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Pre-Contract – There is So Much More Than Just the Franchise Agreement

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1. Introduction

Franchise lawyers often jump straight to the franchise agreement when discussing franchise sales with clients. However, what happens before the parties negotiate and sign a franchise agreement is often just as important, if not more so. Making sure that the franchise candidate is the right one for the franchise system – and, on the flip side, that the franchise system is the right one for the candidate – is key to a successful, lasting relationship.

Leads for new franchisees can happen out of the blue. In many cases, parties may have been in talks about potentially franchising for years before preliminary deal terms are even discussed. While the business teams may have had numerous interactions with a franchise candidate before engaging counsel, whether formally or informally, it is helpful for counsel to get a background into the existing relationship. Each parties' expectations can become significant factors down the road. Ensuring that counsel also has a sense of what was previously discussed can set the stage for a successful outcome.

This paper explores what happens (or should happen) before a franchisor and franchisee agree to enter into a franchise agreement. It examines the tools and restrictions governing the early stages of discussions and negotiations, and how those tools can be used. It focuses on the authors' jurisdictions, namely, Australia, Canada, Saudi Arabia, and the United States, but the authors hope the general issues covered will be helpful in any jurisdiction.

2. Before pen is put to paper

A. From introductions to due diligence

Is a franchisor even truly franchising before it has had a significant conflict with at least one franchisee? Joking aside, doing diligence on prospective franchisees may be the single most important step a franchisor can take when growing its franchise network.

While most franchisors may not be thinking of franchise law compliance at the very early stages of getting to know prospective franchisees, that may be a mistake. For example, in Australia, the pre-contract stage of franchising is subject to both legal obligations and practical due diligence. Even as initial conversations begin and the parties get to know each other, the law implies a duty of good faith on franchisors and franchisees in all dealings, including negotiations.[1]. This statutory duty requires parties to act honestly and cooperatively and, in practice, encourages transparency from the parties' very first interaction.

At a very early stage, in Australia, franchisors are also required to provide prospective franchisees with an Information Statement in the form prescribed by the Australian Code (to be given as soon as practicable after a prospective franchisee formally expresses interest). This one-page disclosure alert highlights key risks and realities of franchising, setting a candid tone for the "getting to know each other" phase. By providing the Information Statement upfront and engaging in open discussions, franchisors lay the groundwork for trust and help prospective franchisees make informed decisions.

In the U.S., the early stage franchise law compliance requirement may be even more burdensome. While under U.S. federal regulation and under most states' franchise laws, the franchise disclosure document ("FDD") does not have to be provided until 14 calendar days before signing the franchise

[1] Competition and Consumer (Industry Codes – Franchising) Regulation 2014 (Cth) sch 1 (The Code ") cl 6(1). Clause 6(1) imposes an obligation on each party to a franchise agreement to act towards the other in good faith.

agreement, states, such as Iowa and New York, both require that the FDD be shared at the "first personal meeting" between the franchisor and a prospective franchisee.[2]

Although Canada and the US share many cultural differences, it is important to understand that the legal regimes governing franchises are completely distinct. Although Canada does not have federal legislation governing franchising, six provinces (Alberta, British Columbia, Manitoba, New Brunswick, Ontario and Prince Edward Island) have franchise legislation, with a seventh province, Saskatchewan, coming into force on June 30, 2026. Quebec does not have specific franchise legislation, but the Civil Code of Quebec may impose similar obligations on franchisors.

Similarly, in Canada, it is best practice to provide a prospective franchisee with a franchise disclosure document at an earlier stage to give the candidate as much time as possible to make an informed decision about acquiring the franchise at issue. The franchise legislation as between provinces has more similarities than differences. All provinces, including Ontario, require at least 14 days before a prospective franchisee candidate can sign a franchise agreement or make any payments towards the franchise. As a result, franchisors are required to exclude the day on which the prospective franchisee receives the disclosure document, effectively making the disclosure period 15 days. Other provinces, including Alberta, require the exclusion of both the day on which the disclosure document is received and the day on which the franchise agreement is signed, or payment is made, lengthening the disclosure period to 16 days.[3]

The transparency principle that is underlying Australian law is also present in Saudi laws – noting that Saudi Arabia's franchise law likewise emphasizes transparency and requires early disclosure, albeit via an Arabic-language Disclosure Document mandated by Article 7 of the Commercial Franchise Law 2019.[4]

B. Due diligence

i. Diligence on the candidate

The amount of diligence on prospects performed by franchisors varies widely. None of the jurisdictions covered in this paper (or any others, to the authors' knowledge) statutorily oblige franchisors to conduct background checks. However, extensive due diligence on potential franchisees is recommended. This includes verifying the candidate's financial capacity (net worth and funding sources), business or industry experience, and even personal character references or criminal history, especially for sectors where integrity is paramount. Some franchisors require comprehensive application forms and run credit checks to assess a prospect's creditworthiness. These steps are commercially important for selecting suitable partners; in jurisdictions such as Australia, they also align with the statutory good-faith obligation by ensuring that the franchisor has reasonable confidence in a candidate before proceeding.

The result of such due diligence is a higher likelihood of a stable, mutually beneficial franchise relationship from the outset. In Australia, this is important given recent changes to franchising laws that require franchisors to ensure franchisees have a reasonable opportunity to make a return on investment.[5] While there is still no case law on this provision, the Australian franchise regulator, the Australian Competition and Consumer Commission (ACCC), is on record as stating that it regards the

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[2] Iowa Code Chapter 551A.4(1)(b); NY Gen Bus L 683 (8) (2025).

[3] See Ontario's Arthur Wishart Act (Franchise Disclosure) 2000, S.O. 2000, c.3, Section 5(1) (the "Wishart Act"). See also Alberta Franchises Act, RSA 2000, c F-23, Section 4(2).

[4] Saudi Arabia's Commercial Franchise Law 2019, art 7(1) (franchisor must provide a disclosure document, in Arabic, at least 14 days before concluding the franchise agreement or taking any franchise fee or payment). The law also mandates registration of the executed franchise agreement and disclosure document with the Ministry of Commerce (art 6).

[5] These reforms arise under the Competition and Consumer (Industry Codes-Franchising) Regulation 2024 (Cth) (New Code), which commenced on 1 April 2025. The Code previously contained in the Competition and Consumer (Industry Codes-Franchising) Regulation 2014 (Cth) (Old Code) continues to apply to franchise agreements entered before 1 April 2025, until those agreements are renewed, extended or transferred.

financial position, experience and acumen as relevant to this consideration, making proper due diligence even more important in the Australian market.[6]

Diligence takes on a different complexion in the Gulf. In Australia, financial capacity, experience and references will usually suffice. In Saudi Arabia, for example, a prudent franchisor will go further: obtain company extracts from the Ministry of Commerce, run credit checks through SIMAH (the Saudi credit bureau), verify the absence of liens or insolvency markers, and collect identification and police clearance certificates (typically via the Absher system). It is not uncommon to conduct on-the-ground verification to confirm that the proposed franchisee actually operates where it claims to operate.

Likewise, in the U.S., there are many different options for running both financial background checks (credit reports) and more general background checks on individuals. Such reports may include information about business ownership of the individual, their various assets, any bankruptcy history, and litigation they have been, or are, involved in.

In Canada (and other jurisdictions), many franchisors will also invite candidates to a "discovery day" or a day-in-the-life of a franchisee to get a sense of how a candidate might perform in the system. Not only does this provide the candidate with a closer look at the business itself, it also gives the franchisor an opportunity to further vet the candidate in a real world scenario. These types of informal diligence can prove invaluable to both sides, especially when the franchisee is ultimately required to devote their full time and attention to running the business. Most franchises are not passive investments and require sweat equity to succeed. Determining whether the candidate actually wants to and can operate effectively is critical.

ii. Diligence on the country/market

a. What is the business culture?

Franchisors should conduct due diligence on any prospective franchisee candidates, whether or not the candidate is in a market new to the franchise system. Of course, if the candidate is in a new market, the diligence may be even more important, as the franchisees' operations may be the first exposure consumers in that market will have with the franchised brand. However, market entry also means the franchisor needs to conduct extensive due diligence on the market itself. A franchisor needs to understand what the regulatory landscape looks like, covering not only franchise law but also many other legal issues. Some of those legal issues will be relevant to any investment involving issues such as intellectual property regulation, laws regarding withholding taxes, transfer pricing, import regulation related to the necessary supply chain, and so on. Others will be franchise-specific or franchise-related, such as franchise laws, agency and distribution laws, and laws regarding local ownership. Understanding the legal landscape is critical, but market diligence needs to go beyond that.

Australia's franchise sector is well-established, with a strong franchising culture across industries like food & beverage, retail, and professional services. The business culture tends to value straightforwardness and egalitarian communication, meaning prospective franchisees are often well-informed and not shy about asking challenging questions. There is also public awareness of franchising issues, partly due to past high-profile franchise controversies and subsequent regulatory reforms. A franchisor should be prepared for robust due diligence by the franchisee, including queries about the financial performance of existing outlets and the franchisor's track record. The franchisor's early candor (for instance, sharing store-level financial benchmarks or connecting the prospect with current franchisees for references) will generally be viewed positively.

Culturally, Australians generally expect fair dealing and a "no surprises" approach; indeed, the statutory good faith obligation reflects these expectations in law. Additionally, the Australian consumer-protection ethos is strong; regulators such as the ACCC actively enforce franchise laws and scrutinize

[6] [The franchise agreement | ACCC]

questionable conduct even before a contract is signed. This regulatory backdrop reinforces the need for careful, well-documented pre-contract engagement.

Similar to Australia, franchising is well-established in the US. There are an estimated 845,000 franchised locations across the U.S., and it is estimated to employ close to 9 million people.[7] Franchise concepts can be found in just about any segment of the economy, including traditional franchise sectors, such as restaurants, hotels, and fitness, as well as in growth sectors such as child services and health and wellness. Entrepreneurship and business ownership are seen by many Americans as the embodiment of the "American Dream", and franchising fits well with that idea.

The general business culture in the U.S. can be quite different from that of many other jurisdictions. At will employment means less stability in employment relationships. The negotiation of an agreement is often more adversarial than in other countries. The party preparing the initial draft of the agreement is likely to prepare a relatively one-sided agreement, expecting the other party to push back. American businesses are also litigious, and many see litigation, or the threat of litigation, as a way to renegotiate business deals or to resolve disagreements and minor disputes. Courts will place great weight on the exact wording of agreements, giving limited weight to what may have happened during negotiations. Consequently, the negotiation and contract drafting process often takes longer and may be of greater consequence than in other jurisdictions.

Although not traditionally as litigious as the U.S., Canadian franchisors are not immune to claims brought by disgruntled franchisees alleging the franchisor's failure to provide a materially compliant franchise disclosure document. This is often the first step at which a franchisee is disengaged, or the franchised business at issue is struggling. There is a strong business case for compliance as a franchise system grows in Canada. The associated costs and internal resources necessary to defend a dispute may completely derail a smaller or less sophisticated franchisor.

Many prospective franchisees will expect to receive a franchise disclosure document and will compare that with those received from competitors in the same market segment. Although Canadian franchise legislation is not as mature as in some other jurisdictions, Alberta was Canada's first province to enact franchise legislation in 1972. As Canada's most populous province, Ontario introduced franchise legislation in 2000, and Ontario grows the most by number of new franchised units year over year compared to the other provinces. Overall, franchising is Canada's twelfth largest industry and is projected to contribute $148.6 billion Canadian to the GDP by 2027.[8]

b. Franchise law due diligence – is the intended structure a franchise?

Upon market entry, part of the early legal diligence should include determining whether the contemplated arrangement is, in fact, a "franchise" under local law. When entering a new market, many franchisors wish to avoid the local franchise laws and to structure their initial deal in a way that falls outside of those laws. Not infrequently, franchisors will assume that if they structure their agreement with the prospective candidate as a joint venture, as a license agreement, or any other type of agreement that doesn't include the word "franchise", they will not have to worry about franchise laws. However, each jurisdiction has its own definition of what constitutes a "franchise." Just because a specific agreement or model avoided franchise law in the franchisor's home jurisdiction, or another jurisdiction in which it is operating, does not mean that it will also satisfy the requirements of the new market.

In Australia, determining whether the contemplated arrangement is a "franchise" is an essential early legal step. The definition of a "franchise agreement" in the Code is broad – focusing on the presence of a business system or marketing plan, use of the franchisor's branding, and the payment of a fee by the franchisee.[9] This means that certain distribution, licence, or pilot operations can inadvertently meet

[7] FRANData report, Franchising Economic Outlook 2026,
[8] Canadian Franchise Association, Canadian Franchise Industry Economic Outlook, April 2026, Executive Summary.
[9] The Code clause 5(1) (definition of "franchise agreement" requiring a business system controlled by franchisor, use of franchisor's branding, and payment of a fee by franchisee, subject to limited exceptions in cl 5(3)).

the franchise definition (the so-called “accidental franchise”). If so, the full suite of Code obligations will apply despite the parties’ intentions. Franchisors must therefore *identify, during the planning phase,* whether their intended model triggers the Code. Australian law imposes no minimum track record or outlet number for a business to be franchised. A brand new business may legally be franchised in Australia – but given the Code’s strict requirements (and the expectation that a franchise offering be viable), franchisors are well advised to establish a proven model before expansion. Confirming this early is key to shaping the pre-contract process: if the deal falls under the Code, the franchisor must be ready to comply with all its pre-signing steps discussed below.

In Saudia Arabia, the same test applies as in Australia but with statutory safe harbors: Royal franchising schemes by Royal Decree are excluded; contracts governed by the Commercial Agency Law fall outside the regime; pure distribution or exclusive buy/sell licenses, or mere licenses to provide services or use IP without the rest of a system, are carved out; structures where the franchisee is owned directly or indirectly by the franchisor do not qualify as ‘franchises’; and the regulations list ancillary relationships (landlord/tenant, joint venture/shareholder, lender/borrower, employer/employee, non-profit associations, mere licenses or permits) that will not import the regime into those corners. This provides a degree of certainty that is not always present under the franchise definitions in the other jurisdictions covered in this paper, which are broader and more prone to capturing ‘accidental franchises’. If the franchise package ticks the basic statutory box of system, marks and fee, then it may be regulated despite the safe harbors. Saudi Arabia’s franchise law adds another requirement, which is unique among the jurisdictions covered: it requires a franchisor’s business concept to have operated for at least one year in two outlets before franchising)[10]. Insisting that a franchise concept has been tested for at least one year and two outlets before franchising, the ‘greenfield’ experiment tolerated in the other jurisdictions is a statutory no-go in Saudi Arabia.

In the U.S., franchising is regulated at both the federal and state levels. With dozens of different laws and regulations to consider, there is not one uniform definition of a “franchise,” even if there is a lot of similarity between many of the definitions. The starting point for this analysis is often the Federal Trade Commission’s rule titled “Disclosure Requirements and Prohibitions Concerning Franchising (the “FTC Franchise Rule”).[11] The FTC Franchise Rule defines a “franchise” as “any continuing commercial relationship or arrangement, whatever it may be called, in which the terms of the offer or contract specify, or the franchise seller promises or represents, orally or in writing, that: (1) the franchisee will obtain the right to operate a business that is identified or associated with the franchisor’s trademark, or to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor’s trademark; (2) the franchisor will exert or has authority to exert a significant degree of control over the franchisee’s method of operation, or provide significant assistance in the franchisee’s method of operation; and (3) as a condition of obtaining or commencing operation of the franchise, the franchisee makes a required payment or commits to make a required payment to the franchisor or its affiliate.”[12]

State-law definitions vary, but generally follow this three-pronged test. Although these laws vary somewhat in how they define “franchise,” the California Franchise Investment Law's definition is typical of statutes in many other states. That definition specifies that to have a “franchise,” there must be an oral or written contract agreement by which: (1) the franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by the franchisor; (2) the operation of the franchisee’s business pursuant to such plan or system is substantially associated with the franchisor’s trademark, service mark, trade name, etc, or other commercial symbol; and (3) the franchisee is required to pay, directly or indirectly, a franchise fee. In Illinois, Rhode Island, Washington and Wisconsin, the marketing plan can be prescribed or suggested. All three elements must be present to constitute a franchise; if any one

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[10] Saudi Commercial Franchise Law 2019 art 5 (requiring a franchisor’s business to have operated for at least one year and in at least two outlets before franchising). No similar requirement exists in Australian law.
[11] 16 C.F.R. § 436 (2007).
[12] 16 C.F.R. § 436.1(h) (2007).

element is missing, there will be no franchise. The New York Franchises Law constitutes an outlier in that it has two alternative definitions of "franchise" and does not require both a marketing plan and trademark association. If either element is present, along with a franchise fee payment, a franchise will exist for purposes of the New York law.

Turning to Canada, the statutory definition of "franchise" is exceptionally broad and almost identical across provinces with franchise disclosure laws. Generally speaking, there are two main types of franchising in Canada: (1) business format franchising and (2) product franchising. Both types involve the grant of a right by the franchisor to the franchisee, along with the obligation of the franchisee to make a payment or ongoing payments to the franchisor. Reviewing the Ontario legislation in greater detail, a franchise is defined a right to engage in a business where the franchisee is required by contract or otherwise to make a payment or continuing payments, whether direct or indirect, or a commitment to make such payment or payments, to the franchisor, or the franchisor's associate, in the course of operating the business or as a condition of acquiring the franchise or commencing operations and,

a) in which,
   i. the franchisor grants the franchisee the right to sell, offer for sale or distribute goods or services that are substantially associated with a trade-mark, trade name, logo or advertising or other commercial symbol that is owned by or licensed to the franchisor or the franchisor's associate, and
   ii. (ii) the franchisor or the franchisor's associate has the right to exercise or exercises significant control over, or has the right to provide or provides significant assistance in, the franchisee's method of operation, including building design and furnishings, locations, business organization, marketing techniques or training, or
b) in which,
   i. the franchisor, or the franchisor's associate, grants the franchisee the representational or distribution rights, whether or not a trade-mark, trade name, logo or advertising or other commercial symbol is involved, to sell, offer for sale or distribute goods or services supplied by the franchisor or a supplier designated by the franchisor, and
   ii. (ii) the franchisor, or the franchisor's associate, or a third person designated by the franchisor, provides location assistance, including securing retail outlets or accounts for the goods or services to be sold, offered for sale or distributed or securing locations or sites for vending machines, display racks or other product sales displays used by the franchisee; ("franchise")[13]

Significantly, in all the jurisdictions considered in this paper, parties cannot contract out of being deemed a "franchise" at law, and courts will look at the substance of the relationship as opposed to the form. Express language in a parties' agreement stating that it is not a franchise is not determinative of the issue.

c. Trademark protection

(I) Australia, Canada and the United States

A franchisor's due diligence should extend to intellectual property protection, specifically trade marks, when expanding internationally. While none of the authors' jurisdictions mandate the registration of trade marks, common sense suggests that franchisors have their principal trade marks registered, or at least applied for, with the appropriate government agency before executing any franchise agreements. The trademark's status (registered, pending, or unregistered) must also be disclosed in the Disclosure Document/FDD in Australia, Canada, Saudi Arabia, and the US, and (obviously) any failure to secure rights could jeopardize the venture.

Australia has a first-to-file trademark system, so a foreign franchisor should ensure no third party already holds rights to its brand locally. The well-known example is Burger King's entry into Australia

[13] See Section 1(1) definition of "Franchise" pursuant to the Wishart Act.

under the “Hungry Jack’s” brand due to a pre-existing “Burger King” trademark registration by an unrelated party – a predicament best avoided by thorough IP due diligence well before signing up franchisees. Additionally, confidentiality agreements or non-disclosure agreements during the due diligence phase can help protect proprietary information (recipes, software, manuals) shared with prospects. Such NDAs are commonly used in Australia; they are typically enforceable and do not themselves constitute franchise agreements, so they do not trigger disclosure obligations.

In both Canada and the U.S., trademarks are broadly defined signs—such as words, logos, designs, colours, sounds, shapes, or other distinctive indicators—used to identify the source of goods or services and distinguish them from those of competitors. Their fundamental role is to signal to consumers that the goods or services originate from a particular source and carry an associated reputation, quality, or goodwill. Trademarks can protect brand identity and are commonplace in franchising.

Trademark rights in Canada and the U.S. arise in two ways: through use at common law or through federal registration. Common law (unregistered) trademark rights come into existence once a mark is used in Canada or the U.S. (as the case may be) and acquire protection only in the geographic area where the mark has developed goodwill and recognition. By contrast, trademarks may be registered under the federal Trademarks Act in Canada, or under the federal Lanham Act in the U.S., which provides stronger and more predictable protection, including presumptive evidence of ownership and access to statutory causes of action such as infringement and depreciation of goodwill.

Importantly, trademark registration in Canada is exclusively federal, not provincial. Registrations are administered by the Canadian Intellectual Property Office (CIPO) and confer exclusive rights to use the mark across all provinces and territories, regardless of the owner’s actual area of use. Provinces do not maintain separate trademark registries. However, provincial and common law principles remain relevant for unregistered marks and enforcement, particularly in passing-off claims. Trademark rights—whether registered or unregistered—can last indefinitely, provided the mark continues to be used and remains distinctive, with proper control maintained where the mark is licensed to others.

(II) Saudi Arabia

When brands expand into markets using a different alphabet than their home market, additional challenges arise. For North American and European brands, the Middle East and the Arabic alphabet often present the first such challenge. Demand for branded products is insatiable in the Arabic-speaking countries – this means there needs to be an understanding of, and addressing of, the issues relating to the use and protection of the given marks in the local language. This is because the right holder will want to keep the essence/sound of its trademark as uniform as possible to achieve maximum consumer recognition in the local market. Of course, there are other considerations also.

Since there are no elaborate examination guidelines in a number of Arabic language countries, the trademark offices there are usually focused on the phonetics when examining the foreign language trademarks – hence the procedural requirements that an Arabic translation of the applied for mark should also be stated in the application to enable the most relevant phonetic comprehension by the examiner. But to nail down the most relevant phonetics is an art form developed through experience. Thus, the trademark applications, when examined by native Arabic speakers, in local script (whether it is a translation or transliteration), is a complex exercise. Amongst other things, the examiners have to make a decision on whether or not an applied for trademark is phonetically similar: (1) to an earlier registered mark, or (2) to a well know mark that is already in use locally.

<u>Arabic Script Transliterations of Latin Script Trademarks:</u> Arabic transliterations of foreign-script marks are automatically protected in most Arabic-speaking countries, either through customary practice or statutory mandate. Also, in most Arabic-speaking countries, English or French is widely understood. If a Latin-script trademark is registered in such countries, its Arabic-script transliteration is customarily automatically protected, and thus, in many instances, there is no need for separate registration of the local-script transliteration. But at the same time in some instances, the phonetics of the transliterated

local script use is not always the exact equivalent phonetic sound of the foreign word or phrase – in such instances the registration of the local script mark is important and advisable.

With the exception of very few common words, the literal translation of a Latin script trademark into Arabic script will not be phonetically similar to its original Latin script trademark. Further, it often happens that there may be more than one Arabic language equivalent to English words. It is conversely true also – when finding Latin script equivalents for Arabic script marks.

Significantly:

- If the franchisor's trademark in its Arabic script equivalent can be transliterated (or translated) in different phonetic rendition that will not be close enough to the original trademark, or
- If the franchisor needs to comply with local laws that mandate use of Arabic script equivalents for your foreign script marks,

then the mark must be registered in Arabic script also (either transliterated or translated) in Arabic language-speaking countries.

C. When is disclosure required

i. Country-specific requirements

One issue in which generalization is not possible is disclosure requirements under country-specific franchise disclosure and registration laws.

Australian franchising is characterized by a strict mandatory disclosure regime regulated by the Code. Under the Code, a franchisor must provide the prospective franchisee with the complete disclosure package not less than 14 days before the franchisee signs any binding agreement or makes a non-refundable payment. This package includes:

- the Disclosure Document;
- a Key Facts Sheet (a summary of critical information);
- a copy of the franchise agreement in its final form; and
- a copy of the Code itself[14].

Only after 14 full days have passed from delivery of these materials may the franchisor and franchisee enter into the franchise contract or receive payment. This timeline mirrors the approaches of many regulatory regimes (e.g., the US FTC Rule also prescribes a 14-calendar-day disclosure period), and indeed Saudi Arabia's Franchise Law imposes a comparable 14-day pre-signature disclosure period on franchisors[15],

The Disclosure Document content in Australia is prescribed in detail – it covers 23 specific categories of information (from franchisor details and financial requirements to the state of the franchise network and franchisor's supply chains). It must be updated annually and whenever material changes occur. There is no requirement in Australia to file the disclosure document or franchise agreement with a government authority for pre-approval. Instead, the ACCC monitors compliance through audits and by investigating complaints or potential breaches. By contrast, in Saudi Arabia, franchisors must register the executed franchise agreement and the disclosure document with the Ministry of Commerce within a prescribed period, as a form of regulatory oversight.[16]

[14] Franchising Code of Conduct (Cth) cl 9(1)–(2) (list of documents – disclosure document, Code, final form of agreement – to be given 14 days before signing or payment).
[15] Saudi Commercial Franchise Law 2019 art 7(1); Implementing Regulations of the Commercial Franchise Law (Saudi Arabia) art 5.
[16] Saudi Commercial Franchise Law 2019 art 6 (franchise agreement and disclosure document must be registered with the Ministry of Commerce within the time and manner set by Regulations). Australia has no pre-approval or registration of franchise agreements, though since 2022, franchisors must upload a current disclosure document to the online Franchise Disclosure Register (Cth).

Australia also operates a Franchise Disclosure Register, which is a centralized, publicly accessible repository designed to enhance transparency in the franchising sector. Franchisors are required to upload key information annually, including their disclosure document and prescribed details about the franchise system, enabling prospective franchisees to undertake preliminary due diligence before engaging directly with the franchisor. The Register does not perform an approval or vetting function—responsibility for compliance with the Franchising Code remains with the franchisor—but it serves as a regulatory and informational tool, allowing the ACCC to monitor the sector and identify potential non-compliance, while also promoting more informed decision-making by prospective franchisees through ready access to consistent, comparable information.

In Saudi Arabia, the disclosure document must be provided in Arabic (or with a certified translation), and if any material change occurs between disclosure and execution, the franchisor must issue an updated document or a statement of changes. Franchisors must register the executed franchise agreement and the disclosure document with the Ministry of Commerce within a prescribed period, as a form of regulatory oversight.[17] Saudi Arabia entrusts its Ministry of Commerce as the repository of both the executed franchise agreements and disclosure documents: they must be deposited with the Ministry within 90 days of execution and again within 90 days of any amendment. Registration remains effective for the full term, and must be cancelled within 90 days of termination, expiry or court revocation. There is no pre-approval vetting; the Ministry records the parties' agreement and then leaves them to perform. If parties neglect to register, they cannot unwind the deal, but the aggrieved franchisee may recover damages directly resulting from the omission, subject to a 1-year limitation period from awareness and an absolute 3-year bar. Failure to register does not give a right to cancel; it gives the right to compensation for direct losses. The Sauria Arabian contract must be signed by both franchisor and franchisee; be in Arabic or accompanied by a certified translation; the form/template itself is prescribed in the Regulations; and advertising monies must be reported to the network within four months of the year-end.

The disclosure and registration requirements applicable to franchisors in the US are a bit more fragmented than in both Australia and Saudi Arabia. While the FTC Franchise Rule applies to the sale of franchises to be located anywhere in the U.S. and its territories, the FTC Franchise Rule does not preempt state laws that impose stricter requirements. As the FTC Franchise Rule only mandates disclosure and not registration, one such stricter requirement is pre-offer and sale registration of the FDD, which is mandated by several states. Another example of stricter requirements is the disclosure period – while the FTC Franchise Rule requires disclosure at least 14 calendar days before the prospective franchisee signs any agreement or pays any consideration, some state laws require the disclosure 10 business days prior, or at the first personal meeting between the franchisor and the prospect. The federal and state franchise laws and regulations are consistent, however, in that a franchise disclosure document needs to be provided. The format required by the FTC Franchise Rule, as supplemented by guidance from the North American Securities Administrators Association ("NASAA"), is accepted throughout the U.S., with some state addenda added to the FDD to address state-specific requirements. The FTC Franchise Rule and the NASAA guidelines provide very detailed instructions for both the format and the content of the FDD. Foreign franchisors entering the market can often use their home market disclosure document as a starting point for preparing their U.S. FDD, but they should be prepared for significant revisions and will most likely need to supplement with additional information.

There is no review or registration of the FDD on the federal level but, as previously mentioned, several states require registration. The exact states that will require registration depend on whether the franchise offered includes the license to use a trademark that is registered with the U.S. Patent and

[17] Saudi Commercial Franchise Law 2019 art 6 (franchise agreement and disclosure document must be registered with the Ministry of Commerce within the time and manner set by Regulations). Australia has no pre-approval or registration of franchise agreements, though since 2022, franchisors must upload a current disclosure document to the online Franchise Disclosure Register (Cth).

Trademark Office. Such registration reduces the franchise registration requirements to 14 states: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin. Additionally, registration is required under the state business opportunity laws of Connecticut, Florida, Kentucky, Nebraska, Texas, and Utah. Registration is only required if the franchisor intends to offer franchises subject to the franchises that are subject to those laws. Though the laws are not uniform in this regard, typically they will apply if the franchisee is domiciled in the state or intends to operate its franchise there.

When planning a market entry into the U.S., franchisors need to consider not just the time required to prepare the FDD itself, but also the time required to register in the states they wish to target. While some state registrations take only a few days or less, in other states, franchise examiners review the submitted FDD and issue comment letters with questions or requests to revise parts of the FDD. The process from application to registration may take several months in those states.

Unlike the U.S., Canada does not have a governmental body or agency that actively monitors franchising. Canada also does not require registration of a franchisor's disclosure document, and most are kept confidential. Instead, private parties enforce their own rights. In particular, franchisees are prohibited from waiving or releasing their rights provided to them under provincial franchise legislation except in very limited situations.[18]

Canadian franchise legislation is remedial and designed to address the purported imbalance of power and informational gap in the franchisor-franchisee relationship. As courts typically recognize franchisors as more sophisticated and better resourced, and franchisees as less sophisticated with limited resources, Canadian courts generally interpret franchise legislation broadly in the franchisee's favour. As a result, it is important to keep in mind that the purpose of Canadian franchise legislation is to protect franchisees.

As a result, Franchisors are subject to a rigorous pre-contractual disclosure obligation. They must provide prospective franchisees with all the information necessary to make an informed decision about whether to invest in the franchise. Failure to comply with a franchisor's disclosure obligation can result in strict penalties and the extraordinary statutory remedy of rescission of a franchise agreement by a franchisee. Rescission is designed to return a franchisee to the position that they would have been in had they not acquired the franchise and most often involves large sums of money.

Similar to the other jurisdictions discussed above, a Canadian disclosure document must include a long list of prescribed information. However, what makes the Canadian regime unique is the requirement for a franchisor also to disclose all "material facts" in its disclosure document. The definition of a "material fact" is exceptionally broad and generally means information that could reasonably be expected to have a significant impact on the value of the franchise or the franchisee's decision to acquire it. The franchisor's obligation to disclose material facts is over and above the prescribed information already required and has been interpreted by the courts as non-exhaustive. Although there has been significant litigation over what constitutes a "material fact" for the purposes of franchise disclosure, regulators have not provided further guidance or clarity.

Given the onerous obligations imposed on franchisors to provide a fully compliant franchise disclosure document, franchisors are advised to seek legal counsel experienced in franchising in Canada to prepare a national franchise disclosure document that can be used across disclosure provinces. Additionally, it is a best practice for franchisors to provide prospective franchisees in non-disclosure provinces with a form of franchise disclosure document. This is especially the case when a system intends to have multi-provincial franchisees that may own numerous locations. Since the Canadian regime differs significantly from that of other jurisdictions when it comes to disclosure of all material

[18] See Wishart Act, Section 11.

facts, it is unlikely that a foreign franchise disclosure document would be considered compliant in Canada.

a. When waiting periods are too long

It is not uncommon for franchisors and prospective franchisees to agree to the business terms and start acting on those long before they have reached a true agreement on the legal terms of their arrangement. There is often excitement around the opening of a franchise, especially in a new market, and statutory waiting periods may be seen as burdensome and holding up the business deal. What can franchisors do when franchise law waiting periods do not align with their business needs?

The Australian 14-day disclosure period is relatively short and cannot be shortened by agreement – neither franchisor nor franchisee may waive it, even if they are both eager to expedite the deal. As discussed below, some jurisdictions (e.g., certain U.S. states) offer exemptions or allow waivers in large transactions, but Australia provides no general exemptions. The law's only nod to flexibility is that existing multi-unit franchisees may waive the disclosure and cooling-off for additional franchises of the same system (to facilitate experienced expansions). Consequently, if business exigencies make the waiting period burdensome (for example, an urgent need to open a store by a certain date), the franchisor's best approach is to plan carefully to start the disclosure clock early, rather than trying to circumvent it.

In Saudi Arabia, the 14 days waiting period also cannot be waived. In addition, the executed franchise agreement and disclosure document must be registered with the Ministry of Commerce within 90 days. Amendments must also be registered, and the registration must be formally cancelled on termination. Failure to register does not invalidate the agreement, but it exposes the franchisor to claims for compensation for losses resulting from the breach. Australia, by contrast, has no equivalent approval or registration regime.

Similarly, in the U.S., the parties cannot waive the federal 14 calendar day waiting period, or the other state-imposed waiting periods. However, both the federal and state franchise laws and regulations contain exemptions that may apply. The FTC Franchise Rule and the various state franchise disclosure laws exempt or exclude certain relationships from the definition of franchise. The exemptions focus on transactions in which the risk to the prospective franchisee is not significant, either because of a low risk exposure, the prospective franchisee's prior experience or financial and business wherewithal, or because of the franchisor's financial strength and business record. For example, both federal and state laws often exempt franchises for which the initial payment is low – often below $500. Likewise, where the franchisee has previous experience from a similar type of business and the franchised business is only expected to represent a relatively small percentage of their total income – a so called "fractional franchise" – there is often an exemption. Franchisors with a high net worth and a large number of franchisees are also often exempt. The tricky part is that the exemptions are not uniform between different states or under the FTC Franchise Rule. A franchisor who wishes to take advantage of exemptions needs to ascertain both which franchise laws may apply to a transaction, and also whether exemptions exist under each of the applicable laws.

Canadian franchise legislation requires franchisors to provide a disclosure document to prospective franchisees and wait at least 14 days prior to proceeding further but, similar to the US, each disclosure province provides statutory exemptions where disclosure is not required. These exemptions are set out principally in Ontario's Wishart Act and in similar legislation in Alberta, British Columbia, Manitoba, New Brunswick, Prince Edward Island, and Saskatchewan. While the exemptions are largely comparable across jurisdictions, there are important differences in scope, wording, and application that have been tested—and sometimes narrowed—by the courts.

Several exemptions focus on the nature of the transaction or the relationship between the parties. These include grants by a franchisee selling its own franchise (where the franchisor is not involved), grants to existing insiders such as officers or directors of the franchisor, grants of additional franchises to existing franchisees where there has been no material change, and transfers by estates, trustees, or receivers. Renewal and extension exemptions are also common, but outside Alberta, they typically apply only if there has been no interruption in operation and no material change since the last agreement—significantly limiting their availability.

Other exemptions are based on the scale or duration of the franchise investment. These include "fractional franchise" exemptions, where the franchise forms a small part (generally not more than 20%) of an existing business's revenues, and short-term franchise exemptions for agreements of one year or less with no non-refundable franchise fee. However, provinces vary materially: some limit the short-term exemption to situations involving location assistance, others omit it entirely, and Alberta's fractional franchise exemption is broader than in most other jurisdictions.

Finally, some provinces recognize a "sophisticated franchisee" exemption based on the size of the initial investment. Ontario exempts disclosure when the franchisee's total initial investment exceeds CAD$3 million, while British Columbia sets a higher threshold of CAD$5 million, though with less regulatory guidance on how the investment is calculated. Several provinces— including Alberta, Manitoba, New Brunswick, and PEI—do not provide any such exemption, meaning disclosure is still required even for large, well-capitalized franchisees. As a result, franchisors must approach exemptions cautiously, as courts interpret them narrowly and misapplying an exemption can expose franchisors to rescission claims and significant liability.

D. Deposits and LOIs triggering disclosure requirements?

(i) Deposits

As parties get further into their discussions and negotiations, it is common to enter into a letter of intent, memorandum of understanding, term sheet, or heads of terms ("LOI"). The purpose of the LOI is to document the preliminary terms of the parties' future agreement, and they serve as a placeholder on the way to a final agreement. Another way parties often seek to demonstrate good faith and engagement in reaching a final agreement is by paying a deposit. As this section will show, neither of those practices is without legal implications.

As noted above, Australian franchisors must not accept any non-refundable deposit or enforce a binding commitment from the franchisee until disclosure obligations are met and the required 14 days have elapsed. Doing so (for example, taking a "reservation fee" that is not refundable if the prospect backs out) would violate Clause 9 of the Code. If a franchisor wishes to secure a candidate's commitment during the negotiation phase, the only safe method is by way of a fully refundable holding deposit coupled with a non-binding understanding (e.g. an *in-principle agreement or a conditional LOI*). In such cases, the deposit is typically held in trust or escrow and credited towards the franchise fee if the deal proceeds, or returned in full if it does not.

In Saudi Arabia, the franchisor must provide the disclosure document before it collects deposit or any payment from the franchisee.

In the U.S., the rules are even stricter than in Australia. Deposits, reservation fees, and other payments, whether refundable or not, are sufficient to trigger the disclosure requirements under the FTC Franchise Rule and state franchise laws. It does not matter if the payment is made to the franchisor itself or to its affiliate. Thus, franchisors should ensure that their FDD preparation and registration are at least on pace with their discussions with prospective franchisees, so that they have an FDD to provide when they wish to receive a deposit.

However, franchisors may require the execution of limited, narrowly defined agreements—most notably confidentiality (or non-disclosure) agreements and site selection, territory, or location agreements—provided those agreements do not impose substantive franchise obligations, restrict statutory franchisee rights, or prevent disclosure to franchisee associations, other franchisees, or professional advisors.

In Canada, certain provinces permit franchisors to accept deposits before, during, or after the disclosure period, but only if strict conditions are met. Deposits must be fully refundable, subject to a prescribed monetary cap (Ontario is currently set at a maximum of $100,000, which cannot exceed 20% of the initial franchise fee), refundable without deduction if no franchise agreement is entered into, and must not bind the prospective franchisee to proceed with the franchise. While Alberta, Manitoba, Ontario, British Columbia, and Saskatchewan all allow deposits in some form, the precise wording and protections vary by statute, reinforcing the need for franchisors to structure pre-contractual agreements and deposits carefully to avoid unintentionally triggering disclosure violations or rescission rights.

The key is that the prospective franchisee retains the unfettered ability to walk away prior to signing the franchise agreement (or, indeed, during the cooling-off period after signing). Therefore, any preliminary agreement (such as an LOI or "term sheet") must be structured not to impose an irrevocable obligation on the prospect. In summary, deposits and LOIs can inadvertently trigger disclosure obligations if mishandled: an LOI that crosses the line into a binding commitment, or a deposit that is partially non-refundable, may be viewed as an early franchise agreement or payment, respectively, and both scenarios are incompatible with the Code's timing rules.

3. Documentation before the franchise agreement

A. LOIs and heads of terms (binding, non-binding; level of detail)

Letters of Intent and Heads of Agreement/Term Sheets are used to outline key commercial terms of a prospective deal. To avoid potential disclosure issues, they must remain non-binding (except for any agreed binding clauses, such as confidentiality or exclusivity). Typically, an LOI will set out major terms (e.g., territory, development timeline, proposed fees and investment obligations, and any special conditions precedent, such as regulatory approvals or financing) to ensure both parties are aligned before investing further time and costs in negotiating the full franchise agreement. However, the LOI should explicitly state that it is *subject to contract*, and that neither party is legally obliged to enter the final franchise agreement until formal execution. This clarity protects the franchisor in particular: no matter the jurisdiction, under contract law an LOI can be enforced as a binding contract if it appears the parties intended to be bound, so careful drafting is required to avoid prematurely binding obligations.

To lower the risk of the LOI being deemed binding it is recommended to keep the LOI relatively short and somewhat general, leaving the finer points to be flushed out in the franchise agreement.

Were an LOI to be deemed binding there is a risk that the franchisor has inadvertently violated franchise disclosure obligations. Since the term "franchise agreement" is defined very broadly and generally includes any agreement between a franchisor (or its associate) and a prospective franchisee that relates to the franchise, any agreement may be captured. As a result, franchisors are typically prohibited from requiring the execution of agreements prior to providing a franchise disclosure document. If the LOI is such a binding agreement, then disclosure would have been required prior to the parties execution.

While franchisors in general need to be careful about binding LOIs, there are situations in which the risk may be lessened – if the parties can rely on exemptions from franchise laws. Where a franchisor and a franchisee are in agreement that there is an applicable exemption to disclosure, such as in the case of larger multi-unit franchised grants involving large sums of upfront investment which may qualify under the sophisticated investor exemption in Ontario, it makes more commercial sense for the parties to negotiate a detailed LOI that is binding. Where both sides of the transaction are similarly sophisticated both in size and experience, negotiation of a detailed LOI may take months to complete prior to negotiating a franchise agreement.

In these types of scenarios, it is likely that the LOI contains both binding and non-binding terms. Certain provisions are generally craved out as being binding even if the parties do not ultimately proceed with the deal. Generally speaking, the binding provisions will include confidentiality and solicitation clauses, governing law and jurisdiction provisions, dispute resolution, as well as terms dealing with each parties' costs and expenses. The non-binding provisions will revolve around the proposed deal terms that will fall away if a deal is not concluded.

B. Setting the stage for the franchise agreement and a successful relationship

i. Understanding restrictions on financial assurances

While much of this paper has been devoted to what franchisors *should be doing* to successfully enter into a franchise agreement and relationship a word of caution is also appropriate for what they should not do. Financial assurances play a special role in that regard. Prospective franchisees would likely not be interested in the franchise opportunity if they did not believe it could be a profitable venture. Consequently, it is common for franchisors to be asked about potential financial performance. Even without the franchisee asking the franchisor may wish to share encouraging financial results to make the sale easier. However, this is an area in which franchisors need to tread carefully. Providing financial assurances or representations of some sort which are inconsistent with what is permitted with local franchise laws is a mistake that often cannot be cured. Once the "cat is out of the bag" it cannot be put back in and a prudent franchisor may feel it is necessary to walk away from a deal entirely.

Australian law permits franchisors to provide prospective franchisees with financial performance information – such as historical sales figures or profit forecasts – but only under strict conditions. Providing such "earnings information" remains optional under the Franchising Code, and many franchisors choose not to do so. If a franchisor elects to make any financial performance representations, they must be included in the Disclosure Document (or an attachment to it) and provided at least 14 days before the parties sign the franchise agreement.[19] Any such information must be accompanied by a signed statement by the franchisor attesting that the information is accurate to the best of its knowledge, with any qualifications or assumptions clearly identified.[20] The Code also requires a franchisor to explicitly state if it is not providing any earnings information.[21] These measures, retained in the new 2025 Code, ensure that prospective franchisees are either given substantiated, qualified earnings data well early in the recruitment process or are formally warned that no financial projections are available.

Franchisors face serious consequences if financial representations prove false or misleading. The Code (as of 2025) makes all substantive obligations – including those on disclosure – subject to civil penalties[22], and the Code's overarching good faith obligation extends to pre-contract statements.[23] More broadly, the Australian Consumer Law prohibits misleading or deceptive conduct[24] and specific false or misleading representations[25]; breaches can attract penalties of up to AUD 10 million (or more) for corporations.[26] A franchisor whose profit forecasts or financial assurances lack reasonable basis or are presented without proper context thus risks enforcement action by the ACCC and damages claims from aggrieved franchisees. Australian courts have not hesitated to penalize franchisors for unsubstantiated earnings claims – for example, a car wash franchisor's promotional statements about monthly profits and expected business volume were held to be misleading, violating both the ACL and the Code's good-faith requirement. While franchisors often include disclaimers or non-reliance clauses in their contracts, these offer limited protection: no clause can exclude statutory liability (and liability for fraud), and non-reliance / disclaimer clauses are at best evidentiary and offer limited protection against misleading conduct or misrepresentation claim.[27] The prudent course for franchisors is therefore to either avoid giving financial performance projections entirely, or to provide only information that is

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[19] *Competition and Consumer (Industry Codes—Franchising) Regulations 2024 (Cth)*, Schedule 1 (Disclosure Document), clauses 20(1), 20 (1A) and 23(6).
[20] *Competition and Consumer (Industry Codes—Franchising) Regulations 2024 (Cth)*, Chapter 2 ("the Code"), clause 20(2A)
[21] The Code, clause 20(3)
[22] Up to 600 penalty units, which are subject to change by Parliament but are currently valued at AUD 198,000 per breach (See section 11 of the *Competition and Consumer (Industry Codes—Franchising) Regulations 2024 (Cth)*)
[23] Section 18(1) – (2) of the *Competition and Consumer (Industry Codes—Franchising) Regulations 2024 (Cth)*
[24] Section 18 of the *Australian Consumer Law*
[25] Section 29 of the *Australian Consumer Law*
[26] Section 224 of the *Australian Consumer Law*
[27] *Viterra Malt Pty Ltd v Cargill Australia Ltd* [2023] VSCA 157

thoroughly supported by evidence and appropriately qualified, to minimize the risk of breaching their legal obligations.

For U.S. sales, franchisors have to be very careful about what information they share with prospective franchisees. While cost information can typically be freely shared, information about previously achieved financial results and projections for the future are strictly regulated under the FTC Franchise Rule, and NASAA has issued specific guidelines regulating financial performance representations ("FPRs"). Franchisors must have a reasonable basis for the FPRs made, and the FPR must be included in the FDD. A "reasonable basis" means both that the franchisor has a reasonable basis for believing that the information is accurate, and that the prospective franchisee can reasonably expect to duplicate the FPR in their own operation. The FPR must be recent – typically, it is based on the performance of franchised and company-owned outlets in the previous fiscal year. The FPR must also be reasonable in other ways. For example, if the franchisor has significantly revised its franchise model, it is unlikely to have a reasonable basis to use the performance of outlets operating under the old model when selling franchises for the new model. Franchisors entering the U.S. market for the first time need to assess whether the financial results of locations outside the U.S. provide a "reasonable basis" for prospective U.S. franchisees.

Along with Australian and U.S. franchisors, Canadian franchisors must exercise extreme caution when providing franchisees with voluntary disclosures commonly referred to as "earnings projections." An earnings projection has been defined to include any information given by or on behalf of the franchisor or the franchisor's associate, directly or indirectly, from which a specific level or range of actual or potential sales, costs, income, revenue or profits from franchises, or businesses of the franchisor or the franchisor's affiliate of the same type as the franchise being offered can easily be ascertained.[28] Significantly, this definition includes information on operating costs and not just performance. If a franchisor chooses to provide this information, they must include a statement specifying the reasonable basis for the projection, the assumptions underlying the projection, and a location where information is available for inspection to substantiate the projection.

ii. Requiring financial assurances from the franchisee

Franchise agreements frequently require personal guarantees from the principals of the franchisee entity, and sometimes other forms of security (such as bank guarantees or security deposits). There is no statutory prohibition against such requirements in Australia, Canada, or the U.S.. The enforceability of guarantees is governed by general contract and suretyship law – personal guarantees properly obtained (with informed consent and without duress or undue influence) are generally upheld. The same is true for the gulf countries, including, Saudi Arabia, UAE, Qatar, etc.

Unlike some jurisdictions, neither Australian law, nor Canadian, nor U.S. law, caps franchise fees or ongoing royalties, nor does it bar a franchisor from requiring collateral from a franchisee. That said, by dint of contract negotiation and marketplace practices, larger or well-established franchisees often resist giving personal guarantees or letters of credit. In those cases, franchisors may accept alternative assurances (for example, a parent company guarantee from the franchisee's holding company, or a larger initial payment). The existence of a guarantee obligation must be disclosed in the disclosure document.

A recent development in Australian law, introduced by the 2021 amendments to the Code, is Clause 19A, which prohibits franchisors from requiring franchisees to cover the franchisor's legal costs (beyond a fixed, pre-agreed amount) relating to preparing or enforcing the franchise agreement[29]. This ensures franchisees are not saddled with open-ended indemnities for the franchisor's legal fees (for example, costs of enforcing the contract, issuing default notices, or renewing the agreement). The

[28] Manitoba, Franchises Regulation, Man. Reg. 29/2012, section 1(1).

[29] Competition and Consumer (Industry Codes—Franchising) Amendment (Fairness in Franchising) Regulations 2021 (Cth) sch 1 item 15 (inserting new cl 19A into the Code, prohibiting any clause that requires a franchisee to pay the franchisor's legal costs, except for a fixed initial disclosure of costs before the franchisee starts the business).

change has necessitated amendments to many franchise agreements that previously allowed full cost recovery in such scenarios.

C. Understanding other restrictions that local law may put on the agreement

To avoid surprises later on, it is key for franchisors to understand whether local law imposes restrictions on the contract terms that must be included in the franchise agreement, or that may affect its interpretation. Common types of restrictions involve termination and non-renewal, dispute resolution, and governing law.

Australian franchise law overlays several statutory constraints on contractual terms to protect franchisees and promote fair dealing:

- *Dispute resolution:* By law, a franchise agreement cannot require litigation or mediation to occur outside Australia; any clause selecting a foreign forum or governing law will not override a franchisee's right to access Australian dispute resolution processes and forums for a dispute concerning a local franchise.[30] Further, the Code provides a detailed dispute resolution mechanism that either party may initiate, including mediation (or multi-party mediation or conciliation) in Australia, to attempt to resolve a dispute before resorting to court or arbitration. These provisions reflect a policy to make dispute resolution accessible and cost-effective for franchisees.
- *Termination:* In Australia, the Code regulates termination rights for franchise parties. In most breach situations, the franchisor must give the franchisee a notice of default and at least 30 days to remedy the breach before termination.[31] Immediate termination without an opportunity to cure is permitted only for very serious defaults (fraud, insolvency, endangerment of public health, etc., where the franchise agreement explicitly creates such a right) and, even then, the Code now requires a 7-day notice period.[32]
- *Renewal:* In terms of renewal, in Australia, while franchisees do not have an automatic right to a new term, the Code obliges the franchisor to inform a franchisee at least 6 months before expiry whether it intends to renew or not (failing which, penalties may apply)[33]. Further, if a franchisor elects not to renew a franchisee without compensating for goodwill, it cannot enforce a post-term restraint-of-trade clause against the now-former franchisee, provided the franchisee was not in breach and wished to renew on similar terms.[34]. This prevents franchisors from benefiting from a franchisee's investment and local goodwill by declining renewal and then restricting competition.
- *Other restrictions:* It also bears noting that Australian general law contains additional protections, such as unfair contract term rules (which can render significantly one-sided clauses void in small business contracts) and a broad prohibition on unconscionable conduct. While these doctrines apply across industries, they are particularly relevant in franchising, where the power imbalance is often stark. Franchisors should therefore ensure their contracts not only meet black-letter Code requirements but are also substantively fair and reasonable, thereby complying with the law and fostering a sustainable, positive franchisor-franchisee relationship.

A distinctive feature of Australian law is the statutory cooling-off period: once a new franchise agreement is signed (and any applicable payments made), the franchisee may terminate the agreement without cause within 14 days and receive a refund of payments (less specified expenses)[35]. This cooling-off right, which is not commonly found in many other jurisdictions' franchise laws (none of the other

[30] The Code, clause 40.(voiding contractual provisions that restrict dispute resolution or require litigation outside the franchisee's State/Territory, or arbitration outside Australia).
[31] The Code, clause 55
[32] The Code, clauses 57 and 58
[33] The Code, clause 36
[34] The Code, clause 42
[35] Franchising Code of Conduct (Cth) cl 26(1) (statutory cooling-off: franchisee may terminate within 14 days of entering agreement or paying any fee under it, whichever is earlier, and receive full refund of payments within 14 days, subject to permitted deductions).

jurisdictions covered provide a post-signing cooling-off right), further underscores the protective stance of Australian law in the pre-contract phase.

Unlike Australia, where the content of the franchise agreement is largely a matter for negotiation, Saudi law prescribes a minimum set of terms that must be included. Unlike Australia, where the content of the franchise agreement is largely a matter for negotiation, Saudi law prescribes a minimum set of terms that must be included. There are clear mandatory requirements, such as the contract being in Arabic (or accompanied by a certified translation) and signed by both parties. Additionally, commercial terms must deal expressly with:

- the system's name/description, duration and territory and how to modify them;
- the total consideration (initial, ongoing, training, technical) and its computation;
- franchisor's training, technical, marketing and other assistance;
- franchisee's duty to follow prescribed marketing, display and identity protocols; supply regimes and sourcing obligations;
- rights to use trademarks/IP and remedies on breach;
- a bona fide dispute resolution mechanism; rules for sub-franchising;
- effects of any transfer or change of ownership; and any other conditions mandated by the Regulations.
- renewal or non-renewal rights; governing post-term obligations;
- imposing non-compete restraints during/after the term (subject to Competition Law);
- committing the franchisee to protect the system's reputation;
- dealing with site rights and relocation;
- obliging confidentiality and data protection;
- requiring periodic reporting of advertising fund disbursements; and
- embedding whatever else the Ministry prescribes as belonging in a modern Saudi franchise instrument.

The effect is that the Saudi franchise agreement is, to a degree, a regulated document rather than a purely commercial one. Another notable distinction is that Saudi law does not permit franchisees to waive statutory protections (except in limited settlement contexts). This contrasts with Australia, where—subject to the overlay of unfair contract terms and unconscionability—the parties retain greater freedom to allocate risk contractually.

In the U.S., the FTC Franchise Rule does not impact the terms of the franchise agreement, as it purely addresses pre-sale disclosure. However, many state franchise laws do address the contractual relationship between franchisor and franchisee. Somewhat confusingly, it is not always the same laws as those addressing the pre-sale registration and disclosure that impose the obligations, and it is not always the same states that regulate the franchise relationship as those that regulate the sale of franchises. About half of the U.S. states have laws affecting the franchise relationship. The jurisdictions with relationship laws include: Alaska, Arkansas, California, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Dakota, Rhode Island, Virginia, Washington, Wisconsin, Puerto Rico and the Virgin Islands.

The scope of coverage of these laws varies considerably. Some of the earliest state laws passed, and the laws of Puerto Rico and the Virgin Islands, apply generally to just about every selective distribution relationship, including franchises. However, many of the more recently adopted laws often use a definition of "franchise" similar to that used in the franchise disclosure laws and thus would not apply to the typical distribution arrangement. Each state's definition must be examined to determine its scope of coverage.

For example, the California Franchise Relations Act uses the same definition of "franchise" used in its franchise registration and disclosure law. In Illinois, the relationship law is physically incorporated into the Illinois Franchise Disclosure Act of 1987, so the same definition applies. As a result, these laws would apply to the typical franchise, but would not apply to the typical distribution agreement if the seller does not require a fee to be paid by the distributor.

On the other hand, Connecticut, Missouri, Mississippi, New Jersey, Rhode Island and Wisconsin have laws of broad applicability, as do Puerto Rico and the Virgin Islands. For example, the Connecticut Franchises law covers “franchises”, which are defined as a franchisee being granted the right to offer, sell or distribute goods or services under a marketing plan or system prescribed in substantial part by a franchisor, and the operation of the business pursuant to the plan is substantially associated with the franchisor’s mark or trade name. No fee is required.

The New Jersey Franchise Practices Act covers “franchises,” which are defined as written arrangements in which one person grants to another person a license to use a trade name, trademark, etc., and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease agreement or otherwise. However, the Act applies only to a franchise that contemplates or requires a place of business in New Jersey, where gross sales of the products or services covered by the franchise exceed $35,000 for the prior 12 months, and where more than 20% of the franchisee’s gross sales are derived from the franchise.

The Wisconsin Fair Dealership Law and the Rhode Island Fair Dealership Act apply to “dealerships,” which are defined as expressed or implied agreements, oral or written, by which a person is granted the right to sell or distribute goods or services, or use a trade name, trademark, etc., in which there is a community of interest in the business of selling or distributing goods or services at wholesale, retail, by lease, agreement or otherwise. These laws have been held to apply to many typical authorized dealer or selected wholesaler or distributor relationships as well as franchises.

The termination/nonrenewal and relationship laws vary considerably in the subject areas regulated. Many of the laws deal with the relationship between the franchisor and franchisee during the term of the agreement, and cover matters such as the right of the franchisee to associate with other franchisees of the franchisor, competition by the franchisor, and a ban on discriminatory treatment.

Some of the laws, such as the Missouri and Mississippi statutes, which have very inclusive definitions of what constitutes a “franchise,” only require 90 days’ notice to cancel, terminate or fail to renew a franchise. Most of these laws, however, deal with the ability of the seller/manufacturer/franchisor to end the relationship with the distributor/dealer/franchisee. Typically, the agreement can only be terminated or not renewed for “good cause,” as that term is defined in the statute. There usually must be notice given within a specified time before the termination, cancellation, or nonrenewal takes place, usually between 30 and 90 days, but in some cases as much as 180 days.

There is also often a provision requiring the franchisor to repurchase the franchisee’s inventory, if the termination actually takes place, at a price specified in the statute, such as “fair wholesale market value.” Some laws also permit the heirs of the franchisee to inherit the agreement and continue the relationship indefinitely.

If the agreement is terminated by the franchisor without complying with these laws, the franchisee is usually given the right to sue for damages and/or injunctive relief and generally can recover their attorneys’ fees in addition. The net effect of some of these laws often means that the relationship will exist for as long as the franchisee (and their heirs) may want, as long as they continue to comply with the terms of the franchise or distribution agreement until the agreement expires of its own force without renewal rights.

Some of the more recent laws have quite narrow focuses. For example, the Idaho law simply provides that any condition, stipulation or provision in a franchise agreement that purports to waive venue or jurisdiction in that state’s court system is void, but the law allows the franchise agreement to make a choice of law.

Canadian franchise legislation requires the application of the law of the province where the franchised business is operated, in whole or in part. Any provisions in a franchise agreement that attempt to restrict jurisdiction or venue to any forum outside that province are void.[36] Parties to a franchise agreement can still choose to mediate or arbitrate their disputes as long as they attempt to waive or release any of a franchisee's statutory rights.[37]

Relating to termination and non-renewal provisions, Canadian franchise legislation does not mandate specific requirements on franchisors but requires that all parties to a franchise agreement adhere to the duty of fair dealing in its performance and enforcement. This obligation includes the duty to act in good faith and in accordance with reasonable commercial standards.[38]

The courts have consistently held that this duty of good faith and fair dealing cannot be used to rewrite a franchise agreement, to introduce terms not expressly included in the agreement, or to prioritize the franchisee's interests over the franchisor's. Despite this, given that Canadian franchise legislation is remedial in nature and designed to protect franchisees, it is prudent for franchisors to provide franchisees with adequate advance notice of termination or non-renewal as soon as practicable.

D. Local Registration Issue – The Commercial Agencies Law Aspect – UAE and Qatar

An issue that arises in some Middle Eastern jurisdictions, but not in the ones generally covered in this paper, is whether the franchise agreement constitutes a commercial agency. If a Franchise Agreement (if it involves the importation of tangible goods into the UAE or Qatar) will customarily be treated as a commercial agency agreement under the domestic law of the UAE or Qatar, as applicable. Franchisees of such agreements are afforded certain protections, such as implied exclusivity, the right to claim compensation upon termination, and the ability to block imports of given goods by other agents until the agreement is de-registered.

However, it must be noted that most of the protections afforded to commercial agents apply to situations where the primary business involves or relies on the importation of tangible goods into the territory. Even though provision of services as envisioned in the instant a transaction of licensed stores, recordation of Franchise Agreement with the domestic Ministry of Economy will need to should be prohibited as the same can lead to adverse situation for client franchisor at the time of parting of ways the agreement is terminated or expires, should the franchisee goes rogue in the future. If the franchisee is an entity established and registered in the UAE/Qatar, the franchisee will have standing to register with the Commercial Agencies Department, at all times.

[36] See Section 10 of the Wishart Act.
[37] See Section 11 of the Wishart Act.
[38] See Section 3 of the Wishart Act.

Feature	Saudi Arabia	United Arab Emirates	Kuwait	Bahrain	Qatar
Primary Legislation	Franchise Law (Royal Decree M/22 2019)	Commercial Agency Law (No. 3/2022) / Civil Code	Commercial Agency Law (No. 13/2016)	Commercial Agency Law / Disclosure Regs	Commercial Agency Law (No. 8/2002)
Pre-Sale Disclosure	**Mandatory** (14 days prior, FDD required)	Not mandatory (Buyer Beware)	Not mandatory	Mandatory (Simplified disclosure)	Not mandatory
Registration	**Mandatory** (Ministry of Commerce)	Optional (Ministry of Economy)	Mandatory for Agency	Mandatory (One-stop shop)	Mandatory for Agency
Language	Arabic (Mandatory for registration)	English/Arabic (Arabic prevails in court)	Arabic	Arabic	Arabic
Termination Rights	Statutorily defined (Material Breach, Compensation)	High protection for Registered Agents	High protection (Goodwill compensation)	Moderate protection	High protection for Agents
Exclusivity Impact	Does not trigger Agency Law automatically	Triggers Agency Law (if registered)	Triggers Agency Law	Triggers Agency Law	Triggers Agency Law

Note that registration of commercial agency is a legal requirement. A contractual provision binding the other side not to register agreements is an approach frequently adopted many times. But if the other side is not able to does not agree to the same then to this restriction, a franchisor must consider what alternatives are available to it. client must have safeguard against the contingency of potential abuse of such registration post termination/expiry of client's Agreement! The best safeguard is typically a bank guarantee option coupled with the favorable/balanced governing law and dispute resolution clause.

A sign that a franchisee intends to register as a commercial agent is a request Thus, if the franchise asks the client to provide them with for a copy of the franchise agreement attested by the UAE/Qatar embassy. This typically then it means that they will likely use the same for submission to some government authority. At that stage, it is a compliance requirement on the other side - but not on franchisor – rather for franchisor the issue is more of commercial adversity issue in letting this happen - therefore franchisor may want to explore its options using the following arguments - depending upon your company's bargaining strength. The other side must be aware that:

- The value of the transaction is significant for them as well as for your client - and that commercial realities are more important consideration for both the parties and - the commercial agency registration issue is just a minor legal issue.
- Compared to above the financial / commercial prejudice that will be caused to your client because of commercial agency registration - is huge and irreparable - i.e. it will result in reducing the commercial and contractual rights of your client - and that such commercial agency registration is capable of putting your client in significant disadvantage.
- Most of the protections afforded to commercial agents are applicable in situations where the primary business pertains to or relies on importation of tangible goods into the territory. As far as provision of services as envisaged in the instant transaction, non-recordation of license agreement with the domestic Ministry of economy will not be a showstopper for franchisee itself
- If they insist upon Commercial Agency Registration then our view will be towards safeguarding your company's larger commercial interest, and then your client should be securing a standing bank guarantee, that hopefully should mandate Franchisee to provide letter of guarantee (i.e., a performance guarantee in the amount of annual sales forecast) and an irrevocable unconditional letter of guarantee issued by a United Kingdom bank as acceptable to the Franchisor, for the entire agreed duration of agreement plus the 90 days post expiry date of agreement. Its encashment will be at Franchisor's option without any conditions - only as a fail-

safe measure at the time of "failure of Franchisee (or its affiliated sub-licensee or domestic parties) to de-register the Agreement in the given domestic territory"

4. Conclusion

The pre-contract phase of franchising is not merely a prelude to the “real” legal work: it is where the foundations of the franchise relationship are either strengthened or irreparably weakened. Across Australia, the United States, Canada and Saudi Arabia, the regulatory detail differs markedly, but a consistent theme emerges: transparency, timing, and disciplined process are critical.

- In Australia, the Code imposes a structured pathway that prioritizes disclosure, good faith, and measured decision-making, reinforced by cooling-off rights and regulatory oversight.
- The U.S. regime, while similarly disclosure-driven, reflects a more fragmented and commercially adversarial environment in which strict compliance with federal and state requirements (and careful control of pre-sale communications) is essential.
- Canada takes a distinctly protective approach, with broad disclosure obligations and powerful rescission remedies that place significant risk on franchisors who fall short.
- Finally, Saudi Arabia illustrates a more formalized and prescriptive model, combining early disclosure with mandatory contractual content and post-execution registration.

Despite these differences, the practical lesson for franchisors is universal: invest early in diligence, structure pre-contract interactions carefully, and treat disclosure not as a compliance burden but as a strategic tool for selecting the right partner. For franchisees, the lesson is equally clear: engage critically with the information provided, test assumptions, and use the pre-agreement window to fully understand both the opportunity and the risks. Ultimately, successful franchising is not achieved through clever drafting of the franchise agreement alone. It is built through disciplined preparation, candid engagement, and compliance with both the letter and the spirit of the law before ‘pen is ever put to paper’. Those who get this stage right significantly increase the likelihood that the legal relationship they formalize will also be commercially durable.