

**Compliance with Foreign Country Disclosure Requirements
Governing the Offer and Sales of Franchises**

Presented on behalf of



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As franchising increases its presence in the international global marketplace, it is not surprising that more and more countries consider ways to regulate international franchising.

Scope Note

Franchising is not regulated in most countries outside of the United States except through laws of general applicability, such as laws concerning the protection and registration of trademarks, qualification of foreign entities, the remittance of royalties and payment of taxes, laws governing the registration of contacts, and the like. Countries are increasingly establishing laws concerning either or both the offer and sale of franchises or various aspects of the relationship created by a franchise. The exception of the Province of Alberta, in Canada, these laws have all been adopted within the last several years, and necessary regulations have not always been forthcoming.

The following countries have recently adopted franchise-specific laws, in alphabetic order: Australia, Brazil, Canada (Alberta), China, France, Indonesia, Malaysia, Mexico, Romania, Russia, South Korea, and Spain.

Australia

The Trade Practices Act

The Federal Trade Practices Act (TPA) was amended in April 1998. The TPA is a body of Australian law dealing with trade practices and anti-trust issues, generally analogous to the United States Federal Trade Commission Act. Its application is limited to the conduct of corporations and non-corporations with respect to interstate trade and commerce.

As a result of these amendments a mandatory code of conduct directly regulating the franchise industry in Australia was adopted into law.

The Code

The mandatory code resulting from the amendments to the TPA (the Code) became effective on July 1, 1998 and applies to all franchise agreements or renewals entered into after October 1, 1998. The Code applies to all sales of franchises located in Australia, except for a single isolated sale.

The Code is designed to accomplish four basic tasks:

- (1) establish minimum standards for disclosure in connection with the offer and sale of franchise agreements and their renewal;

- (2) encourage the use of alternate dispute resolution in disputes between a franchisor and franchisees;
- (3) prohibit certain types of conduct; and
- (4) require the substantiation of earnings claims.

The Definition of a Franchise Under the Code

The Code defines a franchise as any oral, written or implied agreement:

- by which a party grants to another the right to carry on the business of offering, supplying or distributing goods or services within Australia, under a system or marketing plan substantially determined, controlled or suggested by the franchisor (or an associated of the franchisor);
- under which the operation of the business will be substantially or materially associated with a trademark, advertising or commercial symbol owned, used, licensed or specified by the franchisor (or an associate of the franchisor); and
- under which, before starting or continuing the business, the franchisee must pay (or agree to pay) money to the franchisor (or an associate of the franchisor), including (by way of example) – an initial capital investment fee, payment for goods or services, a royalty or franchise fee or a training or education fee.

Required Disclosures

Under the a written disclosure statement, written in plain English, must be provided by the franchisor prior to entering into a franchise agreement (or any extension or renewal thereof) or paying any money in relationship thereto. The disclosure statement must contain certain specific specified minimum disclosures, which are quite similar to those mandated by the UFOC in the United States. There are 12 categories of detailed disclosures. These are the following:

- a summary of the business experience of each director and executive officer of the franchisor during the previous ten years.
- A summary of the business experience of the franchisor during the last ten years.
- the details of any current litigation alleging any of the following:
 - a breach of the franchise agreement,

- a violation of the TPA
 - a violation of the Australian corporations law.
 - Unconscionable conduct, misconduct, dishonesty, and
 - Violations of industrial relations laws.
- any judgments and insolvency proceedings against the franchisor or any of its directors during the previous ten years;
 - any franchise cancellations, non-renewals, and terminations
 - the franchisor's trademarks, copyrights, and patents;
 - the rights of territorial exclusivity;
 - all requirements concerning goods and services to be purchased or offered by franchisee's;
 - the details of the initial and ongoing payments to the franchisor (or its associates)
 - a summary of the franchisor's obligations;
 - the franchisor's financial condition; and
 - the basis for earnings claims.

Required and Proscribed Conduct

The Code contains a number of provisions regulating the conduct of a franchisor. The most notable of these are the following:

- The franchisee must receive professional advise from a lawyer, accountant or other advisor before entering into the franchise agreement or have expressly waived the right in writing;
- The franchisor is prohibited from obtaining a general release from the franchisee.
- A copy of any lease or sub-lease between the franchisor (or any associate) and the franchisee must be delivered to the franchisee;
- The Code mandates certain contract provisions, including those pertaining to dispute resolution. It sets put a mediation procedure that either party can invoke;
- The franchisor may not unreasonably withhold consent to a sale by the franchisee of his franchise business.

Filing

Unlike United States state franchise disclosure laws, no filing or registration of the disclosure statement or any other document is required.

Continuing Disclosure Obligations

Contrary to United States disclosure requirements, which cease as to a particular franchisee once he or she has purchased the franchise, the Code mandates a continuing disclosure obligation by the franchisor of any materially relevant matters affecting the franchisor and relevant to the franchise system. This provision is evidently intended to ensure that franchisees remain informed about events that may adversely affect a particular franchise system of franchisee. The Code enumerates the categories of materially relevant facts (which are not exclusive) to include the following:

- Changes in majority ownership of the franchisor.
- Litigation against the franchisor of the type which must be disclosed in the disclosure statement; and
- Unsatisfied large judgments and class actions.

Enforcement

Unlike the United States FTC franchising rule, the TPA accords aggrieved franchisees a private right of action for violations of the TPA. Remedies for breach of the TPA include damages, injunctions, undertakings, corrective advertising, rescission and modification of the franchise agreement, and declaratory relief. In addition the Australian Consumer and Competition Commission (ACCC) is empowered to take action, including the issuance of stop and corrective advertising orders.

Brazil

The Franchise Disclosure Law

The Franchise Disclosure Law was adopted in December 1994 and amended in April 1997. It applies to both Brazilian and foreign franchisors and sub-franchisors in Brazil and to franchises operating in that country.

The Definition of a Franchise

A franchise is defined in the Franchise Disclosure Law to include the following elements:

- (1) a system whereby the franchisor grants to the franchisee the right to use a trademark or patent;
- (2) in connection with the distribution of products or services, the provision of the franchisor's method of management or operating system;
- (3) the payment of a fee, directly or indirectly, is required; and
- (4) a relationship that is not an employment relationship.

Required Disclosures

An Offering Circular must be delivered to a prospective franchise at least ten days before execution of the franchise agreement or the payment of any fee. The requirements for the preparation of the Offering Circular are not detailed as in the United States or Australia. It must be written in a language that is capable of being clearly understood and must cover the following elements:

- the identity of the franchisor, including its financial status;
- the product or service that is the subject of the franchise; and
- the obligations of the franchisee to the franchisor.

In addition to the foregoing, the franchise agreement must be in writing.

Filing Requirements

In order to obtain governmental permission to remit royalties and other payments from the franchisee, the franchise agreement must be submitted to the Brazilian Institute and Industrial Property (INPI) for approval and registered with the Central Bank of Brazil. The required filing includes the franchise agreement, a certified translation of the agreement in Portuguese, and a list of the trademarks that are licensed to the franchisee by the franchise agreement.

Updating

Brazilian law does not specify the franchisor's obligations to update any information in the Offering Circular.

Enforcement

The failure of the franchisor to deliver the Offering Circular as required by law, or the furnishing of false information may permit the franchisee to rescind the franchise agreement and obtain a refund of any payments made to the franchisor, plus such other damages as the

Canada

The Alberta Franchise Act

Canada, like the United States, has a dual system of federal and provincial laws. However, unlike the United States, there is no franchise regulation at the federal level in Canada. The Province of Alberta is the only in Canada as of October 1, 1998, to have enacted franchise legislation. The current statute was adopted in 1995 and replaces an earlier law that, unlike the present law, required registration and regulatory review of the franchise agreements.

The Definition of a Franchise Under the Franchise Act

The Franchises Act defines as a right to engage in a business:

- (1) in which goods or services are sold or offered for sale or are distributed under a marketing or business plan prescribed in substantial part by the franchisor or its associate;
- (2) that is substantially associated with a trademark, service mark, trade name, logotype or advertising of the franchisor or its associate or designating the franchisor or its associates; and
- (3) that involves
 - (a) a continuing financial obligation to the franchisor or its associate by the franchisee and significant continuing operational controls by the franchisor or its associate on the operations of the franchised business; or
 - (b) the payment of a franchise fee, and includes a master franchise and sub-franchise.

Therefore like the definition of a franchise under the laws of most states in the United States that have adopted franchise disclosure laws, under the Alberta law, a franchise is composed of several elements;

- a grant of a right to engage in a business
- a trademark license tying each franchise with a common identity belonging to the franchisor; and
- a continuing financial obligation by the franchisee to the franchisor, and the imposition of significant operational controls by the franchisor, or the payment of a franchise fee by the franchisee.

Required Disclosures

The Franchises Act requires the delivery of a disclosure statement to a prospective franchisee at least fourteen days before signing any agreement or the payment of any consideration relating to the franchise whichever is earlier. The disclosure statement contains 21 items of disclosure and must incorporate all material information about the business, operations, capital or control of the franchisor or its associate or about the franchise system that would reasonably be expected to have significant effect on the value or price of the franchise to be sold or the decision to purchase the franchise. This information must include the following;

- information regarding the franchisor, its business history and its directors, general partners and officers who have day-to-day management responsibilities;
- disclosure of prior convictions, litigation and pending charges relating to the franchisor and its associates and each of their directors, general partners and officers having management responsibility relating to the franchise;
- disclosure of bankruptcy or insolvency proceedings in prior six years;
- a description of the nature of the business that is the subject of the franchise;
- a statement of the initial franchise fee and other fees and whether they are refundable and under what conditions;
- a statement of the estimated initial investment that is necessary to start operations;
- information about financing offered directly by the franchisor to the franchisee and the terms and conditions of such financing;
- if an estimate of the necessary working capital is provided, the information must have a reasonable basis at the time it is made and include the underlying material assumptions. If an estimate is not provided, the disclosure document must include a statement that additional funds will be required to finance operations until a positive cash flow is produced;
- disclosure of rebates or other benefits payable to the franchisor and whether any rebates or benefits are shared with franchisees;
- a statement of any requirement that the franchisee participate in the operation of the business;
- a listing of all existing franchisees of the same type being offered during the last three fiscal years;

- a listing of all franchisees and company-owned outlets in the Province of Alberta;
- a statement of any projections or earnings claims, which must have a reasonable basis at the time prepared;
- a statement of the franchisee's exclusive territory and the franchisor's expansion plans;
- a statement of the franchisee's right to cancel the franchise under certain circumstances and the franchisee's right for damages; and
- financial statements of the franchisor.

The Franchises Act permits a franchisor to use the United States form of disclosure document, the UFOC, provided the franchisee is provided with a supplementary with the additional disclosure required by the Franchises Act.

Filing

No filing or registration with a governmental authority is required under the Franchise Act.

Exemptions

The Franchises Act provides for a substantial number of exemptions or exclusions from coverage whereby no filing or disclosure is necessary. These are the following:

- where there is no payment or financial obligation other than than the purchase of a reasonable amount of goods or services at a reasonable bona fide wholesale price;
- where there is no payment or financial obligation to the franchisor other than a payment of a reasonable service charge to the issuer of a credit or debit card by the establishment accepting the card;
- the sale of a franchise by a franchisee that is not effected by or through the franchisor and (1) the franchisee is not the franchisor or an associate of the franchisor, nor a director, officer or employee of the franchisor or its associate, (2) the sale is for the franchisee's own account, and (3) in the case of a master franchise, the entire franchise is sold;
- the sale of a franchise to a person who has been an officer or director of the franchisor or its associate for at least six months for that person's own account;
- the sale of an additional franchise to an existing franchisee if that additional franchise is substantially the same as the existing franchise the franchisee is operating;

- a renewal or extension of an existing franchise agreement;
- the sale of a franchise if the franchisee is required to make a total annual investment to acquire and operate the franchise in an amount that does not exceed \$5000;
- the sale of a franchise by an executor, administrator, sheriff, receiver, trustee, trustee in bankruptcy, or guardian on behalf of a person other than the franchisor or the estate of the franchisor;
- a leased department arrangement, which is defined as the sale of a right to a person to sell goods or services with or adjacent to a retail establishment as a department or division of the establishment, if the person is not required to purchase goods or services from the operator of the retail establishment; and
- a fractional franchise, which is defined as a franchise where the franchisee will sell goods and services within a business in which the franchisee has an interest, and where the sales from the fractional franchise are not expected to exceed a percentage of the total sales of the business, as prescribed by the Regulations.

Enforcement

The Franchises Act grants aggrieved persons a right of action for damages against the franchisor and every person who signs the disclosure document. If timely delivery of the disclosure document is not made, the franchisee has a right to cancel all agreements relating to the franchise by serving notice of cancellation within the first to occur of 60 days after receipt of the disclosure document or two years after the sale of the franchise. A franchisor who receives a notice of cancellation is liable for the franchisee's net losses in purchasing, establishing and operating the franchise. There is no criminal liability for violating the Franchises Act.

China

The Franchise Regulation

China has adopted Franchise Regulations which are administered by the China Chainstore and Franchise Association, a quasi-governmental oversight organization. The Franchise Regulations are not complete, but do require registration and delivery of a disclosure document.

The Definition of a Franchise

The Franchise Regulations define a franchise to mean a grant by the franchisor, through a franchise agreement of the following rights:

....the use of the trademark (including service trademark), commercial firm, products, patent right, proprietary technology, or mode of management, etc., loaned by the franchisor to the franchisee, and the franchisee, on its part. Acting in accordance with the provisions of the contract and the uniform mode of business of the franchisor, conducts operating activities and pays appropriate fees to the franchisor.

Required Disclosures

The Franchise Regulations require the delivery of a disclosure statement at least ten days before signing a franchise agreement with a prospective franchisee. The disclosure requirement is not well defined, but includes the following;

- the name and basic facts about the franchisor's business;
- its financial condition;
- information about its franchisees;
- financial projections based upon actual performance by franchisees;
- the methods of collection of royalties and other charges; and
- the terms and restrictions for the supply of goods.

Filing

Prior to offering a franchise in China, a filing must be made with the China Chainstore and Franchise Association. The requirements are somewhat vague, but information required to be filed includes the following:

- a description of the franchise being offered;
- a statement about the identity of the franchisor;
- a statement concerning the business of the franchisor;
- an estimate of the investment required by the franchisee based on actual performance information;
- the franchisee's obligation for the payment of fees to the franchisor;
- the franchisor's obligations with respect to the provision of goods; and
- a statement of the other material terms and conditions of the franchise agreement.

Enforcement

The Franchise Regulations are unclear concerning remedies for violations.

France

The Doubin Act

The Doubin Act was made effective in 1991. Together with implementing regulations, it applies to commercial relationships including franchises. The Doubin Act requires disclosures franchisors must make to prospective franchisees prior to the sale of a franchise.

The Definition of a Franchise

The Doubin Act defines a franchise as an arrangement whereby a trademark, trade name, or commercial symbol is licensed to a person in connection with the operation of a business that the person undertakes to conduct on an exclusive or quasi-exclusive basis.

Required Disclosures

The Doubin Act requires the delivery of a disclosure statement and the form of franchise agreement proposed for use at least twenty days prior to the payment of any money or the execution of a franchise agreement. The disclosure statement must include the following categories of information:

- information about the franchisor, including the address of the principal offices of the enterprise and the nature of its activities, its legal form and identity of its principal manager if the enterprise is unincorporated, otherwise the principal management personnel if a corporation, and in case of a legal entity, its capital;
- the registration number of the franchisor on the Commercial Register and the Companies Register or on the Registry of Independent Entrepreneurs, the date and registration number or application number of the franchisors mark that is the subject matter of the franchise agreement, and if acquired by assignment or license, the date and appropriate record number and information about the duration of the license (if acquired by license);
- the five principal banking locations used by the franchisor;
- the date of the founding of the franchisor and a description of the principal developments during its history; where applicable, including the history of its network of franchisees, and all information necessary to assess the business experience of the franchisor or its management;

- a description of the market in general and the local market for the goods or services that are the subject of the franchise and a description of the prospects for the development of the market;
- the annual financial statements of the franchisor for the last two fiscal years (or if the company is public, its last two annual reports prepared in accordance with applicable French law);
- information concerning the franchisees of the franchisor must include the following:
 - the names and addresses of all franchisees in France of the same type as that proposed; provided if there are more than 50, the 50 closest to the proposed new franchise location; and
 - the number of franchisees of the same type as that proposed that have ceased to be franchisees during the preceding year, and whether the contract was terminated or expired.
- A description of the trade zone of the outlet contemplated by the proposed franchise agreement, including the goods or services to be offered by the franchisee;
- The term of the proposed franchise agreement and conditions for terminations, renewal and assignment;
- A description of the franchisee's rights of exclusivity; and
- A description of the nature and amount of expenses and investment relating to the proposed operation.

The information furnished in the disclosure document may be limited to the five years in which the document is delivered.

Filing

No filing is required under the Doubin Act, however, under the French Intellectual Property Code, any assignment of rights in the franchisor's trademark must be recorded with the Industrial Intellectual Property Institute.

Enforcement

The Doubin Act provides for the imposition of criminal fines for violation of its disclosure requirements and criminal sanctions for fraudulent disclosures. Although it does not provide for civil remedies. Courts have given relief for violations by granting cancellation of the franchise agreement and damages based on general principles of law in the French Civil Code.

Indonesia

Regulation 16

While Indonesia has not adopted formal franchise legislation, in 1997 the Ministry of Industry and Trade (MIT) imposed the requirement of registration, disclosure, and comprehensive regulations governing the relationship of the parties. Known as Government Regulation No. 16 (Regulation 16), the regulation requires registration of the franchise agreement and other information with MIT, delivery of a disclosure document to prospective franchisees prior to finalizing the sale of the franchise, and continuing reporting requirements by franchisees.

The Definition of a Franchise

Regulation 16 defines a franchise as:

...an agreement in which one party is given the right to utilize and/or use the right over intellectual property or invention or unique business characteristics owned by another party against (the payment of) a fee on the basis of the requirements stipulated by the said other party in the framework of providing and/or selling goods and/or services.

Required Disclosures

Under Regulation 16, the following information must be contained in a disclosure statement:

- The identity of the franchisor, including a description of its business activities and the balance sheet and profit and loss statement of the last two years;
- The rights to the intellectual property or operating system that is the subject of the franchise;
- A description of the obligations of the franchisee
- The services to be provided by the franchisor;
- The rights and obligations of the parties to the franchise agreement;
- A description of the provisions in the franchise agreement relating to termination, cancellation and renewal of the franchise; and
- Other material information relevant to the decision of the franchisee to invest in the franchise, including a statement of the risks involved.

There is no time specified in Regulation 16 for the delivery of the disclosure document, however, the franchisor must allow sufficient time for the prospective franchisee to review the disclosure document and franchise agreement in order to allow the franchisee to be aware of the agreements and risks in connection with the franchise.

Filing

A franchisor is required to register with MIT the franchise agreement, disclosure document, and other supporting documents at least thirty days before signing a franchise agreement. The supporting documents required to be filed include an application form, the franchisee's business license, the franchisor's business license, the franchisor's operating manual, and the franchisor's trademark registration certificate. Although there is evidently no substantive review or approval by MIT of the terms and conditions of the franchise agreement, MIT must issue a Franchise Registration Statement within five business days after it has received a complete registration application.

Required Contract Provisions

The Regulations specify that the franchise agreement must be in writing and must contain 12 enumerated clauses. Included among the requirements is that the franchise must have a minimum term of five years.

Regulations of the Relationship

Regulation 16 imposes rules concerning various aspects of the ongoing relationship between the franchisor and its franchisee in Indonesia. These include the following:

- The priority which must be given by the parties to the maximum use of domestically produced goods and/or materials as far as quality standards be met;
- The priority which must be given to small and medium scale enterprises in the provision of goods and services to franchisees;
- The location of franchises; and
- The territorial rights of the franchisee.

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- The location of franchises; and
- The territorial rights of the franchisee.

Enforcement

Regulation 16 does not contain enforcement provisions and the application of Indonesia's general civil and criminal laws for violations of the regulations are presently uncertain.

Malaysia

The Franchise Act 1998

In December, 1998, Malaysia enacted the Franchise Act of 1998. The Act applies to the sale of any franchise in Malaysia as well as to sales of franchises made outside the country that will operate within Malaysia. The Malaysia law requires registration and disclosure and certain mandated contract provisions. Franchisors are prohibited from discriminating among franchisees, must segregate promotional payments into an audited account and must agree to a duration of not less than five years. The law also sets forth procedures and requirements for termination and non-renewal of the franchise. Termination may only occur for good cause which requires notice and an opportunity to cure.

The Definition of a Franchise

Under the Act. A "franchise" means a contract or agreement, either expressed or implied, oral or written, between two or more people by which:

- (a) the franchisor grants to the franchisee the right to operate a business according to the franchise system as determined by the franchisor during the term to be determined by the franchisor.
- (b) the franchisor grants to the franchisee the right to use a mark, or a trade secret, or any confidential information or intellectual property, owned by the franchisor or relating to the franchisor, and includes a situation where the franchisor, who is the registered user of, or is licensed by another person to use, any intellectual property, grants such right as he possesses to permit the franchisee to use the intellectual property.

- (c) the franchisor possesses the right to administer continuous control during the franchise term over the franchisee's business operations in accordance with the franchise system.
- (d) the franchisor has the responsibility to provide assistance to the franchisee to operate his business including such assistance as the provision or supply of materials and services, training, marketing, and business or technical assistance.
- (e) in return for the grant of rights, the franchisee may be required to pay a fee or other form of consideration; and
- (f) the franchisee operates the business separately from the franchisor, and the relationship of the franchisee with the franchisor shall not at any time be regarded as a partnership, services contract or agency....

Required Disclosures

In order to register a franchise, the franchisor must submit an application to the Registrar on the prescribed form, together with the complete disclosure documents including "all the necessary particulars". If there is any material change in the disclosure documents, the applicant (i.e., the franchisor or representative), must amend the documents in accordance with the form's requirements.

Filing

In addition to the disclosure documents, the applicant must submit a sample of the franchise agreement; the operations manual of the franchise; the training manual of the franchise; a copy of the latest audited accounts; financial statements; the reports, if any, of the auditors and directors of the applicant; and such other additional information or documents as may be required by the Registrar for the purpose of the reviewing the application. The Registrar may, by written notice, require the applicant to provide additional information or documents.

Required Contract Provisions

The Act requires the franchise agreement to be in writing, and to include, among other items, the name and description of the product and business under the franchise; the territorial rights granted to the franchisee; the franchise fee; promotion fee; royalty or any other type of payment that may be imposed on the franchisee, if any, the obligation of the franchisor; the obligations of the franchisee; the franchisee's rights to use the mark or any other intellectual property; the conditions under which the franchise may assign the rights of the franchise; a statement on the "cooling off" period, which is determined by both parties (but which must be a least seven working days), during which the franchisee has the option to terminate the agree

ment; a description pertaining to the mark or any other intellectual property owned or related to the franchisor that is used in the franchise; if the agreement is related to a master franchisee, the franchisor's identity and the rights obtained by the master franchisee from the franchisor; the type of particulars of assistance provided by the franchisor; the duration of the franchise and the terms of renewal; and the effect of termination or expiration of the franchise agreement. Failure to include any of these items renders the franchise agreement null and void.

Regulation of the Franchise Relationship

The Act regulates the relationship between the franchisor and franchisee with respect to:

- the conduct of the parties;
- the obligations of the franchisor and the franchisee with respect to breach, time to cure, payment of fees, assistance to be provided to the franchisee by the franchisor, and the franchisor's obligation to protect the consumer's interest;
- the termination of the franchise agreement for "good cause";
- the non-renewal of the franchise agreement; and
- the extension of the franchise term.

Enforcement

The Act permits an authorized officer to investigate the activities of a franchisor, franchise broker or franchisee to determine whether he or she is in compliance. For the purposes of making such a determination, the officer may issue orders to further his investigation and to secure compliance, including the exercise of police investigation and search and seizure powers in cases where such measures are appropriate pursuant to the Criminal Procedure Code. The officer also has the power to require the attendance and oral examination of any person acquainted with the case, to require the production of records, computerized data, and documents, and to make all relevant inquiries related to compliance with the Act. Parties who fail to comply with the provisions of the Act are subject to fine, imprisonment, avoidance of the franchise agreement, the refund of payments received from the franchisee, and a prohibition on entering into new franchise agreements or appointing new franchisees.

Mexico

The Industrial Property Law

In 1994 Mexico adopted the Industrial Property Law (IPL). Regulations (Regulations) were subsequently adopted clarifying some, but not all of the provisions of the IPL. The IPL and accompanying Regulations imposes an obligation on a franchisor to provide a disclosure document to prospective franchisees and to register the franchise agreement with a governmental agency.

The Definition of a Franchise

A franchise exist under the IPL when it includes the following elements:

- a trademark license;
- the franchisor furnishes technical know-how or assistance to the franchisee to enable the franchisee to produce or sell goods or render services in a uniform manner; and
- the franchisor provides methods of operations to maintain the quality and reputation associated with its marks.

Disclosure Requirements

Article 65 of the Regulations require the delivery of a disclosure document to prospective franchisees before the agreement is signed. The information that must be provided includes the following;

- the name, trade name or business name, domicile and nationality of the franchisor;
- a description of the franchise;
- the amount of time the franchisor and, as applicable, the master franchisee, has been in the business that is the subject matter of the franchise;
- the intellectual property rights involved in the franchise;
- the amounts and types of payments that the franchisee is required to pay the franchisor;
- the types of assistance and services that the franchisor is required to furnish;
- the franchisee's territorial rights;

- whether the franchisee has a right to sell sub-franchises and any conditions to such right;
- the obligations of the franchisee regarding confidential information provided by the franchisor; and
- the obligations and rights of the franchisee under the franchise agreement.

Filing

Franchise Agreements must be registered at the Mexican Institute of Industrial Property (IMPI) **after** they are signed by both parties. Either party may file the application for registration. Government approval of the agreement is not, however, required. The registration application must include a certified copy of the franchise agreement or an original, signed copy, a list of the trademarks permitted for use by the franchisee, and the registration numbers of such marks.

Enforcement

THE IPL provides for the commencement of administrative proceedings for a violation of the law. Violations are punishable by fines or closure of the franchisee's establishment. The IMPI may also institute administrative proceedings. The franchisee may also bring a civil proceeding to recover damages.

Romania

The Government Ordinance Regarding the Legal Status of Franchise

On August 28, 1997, the Government of Romania issued an Ordinance governing the pre- and post-contractual relations between franchising parties. With respect to disclosure, the Ordinance requires the franchisor to disclose certain information to a potential franchisee during the pre-contractual stage, such that the latter may "take part in a franchise agreement in full awareness".

The Definition of a Franchise

The Ordinance defines a franchise as "a marketing system based on a continuous cooperation between natural persons or legal entities, each of them financially independent from the others, whereby a person...grants to another person... the right to operate or to develop a business, a product, a technology or a service".

Required Disclosure

Before the franchise agreement is signed, the franchisor must provide the franchisee with information regarding:

- gained and transferable experience;
- the financial terms of the agreement (i.e., the initial royalty or the fee accessing the network, recurrent royalties, royalties accruing from publicity, the manner in which tariffs regarding the delivery of services, products, technological information and general services are determined) when an obligation to purchase is involved.
- The compounding elements that permit the franchisee to project its results and make the financial plan;
- The objectives and area of the granted exclusivity; and
- The duration of the agreement, and the terms and conditions governing renewal, termination and assignment.

Filing

No filing or registration with a governmental authority is required under the Ordinance.

Required Contract Provisions

The Ordinance requires the franchise agreement to include clauses pertaining to all of the following:

- The object of the agreement;
- The parties' rights and obligations;
- The financial requirements;
- The duration of the agreement; and
- The conditions governing amendment, extension, and termination of the agreement.

Regulation of the Franchise Relationship

The Act regulates the relationship between franchisors and franchisees with respect to:

- The minimum term of the franchise agreement;
- The notice requirements regarding non-renewal of the agreement;
- Any termination without notice provision;
- The transfer of rights arising under the agreement;

- The pre-emption rights;
- The non-competition requirements;
- The franchisee's financial obligations;
- The franchisor's control and royalty rights regarding trademark and intellectual property;
- The notice of breach provisions; and
- The exclusivity agreements (where applicable).

Russia

The Franchise Law

Russia adopted franchise legislation in 1996 as part of its Civil Code, requiring registration of franchise agreements with a governmental agency and regulating various aspects of the relationship.

The Definition of a Franchise

The Franchise Laws defines a franchise as "a contract of commercial concession" that provides:

- (1) ...that one party (the rightholder) shall undertake to grant the other party (the user) for a fee and for a specified or unspecified period of time the right to use in the course of the user's entrepreneurial activities a complex of exclusive rights belonging to the rightholder, including the right to use the firm name and (or) the commercial mark of the rightholder, protected commercial information, as well as other objects of exclusive rights stipulated by the contract – the trademark, the service mark, and the like, (and)
- (2) ...for the use of complex of exclusive rights, business reputation and commercial expertise of the rightholder to a specified extent...with or without indication of the territory of the application thereof with respect to a specified sphere of entrepreneurial activity (sales of goods received from the rightholder or manufactured by the user, execution of other commercial activities, performance of work, provision of services).

Registration

The Russian law requires that the franchise agreement be in writing and registered with a governmental agency.

Regulation of the Franchise Relationship

Much of the Russian law deals with regulation of the relationship between the franchisor and franchisee. Aspects of the law concern the following subjects:

- the rights of the franchisee to grant sub-franchises;
- the obligations of the parties to the franchise agreement, including limitations of the rights of the parties to contract;
- the rights of the franchisee to renew the agreement;
- the termination of the franchise agreement;
- the liability of the consumer claims;
- the assignment of the franchise agreement;
- the loss of rights to the firm name or marks; and
- the obligations of the parties upon termination of the franchise agreement.

Enforcement

The franchise agreement is deemed null and void if there is non-compliance with the registration requirement.

South Korea

The Fair Trade Commission Regulation

South Korea's Fair Trade Commission (South Korea's FTC) has adopted regulations requiring delivery of a disclosure document to a prospective franchisee. Certain disclosures are mandated in all cases and additional disclosures are required if a written request for such disclosures is made by the franchisee.

Required Disclosures

Under the Regulations adopted by South Korea's FTC a franchisor is required to provide a disclosure document and a copy of the prepared franchise agreement a sufficient time to fully examine them. The mandatory disclosure items are those relating to costs and fees in connection with the franchise. In addition a prospective franchisee may make a written request for the following additional information:

- the financial information relating to the franchise business;
- the franchisor's business history for the prior five years;
- the disclosures of ongoing litigation relevant to the franchise business;
- the provisions of the franchise agreement concerning the provision of goods and services by the franchisor and franchisee;
- the franchisor's obligation to provide guidance and assistance;
- a statement of the method used to calculate royalties and other payments to the franchisor;
- the disclosures concerning termination, cancellation and renewal of the agreement; and
- the information concerning earnings projections.

Filing

No filing with a governmental agency is required, although Korea foreign exchange laws require reports of all foreign remittance at the time of remittance.

Enforcement

A violation of the Regulations constitutes an unfair trade practice under the Monopoly Regulation and Fair Trade Act (MRFTA). South Korea's FTC is empowered to take corrective action, including ordering the discontinuance of the practices in violation of MRFTA. South Korea's FTC may also impose fines. Criminal sanctions for intentional violations are also possible. There is no private right of action under the regulations in favor of an aggrieved franchisee. Thus, the franchisee's only remedy is to bring the matter to the attention of South Korea's FTC.

Spain

By royal decree on December 13, 1990, Spain created the Central Registrar of Franchisors. As of November 26, 1999, foreign franchisors will be required to register new or renewal franchises and to make pre-sale disclosures, including information about the franchisor, its trademark, the franchised business and the name of the Spanish master franchisee.

The Retail Trading Law

Although not a statute specifically regulating franchising, Spain's Retail Trading Law, adopted in 1996, explicitly covers franchising and requires franchisors to register and make certain disclosures.

The Definition of a Franchise

The Retail Trading Law defines a franchise as a contract pursuant to which a franchisor grants the franchisee the right to market a particular system of products or services.

Disclosures Required Under the Retail Trading Law

Under the Spanish Act, a written disclosure document must be furnished to a prospective franchisee at least twenty days before signing a franchise agreement or the payment of any money by the franchisee. The standard for disclosure is as follows; "...all information regarding the franchise network...in order for the franchisee to be able to decide freely and knowingly..." about his participation in the franchise system. Although the specific disclosure requirements are currently being developed, the franchisor must disclose at least the following information:

- a description of the franchise business;
- the structure of the franchise;
- the nature of the system; and
- the essential terms of the franchise agreement.

Enforcement

The Spanish law does not provide for remedies for its violation.