

# Global Franchise Regulation Update Webinar



Prepared by Gaylen Knack and Elizabeth Dillon

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# Presenters



**Gaylen Knack**

Lathrop GPM  
Minneapolis, MN  
Gaylen.Knack@lathropgpm.com  
Telephone: 612-632-3217



**Liz Dillon**

Lathrop GPM  
Minneapolis, MN  
Liz.Dillon@lathropgpm.com  
Telephone: 612.632.3284

# Major Developments





# Australia

## Franchise Disclosure Registry

- Creating a registry for prospective franchisees to search and view information on franchisors.
- Franchisors must upload information and that information must be consistent with most recent FDD.
- Must update annually.
- Will go live on November 15.

## Proposed Amendments to Unfair Contracts Law

- Significant changes were proposed that would not only make unfair terms void but carry penalties.
- The proposed amendments lapsed in May.
- Government announced a new bill will be introduced this year.
- Goal to create more penalties for violations.

# New Zealand



- Amendments impacting unfair contract terms and unconscionable conduct.
- Went into effect on August 16, 2022.
- An unfair contract term is a term that causes significant imbalance, is not reasonably necessary and harms the other party.
- Previously, only applied to standard form consumer contracts but extended to “standard form small trade contracts”.
- A small trade contract is one where the trading relationship isn’t expected to exceed \$250,000 annually.

# New Zealand

The following factors are considered when evaluating if behavior is unconscionable:

- Bargaining power
- Parties acting in good faith
- Ability of party to protect themselves and understand the agreement
- Unfair pressure / unduly influences

Potential liability for fines up to \$600,000

# Canada



## Quebec—Franchise and Other Form Contracts Must Be Prepared in French.

- Amended Language Law requires franchise agreements and renewal agreements to be written in French to be enforceable.
- Franchisor may not pass along costs.
- Franchisors must comply after June 1, 2023.
- Language in bill exempts contracts “used in relations outside Quebec” but not clear yet if it exempts franchisors outside of Quebec.



# European Union

- EU enacted changes to Vertical Block Exemption Regulations.
- Effective June 1, 2022 with transition period for existing agreements.
- Maintains general regime – franchise agreements remain a subset of “vertical agreements”.
- Affects how franchisors can regulate franchisee’s use of e-commerce.
- Eases restrictions involving on-line sales while restricting flow of information in dual distribution systems.



# United Kingdom

- UK's Competition and Markets Authority (CMA) recommended adopting a UK vertical restraints Block Exemption following Brexit
- Came into force in June 2022
- Generally aligns with EU proposed VBER, but key differences exist
- Differences including treatment of territorial restrictions, retail parity obligations and term of the exemption
- Provides greater guidance regarding active v. passive selling
- Franchisors need to assess whether block exemption differences necessitate creation of separate agreements



# Thailand

- New data protection law as of June 1, 2022
- Provisions similar to the EU General Data Protection Regulation
- Franchisors with franchisees in Thailand should examine data collection and ownership



# Malaysia

March 2020 amendments to the Franchise Act clarifying sections of the Act under which foreign franchisors must register and rendering enforceable agreements previously registered by the Ministry of Domestic Trade and Consumer Affairs are finally effective as of April 28, 2022.



# South Korea

- New rules require franchisors to get franchisees consent before launching advertising where franchisees would have to contribute financially.
- Failure to comply results in fines.
- Effective May 2022.

# Russian-Ukrainian War – Lessons for Franchisors



- War has had a devastating impact on the immediate region
- Far-reaching ramifications for international franchise systems both inside and outside the region
- Government-imposed sanctions have directly impacted activity in Russia and beyond
- Private companies have imposed additional sanctions
- Global supply chain for various goods has been impacted
- Franchisors should revisit various franchise agreement provisions in light of Russian-Ukrainian war

# Israeli Ben & Jerry's Franchisee Sues to Stop Nonrenewal Arising from Its Insistence on Selling Ice Cream in Occupied Territories

On March 1, 2022 the franchisee sued B&J and Unilever in New Jersey Federal court, seeking damages and:

- A declaration that the nonrenewal is unlawful and breaches the franchise agreement.
- An injunction to stop the nonrenewal.

On August 22, 2022 a judge denied a petition by B&J's board members to stop Unilever from transferring assets in Israel and West Bank to a local licensee in Israel.

On September 30, 2022 B&J sued Unilever claiming Unilever covertly transferred trademarks in violation of the merger agreement.

# Italy's Anti-Trust Authority Concludes Investigation into McDonald's

- Investigated started over complaints by three franchisees over franchise agreement terms.
- Claimed certain franchise agreement terms could be abusive conduct in violation of anti-trust laws, including provisions related to pricing, promotions, supplies and purchases, and financial management.
- McDonald's agreed to remove certain franchise agreement provisions.
- Potential liability for up to 10% of global turnover if McDonalds had been found guilty.



**Thank You**