

PANORAMIC

FRANCHISE 2027

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LEXOLOGY

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Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights, including franchise market overview; key considerations when forming and operating a franchise; offer and sale of franchises; franchise contracts and the franchisor/franchisee relationship; and recent trends.

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Global overview

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When the United States sneezes, the rest of the world catches a cold. While that quip has been used since the Great Depression of 1929, and was likely a modification of a similar comment about Paris and Europe from the time of Napoleon, it is still applicable today because the world is, more than ever, interconnected, with commerce one of the fundamental aspects of this interconnectedness. Since 2020, we have seen local, regional and global changes – pandemic, wars, climate change, economic and financial disruptions and inflation, economic growth, as well as artificial intelligence (AI) increasingly becoming part of our mainstream business and personal lives, just to name a few – affecting travel, hospitality, restaurants, healthcare, education and, of course, economies and industry. Individuals, businesses and entire economies around the world have reacted to these events, and have also continued to evolve.

Many businesses, workers and consumers have thus emerged from these events, and the changes in regional global political and commercial shifts, with a new sense of resilience. Companies have accelerated investments in technology or developed new product and service offerings. AI is being used more extensively. The restaurant industry, which is home to many franchise brands, has increased its investments in mobile technology and contactless payments, modified menu offerings, shifted to takeaway and partnered with delivery companies to counteract the changes in consumption and travel habits. Education, tutoring and training businesses have developed and implemented new virtual offerings. New businesses and services have arisen. Businesses have found new consumers and new markets around the corner, across their home countries and around the globe. As we know, some companies see a crisis, and then recognise it as an opportunity and act. Those companies come out on the other side stronger, and as a result, companies are rethinking their approaches to growth, development and expansion into new markets.

Businesses have embraced the new normal and are evaluating new opportunities. Many franchisors that were doing business in countries now involved in wars, or impacted by shifting trade policies, may have ceased or paused development, or are deploying resources elsewhere. Other companies may wish to explore opportunities outside their borders for the first time and are ready to dip their toe in international franchise waters; others that may have been franchising or distributing in a foreign country may be considering alternatives to expansion, with multiple approaches in different countries, such as direct franchising, master franchising, non-franchised licensing or distribution, or direct investment in company-owned outlets in a country. For all those companies, and for their in-house and outside counsel, Lexology Panoramic*Franchise* is a must-read for initial expansion diligence. Whether a company in Country A is looking to distribute its goods in Country B, or is looking to expand its outlets and services to Country C, D, E or F, understanding the commercial, financial, legal and regulatory landscape of the target countries is critical. This edition should be the first resource used to evaluate franchising and distribution issues in a particular country and guide strategic decisions.

Lexology Panoramic*Franchise* is organised in the familiar style of a country-by-country analysis. Each chapter is written by a lawyer (or lawyers) with impeccable credentials and significant experience representing franchisors, master franchisees, sub-franchisors, franchisees, licensors and distributors in their country. Each chapter uses the same questionnaire to address the issues, business concerns and legal questions that most counsel and executives focus on as they embark on exporting their brand to a new country. Therefore, for the reader who wishes to dive into a particular country or several countries, each chapter discusses the relevant issues, moving from general to specific, much in the way counsel would prepare for a discussion with management. In general, each chapter guides the reader as follows:

- The chapter opens with a market overview, describing franchising in that country and its role in business and the economy.
- The chapter proceeds to discuss basic business issues, such as business formation, taxation, restrictions on foreign investors, labour and employment, real estate and intellectual property.
- Next, the chapter explores franchise issues, going from the general to the specific, including the definition of a 'franchise', the laws and regulations governing franchising, franchisor eligibility and franchisee selection.
- Digging deeper, the chapter explores franchise-specific laws or other intellectual property, trademark, licensing, agency or competition laws. Our authors guide the reader through various aspects of the franchise process, such as franchise disclosure rules, registration and filing requirements, and even applicable general legal principles and codes of conduct.
- The chapter also addresses the details and nuances of franchise agreements and the franchise relationship in each country, including restrictions on or arguments for terminations, renewals, transfers, fees, foreign exchange controls, confidentiality and non-competition covenants. As befitting any legal summary, the chapter discusses the court system, dispute resolution (including arbitration) and governing law requirements.
- Lastly, the chapter wraps up with legal and other developments, and updates and trends.

In addition, where applicable, the chapter provides links to the most critical and relevant laws and regulations accessible through the Lexology website.

Business operations, including franchising and distribution into new markets and countries, are rarely implemented through a one-size-fits-all approach. This edition of Lexology Panoramic*Franchise* allows the reader to evaluate each potential country on its own or create strategies for groups of countries. Because each chapter is organised in the same manner, the reader can identify, evaluate and analyse particular issues across several markets. Counsel may wish to evaluate one or more specific issues across multiple countries, weed out potential targets that are problematic, or focus efforts on better targets, as set out in the following examples:

- Company X is using direct franchising in its home country but wishes to explore alternative forms of franchising in other countries, such as master franchising

or sub-franchising – this edition addresses each country's regulations and requirements as applied to different franchise models.

- Maybe Company X is considering a non-franchise licensing or distribution model and wishes to avoid granting franchises or becoming liable as an accidental franchise. This edition will enable counsel to consider if the law in one or more countries could be a dead end because the current or proposed arrangement is a franchise. This permits a re-evaluation of the strategy for that country or a modification of the commercial arrangement.
- Will a country's tax structure or restrictions on foreign investment make entry into that country a non-starter, or are there restrictions or controls on foreign exchange that make repatriation of currency a challenge?
- If protections of confidential information, know-how and trade secrets are critical, will a particular target country be protective?
- If a company employs specific franchise agreement provisions for the protection of its system or for generating revenue, are those contract provisions permitted or enforceable in certain target countries?
- If a company designates specific suppliers, or controls pricing or resale prices in its home country arrangements or in certain foreign markets, a review of those portions of multiple chapters will assist the company and its counsel in mapping out an expansion strategy.
- Recognising that disputes with franchisees or master franchisees are likely to be inevitable at some point in the life cycle of franchise relationships, which countries are most hospitable to the company's desired dispute resolution procedures and which will enforce foreign judgments?
- Companies' plans change over time and at some point, a company may wish to withdraw from a market or country. Are there restrictions on terminations of franchises that may be an impediment?

This edition of Lexology Panoramic *Franchise* is a valuable resource to evaluate franchising, whether in a neighbouring country to the reader's region, or in one or more countries on the other side of the globe. It is not, nor is it intended to be, a fulsome treatise on all aspects of franchising and franchise laws in the various countries included in this report with the goal to make the reader an expert in franchise law in those countries. Rather, it identifies the most significant issues that counsel, management, and their clients and companies need to know. Lexology Panoramic *Franchise* provides guidance on these issues, as well as direction as to where additional evaluation is needed. The reader will recognise that many issues will require consultation with local counsel in the target country. Further analysis may be particularly necessary regarding non-franchise issues, such as entity formation, tax and labour. Additional research will be needed with respect to franchise-specific issues, such as disclosure and registration, permitted contract clauses or franchise terminations. An in-house lawyer, in-house executive or a company's outside counsel may not be comfortable with turning over all the questions and issues to foreign counsel. This edition will arm the reader with information to ask intelligent questions of foreign counsel. When seeking out counsel in another country, what better source than the author who wrote the relevant chapter?

Let me take this opportunity to thank the group of authors who have contributed to this edition. They have spent years honing their skills and knowledge, and have shared it with the readers in an extremely user-friendly manner.

Business opportunities and challenges continue to evolve, from navigating economic, supply chain and technology changes, to adapting to new or modified governmental regulations or financial requirements. However, one thing has not changed (even with the rise of AI): the need for lawyers and executives to intelligently analyse and evaluate business growth opportunities to provide their clients with the best advice in an efficient manner, so that both counsel and clients can make sound strategic decisions. The world keeps changing, and businesses and commercial relationships continue to evolve. Are you poised to act?



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