

KEY LEGAL ISSUES FOR NON-LAWYERS

- What are the registration, disclosure and other legal compliance issues you are required to satisfy in order to sell franchises in certain countries?
- What do you need to know in order to mitigate costs of compliance and delay that can occur in getting your deal done?
- What other legal issues should you be aware of as you negotiate your international franchise agreement?
- What provisions of a franchise agreement are highly negotiated and what are the best drafting and negotiating approaches to eliminating “push back” on those provisions?

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1. Hitting the High Points - Regulatory Requirements:

A. Jurisdictions with Prerequisites to Offering Franchises:

- Proof of concept (China, Korea, Saudi Arabia and Vietnam)
- Restrictions on foreign ownership (China, Saudi Arabia and the UAE)
- Fee caps, currency controls and sourcing restrictions

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B. Heavy Pre-sale Franchise Registration Requirements:

- Pre-sale filing (Australia, Indonesia, Korea, Malaysia and Vietnam)
- Government approval required (Indonesia, Korea, Malaysia and Vietnam)
- Translation requirements (Indonesia, Korea and Vietnam)
- Notarization, apostille and legalizations (Indonesia)

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C. Wide Variation in Disclosure requirements:

- Jurisdictions with disclosure requirements that mirror the US (Belgium, Brazil, France, Spain and Taiwan)
- Jurisdictions with disclosure requirements that are incredibly vague (Albania, Georgia, Latvia, Moldova, Romania and Turkmenistan)
- Civil Law jurisdictions (Germany and Norway)
- Jurisdictions with unique disclosure requirements (The Netherlands, South Africa, France, Argentina, Brazil, Malaysia and Mexico)

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D. Heavy Post-sale Registration Requirements:

- Filing required to be enforceable (Russia, Kazakhstan, Moldova, The Philippines, Saudi Arabia and Belarus)
- Filing required to repatriate currency (Brazil)

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2. Common “Making a Deal” Questions

- A. Using a letter of intent / reservation letter / application including issue of taking a deposit up front
- B. Getting organizational information / due diligence best practices
- C. Obtaining and maintaining trademark protection
- D. Using personal / corporate guarantees, bank guarantees and letters of credit
- E. Allocating payment of fees and withholding tax
- F. Triggering default and termination; recovering damages

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- G. Restricting transfers
- H. Determining scope of Indemnity
- I. Determining method of Dispute Resolution (including Choice of law and arbitration body / seat)
- J. Obtaining and protecting private and customer data

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Thank you!