to examine each vertical agreement on its merits[65]. In 2007 the decision of the Supreme Court in *Leegin*[66] has equally softened the pricing setting controls that franchisors must follow in the USA and created a safe harbor for franchisors in the USA. As a practical matter, franchisors need to understand if and to what extent a safe harbor is available to them when entering a new market. Franchisors need to be prepared to revise restrictive covenants in franchise and development agreements as required to avoid anti-trust law violations and to ensure enforceability. This impacts not only direct restrictions on competition imposed on franchisees and their owners. It also applies to partitioning of geographic markets through territorial restraints. One recent focus of regulators has been the increasing sophistication of online trade. In the EU, the preservation of trade between member states via virtual marketplaces is seen as an essential facilitator of cross-border trade. Internet selling restrictions can therefore be difficult to enforce internationally. Franchisors should also expect sophisticated franchisees expect their fair share of the online retail market.

[64] Commission Regulation (EEC) No 4087/88.
65 See Section [x] infra
66 Leegin Creative Leather Products, Inc. v. PSKS, Inc. 551 U.S. 877 (2007)

A. Converging Competition Law Policies

The global trend in the application of competition laws to franchise relationships is to increasingly insulate franchise agreements from certain anti-trust liability. This is typically accomplished through the creation of safe harbor regimes and exemption policies. Sometimes an exemption may need to be officially applied for whilst other jurisdictions have promulgated general exemptions for categories of agreements (such as franchise and distribution agreements) or for small and medium sized enterprises[67]. Case law often further exemplifies the pro-competitive nature of franchising and clarifies the scope of available exemptions. In the U.S. many aspects of franchise relationships have long been considered reasonable and therefore permissible in many circumstances and partly insulated from antitrust liability. More recently the Supreme Court held in *Leegin Creative Leather Products v. PSKS, Inc.*, 551 U.S. 877 (2007)[68]that vertical restrictions are subject to the rule of reason and not treated per se as illegal. The Leegin Court noted that aspects of intra-brand competition may lead to greater consumer benefit than allowing unfettered intra-brand competition, but each situation must be analysed independently. Similar to *Leegin*, the European Court of Justice has developed important, guiding principles for the preferential anti-trust treatment of franchise agreements in its leading decision *Pronuptia de Paris.*[69] In *Pronuptia* the European Court of Justice explained that franchising is a pro-competitive business model[70]. The court held that many restrictions on competition typically found in franchise agreements are exempt from competition law restrictions because they are necessary to preserve the common identity and reputation of the franchise network, and to protect the confidential know-how that has been developed by the franchisor.[71] This includes the recommendation of prices by the franchisor[72]. The holding of this case was ultimately adopted into the EU's Guidelines on vertical restraints,[73] and is expressly set forth in the Vertical Restraints Block Exemption.[74]

B. The emergence of a "Safe Habor"

The common starting point for the anti-trust assessment of franchise agreement is the rule that companies may not enter into agreements that unreasonably restrict competition.
In the USA, the Sherman Act[75] prohibits agreements between companies that unreasonably restrain trade, such as price-fixing, collusion, and market division.[76] In Europe Article 101 of

[67] See for example the European Block Exemption for Vertical Restraints 2022/720, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R0720

[68] Dressler, *supra* note 14; DANIEL A. CRANE, ANTITRUST PRINCIPLES AFFECTING FRANCHISE L. 188 (2013); ANTITRUST LAW DEVS., *supra* note 15, at 136–39.

[69] 1986 E.C.R. 00353.

[70] *Id.*

[71] *Id.* at ¶ 14.

[72] *Id.* at ¶ 25.

[73] European Commission, Communication from the Commission, Guidelines on vertical restraints 2022/C O.J. 248/01.

[74] VRBE, *supra* note 1, at art. 4(a).

[75] 15 U.S.C. § 1.

[76] *Id.*

the TFEU prohibits agreements between "undertakings" that have the object or effect to prevent, restrict or distort competition and affect trade between member states.[77]
Under U.S. Supreme Court precedent, franchisors and franchisees and franchisees and other franchisees are viewed as competitors[78], but the considerable market efficiencies generated by franchising are viewed as a mitigating factor. In the EU similarly, franchisees and franchisors are treated as independent undertakings that must enter into arm's length agreements, but several exemptions exist to allow franchise systems to remain competitive whilst preserving uniform standards of quality and customer service. As a result of these mitigating factors, today it has been accepted in the US, the EU and a number of other major global economies, that franchisors should be legally able to impose certain restrictions on franchisees to ensure uniformity such as to agree to set a maximum price under certain circumstances[79]. The US Supreme Court held in *Leegin Creative Leather Products v. PSKS, Inc.*, 551 U.S. 877 (2007) that both manufacturer (franchisor) imposed minimum and maximum resale price maintenance agreements should be evaluated using the "rule of reason" approach.[80] The rule of reason requires the court to weigh "all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition."[81] Most importantly, the franchisor must have market power in the relevant market to satisfy the rule of reason and the restriction cannot be a substitute for some other "per se" illegal agreement. [82]

Similar to the Sherman Act, European Competition Law prohibits anti-competitive agreements.[83] However, there is a presumption that smaller scale franchise and distribution networks do not appreciably affect trade between member states where the aggregate market share of the parties does not exceed five percent and the aggregate annual Union wide turnover of the products covered by the agreement does not exceed EUR 40 million.[84] The European Commission also published the so-called "*de minimis*" notice, in order to clarify that medium sized franchise systems that do not exceed certain market share thresholds are also deemed incapable of appreciably restricting competition.[85] This rule applies if the market share held by each party to the agreement does not exceed fifteen percent on any of the relevant markets affected by the agreement. Or ten percent, where franchisor and franchisee are potential or actual competitors.[86] Furthermore certain

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[77] *Id.* at art 101(3).
[78] *See* Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984).
[79] Erica Hall Dressler *et al*., *Current Advice on Managing Resale Prices in Franchising*, 24 THE FRANCHISE LAWYER 3 (2021).
[80] Dressler, *supra* note 14; DANIEL A. CRANE, ANTITRUST PRINCIPLES AFFECTING FRANCHISE L. 188 (2013); ANTITRUST LAW DEVS., *supra* note 15, at 136–39.
[81] Continental T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36, 49 (1977).
[82] *See* Ohio v. Am. Express Co., 138 S. Ct. 2274, 2284 (2018).
[83] Consolidated Version of the Treaty on the Functioning of the European Union art 101(1), May 9, 2008, 2008 O.J. (c 115) 47 [hereinafter TFEU].

[84] European Commission Notice, Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, OJ C 101, 27.4.2004, paras 44 to 57 [hereinafter Guidelines on Trade Concept].

[85] European Commission, Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union, OJ 2014/C 291/01 [hereinafter De Minimis Notice].

[86] *Id.* at para 8 lett. A.

restrictions of competition commonly encountered in franchise agreements are exempted under the Vertical Block Exemption Regulation ("**VRBE**"), if the market share held by each party to the agreement does not exceed thirty percent of the relevant market.[87] These rules will take most small and medium sized franchise systems outside the catchment area of EU anti-trust law. In the EU Franchisors can benefit from these exemptions provided they do not include hard-core restrictions on competition in their agreements. Hard-core restrictions are prohibited regardless of market share. The *de minimis* Notice and the various other exemptions do not cover agreements which contain hard-core restrictions. [88] The following restrictions are hard-core restrictions (i) price controls.[89] (ii) certain forms of market partitioning (by territory or customer group) and (iii) restriction of passive sales such as internet sales. In reality this means that for all but the very largest franchisors, the focus of the anti-trust law in Europe will be on (i) avoiding hard-core restrictions and (ii) drafting the other restrictions in compliance with the guardrails set out in the VBER.

C. Price Controls

The US stands alone in its rule of reason approach to price controls in franchise agreements. The European safe harbour regime does not permit price fixing nor the setting of minimum prices. The authors have not identified other global economies that permit the fixing of a price range or the setting of a minimum price by the franchisor. Whilst it would seem desirable from a business perspective to achieve price uniformity in franchise systems [90], other global economies do not permit the franchisor to set a price range that the franchisee must follow. Price fixing is prohibited or controlled in the majority of economies worldwide whilst the use of a recommended price is generally permitted as is the setting of maximum prices [91] . In contrast to the USA, the setting of a minimum price is not typically permitted internationally. The reason is that it is thought that a minimum price serves to keep prices artificially high. It is worth noting that some emerging market economies such as Indonesia allow the government to fix maximum prices for products including food to ensure affordability.

D. Market Partitioning and Internet Selling

Another hardcore restriction that is often prohibited is market partitioning. In the EU companies may not enter into agreements that, directly or indirectly, in isolation or in

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[87] European Commission, Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 134/4, art. 3 [hereinafter VRBE].

[88] *See id.* at para 13.

[89] Case C-211/22, Super Bock Bebidas, SA v. Autuoridade da Concorrência, 2023 EUR-Lex CELEX LEXIS 0211 (June 29, 2023)..

[90] *Franchisor Control over Prices & Policies in Franchises*, FMS FRANCHISE (May 22, 2024), https://www.fmsfranchise.com/franchisor-over-prices-and-policies.

[91] *See* discussion *infra* section I.A.2.

combination with other factors controlled by the parties, have the object of restricting the territory into which or the customers to whom the buyer or its customers may sell the contract goods or services. The safe harbour of the VBER is available to territorial protection in franchise systems provided that the franchisee is permitted to respond to unsolicited customer orders. Importantly, the use of the internet by the franchisee to advertise the sale of the franchise systems' products and services to such customers cannot be prohibited, as the internet is considered a passive selling platform that facilitates the flow of goods across EU member states. Exclusive Territories are the most common restrictions on competition found in franchise agreements so franchisors need to be aware of global and local trends regarding their enforceability.

E. Purchase Ties

The safe harbor created by the VBER permits the Franchisor to require that the Franchisee purchases 80% of the contract products and services from the franchisor or its nominated suppliers. The case law of the European Court of Justice[92] has clarified that a further safe harbor is available beyond the confines of the VBER whereby Franchisors may require the franchisee to purchase 100% of the contract good and services from the franchisor where this is necessary to maintain the common identity and reputation of the franchise network. This applies for example to products that bear the trademark of the franchisor and to items that must meet stringent quality standards. In the USA it is permissible for the franchisor to require the franchisee to purchase certain products and service only from the franchisor and its affiliates provided these restrictions are clearly set out in the FDD.

F. Non-Compete Covenants

In the USA, the enforceability of non-compete covenants is governed by state law. There is no general safe harbor. Agreements between franchisor and franchisees and other franchisees not to hire from competing locations are likely to be illegal.

G. Safe Harbour Regimes in other countries

Safe harbor regimes have been created in a number of economies such as the UK, Indonesia, China [TBC], Switzerland. In the United Kingdom, Chapter 1 of the Competition Act 1998 (the "CA") prohibits agreements that have as their object or effect the prevention, restriction, or distortion of competition within the United Kingdom.[93] Any agreement which is prohibited by Chapter 1 CA is void.[94] For franchise agreements there are two primary forms of exemption. The Vertical Agreements Block Exemption Order 2022[95] (the "VABEO") and (2) individual exemption (under CA Section 9(1)).[96]Under the VABEO**,** if the franchise agreement

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[92] Pronuptia and Computerland

[93] Competition Act 1998, c 1, § 2(1) (Eng.).

[94] *Id.* at § 2(4).

[95] The Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022, c 1 (Eng.); *see also* VABEO Guidance, *supra* note 182, at § 2.13.

falls into the correct market threshold,[97] and does not contain hardcore or excluded restrictions it will be exempted from CA Chapter 1.[98] Under CA Section (9)(1), to obtain an individual exemption an agreement must have enough pro-competitive efficiencies to outweigh the anti-competitive effects.[99] Finally, there is also a small agreements exemption.[100] Notwithstanding the foregoing, these exemptions are unlikely to apply to any hardcore restriction on competition such as RPM.[101]

South Africa: In South Africa, an exemption from the prohibition of anti-competitive practices in the Competition Act of 1988 [102] may be granted if the franchisor can demonstrate inter alia that by partaking in the prohibited practice it contributes to the expansion within a market by small and medium businesses whilst Kenya would only allow an exemption for compelling public policy reasons.

Indonesia: In Indonesia franchise agreements are generally exempted from the provisions of the Competition Law. Following the Indonesian Competition Commission Regulation No. 6 of 2009 concerning the Guideline for the Exemption from the Application of Law No. 5 of 1999 in Relation to Franchise Agreements ("KPPU Reg. 6/2009"), franchise agreements enjoy a privileged status but the exemption is not absolute. However, franchise agreements may still fall within the scope of competition law if they contain elements of monopolistic practices or unfair business competition found in a black list of prohibited practices.

China has historically applied a rule of reason approach to franchise agreements, requiring either market dominance or an analysis of the anti-competitive effects. China has recently introduced more detailed safe harbour rules for vertical agreements, effective February 1, 2026, offer a rebuttable presumption of legality for agreements meeting specific, strict market share and turnover thresholds.

Australia equally has an exemption process. Exemptions have to be applied for stating the reasons why the pro-competitive effects outweigh the disadvantages of the restraint. In most cases a franchise agreement will be exempt as an exclusive dealing arrangement that does not result in substantial lessening of competition in the relevant market.[103]

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[96] Competition Act 1998, c.1, § 9 (Eng.); *see also* VABEO Guidance, *supra* note 182, at § 2.9

[97] Note that the VABEO only applies where both the supplier's and the buyer's market shares do not exceed thirty percent. VABEO Guidance, *supra* note 182, at § 10.106.

[98] VABEO Guidance, *supra* note 182, at § 2.14.

[99] *See* VABEO Guidance, *supra* note 182, at § 2.10.

[100] Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000/262 (Eng.).

[101] The Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022, § 8(2)(a) (Eng.); *see also* VABEO Guidance, *supra* note 182, at § 8.10.

[102] Competition Act 89 of 1998 § 5(2) (S. Afr.)
[103] Getting the deal through Australia 2024

A number of countries have enacted exemptions often substantially similar to the VBER, this includes Switzerland (Swiss competition law tends to follow the VBER and EU case law however not by way of Block Exemptions but rather through official notices and guidelines issues by COMCO)[104], Finland[105], Israel[106] (provided the term of the agreement does not exceed 10 years). Japan has Franchise Guidelines that describe permitted restraints.[107] New Zealand provides a statutory exception for franchise agreements in the Commerce Act 1986.[108] Turkey's regulator has equally exercised its power to issue communiques that provide block exemptions by promulgating the Communique on Vertical Agreements. [109] Pursuant to the Communique, franchise agreements are exempt from anti-trust rules where the franchisors market share is less than 30 % and provided they do not contain certain blacklisted restraints such as RPM. Norway is a member of the EEA and has mirrored the Franchise safe harbor set out in the VBER in its domestic law.[110] South Africa applies the "rule of reason" to restrictions where the technological, efficiency or another pro-competitive gain that results from it outweighs any negative effect).[111] It should be noted that price fixing and division of markets are deemed "per se" restrictions.[112] Other countries such as India[113] , South Korea, Malaysia[114], Mexico[115] continue to examine each agreement on its merits. The Korean the "Fair Transactions in Franchising Act"[116] sets out a blacklist of restrictions that are prohibited in franchise agreements. These include RPM, purchase ties and exclusive territories.[117] Some countries, such as GCC countries focus on horizontal restraints such as cartels and abuse of dominant position and merger control.

H. Franchisor and Franchisee as Competitors

While most antitrust issues in franchise relationships arise in respect of vertical restrictions between the franchisor and franchisee, there have been several cases exploring the scope of liability when franchise relationships are used to facilitate horizontal anticompetitive conspiracies. Importantly horizontal price fixing, is still a *per se* violation of Section One of the Sherman Antitrust Act.[118] Horizontal price fixing occurs when competitors coordinate with each other to raise, lower, or stabilize prices.[119] For example, if a franchisor coordinated

[104] Getting the deal through Switzerland 2024
[105] Getting the deal through Franchising 2024
[106] Getting the deal through Franchising, Israel 2024
[107] Getting the deal through Franchising Japan 2024

[109] Communique of the Turkish Competition Board on Vertical Agreements no 2002/2
[110] Getting the deal through Franchising in Norway 2023
[111] Getting the deal through Franchising in South Africa 2023
[112] Supra 46
[113] Getting the Deal Through Franchising, India 2024
[114] Getting the deal through Franchising 2023
[115] Getting the deal through Franchising 2023
[116] https://elaw.klri.re.kr/eng_service/lawView.do?hseq=64613&lang=ENG
[117] https://www.kimchang.com/en/insights/detail.kc?sch_section=4&idx=29936; https://practiceguides.chambers.com/practice-guides/comparison/1379/17330/27074-27075-27076-27077-27078-27079-27080-27081-27082-27083

[118] U.S. v. Socony-Vacuum Co. Inc., 310 U.S. 150, 219–20 (1940).

[119] Crane, *supra* note 17.

prices between groups of franchisees or between franchisor owned corporate outlets and franchisee outlets, that would raise horizontal price fixing concerns.[120] Equally, franchisees may not coordinate prices with each other. Information sharing is an important function in franchise systems. The franchisor needs to receive regular reporting from its franchisees, not only on sales, to calculate its royalties, but also in respect of business performance to properly perform its training and support function. What are the limitations imposed on sharing competitively sensitive information in franchise systems? Generally, to the extent that the information is needed to operate the system and create efficiencies, information sharing tends to be permitted. However, franchisors need to be careful where they also operate their own corporate outlets. This is the known as "dual distribution"[121] and results in a situation where the franchisor is also a competitor of its own franchisees. In those instances, information sharing needs to be strictly limited to the information necessary for the purposes of the proper functioning of the franchise system. Additional "nice to have" information that the franchisor might wish to collect to improve its business model may not be accessible

I. Practical Recommendations

Prior to expanding internationally, franchisors should compile a checklist of the restrictions on competition that they typically impose on franchisees. These need to be checked carefully for enforceability in the target jurisdiction. This review in essential not only for reasons of enforceability but also to avoid fines and negative publicity. The checklist should include:

- Is the franchisee permitted to operate another business
- Does the franchisee enjoy an exclusive territory. Is market portioning permitted in the target jurisdiction?
- How is a prohibited "competing business" defined? Is that definition reasonable in view of the target market which may have a different structure from the USA.
- Which persons are subject to the restrictions? Many franchisors capture not only the franchisee itself but also directors, shareholders, affiliates and spouses. There may be restrictions on the categories of persons that can be restrained.
- Duration of the restrictions. Pay particular attention to the 5-year rule in the EU for in term non -competes and the 1-year rule for post-term non competes.
- Is the franchisee required to purchase certain products only from the franchisor and its affiliates? Can these purchase ties be enforced locally. Pay particular attention to the requirement in Europe that the purchase tie must be necessary to maintain uniformity.

[120] Hall Dressler, *supra* note 14, at 4.

[121] Dual Distribution is defined in the VRBE at Article 2(5) of Regulation (EU) 2022/720, Dual Distribution, and applies where a supplier of goods or services is also active at the downstream level, thereby competing with its independent distributors. Article 2(4), point (a) of the Regulation concerns the scenario where the supplier sells the contract goods at several levels of trade, namely at the upstream level as a manufacturer, importer or wholesaler and at the downstream level as an importer, wholesaler or retailer, whereas the buyer sells the contract goods at a downstream level, namely as an importer, wholesaler or retailer and is not a competing undertaking at the upstream level where it buys the contract goods.

- Are franchisee permitted to make cross-supplies to each other. If not, do you have a justification to defend this restriction?
- Are you imposing internet selling restrictions? These are now problematic in a large number of jurisdictions.
- Are you restricting the right of the franchisee to sell? Are these restrictions reasonable or could they be seen as anti-competitive.
- Are you competing with the franchisee in the relevant market? If that is the case you may need to think carefully about the extent of permitted information sharing.

This is a recommended checklist, based on the contents of a typical franchise agreement.

VIII. Commercial Agency Laws

A. Franchising and commercial agency

The GCC or Gulf Cooperation Council comprises 6 countries, namely the Kingdom of Saudi Arabia, the United Arab Emirates, Kuwait, Bahrain, the Sultanate of Oman, and Qatar. Franchising in the GCC is an attractive opportunity for US Franchisors because (i) the Gulf is a retail economy with high disposable income; (ii) malls are a way of life; (iii) there is relatively minimal risk to brand reputation with the experienced operators and no capital is required; (iv) good commercial returns (royalty, cost plus, fees); and (v) ownership laws require a local partner. Following the oil boom in the 1970ties, GCC states enacted strict commercial agency laws to ensure local nationals benefited from the surge in imports and infrastructure projects. The original objective was to prevent foreign companies from operating as importers of goods and services. To be protected by the law, required registration and only local businesses were able to register. Once registered, the agent enjoyed robust protection from termination. More recently there has been a shift to increasing liberalisation permitting foreign companies to become importers of products.[122] Franchising is not expressly referred to in the commercial agency laws, however, certain local courts tended to apply the protective regime to franchisees, as (with the exception of Saudi Arabia) there are no specific franchise laws in the region. A similar policy is applied by a large number of EU countries that do not have franchise laws. These countries apply the Commercial Agency Regulations to franchising by analogy affording them protection against termination and a right to compensation. Again, the reason behind this policy is the desire to protect local franchisees.

B. Franchise laws

Most countries in the GCC do not have specific franchise laws. Instead, they regulate franchise agreements through other local laws and rules, including in-particular commercial agency laws. The only country in the Middle East with specific franchise laws is Saudi Arabia. Saudi Arabia has two pieces of legislation governing franchising. These are the “Franchise Law”[123] and the supporting “Implementing Regulations of the Franchise Law”

[122] See Gulf News, 27 December 2021
[123] Franchise Law

("**Implementing Regulations**")[124]. A franchise disclosure document ("**FDD**") and registration are required[125]. US Franchisors cannot simply export their US FDDs for use in this market since FDDs are required to follow the strict format laid out by local law in the appendix of the Implementing Regulations. The process of giving disclosure and making registration also includes translating the franchise agreement and FDD with a certified KSA translator[126] and having all signed documents formalized via notarization, apostilling, and legalization (depending on whether the signing entities' country of incorporation is a member of the Apostille Convention). Not complying with this process can lead to franchisee termination rights[127], franchisee compensation rights[128], and a regulatory fine[129]. Calling a franchise agreement a licensing agreement is risky because it still exposes the franchisor to these claims. Franchisors should therefore carefully consider their structure and approach to entering the Saudi Arabian market and should factor in sufficient time to ensure they can comply with the formalities – in addition there are certain disclosures that might even be sensitive for non-public companies such as accounts.

C. Commercial agency laws

The concept of commercial agency has been adopted by many countries including within the Middle East and the EU. In the Middle East commercial agency laws are often applied to franchise relationships in lieu of specific franchise legislation. The overriding objective was to effectively confer exclusive rights on nationals, GCC and such commercial agency laws will typically grant a franchisee statutory protection if that franchisee can demonstrate that they fulfil the commercial agency criteria. The potential of the applicability of commercial agency protection to franchisees can be a complex area to navigate when considering both entry and exit of the franchise relationship. A franchise relationship could become subject to complications the franchisor did not anticipate, including local laws that would otherwise not have been applicable. In more recent years however, the laws have been relaxed and, in some cases, foreign nationals can own retail business 100%. In addition, certain foreign businesses and their local partner have successfully rejected the concept of an agency since they argued they are not entitled/able to bind their principal – these arguments were in response to claims by local tax authorities (Kuwait in particular) that "agents" are required to register and pay tax.

D. UAE

Under the law of the United Arab Emirates ("UAE") a franchise relationship is at risk of falling into the category of a commercial agency relationship unless the franchise agreement explicitly makes clear that the relationship is not a commercial agency and that no commercial agency registrations should be made – and most such agreements are now drafted on such basis (to avoid tax and as the benefits of registration now appear to be minimal). This is because the relationship between a franchisor and a local franchisee which

[124] Implementing Regulations of the Franchise Law
[125] Franchise Law, Article 6, Article 7
[126] Franchise Law, Article 7(2)(a)
[127] Franchise Law, Article 17
[128] Franchise Law, Article 19, Article 20
[129] Franchise Law, Article 24

relates to the distribution of the franchisor's goods and services in the UAE for a commission or profit could be classified as a "commercial agency" under the Federal Law No. 3 of 2022 on Commercial Agencies. In practice, both registered and unregistered agencies exist. However, agencies that are registered with the Ministry of Economy ("**MoE**") benefit from greater protection. The requirements a franchisee must fulfil to register as a commercial agent are that they are either:

- A natural person who is a UAE national or a company wholly-owned by a UAE national or a UAE public joint stock company (PJSC) that is at least 51% owned by UAE nationals or a private UAE company owned by such a PJSC.[130]
- and have been granted exclusivity

For franchisees the main benefits of registration of an agency are:

- ➢ Exclusivity in the territory.
- ➢ Preventing importation of other products subject to the agency into the UAE (this is the only benefit a franchisor would obtain from the franchisee registering a commercial agency).
- ➢ Commission on sales in the territory (even if not made by the Agent)[131].
- ➢ Termination / non-renewal protection - the notice period shall generally be no less than one year[132].
- ➢ Strong position to claim compensation upon termination or non-renewal[133].

Franchisors should be wary of notarization and translation requests by the franchisee since this may represent an attempt to fulfill the formalities to register. Even without fulfilling the formalities it can occur that a franchisee is able to register an agency. The level of risk is especially high in the event of an impending termination or a strained relationship. If a registration is successful, it will affect the termination rights of the franchisor and the notice period for termination.

To avoid designation as an agent, the concept of a "Registered User Agreement" has been devised for franchisors which is effectively a short form Trade Mark Licencee. The principal driver for this is that the authorities in each of the GCC markets require some official document as a precondition to issuing official permits to operate under a brand name and to affix signage. This achieves exclusivity in the market and it also avoids the implication that taxes need to be paid by a Franchisor. There is no need for notarisation.

Searches against the Commercial Agency Register in the UAE are possible. This means that Franchisors should conduct searches against the Commercial Agency Register in the UAE prior to terminating any franchisee in the jurisdiction to check whether a registration has been made.

E. Qatar

The Qatar Law No. 8/2002 (as revised) regulates commercial agency in Qatar. Franchisors are advised to ensure the franchise agreement explicitly makes clear it is non-exclusive, that the relationship is not a commercial agency, and that no commercial agency registrations should be made. A commercial agency must be registered with the Commercial Agents Register. The requirements a franchisee must fulfil to register as a commercial agent are that they:

[130] Federal Law No. (3) of 2022 on Regulating Commercial Agencies, Article 2
[131] Federal Law No. (3) of 2022 on Regulating Commercial Agencies, Article 8
[132] Federal Law No. (3) of 2022 on Regulating Commercial Agencies, Article 10
[133] Federal Law No. (3) of 2022 on Regulating Commercial Agencies, Article 11

- Are a Qatar national or a company owned by Qatari nationals[134]; and
- Have exclusivity ("sole distributor")[135]; and
- Act on behalf of the principal and not on their own accord[136].

For franchisees the main benefits of registration are:

- Termination / non-renewal protection (in particular for agreements with open-ended terms)[137].
- Compensation rights[138] in particular where the agency activity has led to success in promoting the products or increasing the number of clients (even where the parties agree to end the contract).
- If the franchisor terminated the agreement or refused to renew its term "without legal justification", there could be a block on contract goods and services covered by contract from entering the jurisdiction (i.e. franchisor would no longer be able to offer their goods or services in Qatar)[139].

Even where the franchisor is cautious to ensure the franchise agreement is clear that it is not an agency agreement, there is still a risk that a local court may say the franchise relationship constitutes an agency. If deemed a commercial agency the franchisee may be entitled to additional rights and protections.

F. Kuwait

Commercial Agency is governed by Law No. 13 of 2016 Regulating Commercial Agencies[140]. In Kuwait a foreign company **must do business through a local agent**. This applies to franchise agreements. This means that the franchise relationship should be registered under Article 6 as an agency relationship in the commercial register at the Ministry of Commerce and Industry (although in practice this is not rigidly enforced and the Registered User Agreement (as referenced to above) is instead commonly adapted.[141]. Local courts may dismiss claims if the franchise relationship is not registered under agency law.[142] In practice, many Franchisors choose not to register and contractually prohibit the Franchisee from so doing – which affords protection under the (usual) arbitration clause under a neutral but recognized and applicable governing law.

The requirements a franchisee must fulfil are that they are:

- Kuwaiti nationals or legal entities with at least 51% Kuwaiti ownership.
- Registered in the Commercial Registry.
- Licensed for the relevant activity.
- Have a direct agreement with the franchisor.[143]

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[134] Qatar Law No. 8/2002, Article 11
[135] Qatar Law No. 8/2002, Article 2
[136] Qatar Law No. 8/2002, Article 2
[137] Qatar Law No. 8/2002, Article 8, Article 9
[138] Qatar Law No. 8/2002, Article 8, Article 9
[139] Qatar Law No. 8/2002, Article 17
[140] See also Law No. 68 of 1980.
[141] Kuwait introduces new Agency Law: franchisors take note - Lexology
[142] Kuwait introduces new Agency Law: franchisors take note - Lexology
[143] Doing Business in Kuwait: Overview | Practical Law

For franchisees the main benefits of registration are local law mandated compensation rights in the event the franchise agreement is terminated without the franchisee being in breach of contract[144].

G. Conclusion

The GCC represents an attractive brand growth and investment opportunity for US Franchisors. Because of this US Franchisors will often establish their first international franchise locations there. However, any franchisor entering the market should ensure that they are prepared to adapt their franchise agreements to local law requirements and should ensure that they are fully aware of, and navigate the commercial agency rules for the relevant jurisdiction (and seek to mitigate any potentially adverse effects). For Saudi Arabia the Franchise Law must be complied with. In the other jurisdictions it is a matter of assessing whether the franchise relationship is deemed a commercial agency by default, or whether the commercial agency designation can be resisted or disapplied. Franchisor's should resist this designation where possible due to the compensation and other rights the franchisee will obtain. In some cases, however, such as in Kuwait, franchisor's must act inversely to ensure registration of the franchise relationship in order to enforce the agreement locally.

IX. E-COMMERCE

Most countries regulate E-Commerce and use of customer data in great detail. Franchisors need to be mindful that their own website (when selling into other countries) and the websites of their franchisees comply with applicable E-Commerce and Data Privacy Laws. The regulation of E-Commerce differs by country. In the EU the E-Commerce Directive came into force in the year 2000 and has been implemented in all 27 EU Member States, in the USA California's Electronic Commerce Act was passed as early as 1984 followed by COPPA in 1998. The regulation of e-commerce in the GCC is more recent. From 2019 Saudi Arabia's e-commerce landscape has become heavily regulated by the **E-Commerce Law (2019)** and the **Personal Data Protection Law (PDPL)**, which apply to both local and foreign sellers targeting consumers in the Kingdom. Key regulations require online businesses to hold a Commercial Registration (or SaaS certificate), implement data security, disclose business identities, and provide clear terms of service. Consumers have the right to return goods within seven days. Violations can result in fines up to SAR 1 million, suspension of activities, and website blocking. The United Arab Emirates enacted a comprehensive E-Commerce law in 2023. The main policy reasons for enacting e-commerce regulations are the desire to protect consumers, ensure transparency and fairness and managing the security of personal and financial data. Two examples are considered in detail below. They demonstrate that franchisors and franchisees need to comply with a broad range of requirements when operating e-shops in the GCC territories.

[144] Doing Business in Kuwait: Overview | Practical Law

APPENDIX 1: E-COMMERCE GUIDES

Saudi Arabia

	Items	Considerations
1	Valid Authorizations	An entity wishing to carry out commercial / trading activities (whether via e-commerce or otherwise) should have valid authorizations and appropriate activities on its MISA Investment Registration Certificate, if applicable, Commercial Registration and Articles of Association.
2	E-Shop Registration	E-Shop should display the information specified below and be registered with the Ministry of Commerce and clearly listed in the ABOUT US section of the E-Shop: a) Service Provider's name / distinctive statement; b) Service Provider's address; c) Means of communication with the Service Provider; d) Commercial Register and tax numbers; e) Privacy Policy (including measures to protect the consumer's personal data and the scope/extent of dealing with user's profiles; and f) Procedures and means used to received and address consumer complaints.
3	Contractual Authority from Franchisor	The Franchise Agreement must provide that the franchisee may sell products and services via the omnichannel/ remote channels. Some franchise agreements reserve the online channel exclusively to the franchisor
4	Competition Law consideration	The competition authorities of the KSA and other GCC countries focus on mergers, monopolies and cartel control. The laws regarding vertical restraints are less developed. It is unclear if franchisors can lawfully prohibit online sales.
5	Website / App / E-Shop Set up	To set up an E-Shop the franchisee will need to comply with the following steps and provide the information set out below in respect of their E-Shop: a) Terms and conditions of the purchase contract; b) Procedure for conclusion of contract between customer and franchisee; c) Information pertaining to the Internet Service Provider. If Service Provider is a professional company then details pertaining to the license and licensing body; d) Basic characteristics of the products/services;

		e) Total price (including all fees, taxes or additional delivery related amounts) and the method of calculation thereof; f) Payment and delivery terms; g) Warranty, if applicable; h) Indication on customer's right to rescind the contract; i) After sales service, if any, and conditions thereof; and j) Term of the contract and expiry. Above information may be displayed in more than one place in the E-Shop for example separate pages for privacy policy, products' details, company information, etc.
6	Data Protection	Service Provider shall comply with the data protection provisions of KSA's personal data protection legislative framework and those contained within the E-Commerce Laws. These include but are not limited to: (a) collection and processing of customer's data only with their consent; (b) privacy policy; (c) process personal data only to the extent necessary; (d) delete personal data after completion of purpose or agreed period; (e) if required, appoint a data protection officer; (f) data controller registration; (g) execute data processing agreements with data processors; (h) implement necessary organizational, technical and administrative measures; (i) maintain records of processing activities; (j) employee seminars; and (k) transfer personal data outside of the Kingdom in accordance with the cross-border data transfer regulations (usually advisable to have a Data Transfer Agreement).
7	Personal Data Retention	The Law permits retaining the personal data of a consumer for a period agreed between the consumer and service provider. In the absence of such an agreement, personal data shall only be retained for the duration of the e-commerce dealing.
8.	Sending Data to the Franchisor	Exporting personal data of KSA individuals to foreign franchisors is limited. If the franchisor operates a loyalty program or requires access to customer lists, this will require opt in customer consent at the time of purchase.
10	Cooling-off Period	Save in the case of certain specified products such as custom-made products, perishable goods, videotapes / disks / CDs, etc., a customer shall be entitled to rescind the contract within 7 days of

		receipt or contract provided the customer has not used or benefited therefrom.
11	Returns, Exchange & Refunds	No specific provisions. Consumer Protection Guide requires Service Providers to adhere to their returns, exchange and refund policies. Service providers should not accept returns of products that are harmful to human health and safety such as exposed foods, cosmetics, undergarments, etc.
12	Delayed Delivery- Order Cancellation	Unless delayed via force majeure or another period of delivery has been agreed, consumer is entitled to terminate the contract if delivery is delayed by a period exceeding 15 days from the date of conclusion of the contract or the agreed date.
13	Pricing	Pricing (including original price, taxes and delivery costs) must be clearly displayed before conclusion of the contract, including the basis of calculation thereof. Saudi ZATCA mandates VAT invoice format and VAT disclosure and reporting requirements. In addition to ZATCA's requirements, E-Commerce Law requires that a recordable bill be issued to the customer containing following information: a) Service Provider name; b) Description of the product/service; c) Contract conclusion date; d) Abovementioned pricing information; e) Shipping, transportation and delivery charges; f) Tax number; g) Date of delivery of the product/service; h) Shipment tracking information; i) Summary of return and replacement provisions, if applicable; j) Method of payment and statement of payment. Per E-Commerce Laws a contract between a consumer and an E-Commerce Service Provider can be concluded electronically. Electronic Advertisements should be in compliance with the E-Commerce Laws and form part of/ supplement the contract.

UNITED ARAB EMIRATES

Issue	**Legal requirements**	**To do**
Provide the customer with adequate descriptions of products and services before purchases are made	Each offered product and service must be clearly described, and that customers are not misled.	Ensure all product and service descriptions are accurate.
Is the advertising truthful?	Advertising must not be misleading.	No misleading information or omission of fundamental information which may impact the customer's decision.
Language	Ensure that all products and services offered for sale are labelled correctly in the Arabic language.	
Are there customer terms and conditions and are they correctly agreed to by the customer?	The terms upon which products and services are supplied must be clear.	The checkout process should feature a robust set of customer terms and conditions that the customer must accept *before* agreeing to purchase any products or services.
No "harmful terms and conditions"	General prohibition on "harmful terms" for example for purchases under AED 50,000, terms cannot force the customer to use arbitration for dispute resolution instead of the UAE courts.	Ensure there are no harmful terms including, for example, any terms which allow the seller to amend the customer terms and conditions after the order is placed without first obtaining the customer's agreement, cancel or remove any rights that the customer may have under applicable consumer protection law, change the specification or type of products or services after an order has been placed, restrict the customer's right to compensation in case of breach.
Are all data, advertising and contracts (including customer terms and conditions and privacy policy) available in Arabic?	Data, advertising, invoices, the customer terms and conditions and any documents related to the customer's order must be available in Arabic.	
Are invoices issued in Arabic, and do they contain all the required information?	A tax-compliant invoice must be provided to the customer for any product or service supplied. All invoices must be in Arabic	The customer must receive an invoice in Arabic. Local laws prescribe specific information to be included.

Is there a compliant and clear return and refund policy? **There are particular return rules for certain products**	Customers have the right to return items that are misrepresented, broken, damaged or missing parts, or delivered too late to be usable. Illegal to state “no refunds or exchanges” except in specific cases.	Need a legally compliant refund and return policy that makes clear when returns will be accepted or refused, and how customers can request a refund, repair, replacement or exchange.
Is there a warranty for the products and services that are being sold?	Certain products and services must come with a warranty. The law does not set one fixed minimum period that applies to every product. The warranty period must simply be appropriate for the type of products or services sold.	Legal requirements that many products and services are covered by warranties.
Where acting as a commercial agent, are the principal's warranties being honoured?	Commercial agents must honour all warranties given by its principal and provide the consumer with a similar commodity free of charge if compliance will take longer than 7 days.	Understand the warranties that a principal provides and ensure that they are honoured.
Are the strict rules for the supply of spare parts (if applicable) being follow?[145]	Dependent on the nature of the products sold, the Seller must ensure that it can provide spare parts and repairs.	If obligated to supply spare parts, the Seller must comply with the law. In addition, there should be a written (including in Arabic) process explaining how spare parts, maintenance and warranty support will be provided.
A 30-day rule for certain defective products?	The customer may be entitled to return the products and recover the price if the defect appears within 30 days.	Is the warranty backing in place? If not, ensure any sales team must know when the 30-day refund rule may/will apply.
Product Recalls?	Under applicable safety legislation, a Seller must stop selling the item, withdraw it from the market and seek to recover previously sold defective items. The relevant government authority and customers must be informed within **24 hours**	Upon discovering a product sold is dangerous, immediate action should be taken. There should also be an internal recall process covering customer contact, regulator notification, public notices, refunds, repairs, replacements and reporting back to the authority.

	A recall notice must be placed in two local daily newspapers (one must be in Arabic) and posted on the website and social media.	
Are there any promotions or discounts without the required approval?	Promotions and discounts generally require prior approval from the competent authority.	
The 1-week discount rule	If a customer buys an item at full price and the same item is put on sale within one week, the customer must be informed. The customer may ask for the price difference back within 30 days.	Put in place an internal process to identify relevant recent purchases before launching any discount events and to handle customer claims for the price difference.
Are sales practices fair and free from any form of price manipulation or forced buying?	The law prohibits a range of unfair commercial practices including refusal to sell a product or provide a service with the intention of controlling its price or creating a shortage, use loss leaders, minimum purchase requirements, charging a higher price than advertised and price fixing or market partitioning. These rules apply in addition to the UAE's competition law.	Review sales, pricing and promotional practices to make sure no aspect of any of them falls into any of the categories listed above. In particular, check that any bundled offers do not make the purchase of one product a condition of buying another. Check that advertised prices are the prices customers actually pay, and ensure internal pricing decisions are made independently.
Do products on e-commerce platform(s) show the required conformity information?	For e-commerce sales, certain products may require supporting conformity documents or badges. These documents must be available to produce to the relevant authority if requested.	Check whether any products require a conformity mark or badge and make sure these appear on the product page where required. Make sure these documents are organised and can be produced quickly if a regulator or authority asks to see them.
Completeness and Accuracy of e-commerce platform	Certain minimum information is required on the e-commerce platform as below: • terms, conditions, and details of the various stages of the sale of the products and services. • prices. • delivery fees • any payment processing fees.	The e-commerce platform must be reviewed to ensure it is compliant.

	• digital contract, or if none where there is no digital contract, the purchase terms and conditions relating to the purchase.	
Are the prices displayed on the e-commerce platform correct and not misleading?	The price the customer sees on the e-commerce platform is the price they must pay. Hidden fees are NOT allowed.	Ensure that no surprise shipping fees or other surcharges are added at the end of checkout. This affects credit card fees, handling and shipping fees and VAT
"Rating Box" and a 24/7 complaint system to be available on any e-commerce platform?	The law requires the facilitation of customer complaints and reviews	A rating or review section must be included on each e-commerce platform where customers can rate the product, the delivery company, and the payment process.
Is there a business continuity plan for your e-commerce store	There must be a business continuity plan to help keep operations running during risks, outages or crises.	
Customer privacy policy	Customers must be aware (at the time of collection of such personal data) of what personal data is collected and how it may be used.	A customer privacy policy must be available on any e-commerce platform and it must be compliant with data protection laws (an Arabic version must also be available). The customer's attention should be drawn to the privacy policy upon/prior to check out.
Permission around marketing emails or texts?	Marketing messages can't be sent unless the customer actively agrees.	Ensure there is a legally compliant 'opt-in' process.

APPENDIX II: International Compliance Checklist

It is recommended that franchisors create a risk profile of their international target markets using a "Law and Policies Checklist" and the creation of certain supplementary policies and procedures. An example of a checklist is found below.

	Preliminary check	Next Steps
Pre-contractual disclosure		
- Disclosure required?		
- Amend US FDD for local use		
Franchise Registration		
- before selling a franchise		consider time line
- After concluding the agreement		consider time line
- Registration of trademark licence		
Can you take a deposit prior to disclosure?		
Back-ground checks on franchisee		
- Franchisee to complete questionnaire		
- Do red flags require an external risk report		
Trade tariffs applicable to franchised goods and services		
Legal Red Flag review of key provisions in your franchise agreement such as exclusivity and restrictive covenants		
Identify and eliminate Joint Employer risk		
Identify Commercial Agency Risks		
Decide on E-Commerce Strategy		