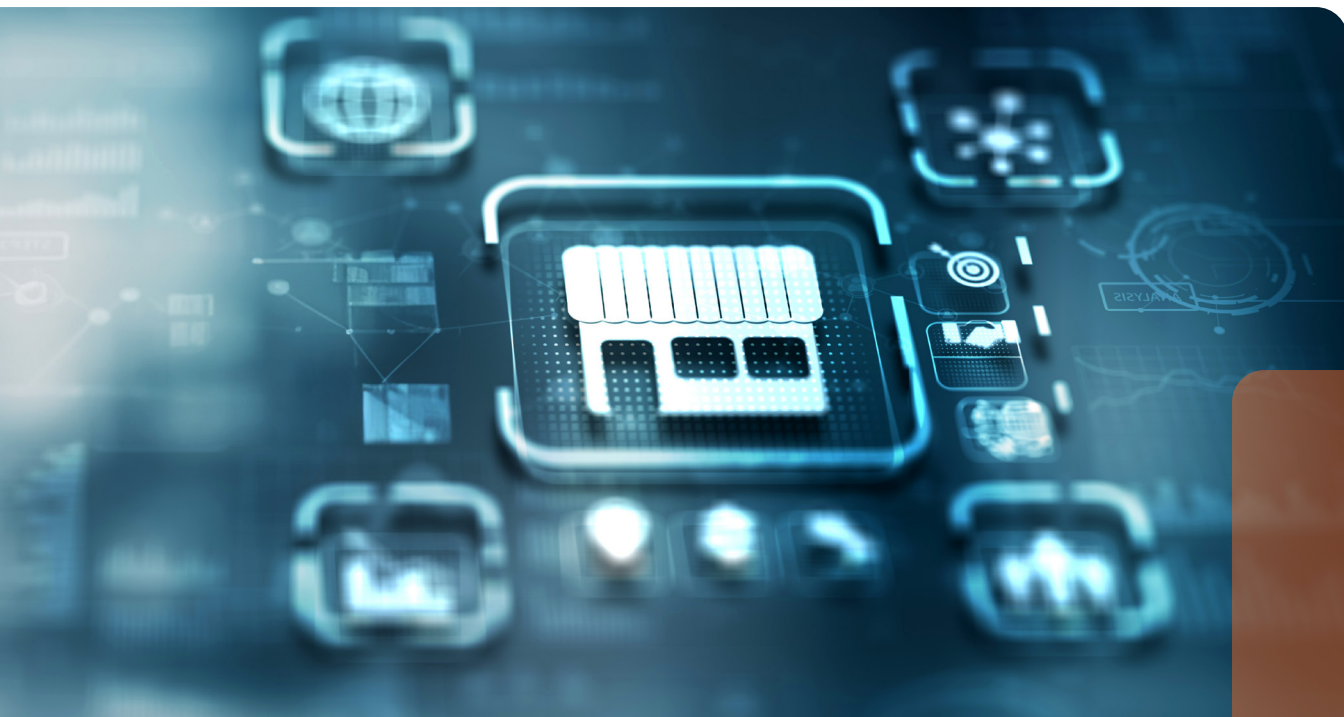


**International  
Comparative  
Legal Guides**



# Franchise

# 2024

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Contributing Editor:

**Iain Bowler**  
Freeths LLP

**glg** Global Legal Group

# Introductory Chapter

1

**Introduction to ICLG – Franchise 2024**

Iain Bowler &amp; Jaskeerat Sanghera, Freeths LLP

# Industry Chapters

4

**Support a Strong Global Franchise Community**

Matthew Haller, International Franchise Association (IFA)

6

**The BFA: Pioneering for the Future**

Pip Wilkins QFP &amp; Emily Price QFP, British Franchise Association (BFA)

# Q&A Chapters

10

**Australia**

Thomson Geer: Bronwyn Furse

21

**Brazil**

Pitanga Bastos: Daniel Pitanga, Mônica Pinheiro &amp; Rodrigo Rodrigues

30

**Canada**

Hoffer Adler LLP: Joseph Adler, Idan Erez &amp; Stephanie Chong

41

**China**

Jones &amp; Co.: Paul Jones &amp; Jiahui (Jennifer) Zhang

50

**England & Wales**

Freeths LLP: Iain Bowler &amp; Jaskeerat Sanghera

62

**France**

Linkea-Avocats: Cecile Peskine &amp; Clémence Casanova

71

**Germany**

Noerr PartGmbH: Dr. Tom Billing &amp; Dr. Jasmin Schulzweida

82

**India**

LexOrbis: Dr. Shivani Shrivastava &amp; C. R. Jacob

90

**Korea**

IPG Legal: Sean Hayes &amp; Jiwon Min

97

**Netherlands**

Kennedy Van der Laan: Martine de Koning &amp; Tosca Bokhove

109

**New Zealand**

Jackson Russell: Darryl King

118

**Nigeria**

ÆLEX: Tiwalola Osazuwa, Ifeoluwa Ebiseni &amp; Nenjom Asuk

126

**Norway**

Advokatfirmaet Forsberg DA: Per Forsberg &amp; Dag Thorstensen

133

**Saudi Arabia**

Hammad and Al-Mehdar Law Firm: Suhaib Hammad

140

**South Africa**

Fluxmans Inc.: Ian Jacobsberg

148

**Spain**

ELZABURU: Javier Fernández-Lasquetty Quintana &amp; Jorge Parada Chacón

157

**Sweden**

Sagell &amp; Co. Advokatbyrå: Dan-Michael Sagell

164

**Turkey**

Pehlivan &amp; Güner: Haşmet Ozan Güner, Nilgün Gonca Deveci &amp; İpek Açıkgöz

173

**United Arab Emirates**

BSA Ahmad Bin Hezeem &amp; Associates: Munir Suboh, Amala Atieh &amp; Felicity Hammond

184

**USA**

Rosen Karol Salis, PLLC: Richard L. Rosen, Leonard S. Salis &amp; John A. Karol

# India

LexOrbis



Dr. Shivani Shrivastava



C. R. Jacob

## 1 Relevant Legislation and Rules Governing Franchise Transactions

### 1.1 What is the legal definition of a franchise?

Consumer demand is poised for growth in India, especially since there is a largely unserved market to be capitalised in tier-2 and tier-3 cities. India does not have a franchise law, hence an interpretation of the definition can be inferred from the Finance Act, 1999 in the context of service tax, which has since been repealed following the introduction of goods and service tax (GST). From the Finance Act, 1999, one can define a franchise as an agreement that grants the franchisee the right to sell or manufacture goods, provide services, or undertake any process identified with the franchisor, whether or not a trademark, service mark, trade name or logo, is involved.

### 1.2 What laws regulate the offer and sale of franchises?

Parties involved in the Franchise agreement must take cognisance of the applicable Goods and services tax (GST) and Income tax. Generally, the offer and sale of franchises find a legal basis in laws such as:

- The Indian Contract Act, 1872.
- The Foreign Exchange Management Act, 1999 (FEMA).
- The Competition Act, 2002.
- The Trademarks Act, 1999.
- The Copyright Act, 1957.
- The Patents Act, 1970.
- The Design Act, 2000.
- The Income Tax Act, 1961.
- The Arbitration and Conciliation Act, 1996.
- The Specific Relief Act, 1963.
- The Information Technology Act, 2000.

### 1.3 If a franchisor is proposing to appoint only one franchisee/licensee in your jurisdiction, will this person be treated as a “franchisee” for purposes of any franchise disclosure or registration laws?

In India, it is frequently observed that business structures involve the franchisor granting master franchise rights to a single franchisee for the entire country. Alternatively, the franchisor may choose to appoint multiple franchisees, with each franchisee assigned to a specific jurisdiction.

### 1.4 Are there any registration requirements relating to the franchise system?

Registration is not obligatory, but it is necessary to obtain Goods and Services Tax (GST) registration based on the turnover.

### 1.5 Are there mandatory pre-sale disclosure obligations?

There is no legal requirement that compels a franchisor to disclose information to a franchisee. Generally, franchise transactions are conducted in good faith, and it is the responsibility of both parties to conduct thorough due diligence before entering into a franchising agreement. However, it is considered best practice to have a franchisee disclosure document in place as it enhances the credibility of the franchisor and franchisee in the arrangement.

### 1.6 Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?

There are no specific pre-sale disclosure obligations.

### 1.7 Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?

There are no specific statutory obligations to make continuing disclosure to existing franchisees.

### 1.8 What are the consequences of not complying with mandatory pre-sale disclosure obligations?

In the absence of specific statutes governing franchising and pre-sale disclosure obligations, any failure to comply would be addressed under the common law doctrine of equity.

### 1.9 Are there any other requirements that must be met before a franchise may be offered or sold?

There are no statutory requirements, but it is good practice to conduct due diligence, protect trademarks, and have watertight franchise contracts in compliance with the Indian Contract Act, 1872.

#### 1.10 Is membership of any national franchise association mandatory or commercially advisable?

There is no requirement for membership in any national franchise association.

#### 1.11 Does membership of a national franchise association impose any additional obligations on franchisors?

Since there is no requirement for membership in a national franchise association, there exist no other obligations. It is completely at the discretion of parties involved in franchising to be part of any national franchise association.

#### 1.12 Is there a requirement for franchise documents or disclosure documents to be translated into the local language?

There is no requirement for any translation into a local language.

## 2 Business Organisations Through Which a Franchised Business Can be Carried On

#### 2.1 Are there any foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a business in your jurisdiction?

Any franchisor from outside India who wishes to invest in an Indian company should first be aware of India's foreign direct investment (FDI) policy. According to FDI policy, investments can be made by non-residents in the: equity shares; fully, compulsorily, and mandatorily convertible debentures; and fully, compulsorily, and mandatorily convertible preference shares of an Indian company, through the Automatic Route or the Government Route. Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from the Government of India for the investment. Under the Government Route, prior approval of the Government of India is required. Proposals for foreign investment under the Government Route are considered by the respective administrative ministry/department. Further, payments to the overseas franchisor must conform to the Reserve Bank of India (RBI) norms and FEMA regulations.

#### 2.2 What forms of business entity are typically used by franchisors?

There are various business structures that franchisors can opt for. A franchisor can establish a presence in India through a subsidiary or a joint venture. If a subsidiary is being set up, the franchise should follow the guidelines laid down by the FDI policy and check for compliances regarding the percentage stake that a foreign national can have and the type of incorporation of the new subsidiary, i.e., as a private limited company or any other type of incorporation.

#### 2.3 Are there any registration requirements or other formalities applicable to a new business entity as a pre-condition to being able to trade in your jurisdiction?

If a new business entity is created, then the new entity must be registered under a relevant business incorporation structure, i.e.,

a private limited company or limited liability partnership. The new entity must apply for relevant tax certificates such as GST.

## 3 Competition Law

#### 3.1 Provide an overview of the competition laws that apply to the offer and sale of franchises.

The Competition Act, 2002 deals with the prohibition of agreements that are anti-competitive and arrangements that constitute abuse of a dominant position. Recently, the highly anticipated Competition (Amendment) bill, 2023 was passed by both the lower house and the upper house of the Indian parliament and came into effect on April 11, 2023, after receiving assent from the President. One of the important changes made in the Amendment Act is the deal value threshold. A person or business is not allowed to participate in a combination, such as a merger, acquisition, or amalgamation, under the Amendment Act, if it could have a significant negative impact on competition. The definition of combination has been widened by the Amendment Act to now encompass deals with a value greater than INR 2000 crore (about GBP 192 million). Additionally, transactions involving businesses that have "substantial business operations in India" must be reported.

Another important facet of the Amendment Act is with regard to IPR. According to the Act's Section 3, an entity's Intellectual Property Rights in Copyright, Patents, Trademarks, and Designs may be utilised as a defence in cases involving anti-competitive agreements. However, this justification is not available in cases involving the abuse of a dominating position. The Amendment Act has not changed this position, and entities cannot use the protection of their IPRs as a defence in cases involving unfair/discriminatory pricing, predatory pricing, conditions in the purchase or sale of goods or services, limitations, or restrictions on the production of goods, technological or scientific development relating to goods or services to the detriment of consumers, denying other players access to the market, or any other abuse of a dominant position.

#### 3.2 Is there a maximum permitted term for a franchise agreement?

There is no maximum or minimum term for a franchise agreement, and it is at the discretion of the franchisor and franchisee to set the term in the agreement.

#### 3.3 Is there a maximum permitted term for any related product supply agreement?

No, there is no maximum permitted term.

#### 3.4 Are there restrictions on the ability of the franchisor to impose minimum resale prices?

A franchisor can control the prices at which its franchisee partner resells its products in India provided that the terms of the agreement and price control mechanism comply with the provisions of the Competition Act, 2002. This resale price provision is referred to as resale price maintenance (RPM). Care must be taken to have RPM, as they may attract the scrutiny of the Competition Commission (CCT) by being anti-competitive.

### 3.5 Encroachment – are there any minimum obligations that a franchisor must observe when offering franchises in adjoining territories?

There are no minimum obligations that a franchisor must observe; however, it is based on the territory assigned in a franchise agreement. The territory assigned can differ in each agreement, i.e., it can be exclusive or non-exclusive. The territory assigned can include an exclusive territory, i.e., when a franchise is sold with an exclusive territory, it means the franchisor cannot sell other franchises in that area. The second form of territorial franchising is on a non-exclusive territory basis, i.e., where a franchise is sold in a non-exclusive territory, the franchisor can sell other franchises to people in that territory.

### 3.6 Are in-term and post-term non-compete and non-solicitation of customers covenants enforceable?

Both in-term and post-term non-compete and non-solicitation covenants can be enforceable if found reasonable and not a complete restraint of trade.

## 4 Protecting the Brand and Other Intellectual Property

### 4.1 How are trade marks protected?

Trademark registration in India is regulated by the Trademark Act of 1999. This legislation outlines the procedures for registering trademarks and the enforcement of trademark rights in cases of infringement. Under Indian trademark law, significant importance is given to the prior use of a mark.

To obtain registration, an application must be filed with the Indian Trademark Registry. It is important to note that trademark rights are limited to the territory of India. A trademark registered in India is only valid within the country. The initial validity period of a registered trademark is 10 years, and it can be renewed periodically.

Trademark registration grants exclusive rights to the registered owner for using the trademark and provides recourse in cases of trademark infringement. Additionally, Indian laws recognise the concept of “passing off” under common law tort. This allows users to take legal action against unauthorised use of an unregistered trademark. In such cases, it is necessary to establish that the business’s goodwill or reputation is associated with the unregistered trademark.

### 4.2 Are know-how, trade secrets and other business-critical confidential information (e.g. the Operations Manual) protected by local law?

India lacks dedicated legislation to protect know-how, trade secrets, and other confidential business information. Nevertheless, such intellectual assets can be safeguarded under common law principles, contractual agreements, and relevant statutes such as the Indian Contract Act of 1872, the Indian Penal Code of 1860, the Copyright Act of 1957, etc.

### 4.3 Is copyright (in the Operations Manual or in proprietary software developed by the franchisor and licensed to the franchisee under the franchise agreement) protected by local law?

Certainly, the operations manual and proprietary software created by the franchisor and licensed to the franchisee through

the franchise agreement can be safeguarded under the Copyright Act of 1957. It is important to note that copyright registration is not compulsory in India. However, obtaining a copyright registration certificate can serve as *prima facie* evidence in legal proceedings pertaining to copyright infringement.

## 5 Liability

### 5.1 What remedies can be enforced against a franchisor for failing to comply with mandatory disclosure obligations? Is a franchisee entitled to rescind the franchise agreement and/or claim damages?

There are no specific legal requirements for disclosure in franchising. Nevertheless, a franchisee has the option to take legal action against a franchisor for non-compliance with mandatory disclosure obligations. In such cases, a franchisee may initiate a civil lawsuit or file a criminal complaint for criminal breach of trust. The entitlement to rescind the franchise agreement or claim damages would be contingent upon the terms and conditions outlined in the franchise agreement.

### 5.2 In the case of sub-franchising, how is liability for disclosure non-compliance or for pre-contractual misrepresentation allocated between franchisor and master franchisee? If the franchisor takes an indemnity from the master franchisee in the Master Franchise Agreement, are there any limitations on such an indemnity being enforceable against the master franchisee?

Regarding sub-franchising, the responsibility for disclosing non-compliance or pre-contractual misrepresentation would be determined by the contractual agreement established between the franchisor and the master franchisee. The specific terms and provisions outlined in the contract would dictate the liability and obligations related to disclosure and misrepresentation in the sub-franchise arrangement.

### 5.3 Can a franchisor successfully avoid liability for pre-contractual misrepresentation by including a disclaimer in the franchise agreement?

Disclaimer clauses in an agreement are acceptable in India. As per the Indian Contract Act, 1872, “when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused”. Therefore, the franchisee has the option to rescind the contract in the case of pre-contractual misrepresentation. However, including a disclaimer in the franchise agreement can limit the remedies excluding the right to revoke the agreement.

### 5.4 Does local law permit class actions to be brought by a number of aggrieved franchisees and, if so, are class action waiver clauses enforceable?

Indian law permits class actions to be brought by a number of aggrieved franchisees. As per the Code of Civil Procedure, 1908 (Order 1 Rule 8) “one person may sue or defend on behalf of all in same interest”. Section 28 of the Indian Contract Act, 1872 states that any agreement that restrains any of the parties enforcing his legal rights is void. Therefore, any illegal waiver is not allowed in India. Even though the provision of class action suits exists for aggrieved franchisees, they are not very common.

## 6 Governing Law

**6.1 Is there a requirement for franchise documents to be governed by local law? If not, is there any generally accepted norm relating to choice of governing law, if it is not local law?**

There is no obligatory mandate for franchise documents to be governed by local laws. The decision regarding the governing law is left to the discretion of the franchisor and franchisee. There is no universally established standard or norm concerning the choice of governing law in franchise agreements.

**6.2 Do the local courts provide a remedy, or will they enforce orders granted by other countries' courts, for interlocutory relief (injunction) against a franchisee to prevent damage to the brand or misuse of business-critical confidential information?**

Yes, Indian laws may enforce orders granted by other countries' courts. Indian law also entertains applications for interlocutory relief and enforces any order to prevent damage to the brand or misuse of business-critical confidential information.

**6.3 Is arbitration recognised as a viable means of dispute resolution and is your country a signatory to the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Do businesses that accept arbitration as a form of dispute resolution procedure generally favour any particular set of arbitral rules?**

Yes, arbitration is recognised as a viable means of dispute resolution in India. India is a signatory to the New York Arbitration Convention. The Indian arbitration is governed and regulated by the Arbitration and Conciliation Act, 1996, which derives its basis from the 1985 UNCITRAL Model on International Commercial Arbitration and the UNCITRAL Arbitration Rules of 1976.

The Mumbai Centre for International Arbitration, Delhi International Arbitration Centre, and Arbitration & Conciliation Centre – Bengaluru are amongst the most popular domestic arbitral institutions. When domestic arbitral institutions are not chosen, the International Chamber of Commerce, Singapore International Arbitration Centre, London Centre of International Arbitration, and Hong Kong International Arbitration Centre are often the preferred institutions for arbitration.

## 7 Real Estate

**7.1 Generally speaking, is there a typical length of term for a commercial property lease?**

In India, the length of term for a commercial property lease is typically negotiated between the landlord and the tenant based on their mutual agreement. Indian laws do not specify a specific or mandatory length of term for commercial property leases. The lease term can vary and is influenced by factors such as the nature of the business, rental market conditions, and the preferences of the parties involved. It is common for commercial leases in India to have terms ranging from three to 10 years, but the actual duration can be shorter or longer based on the agreement reached between the landlord and tenant. It is important for both parties to clearly define the lease term and other terms and conditions in a written lease agreement to ensure legal clarity and protection of their respective rights.

**7.2 Is the concept of an option/conditional lease assignment over the lease (under which a franchisor has the right to step into the franchisee/tenant's shoes under the lease, or direct that a third party (often a replacement franchisee) may do so upon the failure of the original tenant or the termination of the franchise agreement) understood and enforceable?**

In India, the concept of an option/conditional lease assignment, where a franchisor has the right to step into the franchisee/tenant's shoes under the lease or direct a third party (such as a replacement franchisee) to do so upon the failure of the original tenant or termination of the franchise agreement, is generally understood and enforceable.

The enforceability of such provisions will depend on various factors, including the specific terms and conditions of the lease agreement, any applicable laws or regulations, and the interpretation of the courts. It is crucial to ensure that the lease agreement clearly outlines the rights, obligations, and conditions related to an option/conditional lease assignment to avoid ambiguity and potential disputes.

**7.3 Are there any restrictions on non-national entities holding any interest in real estate, or being able to sub-lease property?**

According to Indian laws, there are restrictions on non-national entities holding an interest in real estate or being able to sub-lease property. The acquisition and ownership of real estate in India by non-national entities are regulated under the Foreign Exchange Management Act (FEMA) and the regulations issued by the Reserve Bank of India (RBI).

Non-national entities, including foreign companies, are generally prohibited from directly acquiring or owning agricultural land in India. However, they may be allowed to acquire and own immovable property for specific purposes, such as establishing a branch office, liaison office, or wholly owned subsidiary for conducting business activities in India. Such acquisitions would typically require prior approval from the RBI or comply with prescribed conditions.

Similarly, the sub-leasing of property by non-national entities is subject to restrictions and would need to comply with applicable laws and regulations. The specific terms and conditions for sub-leasing, including the eligibility and permissions required, would depend on the nature of the property and the purpose of the sublease.

**7.4 Give a general overview of the commercial real estate market. To what extent has the real estate market been affected by the Coronavirus pandemic? Specifically, can a tenant expect to secure an initial rent free period when entering into a new lease (and if so, for how long, generally), or are landlords demanding "key money" (a premium for a lease in a flagship location)?**

The Union Cabinet approved the Model Tenancy Act in 2021 and it has since been sent to the various Indian states for adaptation. According to the Act, the security deposit will be an utmost of two months of monthly rent for residential premises and six months of monthly rent for Commercial premises.

Like any other market, the commercial real estate market also depends on supply and demand, which has been severely affected by the COVID-19 pandemic due to lockdowns across the country and the remote working of the workforce. Rent-free periods or key money depend on the negotiating capabilities of

the parties and the nature of the property. However, considering the current situation of the COVID-19 pandemic, the likelihood of rent-free periods has increased. Typically, a rent-free period is one to three months, but more can be negotiated. Demanding key money based on a premium location is very common, although the same has also been reduced by up to 50 per cent in the current situation.

## 8 Online Trading

**8.1** If an online order for products or request for services is received from a potential customer located outside the franchisee's exclusive territory, can the franchise agreement impose a binding requirement for the request to be re-directed to the franchisee for the territory from which the sales request originated?

There are no statutory restrictions in India, although these can be enforced if mentioned in the franchise agreement.

**8.2** Are there any limitations on a franchisor being able to require a former franchisee to assign local domain names to the franchisor on the termination or expiry of the franchise agreement?

There are no limitations on a franchisor being able to require a former franchisee to assign local domain names to the franchisor on the termination or expiry of the franchise agreement.

## 9 Termination

**9.1** Are there any mandatory local laws that might override the termination rights one might typically expect to see in a franchise agreement?

In India, there are no specific mandatory local laws that explicitly override the termination rights typically included in a franchise agreement. The termination rights in a franchise agreement are generally governed by the contractual terms agreed upon by the franchisor and franchisee. However, it is important to consider that the termination provisions must comply with applicable laws and regulations, such as the Indian Contract Act, 1872, which governs the validity and enforceability of contracts in India.

Under the Indian Contract Act, parties have the right to terminate a contract based on the agreed-upon terms or due to certain specified circumstances, such as a breach of contract. Additionally, Indian courts may intervene in cases where termination is done unfairly or arbitrarily, and they may provide remedies or damages to the aggrieved party.

**9.2** Are there local rules that impose a minimum notice period that must be given to bring a business relationship that has existed for a number of years to an end, which will apply irrespective of the length of the notice period set out in the franchise agreement?

Under Indian laws, there are no specific local rules that impose a minimum notice period for ending a business relationship, such as a franchise agreement, irrespective of the notice period mentioned in the agreement. The notice period for terminating a business relationship, including a franchise agreement, is generally governed by the terms and conditions specified in the agreement itself.

The Indian Contract Act, 1872, provides the framework for contract termination, which includes the right to terminate based on the agreed-upon terms and conditions. Parties are expected to adhere to the contractual obligations and notice periods as mutually agreed upon in the franchise agreement.

It is important for franchisors and franchisees to carefully review and negotiate the notice provisions in the franchise agreement to ensure they comply with their intended business relationship and provide sufficient notice for termination. Parties can agree on specific notice periods that meet their requirements, taking into consideration the nature of the business, industry practices, and any specific legal provisions that may be applicable.

## 10 Joint Employer Risk and Vicarious Liability

**10.1** Is there a risk that a franchisor may be regarded as a joint employer with the franchisee in respect of the franchisee's employees? If so, can anything be done to mitigate this risk?

In general, a franchisor is not responsible for the acts/omissions of a franchisee's employees. A franchisee is an independent contractor, and no agency relationship exists between a franchisor and a franchisee. The franchisee is solely responsible for its day-to-day operations and the Indian courts will not find a franchisor to be vicariously liable for its franchisee's acts/omissions. However, in the event there is a principal-agent relationship or an employer-employee relationship between the franchisor and the franchisee, the franchisor could be held liable for any acts/omissions committed by the franchisee contrary to the agreement, during the course of the business.

**10.2** Is there a risk that a franchisor may be held to be vicariously liable for the acts or omissions of a franchisee's employees in the performance of the franchisee's franchised business? If so, can anything be done to mitigate this risk?

A franchisor would not typically be held vicariously liable for the acts of the franchisee's employees, as the franchisor-franchisee relationship is a principal-to-principal relationship. In the event there is a principal-agent relationship or an employer-employee relationship, the franchisor could be held liable for any acts/omissions committed by the franchisee's employees.

## 11 Currency Controls and Taxation

**11.1** Are there any restrictions (for example exchange control restrictions) on the payment of royalties to an overseas franchisor?

Payments of royalties to an overseas franchisor for use of trademark, or fees for technical services or other services under the franchise agreement are governed by foreign exchange regulations under the FEMA. According to the Security Exchange Board of India (SEBI), payments made to related parties overseas towards brand usage or royalty may be considered material if the transaction(s) exceed five per cent of the annual consolidated turnover of the listed entity during a financial year and would require approval of the shareholders, with no related party having a vote to approve such resolutions. In short, royalty payments should not exceed 5 per cent on local sales and 8 per cent on exports and lump-sum payment does not exceed USD 2 million.

**11.2 Are there any mandatory withholding tax requirements applicable to the payment of royalties under a trade mark licence or in respect of the transfer of technology? Can any withholding tax be avoided by structuring payments due from the franchisee to the franchisor as a management services fee rather than a royalty for the use of a trade mark or technology?**

The direct taxation of the franchisee arrangement is governed by the Income Tax Act, 1961. Where there is any payment in the form of royalty or franchise fees to the franchisor, the franchisee is required to deduct a withholding tax of 10 per cent on the payments made. However, if the franchisor is overseas and is entitled to double tax agreement benefits agreed by India, then the franchisor can claim the benefit of the more beneficial tax provisions.

**11.3 Are there any requirements for financial transactions, including the payment of franchise fees or royalties, to be conducted in local currency?**

No, there is no such requirement.

## 12 Commercial Agency

**12.1 Is there a risk that a franchisee might be treated as the franchisor's commercial agent? If so, is there anything that can be done to help mitigate this risk?**

The franchisor-franchisee relationship is a principal-to-principal relationship. If the franchisee has been given the power to conclude contracts on behalf of the franchisor, then the latter runs the risk of treating the franchisee as a commercial agent. The underlying contract and business terms need to be carefully drafted in the franchise agreement to avoid such risks.

## 13 Good Faith and Fair Dealings

**13.1 Is there any overriding requirement for a franchisor to deal with a franchisee in good faith and to act fairly in its dealings with franchisees according to some objective test of fairness and reasonableness?**

Under Indian laws, there is no specific statutory requirement for a franchisor to deal with a franchisee in good faith or to act fairly in its dealings with franchisees according to an objective test of fairness and reasonableness. The relationship between a franchisor and a franchisee is primarily governed by the terms and conditions outlined in the franchise agreement.

However, it is important to note that the Indian Contract Act, 1872, which governs the general principles of contract law in India, imposes an obligation of good faith on the parties to a contract. This means that the parties are expected to act honestly and reasonably in their contractual dealings. While the Act does not specifically address franchising, the principle of good faith is generally recognised and applied by Indian courts in contractual relationships.

In practice, it is advisable for franchisors to deal with franchisees fairly and reasonably to maintain a positive working relationship and protect the reputation of their brand. This can include providing support, timely communication, and addressing any concerns or disputes reasonably and transparently. Operating in good faith and acting fairly in dealings with franchisees can help foster a successful and sustainable franchise system.

Franchise agreements often include provisions that outline the rights, responsibilities, and expectations of both parties. It is

crucial to review and negotiate the terms of the franchise agreement carefully to ensure a fair and balanced relationship between the franchisor and franchisee.

While there is no specific legal requirement for good faith dealing, parties may seek legal remedies if there are instances of bad faith, fraud, or unconscionable conduct that could be challenged under general contract law principles or other applicable laws.

**13.2 Is there any limitation on a good faith obligation being unenforceable if it only applies from franchisee to franchisor, rather than being mutual?**

There is no limitation on good faith obligations being unenforceable. In case of a breach of trust between the parties, legal remedies exist for both parties.

## 14 Ongoing Relationship Issues

**14.1 Are there any specific laws regulating the relationship between franchisor and franchisee once the franchise agreement has been entered into?**

In India, there are no specific laws that exclusively regulate the relationship between franchisors and franchisees once the franchise agreement has been entered into. The rights and obligations of both parties are primarily governed by the terms and conditions stipulated in the franchise agreement itself.

However, certain general laws and regulations may apply to aspects of the franchisor-franchisee relationship. These can include:

- **Indian Contract Act, 1872:** The general principles of contract law govern the validity, interpretation, and enforcement of the franchise agreement. It establishes the contractual rights and obligations of both parties and provides remedies for breaches of contract.
- **Competition Law:** The Competition Act, 2002, regulates anti-competitive practices and prohibits agreements that cause an appreciable adverse effect on competition. Franchise agreements that include provisions restricting competition may be subject to scrutiny under this law.
- **Intellectual Property Laws:** Franchise agreements often involve the use of intellectual property, such as trademarks, copyrights, or patents. The Trademarks Act, 1999, the Copyright Act, 1957, and other relevant intellectual property laws govern the protection and enforcement of these rights.
- **Consumer Protection Laws:** The Consumer Protection Act, 2019, aims to protect the interests of consumers and provide remedies in case of unfair trade practices. Franchisees who are considered consumers may seek recourse under this law for any unfair treatment or deceptive practices.

While there are no specific laws governing the ongoing relationship between franchisors and franchisees, both parties need to adhere to the terms of the franchise agreement, maintain open communication, and resolve any disputes or issues amicably.

## 15 Franchise Renewal

**15.1 What disclosure obligations apply in relation to a renewal of an existing franchise at the end of the franchise agreement term?**

In India, there are no specific statutory disclosure obligations that apply specifically to the renewal of an existing franchise at



the end of the franchise agreement term. The renewal process and the obligations associated with it are primarily governed by the terms and conditions outlined in the original franchise agreement.

Typically, the renewal provisions, including the terms, conditions, and requirements for renewal, are outlined in the initial franchise agreement. It is crucial for both the franchisor and franchisee to carefully review these provisions to understand their rights and obligations regarding the renewal process.

In practice, the franchisor should provide the franchisee with any necessary information and documentation relevant to the renewal decision. This may include updated terms, conditions, fees, or any changes that would be applicable for the renewed term. Open communication between the parties is essential to ensure a smooth renewal process.

Franchise agreements often include provisions regarding the notice period for renewal, the franchisee's eligibility for renewal, any renewal fees, and any conditions or requirements that must be met for renewal to occur. Both parties should adhere to these provisions and follow the agreed-upon renewal process.

While there are no specific disclosure obligations for renewal, it is generally considered good business practice for the franchisor to provide the franchisee with relevant information to make an informed decision about whether to renew the franchise agreement. This may include financial disclosures, updated operations manuals, or any other relevant information that would assist the franchisee in evaluating the renewal opportunity.

**15.2 Is there any overriding right for a franchisee to be automatically entitled to a renewal or extension of the franchise agreement at the end of the initial term irrespective of the wishes of the franchisor not to renew or extend?**

There is no such right for a franchisee to be automatically entitled to a renewal or extension of the franchise agreement at the end of the initial term, and it is at the discretion of the parties to set the terms related to the renewal or extension of the franchise agreement.

**15.3 Is a franchisee that is refused a renewal or extension of its franchise agreement entitled to any compensation or damages as a result of the non-renewal or refusal to extend?**

The franchisee may be entitled to any compensation or damages if the franchise agreement has any clause related to the renewal or extension.

## 16 Franchise Migration

**16.1 Is a franchisor entitled to impose restrictions on a franchisee's freedom to sell, transfer, assign or otherwise dispose of the franchised business?**

The franchisor can validly restrict a franchisee from selling, transferring, assigning, or disposing of its franchise. To make restrictions effective, relevant terms and conditions must be expressly provided in the franchise agreement.

**16.2 If a franchisee is in breach and the franchise agreement is terminated by the franchisor, will a "step-in" right in the franchise agreement (whereby the franchisor may take over the ownership and**

**management of the franchised business) be recognised by local law, and are there any registration requirements or other formalities that must be complied with to ensure that such a right will be enforceable?**

Yes, one can include "step-in" rights in the franchise agreement; however, the "step-in" rights must be drafted under FEMA regulations. In the event of a breach in the franchise agreement, the franchisor, if a foreign company, cannot directly enter into a lease for the property in India, except in limited circumstances. In this scenario, the franchisor will need to establish a legal entity in India to whom the franchise may be assigned.

**16.3 If the franchise agreement contains a power of attorney in favour of the franchisor under which it may complete all necessary formalities required to complete a franchise migration under pre-emption or "step-in" rights, will such a power of attorney be recognised by the courts in the jurisdiction and be treated as valid? Are there any registration or other formalities that must be complied with to ensure that such a power of attorney will be valid and effective?**

While the existing power of attorney can be used to ascertain the powers entitled to the franchisor as provided in the franchise agreement, it is advisable to have a separate power of attorney to complete all necessary formalities required for the migration of the franchise.

## 17 Electronic Signatures and Document Retention

**17.1 Are there any specific requirements for applying an electronic signature to a franchise agreement (rather than physically signing a "wet ink" version of the agreement), and are electronic signatures recognised as a valid way of creating a binding and enforceable agreement?**

Electronic signatures that meet the requirements of the Information Technology Act, 2000 are considered at par with agreements executed with wet ink and are recognised as a valid way of creating and binding an enforceable agreement.

**17.2 If a signed/executed franchise agreement is stored electronically (either having been signed using e-signatures or a "wet ink" version having been scanned and saved as an electronic file), can the paper version of the agreement be destroyed?**

Executed franchise agreements stored electronically are valid for any future use. However, it is advisable to keep the paper version of the agreement.

## 18 Current Developments

**18.1 What is the biggest challenge franchising is facing in your jurisdiction and how are franchisors responding to that challenge?**

Tier-2 and tier-3 cities in India have a lot of scope for business expansion. However, there are challenges while doing business in India by way of the franchise model, some of them being finding the right franchisee partners as well as logistics that can cater to tier-2 and tier-3 cities.



**Dr. Shivani Shrivastava** is an Advocate and a registered Patent and Trademark Agent, and is currently an Associate Partner at LexOrbis. With over 17 years of professional experience, she specialises in the field of Intellectual Property (IP). Her educational background includes a Ph.D. in Bioinformatics and an M.Sc. in Plant Science. In addition, she has completed the Executive Programme (TLPWE) from IIM Calcutta. Dr. Shivani Shrivastava actively engages with clients, playing a crucial role in managing their IP portfolios. Her expertise extends to providing guidance and mentorship to individuals, start-ups, and small and medium enterprises, assisting them in developing effective IP strategies and managing their IP portfolios. She is well-versed in various aspects of IP-related business dealings, such as IP valuation, due diligence, technology transfer, and licensing, among others.

**LexOrbis**  
606–607, 6<sup>th</sup> Floor, Gamma Block, Sigma Soft Tech Park  
No.7 Whitefield Main Road, Varthur Hobli  
Bengaluru – 560066  
India

Tel: +91 80 4324 5900  
Email: shivani@lexorbis.com  
URL: www.lexorbis.com



**C. R. Jacob** is a Senior Strategist for Intellectual Property & Business at LexOrbis. At LexOrbis, he regularly advises large and small organisations on their IP strategy, IP prosecution, IP Valuation, and IP commercialisation. He founded IP Astra, a boutique IP firm which was later merged with LexOrbis. He is also the director at BPE Biotree India Pvt Ltd, a company that manufactures bioprocess equipment for vaccine producers, where his role involves investor relations, IP protection, legal compliance, and raising capital for the organisation. Mr. Jacob regularly conducts IP sessions for startups at IIM Kozhikode LIVE startup incubation centre and is also a mentor at the Kerala Startup Mission. He has an M.Tech from Vellore University, a B.Tech from Mangalore University and has done his EPGBM from the IIM, Calcutta. He is a Certified Patent Valuation Analyst (CPVA).

**LexOrbis**  
606–607, 6<sup>th</sup> Floor, Gamma Block, Sigma Soft Tech Park  
No.7 Whitefield Main Road, Varthur Hobli  
Bengaluru – 560066  
India

Tel: +91 80 4324 5900  
Email: jacob@lexorbis.com  
URL: www.lexorbis.com

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