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Basics Track: Expanding Internationally

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AUTHORS' NOTE

"Basics Track: International Expansion" has been a recurring workshop at the International Franchise Association's Legal Symposium and, starting from last year, as a "bridge" program for the IBA/IFA Joint Conference that follows the next day. Our mandate from the IFA is to prepare an updated edition of one of the past papers on this exact topic. We certainly had a number of excellent choices. After much deliberation, we chose to revise, update, and augment the paper originally prepared by Mark Siebert, Adiya Dixon, and Alan Greenfield in 2016. We also consulted and incorporated select parts from the papers prepared by Marc Mushkin, Dominic Mochrie, and Robert Smith in 2015, and Lisa Greenlees, Debi Sutin, and Kendal Tyre in 2017. We want to express our gratitude to all of these authors, and those who helped them (Jennie Hinkle and Matthew Miller for the 2016 paper, Diana Vilmenay-Hammond and Keri McWilliams for the 2017 paper). We also wish to thank Ashley King, associate at DLA Piper's Northern Virginia office, for her assistance with this current paper.

IFA 52ND ANNUAL LEGAL SYMPOSIUM
BASICS TRACK: EXPANDING INTERNATIONALLY

A. INTRODUCTION

If you are reading this, you are likely entertaining the idea of expanding your franchise system beyond your home country borders and setting out down the path of international growth for the first time. You are in good company: based on a survey conducted by the IFA in 2015, 61 percent of respondents indicated they currently franchise or operate in international locations and nearly 75 percent said they plan to start or accelerate their international business.

And who could blame them? The outlook for global growth of the franchise industry is positive to say the least. According to Beth Solomon, president and CEO of the National Association of Development Companies and former Vice-President of strategic initiatives and industry relations for the IFA, the industry will be worth $4 trillion by 2020, with 50% of the top 200 franchised brands' units predicted to be overseas by that point.

There are several good reasons for this outlook. Just as in the United States, franchising internationally is an attractive opportunity for businesses seeking growth with reduced startup investment costs, minimal G&A expense and reduced liability exposure. Additionally, these days, franchising internationally may be a bit easier than it was in the past. With the proliferation of the internet and social media like Facebook, Twitter, Instagram, Snapchat and LinkedIn, domestic brands have a wider reaching platform for marketing their concepts than ever before. Instead of deploying their own personnel to a new territory, brands can now post their own advertisements, either directly or through the use of "influencers" and have those advertisements liked, shared, retweeted or favorited many times over. The ability to market this way increases a brand's global awareness, which may help in attracting franchise partners and customers alike.

In spite of the geopolitical uncertainty of the times, opportunities for global expansion abound in both developed and emerging markets. Developed markets offer the benefit of solid infrastructure necessary to support the real estate, banking and supply chain needs of your business as well as the legal framework supportive of franchising. While competition in these territories may be more difficult and robust, later entrants in these markets may benefit from a sophisticated consumer base and the ability to learn from the prior mistakes of others.

Emerging markets, too, offer tremendous opportunity for growth. While these markets do not typically offer the stability of developed markets, what they often offer is relatively low amounts of competition and often a near clear path to the market. Importantly, these markets often offer large, young populations with a growing middle class, important demographics for most international franchising.

Over the course of this paper we will present a few key considerations for franchisors looking abroad, whether a franchisor has already established a presence in another country, or is preparing for its first international venture. Once we've presented

how to assess readiness for international expansion, this paper will provide some key considerations before a franchisor takes the first step, including the importance of due diligence and partner selection, as well as some tips for approaching those critical tasks. This paper will then discuss key deal points, including structure, deal terms and protection of intellectual property. Finally we will conclude with a discussion of franchise and other applicable laws around the world.

The goal of this paper is to arm the reader with the fundamentals to enable them to make their first (or second) international push a successful one.

B. ASSESSING READINESS: ARE YOU READY TO EXPAND INTERNATIONALLY?

While most international expansion initiatives start with high hopes, the reality can be quite daunting. The franchisor needs to have the ability to replicate the most salient components of its domestic system in a new market, all the while navigating the legal, conceptual, cultural, supply chain, and economic differences of one or more international markets. Your ability to navigate this will ultimately determine success.

All too often, the neophyte international franchisor begins their journey reactively, when an unsolicited offer for their franchise rights in some distant country comes in via one or more electronic means. And knowing little about the country and even less about the potential partner, they rush headlong into a business endeavor that they know little about. The allure of being a "global franchisor" and the promise of initial fees is simply too great.

The best franchisors, clearly, will take a more rational proactive course. Once they are sure they are ready for international expansion (and only then), they will target specific countries or regions after careful analysis and planning. They will select their partner with care after a focused research and vetting process. And they will understand that the training and support received by that international partner will be the key to everyone's long term success.

Preparation is paramount in this effort. As a first step, the franchisor must carefully assess whether or not it has sufficient human and financial resources to establish an expansion plan that will allow it to succeed – without sacrificing the performance of its domestic franchise efforts.

The following factors can help determine a system's readiness to go global.

1. Does it fit the corporate goals?

The allure of having an "international brand" is not enough to justify expansion. Before making the leap, the first question the franchisor should ask is, "Why?"

Like domestic franchising, the initial fee that is received by the franchisor will likely prove to be mostly a cost recovery vehicle when the cost of due diligence, contract negotiation, trademark protection, training, and initial support have all been factored into

the equation. And since the long term costs of support can be significant while the ramp-up period can often be slower than domestic franchising, the franchisor is well advised to be sure that international franchising fits well with their short term goals before making the leap.

Questions that franchisors should ask before committing to expand internationally:

- Will the international initiative cause us to lose focus on our domestic market growth – or can we realistically tackle both at the same time?
- Does the international initiative have the potential to be more profitable than further domestic expansion?
- Will we be able to provide adequate levels of support to our international franchisees using internal resources?
- Are we "going international" as a part of a well-thought-out long-term plan for the company?
- Are there external factors (competitive actions, developments in international markets, opportunities to partner with significant international players, etc.) that we should allow to influence the decision to go international now rather than later?
- Are there other benefits associated with going international that make this a short-term priority?

2. Are the resources available?

Launching an international franchise effort requires a substantial financial commitment. Travel, legal costs, and market research only make up a portion of the expenses a franchisor can expect to incur.

The tasks of finding the right local partner and conducting due diligence take time and money if they are to be done correctly. Frequent market visits are essential, as they provide insight on a brand's potential viability, consumer preferences and expectations, existing competition, and the potential concept adaptations that may be required in entering a new market. Secondary market research should only act as a supplement to the first-hand knowledge that a franchisor gathers on foreign soil.

All told, with trademark protection work, legal research, market research, travel, broker's fees, marketing expense, letters of intent, initial drafts of contracts, and disclosure documents (where required), an investment in an international expansion effort can easily exceed U.S.$100,000 before any fees are even paid by the initial licensee (and potential commissions are paid) and can often go much higher. So those headed overseas need to be prepared for the costs of doing business internationally before making that commitment.

3. Does the franchisor have the right people?

In addition to capital, the new international franchisor will need to have the people to provide service and support to their new international franchisees. And while the franchisor's initial inclination may be to say that their domestic team can handle international expansion, that route is not without its pitfalls.

First, of course, is the question of resource cannibalization. If human resources are reassigned from their domestic duties to fulfill these new international needs, domestic expansion efforts may well take a hit. Moreover, it is important to understand that the domestic team may not be well suited to an international role. International support will often require team members to spend extended periods of time overseas on a regular basis – making it difficult for those with young families or other obligations that would necessitate less travel. And since international staff will often need to wear more hats than a field support person might wear domestically, the franchisor's current staff may not be up to the task.

In much the same way that the best franchisors plan around support domestically, the new international franchisor should address staffing needs by looking at the specific support services that the franchisee will need to be successful internationally.

Assessing the readiness of a domestic system's infrastructure involves a close examination of every functional area within the company. From the legal and marketing teams to IT and operations, each area's current capabilities must be considered, as well as what it would take to realistically extend – and, ultimately, replicate – core skills and processes within an international franchise network. Diversity of expertise, adequate bandwidth, and synergy among the domestic team will increase the likelihood of a smoother transition during the expansion process.

In conducting this analysis, it is important to recognize that international franchisees may require training and support in areas that domestic franchisees do not. If, for example, there is a need for concept adaptation based on local culture, laws, or economic conditions, the franchisor will need to decide how to ultimately deal with those issues. If the franchisor contemplates a master franchise relationship, the franchisor will need to provide training and assistance in areas such as franchise marketing and support. If the franchise sells or uses products that will be sourced locally, supply chain issues will need to be re-considered. Some markets will require the franchisee to import labor rather than recruiting locally. So franchisors will often find that their domestic skill set will need to be supplemented in order to help their international franchisees succeed.

4. Competitive Landscape?

Twenty-five years ago, when a U.S. franchisor entered a foreign market, chances were that they did not face much competition on the franchise front. In most markets, franchising was a relatively new form of business expansion that was largely the bastion of U.S. brands. But today, franchisors going abroad face a much more competitive

franchise marketplace in almost every country in which they would like to have a presence.

Upon entering a new market, a franchisor will need to compete for the same pool of franchise prospects as existing systems. And if the existing systems are native to that market, they will often have some significant advantages, including a better knowledge of local language and customs, a better understanding of the culture, increased access to real estate, and established supply chains that may provide them advantageous pricing. In addition, franchisors native to the foreign market may enjoy arms-length relationships with local design, construction, and marketing firms, which give them the ability to support franchisees locally, promote their "home grown" roots, and avoid the need to adapt to meet the local cultural and legal requirements as non-native franchisors must do. All of these factors give native-franchisors a head start in developing the market.

Of course, the franchisor's international licensee may bring some of this to the table, at least in part, leveling the playing field.

But the decision to expand globally should also take into consideration whether a concept is prepared to compete with local brands and international franchise giants who already have a foothold internationally. The savvy franchisor will want to compare and contrast its value proposition with those of the companies with whom it will compete to make an assessment of its likelihood of success. Local brands should not be discounted. Just because you have never heard of it before, do not assume it will not be a worthy competitor in that market. International brokers, consultants, market research firms, and even the U.S. government can help franchisors gather the information necessary to determine a concept's readiness.

The strength and longevity of an international strategy depends largely upon how the franchisor has prepared. As with any business decision of this magnitude, a great deal of research and self-assessment is required as a first step.

C. CONSIDERATIONS FOR MARKET PRIORITIZATION

With nearly 200 countries in the world today, a franchisor will obviously need to focus their efforts if they hope to succeed. Just like domestic franchising, a hopscotch strategy in which a franchisor attempts to develop in multiple markets that are far removed from one another will be significantly more costly and more difficult to effectively support. So often, franchisors should start by determining a general region in which to focus their efforts.

Moreover, the choice of market focus will often dictate strategy – and vice versa.

For example, if a franchisor chooses to focus on markets with a large middle-class where franchising is well accepted, they may find that a master franchise structure will provide the fastest market penetration. This will have implications for fee structure (as fees will be split with the master), franchisee profile (someone capable of building a sales organization), and the support provided (in addition to unit operations, the franchisor will

need to teach the master franchisee about becoming a franchisor, including franchise marketing, sales, and support).

Alternatively, if a franchisor chooses to enter markets with a barbell distribution of wealth, they will likely be looking for large area developers who, while easily identified, are simultaneously being courted by many of the largest global franchise brands.

Identifying appropriate target markets should start by gaining an understanding of how a brand will fare considering the current social, political, and economic conditions in a particular region. Sufficient investigation in this regard can prepare a franchisor to overcome certain challenges.

Strategically, there are a number of choices to be made for the first-time international franchisor. Do they want to target the biggest markets, knowing that they may also be the most difficult, or do they prefer the markets where competition is the least developed? Perhaps the desire is for the markets where the logistics of support, language, supply chain, and concept adaptations will be the easiest? Regardless of these strategic choices, the savvy franchisor will want to look at a variety of factors in determining market focus.

1. Market Knowledge

Between internal and external investigation, a franchisor should commit to gaining the clearest possible perspective about potential market opportunities before an expansion strategy can take shape. Part of that knowledge involves gaining an understanding of the franchise "climate" in a particular country (e.g., licensee's ability to sub-franchise, recognition by the legal system, the general feelings toward franchising, size of the middle class, degree to which other franchisors have been successful in the market, etc.)

One good source for information on franchising in various international markets comes from the U.S. Commercial Service, which is also available to do customized research for individual franchisors through their Gold Key Matching Service, as we will see below in Section 2(b)(ii). In addition, the International Franchise Association houses some of their franchise specific information at the following link: http://www.franchise.org/us-commercial-service-franchising-market-reports.

(a) Efficiency of Support for Franchisees

The efficiency of providing support to international franchisees is often a complex issue. Factors that will influence support needs and costs include the structure of the offer (area development, master franchise, or direct franchising), complexity of the business, the relative strength and resources of the franchisee, as well as factors such as language, legal differences, consumer differences, time zone differences, distance, and supply chain. Prior to delving into international waters, the wise franchisor will first develop a comprehensive business plan that will cover these issues as well as develop a plan for staffing the support organization.

(b) Socio-Cultural Differences

Naturally, if concepts are destined to succeed in a new market, franchisors must give thought to adaptability. Just because a system performs well domestically doesn't necessarily mean that consumers abroad will respond to it in a similar way. Language, local/regional customs, preferences, and even religious beliefs (dietary or alcohol restrictions, segregation of sexes in some Muslim markets, need to plan around religious holidays or prayer time, mandated benefits or vacations in some countries, need to import labor, etc.) tend to shape the perspective from which target consumers will receive the brand. Thus, a solid understanding of local ideologies and expectations can help a franchisor modify its concept for a global public. Foreseeable modifications might include altering certain product offerings to suit local tastes, altering the labor model, changing sources of supply, and adapting consumer marketing.

(c) Forecasting Potential Profitability

Once a franchisor has a good idea of how the concept might need to be adapted, they should develop a financial feasibility model to determine whether the model is likely to be profitable enough to create a "win-win" for the franchisee and the franchisor.

That said, it would be a mistake to rely exclusively on population and other relevant demographics affecting domestic market potential and doing a side-by-side comparison to draw conclusions.

The primary focus of this financial model should account for <u>differences</u> in the unit economics in the following areas:

- Development and real estate costs (land costs, key money, costs of construction, costs of equipment, differences in rent costs that would impact target locations, average rent costs for the target location, etc.).

- Consumer buying power and local competition (Are there enough consumers who can afford the product/service and if there are, will they be drawn to existing competitors that offer substitute products at substantially lower prices? How will that impact the franchisee's consumer pricing? How fragmented is the local market? If there are dominant players in the market, how will the franchisor differentiate itself from established brands?).

- Costs of goods sold (Are current or substitute products readily available through the local supply chain? At similar costs? Will tariffs be imposed on imported products? How will exchange rates affect costs? Are there any restrictions on imports? How will consumer pricing strategies impact cost of goods sold (COGS)?).

- Costs of labor (Is qualified labor readily available and at what cost? Do local customs or laws dictate different labor practices?).

One important step in the research of any market is called the "market basket" approach, in which the franchisor or their prospective franchisee would "shop" for a pre-

determined basket of goods or services in competitive locations in the target market. By comparing the prices charged for substitute products in the market, the franchisor will gain significant insight as to unit economics in the competitive environment.

(d) Power, Politics, and Economy

A keen eye for the external factors that are shaping the current business climate in a country can be critical to forecasting success abroad. A country's government structure, expressions of autonomy, respect for the rule of law, and political history can be indicative of its overall stability.

If a franchisor intends to export product to the local franchisees, it is particularly important to understand the impact that variances in exchange rates might have on the franchisee's profitability. In such a situation, a currency devaluation could have a substantial impact on a franchisee's cost of goods sold – impacting either franchisee profitability (if local prices remain constant) or royalties (if they do not).

(e) Legal Climate

Considering the amount of time and resources an international expansion plan demands, it is in franchisors' best interest to investigate the legal standards of the target market. What legislation is currently impacting the local business environment? In addition to franchise laws, the franchisor will need to be cognizant of laws regarding registration, disclosure, anti-trust, tying, anti-competitive measures, protection of trademarks and intellectual property, enforceability of in-term and post-term noncompetition clauses, repatriation of profits, import restrictions, taxation, and other relevant law.

2. Franchisee Recruiting

Outlining the characteristics of a qualified international franchisee is perhaps even more important to the process than identifying the territory itself. Though potential owner-operators will have varying backgrounds and experience, a franchisor can outline some core requirements to help cull the franchisee pool and screen out those who lack the ability to succeed in this complex business relationship.

(a) Qualifying Franchisees

(i) Net Worth and Financial Strength

Many franchisors establish a net worth requirement as a means of sifting through those who might not be able to adequately fund such an investment. In the case of international franchising, it becomes ever more important to ensure that those chosen to partner with a franchisor have sufficient financial resources in order to contribute to system-wide stability. Such parameters need to be established based on local market development costs, the availability of credit, and the number of locations that will be a part of the development plan for the franchisee -- as well as how many of those units will

be owned and/or operated by the prospective franchisee (as opposed to a sub-franchise relationship).

(ii) Willingness to Champion the Brand

Franchisees in a new market should share the company's goals and values - expressing a full-on commitment to the concept's growth and stability. In essence, these franchise owners are forming a foundation for the future of the brand's international presence. As systems flesh out what functional support looks like in what is often a brand new jurisdiction, the commitment of owner-operators who believe in the overall mission can be incredibly valuable.

With large, multi-concept franchisees committing to developing an entire region, however, the franchisor must make a more difficult determination. While the allure of partnering with an established area developer is significant, there are downsides as well. These area developers often have much more clout in the marketplace, dictating fees (and sometimes refusing to pay initial fees entirely), development strategies, and often mandating changes in operating standards (such as POS systems). And while they will likely be much more adept at concept adaptation, they will be equally likely to cut their losses quickly if a concept does not perform to expectations. Moreover, a franchisor should be prepared to make a sober assessment of whether a large, multi-concept franchisee will be able to dedicate the necessary resources and management focus to *its* brand to a sufficient degree that it will be a long-term and reliable brand custodian. Similarly, the franchisor should seek assurances (and verify during the relationship) that a multi-concept franchisee's key management personnel do not routinely rotate amongst its various brands in a manner that compromises confidentiality obligations. So the franchisor dealing with one of these bigger conglomerates must understand who will be charged with the development of its brand and the kind of commitment that is being made to development.

It also is important to note that such considerations become multi-dimensional in the context of a master franchise relationship. An effective master franchisee has to be both a solid custodian of the brand and operator of the franchisor's concept in its own right as well as an effective marketer of its own sub-franchises. Importantly, franchisors should not assume that just because a would-be master franchisee demonstrates promise in one of these areas that it will be successful at both. International franchising is replete with tales of master franchisees who were solid operators but had toxic relationships with their sub-franchisees (to the detriment of the brand) or who, alternatively, were very successful at selling sub-franchises (and collecting the associated fees) but complete failures as operators in their own right.

(iii) Business Acumen

One of the biggest advantages of international franchising is that, in an ideal world, the franchisee will drive expansion without substantially depleting the franchisor's corporate resources. With this in mind, smart franchisors will seek potential franchisees that have the relationships necessary for navigating the local business landscape. Depending on the concept and the growth strategy, these needs may include real estate,

construction, marketing, franchise sales, and/or distribution – as well as concept-specific expertise.

While this might argue on behalf of the larger developers, numerous brands have had substantial success by finding developers who will "grow their own" teams. Should this be the chosen candidate, of course, the franchisor should focus on management expertise and a track record of developing a team – as well as factoring the need for these hires into the financial qualifications imposed on their candidate.

(iv) Sound Vision for Developing Concept in Target Jurisdiction

At the same time, franchisors will want to ensure that the candidate will enlist franchisees who have a realistic plan for the development of the concept. Every franchisor should, as a part of their vetting process, require each candidate for a market to prepare a detailed business plan that will discuss issues such as prototype development and adaptation, real estate and construction (if applicable), business economics, competitors, market, staffing for support, and a plan for growth.

Many franchisors will provide their international prospects with a template or an outline from which to work when developing this plan in order to be sure that they receive their candidate's thinking on all of the issues that will ultimately impact their success. Reading these plans with a critical eye will not only provide insight as to market conditions, but it will also allow the franchisor to gauge whether that candidate has realistic expectations and a sound plan for growth, as well as an understanding of the role that each of the parties will have. And, most importantly, it will provide a deeper understanding of the candidate's commitment, thinking, and resources.

(v) Communication Skills

Obviously, distance, time zone differences, and language can all be impediments to communication. And since the franchisor will likely visit international markets with less frequency than their domestic counterparts, franchisors would be well advised to look for candidates who communicate well and often. During the franchise application process, franchisors should evaluate the degree of communication they receive from the candidate - noting that his or her level of commitment at that stage will often set the tone for future interactions.

Moreover, franchisors should not be afraid to require some level of fluency in English as a requirement of their candidates. English is widely considered to be the "language of business," and has been adopted as such by many multinational companies headquartered outside of the English speaking countries (companies like SAP, Nokia, Airbus, and others) as the official corporate language. By doing so, franchisors can engage with candidates who are willing and able to conduct business in a common language in order to ease the burden that is inherent in translation.

(b) Prospecting for International Leads

Once a franchisor has developed a profile for an ideal candidate, thought must be given to how it intends to find these prospects. The best candidates are generally not those that come in over the transom, but instead those that are specifically targeted with a focused marketing effort.

While not all inclusive, some of the methods for identifying these prospects include the following:

(i) International Franchise Brokers

Perhaps one of the "easiest" ways to identify prospective franchisees is to employ specialized brokers who focus on the franchise space. Generally speaking, these brokers are well-connected in the franchise community – sometimes globally and sometimes confined to regional markets. These brokers will often require a franchisor to initiate the process with a market study. The franchisor will then be responsible for paying for local advertising (directed by the broker), monthly fees, travel expenses, and success fees (which may run 20% or more of the initial license fee for the country). So while the use of brokers will eliminate the need for in-house development personnel, it can still be quite costly.

(ii) Governmental Programs

Governmental programs such as the Gold Key Matching Service provide another highly directed means of identifying strong candidates. The U.S. Commercial Service, which oversees the program, is charged with international trade promotion by the U.S. Department of Commerce's International Trade Administration. With a presence in over 75 countries, the Gold Key program will arrange for franchisors to have pre-screened appointments in-country with candidates that will fit their recruiting profile and can follow up with those candidates after the franchisor leaves the market. While the services rendered by the U.S. Commercial Service are extremely reasonably priced and they do not have associated success fees, the strength of their franchise expertise varies by market. And, of course, the franchisor will have to invest their time and effort in traveling to specific markets (although there is a video service that is also offered as a part of the program). More information on the program can be found at: http://www.export.gov/salesandmarketing/eg_main_018195.asp.

(iii) Franchise Trade Missions

Organizations such as the International Franchise Association regularly sponsor trade missions to various markets to promote franchising. Typically, these trade missions, which are co-sponsored by the U.S. Commercial Service, are limited to about a dozen franchisors and will include several countries in a specific region. Franchisors will travel to several countries over the course of a week or two and can expect to spend about $10,000 plus travel related expenses – meeting with qualified prospects in each venue. While this can be a productive means of lead generation, the markets targeted each year are limited, as are the number of participants, making it difficult to center a marketing strategy around these events.

(iv) International Franchise Trade Shows

Trade shows provide an open forum for franchised brands to present their concepts before an interested audience of potential buyers. Trade shows take place at venues worldwide, attracting vast numbers of attendees who are often local to the area and open to finding a franchise opportunity that suits them. Although these shows provide an excellent setting for engaging with active leads, franchisors should be aware that not all prospective franchisees who attend these shows are qualified to invest in a franchise. As discussed above in Section C.2, some potential franchisees will be a better fit for certain franchise opportunities than others, depending on the level of financing and operational sophistication required.

(v) Foreign Franchise and Trade Associations

Franchisors can seek out franchise and trade associations within the target market that are often willing to help them assess the viability of their concept and make appropriate introductions. While they can do so in accordance with the criteria franchisors establish, these associations are also able to use their firsthand knowledge of the franchisee pool to suggest additional requirements that might be necessary given certain demographics or economic conditions. Ultimately, these associations can serve as a valuable resource for franchisee recruitment, but again, should not be the center of a franchise recruitment strategy.

(vi) Traditional Advertising and/or Public Relations Activities

Of course, franchisors can also avail themselves of traditional methods of lead generation, including web portals, pay-per-click advertising, print advertising in specialized publications, and public relations – all of which can be done with a highly market-focused approach. While these methods tend to be somewhat inefficient, they can occasionally generate satisfactory results if they are focused on a highly-targeted candidate pool. In a larger sense, public relations activities can serve as a valuable complement to more direct lead generation strategies by acting as third-party validation for franchise concepts that are new to the market.

(vii) Franchisor's Domestic and Local Counsel

It also is not unusual for experienced outside counsel, both in the franchisor's home market as well as abroad, to be a valuable resource in facilitating contacts with some or all of the above or even direct introductions with prospective franchisees with whom such counsel may have crossed paths in connection with other deals.

3. Due Diligence on Foreign Franchisees

Given the difficulty in unwinding a foreign transaction (and worse, the potential nightmare of associating with the wrong "partner"), conducting thorough due diligence prior to finalizing your relationship is imperative.

(a) Financial Qualifications

While a candidate may have represented that they are adequately capitalized to undertake a particular venture, that does not necessarily mean that they actually are. A diligent franchisor will investigate their prospect's financials independently, making use of whatever is available to them. That can include any audit records, credit reports, bank statements—anything that can lend some credence to a prospect's claims of solid financials. Savvy franchisors will often ask for Letters of Credit from a candidate in pursuit of proof pertaining to his or her financial standing.

(b) References, Background and Credit Checks

Unfortunately, the availability of financial information can vary widely from market to market, underscoring the need for background checks. Again, the U.S. Commercial Service can help with these checks. Franchisors are wise to consider providing prospective franchisees with detailed questionnaires that seek relevant background information concerning the would-be franchisee's finances, reputation, litigation and/or bankruptcy history, criminal records, third-party business and/or government affiliations, professional licenses and even driving records. Separately, the franchisor should also contact the franchisee's references (including former or existing business partners and/or vendors) and should network with people in the international franchise community to get additional feedback. Lastly, skimming local media for any articles can also clue franchisors in to the candidate's personal and/or professional image.

Aside from the Commercial Service, there are a number of companies that specialize in screening and evaluating prospective partners and their capacity to professionally, legally, and economically participate in the intimate business relationship franchising requires. This in-depth research includes law enforcement checks, press reviews and more – allowing franchisors to make the most informed decision when evaluating prospective local partners.

(c) In-Person Meetings

It is absolutely imperative to meet with your candidate and his or her team in person. There will ideally be several meetings; at least one meeting at the franchisor's headquarters and another in the country in which the expansion is planned. Nothing beats meeting someone face-to-face to determine the degree to which a candidate shares common values and a commitment to the brand.

If a candidate is not willing to visit the franchisor at their headquarters, that would say a great deal about their commitment to the brand and to franchising. And if the franchisor is not willing to visit a candidate in their local market, it should question its own commitment to international franchising.

(d) Validating Ownership Structures

The extra-territorial application of the franchisor's home country law also should be an essential component of a franchisor's due diligence process. The franchisor needs to be careful to vet the candidate's intended ownership structure and personnel in order to verify that the franchisor is permitted even to conduct business with either. For

instance, in the U.S., under the "USA Patriot" Act, 115 Stat. 272 (2001), franchisors must thoroughly validate and assess each stakeholder to ensure that they are not on any prohibited parties lists. Resources like those provided by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") can be instrumental in conducting due diligence on the prospect, as well as any and all potential stakeholders. OFAC's Specially Designated Nationals ("SDN") List is an important resource for determining whether an individual or company has been "blocked" from doing business with U.S. persons or entities, see: https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx. The U.S. Department of Commerce also provides a list of oppositional groups or individuals who have been deemed unfit for business. This list of economic sanctions -- called the "List of Parties of Concern" -- can be found on the Department of Commerce's website at: https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern.

D. STRUCTURAL MODELS FOR INTERNATIONAL DEVELOPMENT

There are several different franchise development models that a franchisor may consider for international growth opportunities. The common international development models used by franchisors are largely the same models franchisors can use for domestic expansion, provided that internationally there is a greater use of multi-unit expansion models. These are: area development, master franchise, area representative, single unit and joint ventures arrangements. When choosing the right development model for a given region or country, as discussed earlier in this paper, there are several considerations for franchisors to weigh, such as local laws and customs; the costs of doing business, including travel; cultural and language barriers; and any regulations concerning franchising, commercial agency, and/or intellectual property requirements.

In general, a franchisor must have the ability to invest the funds and resources required to support planned international expansion efforts if it wishes to have greater control over the local operations (including "boots on the ground" in the country or region). Conversely, if a franchisor is reluctant to make the significant investment required for greater control, the franchisor may delegate some of the traditional "franchisor" responsibilities to third parties and thus sacrifice a certain degree of control. Of course there are other costs associated with being able to reduce investment costs and delegating responsibilities. The franchisor will have to compensate the third party designee often times by sharing the initial fees and royalties payable by franchisees operating in the defined territory. There is no one size fits all – franchisors often times utilize more than one development model for international expansion depending on a particular deal or region. For example, a franchisor may opt to use the master franchise model if granting development and subfranchising rights to multiple countries in a single region (e.g., the Middle East), the area development model if granting development rights to a single country, and a single unit model if a market can support only a single franchised outlet, such as many islands in the Caribbean.

The following is a general description of the most common franchise models used for international expansion as well as the pros and the cons of each model. The following

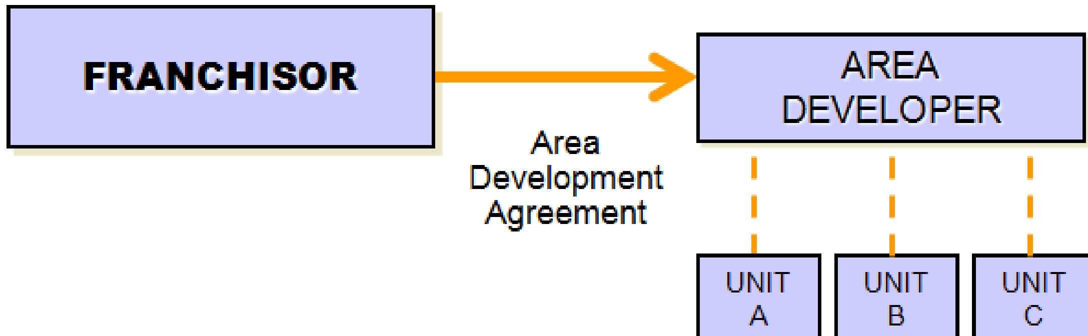
models are presented in the order of the authors' anecdotal understanding of the most-common to least-common in terms of frequency of use in international franchising.

1. Area Development Model

Under an area development model, a franchisor enters into an area development agreement with a third-party franchisee (often referred to as a "developer" or "area developer") whereby the franchisee commits to develop and operate (either itself or through a controlled affiliated entity) a specified number of outlets within a defined territory (typically an entire country or city within a country). An area development agreement often (but not always) grants the developer exclusive rights within the defined territory subject to any rights reserved by the franchisor under the agreement in exchange for the developer adhering to a specific development schedule. Area developers typically pay an area development fee under the area development agreement as consideration for the exclusive territory. Depending on the amount of the area development fee payable under the area development agreement, a portion of the fee is often times "credited" against the initial franchise fee for the individual outlets developed pursuant to the development schedule. The contractual relationships under the area development model are illustrated below. This expansion model allows the franchisor to retain control over its traditional pre-sale and post-sale support roles by maintaining a direct contractual relationship with the franchisee responsible for the development and operation of each outlet, while at the same time facilitates faster unit growth by not having to solicit a different franchisee for each outlet to be developed in the territory. Unlike the master franchise model (discussed further below), area developers do not have the right to subfranchise; the area developer must develop and operate all of the outlets set forth in the development schedule. However, it is common for area developers to delegate the actual development and operational duties for each outlet developed to an affiliate entity, that then must enter into a separate unit franchise agreement with the franchisor for the individual outlet or enter into an affiliate joinder agreement to the area development agreement. Thus, an area development model can at times appear to be a hybrid between the traditional unit franchise model and master franchise model, but in the case of the area development model, the franchisor always has a direct contractual relationship with all franchise entities.

The area development model is commonly used by mature franchisors that wish to maintain the maximum amount of control over their brand internationally. The area development model can also serve as a convenient way for a franchisor to take advantage of a local franchisee's knowledge of real estate markets and key connections needed to enable the brand to effectively expand within a new target country or region, which can make the difference between aggressive growth and inconvenient road blocks. Although an area developer is responsible for the bulk of the development responsibility, as noted above the franchisor retains responsibility for providing the franchisor's services under the area development agreement, such as site approval, initial and ongoing training, and operational support and inspections, as well as ensuring the franchise offer is compliant with applicable franchise or other regulations within the territory.

Illustration of Contractual Relationship:



• Franchise Agreement for each unit

AREA DEVELOPMENT	
PROS	**CONS**
- Franchisor retains a high level of control over the brand	- Difficult to find developers with sufficient capital and resources to develop an entire country
- Faster growth and development in a territory	- Requires more of franchisor's resources than master franchise and area representative models, including regular monitoring and support by franchisor
- One franchisee operating in a market	- Can tie up an entire market for many years
- Economies of scale as it can be more profitable for a franchisee to operate more than one franchised business	- Developer will not be operating each franchised outlet personally
- Requires less of franchisor's resources as the developer gains experience and opens additional franchised outlets	- A bad developer can damage the franchisor's brand in an entire market
- Higher initial fee payable to franchisor	- Franchisor more likely needs to

as a form of "pre-payment" for unit franchises to be developed and territory exclusivity	perform its own due diligence on the territory and its applicable laws and customs
- Franchisor need not split fees	- Risk of increased liability and exposure to third-party claims due to the direct relationship
- Easier to terminate than a master franchise relationship because there are no subfranchisees	

2. Master Franchise Model

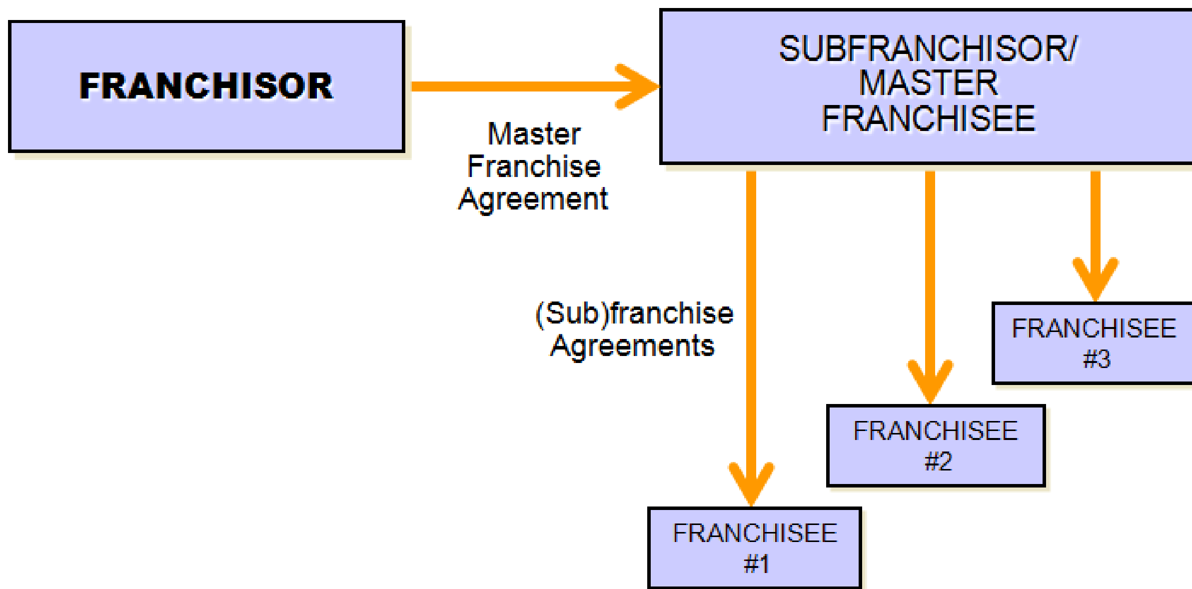
In a master franchise model, the franchisor grants a franchisee (referred to as a "master franchisee") the right to open and operate franchised outlets within a defined territory as well as the right to grant franchises to other third-parties (often referred as "subfranchisees") to open and operate franchised outlets in the territory. As illustrated below, the distinguishing factor in the master franchise model from the rest of the international expansion models is that the franchisor has no direct contractual relationship with the subfranchisees. Rather, the subfranchisees enter into subfranchise agreements directly with the master franchisee. Short of retaining the right to ultimately approve or reject subfranchisee candidates proffered by the master franchisee, specifying the form of subfranchise agreement that the master franchisee must use with its subfranchisees, and reserving the ability to enforce the master franchisee's rights under the subfranchise agreement should the master franchisee fail to do so, the franchisor delegates all franchise activities in the territory to the master franchisee who effectively acts as the franchisor in the territory. Master franchise arrangements are popular in international expansion efforts where the franchisor either is unable or is unwilling to invest the necessary resources to support franchise operations in an international market.

A master franchise agreement typically grants the master franchisee exclusive rights within the defined territory subject to any rights reserved by the franchisor under the agreement in exchange for the master franchisee adhering to a specific development schedule. The master franchisee can satisfy the development obligations by developing its own franchised outlets or soliciting subfranchisees to develop franchised outlets. Master franchisees typically pay an initial master franchise fee under the master franchise agreement as consideration for the exclusive territory, as well as a portion of the initial franchise fees and royalties payable by subfranchisees in the territory. In some instances, the franchisor may require the master franchisee to pay a greater portion of the initial franchise fees or royalties for the outlets developed by the master franchisee or its affiliate entities.

In the typical master franchise model, the master franchisee is obligated to develop and operate at least one franchised outlet in the territory in order to learn the franchise system, get comfortable with operating the franchise, and navigate the logistics of

sourcing local suppliers for products and services according to the franchisor's standards. That particular outlet often serves as the flagship store and training center in the territory. The master franchise agreement also requires the master franchisee to monitor subfranchisees' performance and compliance with brand standards through inspections and audits, and provide the franchisor with regular reports on the subfranchisees' performance. Often, the master franchisee is granted the right to adapt or modify the franchisor's brand standards or system requirements to the local laws, business practices, customs and tastes within the territory, subject to the franchisor's approval. The master franchise agreement may include a broad license allowing the master franchisee to offer both single unit and multi-unit franchises as well as area representative franchises; however, the master franchise agreement typically prohibits the granting of additional master franchise agreements by the master franchisee.

Illustration of Contractual Relationship:



MASTER FRANCHISE	
PROS	**CONS**
- Requires less of franchisor's capital	- Franchisor cedes a lot of control over the brand, including privity of contract, to master franchisee who may not share same passion and commitment as franchisor
- Master franchisee has a presence in the territory	- Can be difficult for franchisor to control quality of products and services since relies on master franchisee for

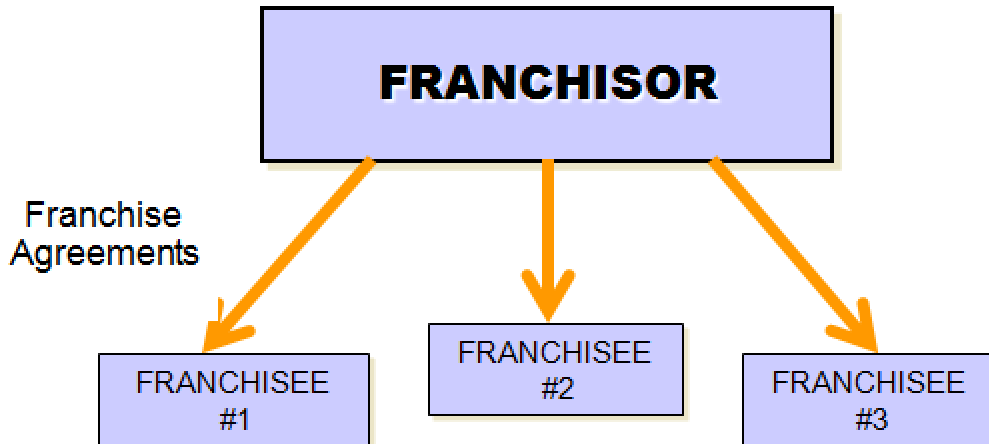
MASTER FRANCHISE	
PROS	**CONS**
	maintaining brand standards
- Faster growth and development in a territory and can be used for larger territories (multinational regions or large countries)	- Can tie up an entire market for many years
- Master franchisee has better understanding of local markets and local competition and is in a better position to adapt the franchise system to the territory	- Same franchisee will not be operating each franchised outlet personally
- Requires less of franchisor's resources because master franchisee serves as "franchisor" and supports the subfranchisees in the territory	- Can be difficult to terminate the relationship if the master franchisee granted subfranchises in the territory because franchisor may suddenly be in a position where the franchisor must either service subfranchisees in a territory without appropriate resources or local knowledge or terminate the subfranchise agreements and withdraw from the market
- Low risk of liability and exposure to third-party subfranchisee claims due to lack of direct relationship	- Franchisor makes less money because splits fees and has little visibility over subfranchisee payments made to master franchisee
- Higher initial fee payable to franchisor for territory exclusivity	- A bad master franchisee can damage the franchisor's brand in an entire market

3. Unit Franchise Model

The single unit franchise model in an international context is basically an extension of the typical single unit franchise model utilized by the majority of franchisors in their home market for domestic development. As illustrated below, the unit franchise model involves a franchisor entering into a franchise agreement with a franchisee for the development and operation of a single franchised business. The franchisor remains obligated to perform the duties of the franchisor under the franchise agreement, such as training, support services, and inspections and quality control. In an international unit

franchise model the franchisor must either have a local presence in the country or region of the unit franchise, or attempt to perform its duties long-distance.

Illustration of Contractual Relationship:



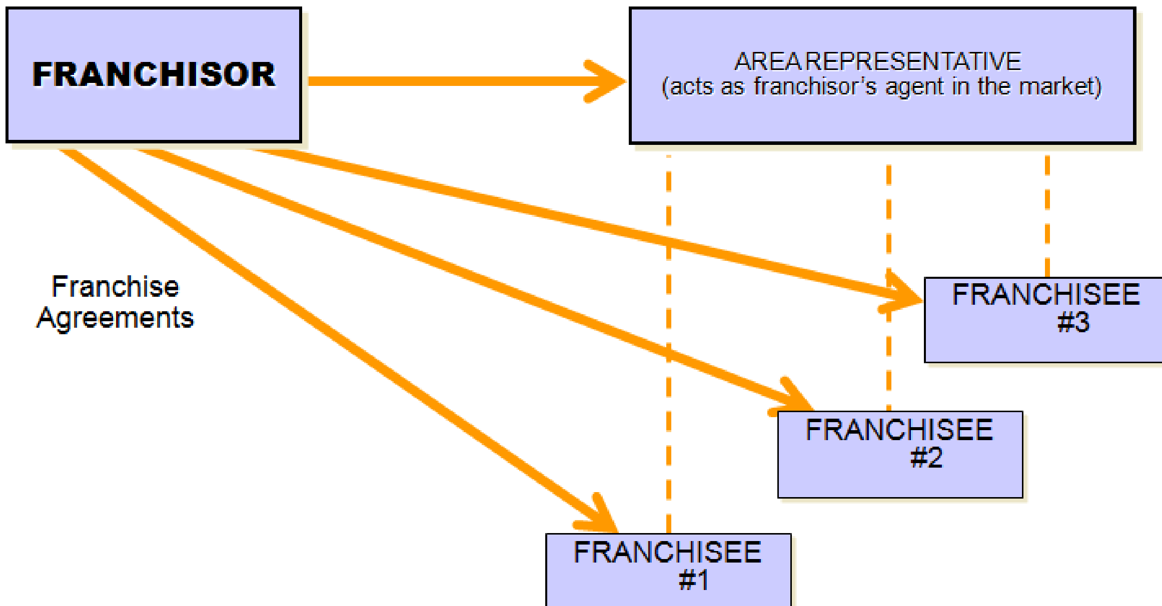
UNIT FRANCHISE	
PROS	**CONS**
- Franchisor retains a high level of control over the brand	- Slower growth and development in the foreign territory
- Franchisee is not highly leveraged since is operating only one franchised outlet	- Requires more of franchisor's resources, including regular monitoring and support by franchisor
- Franchisee is likely the operator of the franchised business with a personal stake in the business	- Lower initial fee payable to franchisor compared to other international franchise models
- Franchisor need not split fees	- Franchisor must perform its own due diligence on the territory and its applicable laws and customs
	- Risk of increased liability and exposure to third-party claims due to the direct relationship

4. Area Representative Model

The area representative model is one of two traditional three-party franchise models. Under an area representative model the franchisor, through an area representative agreement, delegates certain pre-sale and post-sale obligations to the area representative franchisee (often referred to as a "development agent," or "area representative"). The area representative markets franchises and screens prospective franchisees in a defined territory, and in most cases when dealing with an international area representative arrangement, the area representative also assists with the franchisor's post-sale obligations, such as site selection, construction supervision, training and on-going inspections and support. As illustrated below, in an area representative model, the franchisor will enter into two separate contractual arrangements: an area representative agreement with the area representative, and a unit franchise agreement or area development agreement with the franchisee who plans to develop the franchised outlet(s). No direct contractual relationship exists between the area representative and the unit franchisees, which is primary difference between the area representative model and the master franchise model.

An area representative acts similar to a franchise broker by soliciting, recruiting and screening prospective franchisees and providing other pre-sale services to the franchisor. An area representative should be obligated under the area representative agreement to comply with all applicable franchise laws in the territory. An area representative agreement typically grants the area representative exclusive rights within the defined territory subject to any rights reserved by the franchisor under the agreement in exchange for area representative adhering to a specific development schedule. The area representative has the option to either solicit third parties to enter into franchise agreements with the franchisor or the area representative can develop the territory itself by entering into the franchise agreements with the franchisor. In most cases, the area representative pays an initial fee to the franchisor for the area representative rights to the territory (especially if the rights are exclusive), but the area representative is then compensated by receiving as a commission a certain percentage of the initial franchise fees received by the franchisor from franchisees in the territory. For area representatives who continue to provide ongoing services to franchisees post-sale, the franchisor typically also compensates the area representative with a portion of the ongoing royalty fees collected from franchisees in the territory.

Illustration of Contractual Relationship:



AREA REPRESENTATIVE*	
PROS	**CONS**
- Some measure of control because franchisor enters into franchise agreements directly with franchisees	- Franchisor has less control over franchisee operations (delegates key responsibilities to the area representative), which can result in harm to the brand
- Area representative has a presence in the territory	- Franchisor makes less money because of ongoing royalty and initial franchise fee commissions payable to area representative
- Requires less of franchisor's resources because area representative performs pre and post sale services on behalf of franchisor	- Franchisor is liable for acts of its agents, therefore, if an area representative violates franchise registration or disclosure laws, the franchisor can be liable
- Higher initial fee payable to franchisor for ongoing revenue stream and territory exclusivity	- Loss of area representative in a market can be damaging to operations in an entire market and result in the franchisor suddenly being in a position where it must

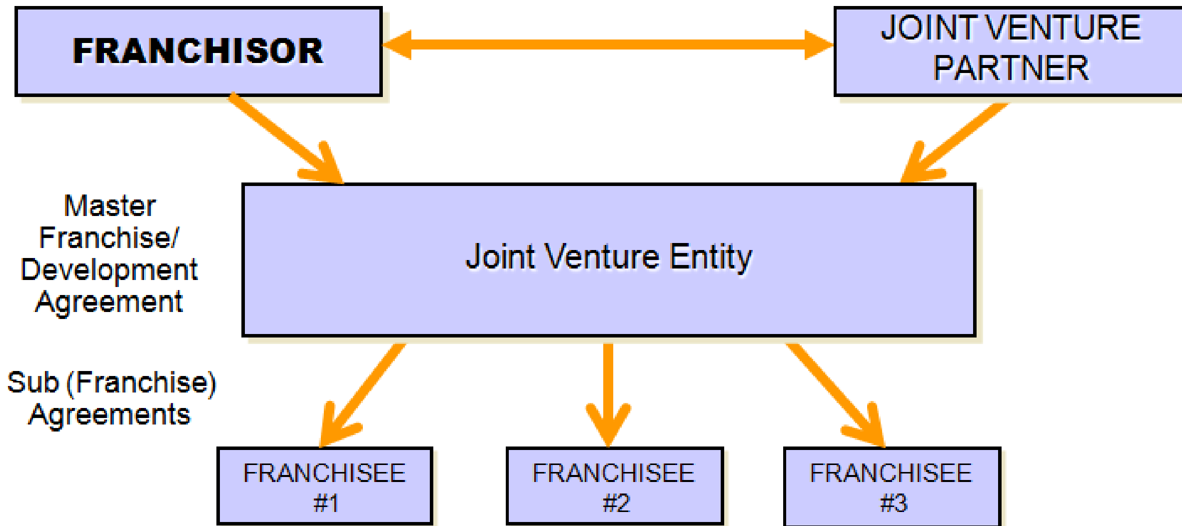
AREA REPRESENTATIVE*	
PROS	**CONS**
	service franchisees in a territory without appropriate resources or local knowledge

* The pros and cons of the unit franchise model also apply to the area representative model

5. Joint Ventures

The joint venture model is often used where two companies each have something of value to contribute to the relationship beyond money or where the franchisor wants to participate in the potential profits at the franchisee level. The most common structure for the joint venture model is where the brand owner/franchisor and local partner enter into a contractual relationship with one another, usually in the form of an operating agreement (or other form of partnership agreement). The joint venture entity then serves as the local franchisee with the right to develop outlets in a defined territory either directly by the joint venture entity or by granting subfranchises to third party subfranchisees. The contractual relationships under the joint venture model are illustrated below. Franchisors most often require the joint venture franchisee to enter into a franchise agreement with the franchisor under which the franchisor collects initial franchise fees and royalties from the joint venture franchisee. Alternatively, the franchisor can enter into a license agreement with the joint venture entity, whereby the franchisor grants the joint venture entity the right to use the intellectual property associated with the franchise system (including trademarks, operations manuals, and applicable trade dress, recipes, equipment, etc.) within the defined territory. The franchisor may also contribute capital to the joint venture entity in addition to the licensed intellectual property rights; however, most often franchisors prefer to rely on the local partner for the necessary capital. Regardless the license from franchisor from franchisor to joint venture entity will likely qualify as a franchise (or master franchise) in those countries with franchise regulation.

Illustration of Contractual Relationship:



JOINT VENTURE	
PROS	**CONS**
- Franchisor retains a high level of control over the brand because JV will contract with the franchisor or an affiliate	- The joint venture structure and underlying documents can be complex and require more negotiation than other structures, which can lead to higher legal costs (including retaining local counsel and accountants to advise on local corporate and tax issues)
- Franchisor has a direct role in the development of the territory	- Higher capital investment by franchisor, as well as potential investment in other resources and personnel
- Requires less of franchisor's capital to expand	- Risk of increased liability and exposure to third-party claims and applicable laws of the territory, including corporate and tax laws
- Joint venture partner typically has a presence in the territory	

E. KEY BUSINESS ISSUES/NEGOTIATING THE DEAL

Once you have selected your local franchisee and have determined the structure that you wish to use, all that is left is the simple task of negotiating your agreement. Before diving into the specific contractual terms – many of which are, thankfully, quite similar to the terms negotiated domestically – a note on the influence of culture in contract negotiations is warranted. In general, the process of negotiating an international franchise arrangement is not wholly dissimilar from the process in the United States. The franchisor and potential franchisee may meet in person or over the phone to discuss a framework, and after a series of follow up calls, marked up documents and visits, the deal is reached.

For international deals, particularly in emerging markets, it is important to be sensitive to local expectations for the process of negotiation. Many cultures will favor face-to-face negotiations rather than discussions over phone or email. At each meeting, there is often an unspoken requirement that the parties will engage in pleasantries and personal conversation prior to tackling the issues at hand. Additionally, expectations for communication and negotiation style also vary widely from territory to territory. A good local counsel will be able to guide you through the local protocol to ensure your negotiations are smooth and successful. Moreover, franchisors who can effectively communicate how and why the key provisions of their standard franchise agreement serve the purpose of protecting their brand will greatly improve their chances of bridging the cultural gaps that inevitably will arise in a cross-border negotiation.

What follows is a brief introduction of the key business issues to be negotiated in your international licensing deal.

1. Fees

We will begin with fees because other than the rare scenario where you extend franchise rights to a party for a strategic reason unrelated to generating revenue, they are the reason you are in business and likely the only means by which to continue in business. Just as with domestic franchises, fees can be broken into a few categories, including: upfront fees, unit fees, advertising fees, and royalties. We will address each in turn.

(a) Upfront Fees

Upfront fees are the charges you recover from your franchisee at the outset of your relationship in exchange for granting the franchise. These fees are often collected at the signing of the franchise agreement, or they can be split and/or structured to accompany certain stages during the documentation of the relationship, beginning with the Letter of Intent. Formulas for calculation of these fees vary widely, with flat fees being charged by some franchisors, and others determining the amount based on the one or more of the following factors:

- **Size of the territory.** Can the territory support a large number of franchised units? If so, a higher fee may be appropriate.
- **Scope of the local partner's rights in the territory.** Will the local partner develop, own and/or operate the franchise in the territory? If so, will the local partner do so exclusively? Will they enjoy master franchise rights enabling them to sub-franchise?
- **Market precedents**. How much are similarly positioned competitors charging in the market or region?
- **Local economy**. Is your target upfront fee justifiable in light of the relative strength of the local economy?
- **Franchisee strength.** How does the strength, size and sophistication of the local party factor in to your fee?
- **Nature and extent of Franchisor support.** Will you allow the partner to leverage your domestic balance sheet to support payroll or marketing? Will you hire additional headcount either at your headquarters or in-market to help get the business off the ground? Will franchisees have equal access to research, product and service development, and technology updates as your domestic franchisees? Will you need to deploy franchisor personnel to the local market to conduct training and provide additional operational support during the "start-up" phase of the relationship?
- **Nature and extent of Franchisor's up-front costs of market entry.** Will the franchisor expend significant legal and other administrative expenses in order to be able to successfully market its product or service in the target market?

In your negotiation of the upfront fee, your position as a franchisor will likely be that the fee should be considered as the local partner's price of admission to the business in the territory. From the perspective of the franchisor, it is as much a symbolic payment as it is a financial one, particularly in light of strict (and ever changing) accounting rules for recognition. A substantial upfront payment also gives the franchisor some security against any local partner default of royalty or other payment obligations over the course of the relationship and can ensure that at least some of its out-of-pocket expenses associated with market entry are recovered. This is perhaps more important in the international context than in the domestic setting, given the physical distance between the franchisor and its local partner and the extra steps that may be necessary under the foreign legal system to enforce any payment obligations in the event of default.

(b) Unit Fees

If your arrangement with the local partner allows the partner to open and operate its own locations, you will likely charge a fee to compensate you for the support you provide at each location. A franchisor may elect to charge a unit fee comparable or equal to fees charged domestically in the United States. This is not a bad starting point for your

conversations, as it is justifiable to look to the domestic processes when at all possible in negotiating your deal. However, from the local partner's perspective, this amount may not be justified, as the partner will not likely have direct access to the types of support offered to domestic franchisees and/or justifiably may expect the franchisor to make use of its off-the-shelf technology tools (e.g., webinars) to provide such support at limited cost. To a large extent, the factors to be taken into consideration when determining upfront fees will also impact your decision on how much of a fee to charge per unit. Upfront fees and unit fees are also linked in that in some scenarios the upfront fee charged will be a percentage of the total estimated unit fees. If this is your approach, you are well advised to consult with your US accounting advisors to determine whether and when such advance fees can be recognized.

(c) Advertising Contribution

The requirement to set aside a portion of net sales for advertising is common to both international and domestic franchise businesses and the negotiation of that amount will likely proceed similarly in either circumstance. One key difference between the domestic and international appeal of a franchise is in the extent to which the franchisor has established a clear brand identity and defined the consumer proposition. A typical franchisee will be attracted to a franchise opportunity because they view the business as "turn-key"—franchise owners are able to take advantage of the solid platform the franchisor has established and can begin to attract customers nearly from their first day of business due to the franchisor's investment in a consumer base.

By contrast, the international franchise owner will not have the benefit of a ready-made market. Often, international franchisees find they need to invest far more than the proposed advertising rate in order to sufficiently educate the public and drive sales. Therefore, the modern international franchise partner may look to the franchisor to bear some of the burden of the marketing expense for a period of time. If agreed in concept, this can be structured in a number of ways, from direct payments or reimbursements of expenses, to the establishment of a fund into which the franchisee and franchisor jointly contribute that can be expanded to the benefit of any additional franchisees established in the market. Well-established franchisors also should be prepared to assist the franchisee with the development of marketing materials for use in the local market, perhaps by making its "asset library" available.

(d) Royalty

Like other financial terms, you will likely find negotiation of the royalty rate to be a more rigorous process in international deals than it is in domestic deals. In particular, the lack of a critical mass of franchise businesses in emerging markets means your partner will likely not be familiar with the standard rates charged and so you should be prepared to explain – and justify – the amounts you request. In addition, while the concept of a royalty in some markets is well understood, you may have partners in other markets who do not believe in paying a royalty for the use of your trademark. If this is the starting point of the conversation with your potential partner, you should probably look elsewhere for a better relationship fit!

It also is important to remember that the royalty structure is likely to vary depending on the franchisor's preferred development model. Specifically, and with the master franchise model, a key subject of negotiation will involve the allocation of royalties paid by sub-franchisees. Similar negotiations should be expected when pursuing a joint-venture model.

2. Scope of Territory/Exclusivity

Depending on your long-term outlook and plan for market development, you will need to determine the size of the market to be granted to your franchisee. Franchisees will likely negotiate for exclusivity throughout the country. This obviously gives them the security of operating free from competition and allows them to develop a comprehensive strategy of their own for the build out of the entire country. They may also argue that supply chain issues arise when additional groups are allowed to develop, own or operate in the same market and the surest way to mitigate these is to have a single partner in the country. Additionally, they will likely make the point that a single partner in the country streamlines your administration and support as you will have a single contact in the market to manage long term.

While these are all valid points, you may be well advised as a franchisor not to grant the entirety of any one country, or exclusive rights in that country, from day 1 of your relationship. This is especially true in major markets such as China and India. Except in the case of a well-established partner with a wealth of successful experience in your industry and in the country, most local partners will find the learning curve steeper than expected and the path to profit longer than anticipated. They may seek to try out different trade areas in the country, bouncing from one to another when their early efforts at an initial trade area were unfruitful. They may slow down on development, or worse, cease to develop altogether while they reset their efforts at refining the business model. While franchisors should be sympathetic and supportive of the experience of partners breaking in to the market, franchisors should not have to suffer the lost opportunity cost incurred by stalled development or false starts. Just as a sound investor may diversify its investment portfolio, a smart franchisor should consider structuring a deal that allows for additional local partners to participate in expanding the brand. Instead of an all at once approach, a staggered grant of pieces of the territory – whether key cities or key trade areas within a city, for example – upon the local partner meeting key milestones may give the partner a meaningful carrot to work towards. Such an approach may also help to focus the partner on successfully building out the country step by step instead of a buckshot approach. As noted above under our discussion of fees, any grant of exclusivity should be reciprocated by a payment of an appropriate fee.

Most franchisors also are well-advised to consider potential alternative distribution models in the local market and whether they wish to reserve such rights to themselves separately and distinct from the contemplated franchisee relationship. Such rights, which can vary from internet sales to the operation of stores in non-traditional locations (such as airports, hospitals, military bases and college campuses) should be clearly reserved in the franchise agreement.

3. Transfer Restrictions

As has been discussed, beyond any cultural or language gaps you may need to bridge with your international partner, a central challenge of franchising internationally is the physical distance between you and your local partner. This is a principal reason why you and your local partner should take seriously the negotiation of transfer restrictions. To be sure, franchise rights should be personal and non-transferrable, except with consent of the franchisor. The franchisor should have the ability to review any individual or entity that might become a part of their system, both for protection of the brand and for the protection of all franchisees, domestic and international. From the outset, it is important to establish a meaningful level of trust and healthy rapport with your local partner. This, almost more than anything in the agreement, will help you ensure that the business stays in the hands of this partner rather than being transferred without your knowledge.

Franchisees will propose lenient transfer rules, allowing them to transfer to others freely or with post-transfer notice to the franchisor. Franchisors should insist that no transfers be made without their consent and require in the agreement that any requests for consent be accompanied by sufficient information to enable the franchisor to make an informed decision. You may relax the rules for a select class of "permitted transferees" including wholly owned subsidiaries or for *de minimis* transfers of ownership rights in the partner. In the case of these transfers, you should require advance notice of the transferee and condition the right on clearance by your internal risk team. Your local and U.S. counsel can assist in determining the appropriate limits for publicly-held franchisees.

You are advised to be inflexible in considering the right to transfer interest in the franchise rights, however, and also to subject such transfers to appropriate conditions that minimize potential risk to the brand during the transition. Such conditions typically might require that, in connection with the transfer: (i) the transferee sign the franchisor's then-current form of franchise agreement, (ii) the transferor and/or transferee pay a transfer fee to offset any costs incurred by the franchisor (e.g., administrative expenses such as due diligence on the transferee) in connection with the transfer and/or (iii) store locations be renovated or upgraded to comply with brand standards.

4. Termination Rights

Just as you will want to draft tight transfer restrictions to prevent the rights of your brand from falling into unapproved hands, you will similarly want to ensure you have broad termination rights. As in the case of domestic franchises, it is advisable that franchisors lay out in their agreements at least three different types of terminations.

(a) Automatic Termination

There are a number of reasons you may want to draft your agreement to provide for automatic termination. For example, if you have allowed your franchise to use as collateral shares of the franchise entity or assets of its business, (a step which is itself not in your best interest without a separate agreement clarifying your rights and the rights of

the lender), you may wish to have your agreement terminate in the event of lender foreclosure. This is advisable for domestic agreements as well, but in the case of international agreements it is particularly advisable. This is so because it is easier to monitor your domestic franchisees and learn of foreclosures than it is to do with international partners. Providing for automatic termination with no further action gives you the benefit of being able to prevent banks or other financial institutions from stepping in to run your franchisee, of particular importance because such institutions often do not share the same business motivations as the franchisor. However, you must be aware that in certain jurisdictions, provisions triggering automatic termination of the franchise agreement in the event of franchisee's bankruptcy or any similar proceeding, are unenforceable.

In the context of an international franchise relationship, most franchisors also would be wise to consider certain geopolitical realities when contemplating when automatic termination would be appropriate. This is especially true in emerging and politically-volatile markets. For example, a lockdown on cross-border currency remittances or oppressive visa restrictions (preventing the franchisor's employees from inspecting the franchisee's operations) that last longer than a franchisor would be willing to accept might present scenarios wherein the franchisor would want to automatically terminate the franchise agreement.

(b) Termination on Notice

Termination on notice allows you to end the franchise relationship with a few days' notice. Notwithstanding this, you may wish to afford the partner the opportunity to cure the default that triggered the notice, but often they are the types of breaches and other actions that simply cannot be cured. These include transfers without consent, breaches of confidentiality, submission of misleading books and records, violations of anti-corruption/anti-money-laundering laws and other criminal activity.

(c) Default and Termination with a Right to Cure

This is reserved for general breaches of the agreement and may include repetitive late payments of fees, failure to adhere to an agreed development schedule, and any other curable breach of the agreement.

As with all aspects of the negotiation, you will need to coordinate with local counsel to make sure these termination categories and rights are enforceable since, as is the case with certain U.S. states, many foreign jurisdictions have relationship laws that allow for termination only with good cause and/or afford the franchisee the opportunity to cure the default. Further, local counsel will be able to provide guidance on your rights upon termination and the degree to which you are able to include such rights as enforceable franchisee obligations that should be set forth in the franchise agreement.

At a minimum, whether domestic or international, you should have the right on termination to compel the partner to remove all signage bearing your brand's name or trademarks. You may also want the right to purchase any assets including real estate of

the business after termination. You also should expect the franchisee to (i) return any and all operating manuals, marketing materials and other documentation in connection with the operation of the franchise system; (ii) maintain the confidentiality of the franchisor's proprietary information and trade secrets; (iii) assign its ownership of any trademarks, web domains and other intellectual property to the franchisor and (iv) execute a termination agreement, preferably one that includes a release of all claims against the franchisor.

In certain jurisdictions, there are a number of housekeeping tasks that must be completed in order to ensure you are protected post-termination. There are territories that require local partners to register their relationship with the franchisor and the franchise agreement with a government agency. Others may require registration of the agreement itself in connection with recognition of the franchisee's rights to use your IP. In either case, you will need to coordinate with local counsel to cancel or transfer any registrations so there is no confusion as to your relationship status with the partner. In some cases, you may require the cooperation of the local partner, so you should try to maintain as amicable a split as possible!

5. Noncompetition Covenant

In your partner selection process you no doubt will have sought out partners with the level of resources and business acumen that suggests they will be successful in the enterprise. The good news is, if you are targeting emerging markets, you are more likely than ever to find a partner with the financial resources necessary to handle a franchise. Your options for partnership may also be more enthusiastic, energetic, creative and have a longer-term view of the business than in the past, given the youthful demographic of the emerging market partner pool. Still, and particularly in emerging markets, you are likely to find it more difficult to find a partner that has the type of experience that you may typically require of a domestic partner. The obvious concern any franchisor will have in a situation like this is how to prevent your franchisee from taking all the skills and know-how you've shared with them over the course of the relationship and applying it to support or grow a rival brand. For this reason, a franchisor should include strict non-competition language in their agreement. In general, there are four key points to think about in the drafting of the noncompetition agreement: the definition of competing business, the scope of the limitation during the term of the agreement, the scope of the limitation post-termination, and penalties for breach.

(a) Defining "Competing Business"

In a truly emerging market with minimal competing businesses you will have the luxury of drafting this language as broadly as you wish, as your franchise partner will not likely have available a host of other businesses in which to engage. By contrast, in more saturated markets where competition is tight you will likely face push back from franchisees who have interests in other businesses and seek to narrowly define what constitutes competition for your brand. In either event, it is important for you to be well educated about the market before you propose your definition. Understanding the competitive landscape – the number and reach of your competitors as well as a full

understanding of the products they offer – will help you determine which currently businesses pose a threat, which may become a threat in the future as your brand takes shape in the market, and which ones are less of a concern to your business.

(b) Scope of Noncompetition during the Agreement

Once you have defined what constitutes a competing business, you will need to determine the scope of the noncompetition covenant. Do you want to limit the restrictions to the individual/entity that is your franchisee? Perhaps you want to include all owners and operators of the business? A wider net would include key employees of the business as well. In addition to the group to which the noncompetition agreement applies, what sorts of activities will trigger your noncompetition restrictions? The obvious answer is that the partner should be prohibited from spending its time and resources in developing or operating a competing business. But the definitions and limitations get hazy when you consider the myriad ways in which an individual or entity could potentially contribute to a business. For example, would your partner offering guidance to a friend who is starting a competing business constitute a breach of the noncompetition covenant? Or again, if the partner has an interest in a bank and that bank issues a loan to a competing brand, would you consider that a threat to your business? Ultimately, therefore, the scope of your noncompetition agreement will be heavily dependent on the nature of your business and the partner, as well as your particular views on where the line should be drawn between permissible activities and breach. You may find that these questions are more complicated in the international context, given the likelihood that your partner is an individual or entity with a wide variety of business experiences, past and continuing and a network of connected friends and family that may be in direct competition with your brand.

(c) Scope of Post-Term Noncompetition

You will likely want a noncompetition provision that covers activities of the franchisee after the agreement is terminated. In general, as with domestic noncompetition agreements, limitations must be narrowly drafted to not be overly burdensome. You may find a noncompetition agreement that applies to the entire territory, depending on your definition of competing business, and the individuals to which it applies, is unenforceable under local law. In that event, depending on the jurisdiction you may risk having the entire provision invalidated by a court. In businesses that are heavily real estate dependent operating in jurisdictions where real estate opportunities are tight, a broad noncompetition provision can prevent your former partner from flipping your locations into the hands of competitors, which itself could do damage to your brand image and make growing your brand a challenge.

6. Development Schedule

From the perspective of a traditional franchisor, that is, a business that derives its revenue chiefly from royalties paid by franchisees and not engaged either alone or in partnership with a franchisee in operations, royalties are the life blood of the enterprise. Therefore, franchisors often believe it is in their best interest to compel their franchisees

to develop as quickly as possible. This may be true, as naturally a larger number of units generates a larger net sales number from which the franchisor would earn a larger royalty. However, an overly aggressive development schedule can do more harm than good as strict adherence may compel franchisees to open units in unfavorable locations, and the task of addressing and renegotiating missed targets is a burdensome distraction to franchisor and franchisee alike. In addition, as with any business there is a learning curve that your local partner will have to tackle, and in the process of doing so your partner may realize that the previously agreed targets are simply impossible. Rather than set your partner up for failure, and yourself up for missed revenue targets, it is a good idea to negotiate general goals. You and your local partner should have agreed early on how many units would likely be achievable in the particular market. Consider using that initial conversation as a guide and crafting a reasonable schedule, with or without specific numerical targets, on which both you and your partner can agree. Moreover, it also can be a good idea to consider how best to incentivize the franchisee to manage its market development, perhaps through the use of reduced royalties or fees for each unit that exceeds an agreed-upon development schedule.

It is also important to negotiate and contract for the types of penalties your partner will face for failure to meet the schedule, particularly if the schedule is reasonable. Is your brand so desirable that you have a ready back-up partner in the event your partner defaults? If so, you may consider making failure to meet the targets an event of default, the penalty for which is either (a) loss of exclusivity in the market, assuming the partner had such right, or (b) loss of development rights. You may use the lever of an uptick in royalty rates for the period of default, or the right to immediate repayment of any financial obligations owed by the partner to you. There is no one formula or method to achieve the goal of jumpstarting stagnant development – whether with this partner or another – and your counsel should be able to guide you to a good and legal solution that reflects the commercial realities of the local market.

7. Other Points

(a) Taxes

Your international franchise agreement will need to address issues of tax treatment and responsibility. For this reason, it is critical to consult with tax advisors – both domestic and local to the jurisdiction in question – to determine what liabilities you may have in the arrangement and what portion of that responsibility it may be appropriate for your local partner to share. Such considerations should be an important first step in any franchisor's financial analysis of a particular market's viability for the sale of its products or services. More specifically, issues such as whether (i) the target market has a tax treaty with the United States, (ii) a withholding tax is imposed on royalties in the target market (and if so, at what rate) and/or (iii) the target market imposes other quasi-taxes (such as a stamp tax) are likely to be featured in any such analysis. Your tax advisors and attorneys will also be able to tell you the types of filings and other documentation necessary for you to complete and assist in processing of the same.

(b) Supply Chain

This issue, although buried in the pages of this paper, perhaps deserves a full paper of its own. It is absolutely imperative that you as franchisor research and fully understand the local supply chain required for your local partner's success. The obvious reason for this need is that with holes in your partner's supply chain come product shortages, inability to provide necessary services and ultimately, a failed business. The less obvious reason is that, again, given the distance between your home office and your local partner, you often will not find out about supply chain issues until it is too late. Local partners may attempt to find solutions for missing components with unapproved or lower quality products without your knowledge. The result is potentially brand damaging, and with the rise of social media and travel, damage done to your brand in one country may impact your entire system, including in the United States. Making the right logistic choices is therefore of critical importance for franchisors and franchisees as the recent KFC breakdown showed (KFC had to close half its stores in the U.K. for several days following a supply disruption caused by a new third-party logistics partner, in February 2018).

Once you understand the supply chain – and any legal parameters impacting it – you can and should help your potential partner assemble the pieces to create a full network. Again, it is imperative that this work be done in concert with your partner before any contracts are signed. This is because if you and your partner determine that a critical product simply cannot be sourced, either due to legal restrictions or lack of quality vendors, you may need to reconsider your entrance into the market in question. In addition, the collaborative work of assembling a supply chain in advance of the agreement helps you to make clear your particular quality standards. You will be able to preapprove suppliers and have peace of mind that the offerings in the local jurisdiction are on par with what you offer in the United States. Additional contract points on supply chain include, subject to local counsel's guidance, (i) the franchisor's retention of a contractual approval right over new suppliers or new products/services offered by the local partner to ensure compliance with franchisor's standards throughout the relationship together with (ii) clear limitations on the franchisee's ability to source products from unapproved suppliers.

(c) Impact of New Technologies on Key Terms

Few franchise concepts have escaped the impact of the accelerating pace of technological changes disrupting traditional business models, and such changes are increasingly driving modifications to key provisions found in most franchise agreements. For example, the advent of third-party delivery providers has forced franchisors and franchisees in the restaurant industry to take a fresh look at how adequately standard provisions concerning fees, royalties, advertising fund contributions, usage of the franchisor's trademarks and even territorial exclusivity address situations where such providers' activities have become essential features of the store-level operational model. Similarly, the increased use of such sophisticated technologies also results in the generation of new species of customer data, the ownership, regulation, and use of which often is becoming a more frequent source of tension in many franchisor-franchisee relationships – especially if the franchisee is located thousands of miles away. An examination of all of the implications of these developments on the provisions of a typical international franchise agreement is beyond the scope of this paper, but franchisors looking to expand into international markets are well-advised to raise them with both their

U.S. and local/foreign counsel before tendering a franchise agreement to a prospective franchisee.

You will find much of the process of negotiating your international franchise agreement will be similar to the process domestically, and hopefully the foregoing has provided sufficient food for thought to prepare you for the key differences.

F. FOREIGN FRANCHISE LAWS

In the last five decades, especially in the last quarter century, along with the expansion of international franchising into more than 160 countries, there has been a proliferation of franchise laws and regulations in countries outside of the United States of America. Such laws and regulations underpin the legal documentation that is needed to successfully expand into foreign markets and also dictate the modifications/changes needed to adapt the franchise documents in the target jurisdictions.

A franchisor and its counsel need to be aware of any franchise disclosure and/or registration requirements in the country(ies) relevant to the potential deal, as well as franchise relationship laws which may affect the franchisor's rights. At a minimum, being aware of these laws gives the franchisor the opportunity to account for the increased costs of having to comply with local franchise disclosure and/or registration requirements when determining the initial franchise fee it wishes to charge for the rights to the territory. Franchise laws vary widely around the world, and countries continuously institute new laws or amendments to existing laws. In addition to the countries with franchise disclosure laws set forth in the chart below, certain countries have civil codes which effectively impose a disclosure requirement; for example, Austria, Germany and the Canadian province of Quebec all impose a duty of good faith on parties to an agreement to disclose provisions which may impose significant obligations. Below is a chart that captures franchise disclosure and relationship laws (excluding civil code requirements) around the world as of the publication of this paper:

Country	Disclosure Laws	Relationship Laws
Albania	✓	✓
Angola		✓
Argentina	✓	✓
Australia	✓	✓
Azerbaijan	✓	✓
Belarus		✓
Belgium	✓	
Brazil	✓	
Canada (only provinces of Alberta, British Columbia, Manitoba, New Brunswick, Ontario, Prince Edward Island)	✓	✓
China	✓	✓

Country	Disclosure Laws	Relationship Laws
Estonia		✓
France	✓	
Georgia	✓	✓
Indonesia	✓	✓
Italy	✓	✓
Japan	✓	✓
Kazakhstan		✓
Kyrgyzstan		✓
Latvia	✓	✓
Lithuania		✓
Macau	✓	✓
Malaysia	✓	✓
Mexico	✓	✓
Moldova	✓	✓
Mongolia	✓	✓
Romania	✓	✓
Russia		✓
South Africa	✓	✓
South Korea	✓	✓
Spain	✓	
Sweden	✓	
Taiwan	✓	
Tunisia	✓	✓
Turkmenistan	✓	✓
Ukraine		✓
Vietnam	✓	✓

Franchisors which already must comply with franchise disclosure and/or registration laws in their home country may be in a slightly better position to initiate a franchise program in an international jurisdiction with similar requirements because those franchisors should already have some familiarity with the process. That said, the differences from jurisdiction to jurisdiction often vary quite a bit such that franchisors should expect to encounter additional hurdles. Among those countries which do require registration of the disclosure document, the process, costs and requirements vary widely – which highlights again the importance of engaging local counsel early on in the transaction.

When investigating foreign laws and regulations, franchisors should consider how these legal frameworks impact their expansion plans, including:

- timing of expansion (e.g., by requiring the franchisor to obtain licenses, permits and other such authorizations);

- costs of expansion, particularly in countries that stipulate a number of corporate stores before franchising is permitted;

- trends in courts that would favor domestic franchisees over foreign franchisors; and

- obligations can be passed on to the local franchisees.

1. Disclosure Laws

A U.S. franchisor may be able to use its U.S. franchise disclosure document in certain countries with minor modifications, while in other jurisdictions the franchisor will need to prepare an entirely new, country-specific and local law compliant disclosure document that is relatively similar (such as in Canada), or one that is much different from the typical disclosure document used in the U.S. (such as in Brazil and China). Some countries may regulate language requirements for the disclosure document and the franchise agreement, the timing of disclosure (and when documents must be registered), and the format of the disclosure document, while other countries do not provide any guidance on these issues. Further, certain countries have broader disclosure requirements than in the U.S., resulting in lengthier disclosure documents and burdensome disclosure obligations requiring the document to be current every time it is handed out to a prospective franchisee (including the list of franchisees), whereas the scope of disclosure in other countries is much narrower, and the disclosure document can be very short but equally burdensome in that the document must also be current every time it is handed out to a prospective franchisee.

Although registration of a disclosure document is not common in the majority of countries, some countries do require registration of the disclosure document or of other documents, such as the franchise agreement or trademark license agreement. As the international legal landscape surrounding franchising is constantly evolving, local counsel should serve as a resource on how to best to comply with any recent developments, especially when guidelines have not been established by the local governmental authorities.

2. Registration Laws

Certain countries require franchisors to submit the franchise agreement to a government agency for substantive review, translation and approval before the agreement can become effective. These countries tend to regulate various provisions of the franchise agreement, such as choice of law, dispute resolution, termination, restrictive covenants, and fees and currency. In addition, government approval of the franchise agreement may be required in some countries with respect to trademark issues or customs requirements, but the franchisor can include language in the franchise agreement so that its effectiveness is contingent on obtaining such approvals.

3. Relationship/Agency Laws

In addition to the disclosure and registration laws in certain countries, franchisors should also consult with local counsel regarding relationship laws or other laws which may have an effect on the franchise relationship so that the franchisor has the appropriate expectations when attempting to enforce its rights under the franchise agreement. Generally, international relationship laws are similar to those franchisors encounter in the U.S. laws, which require the franchisor to have good cause to terminate (with a cure period), or to not renew or disapprove of the transfer of a franchise agreement.

In domestic franchise agreements, the franchisor's grounds for termination are often broken down into three categories based on the severity of the default committed by the franchisee -- defaults that are grounds for automatic termination without notice from the franchisor, defaults that are grounds for immediate termination upon written notice from the franchisor and defaults that are grounds for termination only if the franchisee fails to cure the default within a defined period of time after the franchisor provides written notice of that default to the franchisee.

In international franchising, the practical and legal issues involved with terminating the franchisee often warrant a more conservative approach to termination. Simply put, the franchisor may not be able to timely and efficiently enforce the termination of the franchisee in the territory (which is often halfway around the world) and, as a practical matter, the franchisor may not be in a position to take over the franchisee's operations in the territory even if the termination can be effectuated. The latter is especially a concern where the franchisor is using the master franchise model because the franchisor will often be forced to deal with the subfranchise agreements that the franchisee entered into with franchisees in the territory.

While there are certain actions on the part of the franchisee that should always be grounds for automatic termination of an international franchise agreement (e.g., bankruptcy or attempted illegal transfer) or termination by the franchisor without an opportunity to cure (e.g., abandonment, serious criminal conviction, violation of in-term covenants against competition and/or violation of franchise sales laws), the franchisor should be careful as to how it treats other defaults under the agreement given the increased costs and uncertainty involved in terminating an international franchise relationship — especially if the franchisee is responsible for administering the system in the territory and the franchisor is not in a position to take over that system.

The post-termination obligations of the franchisee under an international franchise agreement should require that the franchisee: (1) immediately cease all offers and solicitations of subfranchisees, as well as all franchise sales, in the territory; (2) promptly de-identify itself from the franchisor's proprietary marks and cease holding itself out as a former or existing licensee of the franchisor or the system; (3) pay all amounts due and owing the franchisor under the agreement as of the date of termination, which may include reimbursing the franchisor for the legal costs it incurred in terminating the agreement; (4) return all proprietary materials and materials that display the franchisor's proprietary marks to the franchisor, which includes the translated version of any documents that the franchisee may have translated for use within the territory; (5) immediately cease all use

of the materials listed in (4); and (6) comply with all post-term covenants against competition.

In addition to relationship laws, in certain countries, particularly in the Middle East, Spain, Latin America and those that follow civil law, franchisees who are independent contractors and generally outside of the scope of labor laws, may be considered to be the franchisor's sales representatives or commercial agents, which would subject the franchisor to local agency laws. Such agency laws protect the franchisee from an "unjust" termination by the franchisor, and may provide "extra-contractual indemnification to a franchisee in the event of termination, modification or non-renewal of the relationship by the franchisor without "just cause" (as defined under such laws), even when such termination, modification or non-renewal is done strictly in accordance with the terms of the agreement." These agency laws may apply to any local person or entity that acts as an independent commission-based sales representative (which is generally outside of the scope of a typical franchise agreement) or to a buy-sell distributor (which may be outside of a franchise arrangement, depending on whether the type of franchise includes a distribution element), or to a person or entity that promotes or offers products and/or services of a principal entity (in which case the application of the law to a franchise agreement may be proper). The stringency of international agency laws tend to vary widely and application of the laws can be fact-specific, therefore franchisors should consult with local counsel regarding the possible application of any agency laws in the territory.

G. TRADEMARK/INTELLECTUAL PROPERTY CONCERNS

A company's intellectual property ("IP"), including the traditional assets of patents, trademarks and copyright as well as other "know-how" - which is for many the "secret sauce" of their brand - is a key asset in any industry. To be sure, a lot of companies engaged in franchising, intellectual property is the only asset actually shared with franchisees, as franchisees are required to procure products and supplies from third parties. Often, the royalty, initial fee and exclusivity fees all relate back to the intellectual property involved in the deal.

Value in franchise systems is based on "exclusivity" – of the trademarks, brand, proprietary technology, know-how, confidential information and the system. It is important to protect and strategically manage the use of these intangible assets during international expansion as they can be subject to different intellectual property regimes in foreign markets. For example, franchisors may need to consider when to register their trademarks in the foreign market, as well as conduct due diligence on the distinctiveness of their marks as compared to the marks of other local market players.

Failure to adequately secure it initially, clearly define the grant of the license to it, and protect it from third party infringers, diminishes the value of your brand and could undermine your fee structure. It goes without saying therefore that protection of intellectual property is critically important both for franchisors and franchisees in foreign territories. Additionally depending on the territory, there may be cultural issues that require some creative changes to your IP.

Additionally, franchisors will want to protect their proprietary technology, know-how and confidential information in order to ensure that they do not dilute their competitive advantages during expansion. For example, local laws may impose restrictions on how long proprietary technology may be exclusive (i.e., patent terms) or how long a party to an agreement can be expected to keep information confidential (i.e., survival obligations related to confidentiality)

1. Securing Your IP under Local Law

If your business is heavily patent-based, it is essential that you plan well in advance for international use. Assuming you apply for protection first in the US, within one year of that filing you must file a Patent Cooperation Treaty application to have a chance to protect the patent internationally. Within 18 months thereafter, you must inform the World Intellectual Property Organization where you want to nationalize the application and pay national fees for each territory. Failure to meet this somewhat rigid timeline will make it nearly impossible for you to secure legal protection of your patent rights, though you will still be able to license your technology and related know-how.

For trademarks and copyrights, you will need to work with local counsel in your target jurisdiction to timely file applications for protection. Time from application to registration varies by market, so it is in your best interest to apply as soon as possible. To that point, depending on whether the jurisdiction is "first to file" or "first to use" you may consider applying well in advance of your entry, perhaps even in advance of securing a local partner. Even in jurisdictions where priority is granted to early applicants, such as the European Community and China, rights may be subject to cancellation upon challenge if use has not been established within a specific time frame. If you are unable to obtain protection of your trademark rights, in some jurisdictions securing a copyright may help to protect your brand's name. Additionally, local counsel can advise you as to whether applications using stylized or local character formats can help secure your brand's identity abroad.

Though it may be tempting to rely on the resources of your local partner and authorize them to register and maintain your IP, that path can lead to ruin in the event of a market exit or transfer, as the franchisee may not cooperate with your attempts to deregister or transfer the assets. Instead, it is advisable that as franchisor and owner of the IP you maintain direct responsibility for the process and register your IP in the name of your business (rather than the franchisee) instead of relying on your franchisee to do so. Though doing so may be more costly and time consuming, this step will make it easier in the event you need to terminate your franchise agreement and/or withdraw from the territory.

On a related note, cultural and language differences may require you to adapt your existing IP to the requirements of local law or custom. Take, for example, the Starbucks logo. While the original siren depicted in their logo was acceptable to customers in many of their markets, including the United States and other international markets as well, the company was unable to use the image of a semi-nude female in their logo in Saudi Arabia. They therefore adapted their mark to conform to the limitations of local law and custom

to eliminate the siren. This is but one example of the reasons why franchisors are well advised to work with their local counsel, local partners and consumer research firms to determine what if any additional changes may need to be made.

2. Granting License Rights to Your IP

Accurate drafting of the language in your franchise agreement granting your local partner the right to use your intellectual property is important whether domestic or international. The risk when franchising abroad is that often franchisors do not maintain local personnel to police any misuse of the IP. Such misuse may include your franchisee using branded supplies in an unauthorized way, using competitor-branded merchandise in the operation of your business, or failing to utilize updated versions of your IP. As you draft your agreements, it is important to include language that clearly details which IP is to be used, the limited ways in which it is to be used in the operation of the business and the specific penalties for misuse.

(a) Monitoring and Enforcement

As in the United States, the acts of registering, defining and licensing your IP are not the end of the process. Instead, you should be prepared as the owner of the IP to invest time and energy in monitoring infringement by third parties and maintaining registrations. Depending on the scope of your international system, you may find it worthwhile to invest in a service to assist in your monitoring process. It is important, too, to get a sense of the likelihood of infringement in the target market and the time and expense of enforcement processes generally in advance of entering the market, especially for franchisors in the retail fashion and merchandise space. If you are operating in a high-infringement market, you may want to anticipate some of the cost of an inevitable action by building it into your franchise fee structure in advance.

(b) Protecting the “Secret Sauce”

What about the “secret sauce”? Just as in the United States, in most territories abroad “know-how”, or the particular formula of key methods and inputs that differentiate your brand, is not protectable under a formal registration regime. Therefore, your ability to protect such rights lies primarily in contract – specifically, the franchise agreement. One important clause is your confidentiality provision; franchisors should be able to share all information necessary for their local partner to operate the business without risk that the partner would share such information with others who may gain a competitive edge. Compelling confidentiality from your franchisees, from the day the relationship is first discussed through the last day of the relationship under the franchise agreement is of central importance.

Another key provision is the noncompetition provision. Here franchisors are advised to require franchisees to promise allegiance to the franchise brand by agreeing not to participate in any competing business during the term of the relationship and for a period of time thereafter. This noncompetition requirement should be extended in the agreement as far as reasonable to protect the know-how of the business. This may mean

franchisees will be required to secure noncompetition covenants from key employees and executives in their business that may have access to such protected information, and be required to police their activities and report to the franchisor if any of those individuals attempts to work for a competitor. There will likely be some negotiation over this issue, as franchisees will argue it is difficult or burdensome to police former employees. There may also be legal restrictions on post-termination noncompetition provisions. Still, a fair result should be achievable given the importance of protecting these rights to both the franchisor and the franchisee.

(c) Adapting to Cultural Differences

One of the exciting aspects of franchising abroad is that cultural and language differences may require you to adapt your existing IP to the requirements of local law or custom. Take, for example, the Starbucks logo. While the original siren depicted in their logo was acceptable to customers in many of their markets, including the United States, other markets as well, the company was unable to use the image of a semi-nude female in their logo in Saudi Arabia. They therefore adapted their mark to conform to the limitations of local law and custom to eliminate the siren. This is but one example of the reasons why franchisors are well advised to work with their local counsel, local partners and consumer research firms to determine what if any additional changes may need to be made.

H. OTHER LOCAL LAWS

1. Imports, Duties and Customs and Exchange Controls

In addition to the laws which impact the franchise sales process and ongoing relationship, franchisors must also examine the logistical feasibility of setting up a franchise system in a foreign jurisdiction and the related costs. Establishing a supply chain is a key factor for almost every type of franchise system – franchisees will need a way to procure proprietary and other products utilized or sold by the franchised business (such as ingredients and other goods) as well as any required computer and POS systems and related hardware and software, uniforms, signage, and other components of the franchisor's brand standards. To avoid import/export issues, franchisors may be able to find local sources for the goods and services franchisees need to establish their franchised business; however, this may prove difficult depending on the type of goods and services used in the franchise system and/or the current state of the local economy. Franchisors will likely need to invest considerable time and money investigating local resources and import restrictions if they wish to establish a possible supply chain in the territory, as well as sending personnel to the territory to explore the local resources (or engaging a local person with relevant experience).

Certain countries may have restrictions on importing or exporting the products franchisees may need to establish and operate their franchised business, either based on the type of good, the destination country or quotas. Further, the cost of shipping goods to the territory, including import duties, must be borne by someone – either the franchisor or the franchisee – which could have a huge impact on the viability of the franchise

system, if the majority of the goods used to establish a unit franchise cannot be locally sourced. Import duties can be significant, although there may be trade agreements in place that can reduce the amount of the import duty or waive it altogether.

Another piece of the import/export puzzle is currency, and the ability to buy and sell goods at the prevailing currency rate in the territory. Currency rates affect the calculation and payment of fees under the franchise agreement both in the host country and repatriating such fees to the franchisor's home country.

2. Local Ownership Laws

While foreign expansion may be viewed favorably by many countries for the potential economic boost which may result from new businesses, other countries tend to be more protective over their economic and political sovereignty and thus have enacted laws restricting foreign ownership in local businesses. China, Saudi Arabia and the UAE are prime examples of countries that restrict foreign investment. Such restrictions vary by country, but can include: (i) a requirement for the business to be established by a local citizen or entity, (ii) maximum foreign investment ownership thresholds, and (iii) restrictions on foreign ownership in certain industries which may be culturally sensitive. Some countries also regulate the maximum amount of the royalties and other fees payable under franchise agreements, require that the franchisee be the owner of the trademarks used in the franchised business, and/or mandate that certain items be sourced solely from other local businesses (most often in businesses that are especially important to the local economy or culture). The potential costs related to each of these issues must be considered by the franchisor in deciding whether to enter a new market.

3. Competition and Antitrust Laws

Many countries, such as Venezuela and those in the European Union, have adopted competition and antitrust laws similar, and in some instances more restrictive, to those in the United States. Such laws can include prohibitions against collusion to limit consumer selection; price fixing; control over resale prices; control over internet sales; price discrimination; tying; false advertising; exclusive arrangements; exclusive and/or restricted territories; and restrictions on the right to challenge trademarks.

As discussed earlier in this paper, confidentiality and in-term and post-term noncompetition covenants are among the hallmarks of a franchise agreement, each of which are a means for franchisors to protect their brand, proprietary materials and trade secrets, and, with respect to noncompetition covenants, to ensure that a franchisee cannot use the franchisor's proprietary information and know-how to compete with the franchise system. Such covenants are ubiquitous in U.S. franchise agreements, although the enforceability of noncompetition covenants can vary by state and generally must be reasonable in terms of scope and duration. Confidentiality covenants for the purpose of protecting the franchisor's trade secrets are pretty much universally enforceable, whether in the U.S. or abroad. Noncompetition covenants on the other hand often face a high level of scrutiny and are against public policy in many countries. Russia and Saudi Arabia are examples of countries where noncompetition covenants are unenforceable, while in

Canada post-term covenants are only enforceable when drafted narrowly to protect the franchisor's interest and are not unreasonable.

U.S. franchisors expanding to the European Union usually find that the anti-competition restrictions in the European Union are also stricter than what the franchisor is accustomed to in the U.S. The Treaty on the Functioning of European Union "prohibits all agreements between companies which may affect trade between companies within the European Economic Area ("EEA") and which have as their object or effect the restriction, prevention or distortion of competition within the EEA." Noncompetition provisions with a term of no more than five years (including any renewals) are exempted by the European Commission. However, the transfer of substantial know-how usually justifies a non-compete obligation for the whole duration of the franchise agreement provided that certain conditions are met. Further, the only exempted post term noncompetition covenants are those which are limited to the premises and land from which the franchisee operated during the term of the franchise agreement and the goods or services the franchisee purchased that are indispensable to protect the know-how of the franchisor, and which are limited to a period of one year after termination of the franchise agreement.

4. Indemnification

In domestic franchise agreements, franchisors typically require the franchisee to indemnify the franchisor (and its affiliates) for claims and liabilities arising from the operation of the franchised business and the franchise relationship generally. The indemnification provisions work to protect the franchisor from claims from the franchisee's customers or clients, employees, vendors or other third parties. In foreign jurisdictions, indemnification provisions are usually enforceable, but some countries require the indemnified party to mitigate its damages and prohibit a party from receiving indemnification for its own intentional acts or gross negligence. Further, some jurisdictions may evaluate the reasonableness of the indemnification provision and modify overly broad provisions that include claims which were not foreseeable at the time the parties entered into the agreement.

5. Dispute Resolution, Governing Law, and Venue

While U.S. franchisors generally have wide latitude to determine dispute resolution, governing law, and venue provisions in franchise agreements (subject to franchise laws in certain states), local counsel is essential in identifying any restrictions or limitations on these provisions which may exist within the territory. For example, pursuant to the franchise laws of the applicable Canadian provinces, any claim based on a breach of such laws must be governed by and venue must be in the relevant province. As discussed in greater detail below, when operating in Islamic countries, franchisors need to be aware of Sharia law, or the religious law and Code of Islam that governs the local judicial system. Further, while many U.S. franchisors choose litigation to resolve their disputes, arbitration is typically recommended for resolving disputes with international franchisees because, provided the franchisee's home country is a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the

"New York Convention"), it is generally much easier to enforce an arbitration award over a court award. Nevertheless, the enforcement of awards obtained in foreign jurisdictions is not a simple task and local counsel should be used as a resource on this issue.

6. Personal Guaranties and Letters of Credit

It is common for franchisors to require a personal guaranty from the individual owners of a franchisee entity (and sometimes from their spouses) so that the individual owners remain personally liable for the franchisee's obligations under the franchise agreement. While a personal guaranty is generally acceptable in foreign jurisdictions, there are some exceptions franchisors should be aware of, such as in the Canadian province of Alberta. Under Alberta's Guarantees Acknowledgment Act ("GAA"), a personal guaranty does not have effect unless the guarantor appears before a lawyer and both the guarantor and the lawyer acknowledge in a signed certificate (in the required form) that they understand the contents of the guaranty. While Alberta's GAA is definitely not the norm, if a franchisor is concerned about the overall financial viability of the local franchisee, it may be well worth it to have local counsel provide guidance on the enforceability of a personal guaranty in the territory as well as any formalities that must be followed.

In addition, franchisors often find that mature international franchisee conglomerates are unwilling to provide personal guaranties from its owners or even a corporate guaranty. In such instances, franchisors often rely on a letter of credit in lieu of a personal guaranty. It is recommended that the letter of credit be issued from an international financial institution with a presence in the U.S., and a draft of the proposed letter of credit should be reviewed by experienced counsel to confirm that it was issued correctly so that no further action will be required if the franchisor wishes to draw upon it.

7. Religious Concerns

Religious restrictions and traditions around the world can have a significant impact on certain types of franchise systems, as well as contract provisions. Franchisors in the food service, restaurant and hospitality industries should be aware of the various dietary and food preparation restrictions under the Buddhist, Hindu, Islamic and Jewish religions, as well as other faiths. Franchisors must either become familiar with the dietary guidelines in order to make adjustments to required menu and/or ingredient specifications for a particular territory, or allow the franchisee the flexibility to adapt the menu items to accommodate any dietary of food preparation restrictions applicable to its territory. Further, franchisors will likely have to accommodate the religious holidays and observances in certain faiths, such as Sabbath or daily prayer rituals. In addition, in certain Islamic countries, Sharia law, or the religious law and code of Islam, governs the judicial system. The degree to which Sharia law plays a factor can vary - Saudi Arabia has a classical Sharia law system, while other countries, such as the United Arab Emirates, have a mixed legal system of Sharia and secular law. Sharia law prohibits enforcement of certain provisions commonly found in franchise agreements, such as the payment of interest on overdue amounts and noncompetition provisions.

I. EXTRA-TERRITORIAL APPLICATION OF U.S. LAWS

1. US Franchise Laws

In addition to exploring the myriad international laws franchisors should investigate when seeking to expand globally, U.S. franchisors should also reexamine domestic franchise laws and regulations which may apply to their international franchise sales. While at a federal level, the Federal Trade Commission's Franchise Rule, 16 CFR Part 436 (the "FTC Rule") only applies to the offer or sale of a franchise to be located within the U.S., some state franchise registration and disclosure laws may apply to an international franchise transaction. For example, the franchise registration and disclosure laws in New York apply worldwide for franchisors located in New York or that offer or sell franchises in New York. Although franchisors generally are able to obtain an exemption from the application of the New York law, affirmative action must be taken by the franchisor to obtain the exemption.

2. Anti-Corruption Laws

Under the Foreign Corrupt Practices Act ("FCPA"), U.S. companies, their officers and employees, as well as third party representatives or persons acting on their behalf, may not corruptly give or offer to give anything of value to a foreign government official for the purpose of influencing that individual in his official capacity, or causing that official to influence the foreign government in order to obtain or retain business. The law also imposes certain accounting and recordkeeping requirements on "issuers" (corporations that have issued securities registered in the U.S. or that are required to file periodic reports with the Securities and Exchange Commission).

To constitute a violation of the FCPA's antibribery provisions, an offer, promise, or authorization of a payment, or a payment, to a government official must be made "corruptly" – there must be an intent to induce the recipient to misuse his or her official position in order to obtain or retain business. The FCPA also prohibits corrupt payments to foreign officials through third party intermediaries. Companies cannot avoid liability by remaining deliberately ignorant of the actions of third parties that may violate the FCPA.

Franchisors must themselves abide by the FCPA's antibribery provisions, like other covered companies. While there is no specific guidance on franchisor FCPA liability for franchisee actions, in light of the increased enforcement of the FCPA and the nature of the franchise relationship, franchisors could potentially be found liable under the FCPA for actions taken by franchisees, given franchisors' control over franchisees, particularly if there is a failure to exercise due diligence with respect to franchisees.

Although FCPA liability depends on a corrupt intent, a lack of knowledge may not be enough to avoid liability, because the FCPA can be enforced against entities that are "willfully blind" to violations. Franchisors' claims of lack of knowledge (and corresponding lack of intent) arguably could be strengthened by pointing to controls and policies in place set to deter and discover FCPA violations. To minimize potential risk, the following should be considered: an appropriate FCPA compliance program (including compliance manual,

education, and internal enforcement to ensure corporate compliance with FCPA requirements); due diligence of business partners, whether of agents, representatives or franchisees (particularly in jurisdictions where FCPA risks are heightened); inclusion of strong contractual language in franchise and other agreements regarding FCPA prohibitions and obligations; and implementation of an FCPA reporting and monitoring system.

3. Anti-Terrorism Laws

The U.S. Office of Foreign Assets Control ("OFAC") administers and enforces economic sanctions, which are intended to deprive targeted countries, groups and individuals of access to their property in the United States, as well as the benefits of trading with the U.S. and using the U.S. banking system. OFAC administers two types of sanctions: individual and country-specific.

- Individuals. OFAC maintains a list of Specially Designated Nationals ("SDN") with whom U.S. persons are prohibited from doing business. SDNs include terrorists, drug-traffickers, and entities associated with hostile governments. Transactions also are prohibited with SDN-owned or controlled entities, which may not appear on OFAC's list of SDNs. OFAC frequently updates the SDN list.

- Countries. OFAC maintains country-specific sanctions. Sanctions programs vary, but the broadest sanctions prohibit U.S. persons from engaging in nearly all business operations in or involving the sanctioned country. Countries subject to comprehensive sanctions are Iran, Syria, Cuba and Sudan. OFAC also employs country-specific sanctions that prohibit only limited transactions within the country – not all transactions. OFAC's website http://www.treasury.gov/about/organizationalstructure/offices/Pages/Office-of-Foreign-Assets-Control.aspx) includes extensive information about country-specific sanctions, including a list of sanctioned countries and the specific prohibitions against doing business with such countries, which is periodically updated.

In conducting their direct business activities, U.S. franchisors are responsible for complying with the sanctions established by OFAC. In other words, franchisors should not engage in business with persons on the SDN list or in prohibited business with sanctioned jurisdictions. U.S. franchisors face the potential of liability for transactions between a foreign franchisee and a sanctioned entity. OFAC has not issued any guidance on liability in the franchise context, but it is likely that, if the agency found that the franchisor had control over the franchisee, the franchisor would be liable for the franchisee's conduct in violation of OFAC sanctions. Risks are greater to the extent that the franchisee engaged in business with a sanctioned person or entity in furtherance of its franchised operations and/or if the franchisor controlled the actions, policies or personnel decisions of a franchisee. Franchisors could note the elements of the franchise relationship that make the franchisee independent of the franchisor, and further point to their own policies designed to comply with U.S. sanctions. Nonetheless, OFAC

enforcement is aggressive, particularly in the case of dealings with Iran. Because sanctions regulations create a strict liability regime, U.S. companies should consider conducting a risk assessment and establishing appropriate compliance controls. Controls could appear in franchise agreements, screening programs, and processes for making goods, services and software available to franchisees. If franchisors provide any type of financing, guarantee, insurance or management service to a foreign franchisee, enhanced review and controls may be appropriate. Franchisors can consider taking steps to reduce potential liability, including performing due diligence on business partners; demanding compliance from franchisees and other partners; creating a compliance program; and responding promptly to suspicious activity.

4. Anti-Boycott Laws

Antiboycott laws prohibit or penalize U.S. companies for participating in foreign-initiated boycotts and embargoes that the United States has not sanctioned. The main boycott that the laws are designed to counteract is the Arab League boycott of Israel. However, these laws extend beyond the boycott of Israel, and apply to any boycott unapproved by the U.S. government. U.S. companies are subject to two antiboycott laws, the Export Administration Act ("EAA") and the Ribicoff Amendment to the Tax Reform Act ("TRA"). The TRA and the EAA are separate regulatory regimes which vary in their structure, application, penalties and prohibited activities. Generally speaking, the following activities are prohibited: refusals to do business with a boycotted country or with a blacklisted United States person; discriminatory actions on the basis of race, religion, sex, or national origin; furnishing information about race, religion, sex, or national origin; and furnishing information about business relationships with boycotted countries or blacklisted persons.

Boycott requests can assume many forms – some of which may not be obvious. Training of relevant staff therefore is critical to help identify red flags. The EAA and TRA not only restrict compliance with boycott requests, but also require companies to report any request to support an unsanctioned boycott (even if there is no intent to comply with the request). Although countries party to the Arab League (Algeria, Lebanon, Syria, Bahrain, Libya, United Arab Emirates, Iraq, Oman, Yemen, Jordan, Qatar, Kuwait and Saudi Arabia) are the predominant source of boycott requests, other countries have also asked U.S. companies to participate in a boycott (*e.g.,* Bangladesh, Malaysia, Pakistan, Iran, and Nigeria).

Franchisors, like other covered companies, must ensure that their direct actions do not run afoul of the U.S. antiboycott regime. Regarding liability for franchisee behavior, there is no direct statutory or regulatory language or agency guidance that addresses the liability of franchisors for franchisees' violations of antiboycott laws. Franchisors seeking to avoid liability for franchisees' actions would note that a franchise is independently owned and operated, and that franchisors do not exercise requisite control over franchisees' routine business activities – particularly those that may be implicated by boycott laws (*e.g.*, franchisee purchase orders). Being able to document such separation, coupled with a strong compliance program tailored to the franchisor's own activities, would be the best approach for franchisors.

Franchisors may lessen their potential liability by considering an appropriate compliance program designed to uncover any violations of antiboycott laws; educating key employees; and making clear to franchisees, in franchise agreements and otherwise, that the franchisor cannot – and will not – take actions in violation of U.S. antiboycott laws. Franchisors also should consider voluntarily disclosing any known violations.

5. Anti-Money Laundering Laws

Money laundering is the process of disguising proceeds from illegal activities or funding illegal activities by mixing those proceeds with legal funds. In the United States, money laundering is investigated and prosecuted by several agencies, including the Department of Justice, the Internal Revenue Service, the Treasury Department's Financial Crimes Enforcement Network ("FinCEN"), and the Department of Homeland Security. Many of the anti-money laundering ("AML") laws are collectively known as the Bank Secrecy Act ("BSA") and are administered and enforced through regulation by FinCEN. Violations can trigger civil and criminal penalties.

Generally applicable AML laws prohibit laundering money or aiding and abetting money laundering. Money laundering generally requires intent and knowledge of illegal activity, though willful blindness can suffice to show intent. These laws also require reporting certain activities, such as transactions of over $10,000, or bringing the same amount into or out of the United States. Generally applicable AML laws apply to franchisors, like other businesses. For example, a franchisor may not knowingly engage in financial transactions with funds of property acquired through illegal activities, or engage in financial transactions designed to avoid transaction reporting requirements. Franchisors could incur liability if they intentionally launder money, intentionally aid and abet a franchisee's money laundering, or are willfully blind to receipt of illegal proceeds. The more removed franchisors are from the illegal activity, the more attenuated liability is likely to be.

Because financial institutions will scrutinize franchise accounts and transactions for signs of money laundering, franchisors should consider implementing compliance programs to both govern their own business activities in compliance with AML laws and also minimize the risk of franchisee misconduct. Compliance measures to consider include: identifying compliance officials; screening potential business partners; educating key personnel regarding AML laws and compliance requirements; conducting continual risk assessment, and being aware of potential red flags in proposed and existing business relationships; requiring compliance from business partners and franchisees; and conducting internal audits.

J. CONCLUSION

With continued globalization of world economies, proliferation of social media, increased education of consumers, modernization of intellectual property protections, and sanctions relief afforded by the United States and the European Union, establishing or expanding the global footprint of one's franchise presents many exciting opportunities. Global brand recognition brings strategic advantages and positive benefits to franchisors

and their business partners alike who are looking for early entry into new markets, or seeking to enlarge already established territories.

Whether franchising in a developed country or an emerging economy, there are several fundamental issues international franchisors must consider, including the strength of the overall business case for their decision to expand internationally, the qualifications of potential international partners, potential supply chain issues and operational controls, as well the financial incentives and negotiating points involved in such deals. While there are many tools and resources available to assist franchisors in making these decisions -- including on-line forums, trade shows, third party due-diligence companies, and legal counsel -- there is perhaps no better resource than a brand owner's own ability to recognize its strategic strengths, understand its limitations and engage with consumers on a competitive global stage.

Professional Biography for Francesco Turrito

Francesca Turitto is an of counsel to the law firm Roma Legal Partners. She specializes in international franchising and distribution, representing foreign companies wishing to enter the Italian market and Italian companies expanding their network abroad. She also has an extensive experience in corporate and financial transactions, national and international, including mergers and acquisitions, joint ventures, privatizations and private equity deals. Before joining Roma Legal Partners, Francesca was a senior counsel at the Italian office of Allen & Overy for more than ten years. She is a lecturer on international franchising at the Master in business law, jointly offered by the LUISS university in Rome and the Italian association of corporate counsel (AIGI). Francesca is the co-chair of the International Bar Association International Franchising Committee and is regularly called to speak at international events. She has been constantly recognized in the last years by the International Who's Who of Franchise Lawyers as one of the world's leading practitioners in the field of franchising.

Professional Biography for Larry Weinberg

Larry is a partner at the Toronto law firm of Cassels Brock & Blackwell LLP. Since 1989 he has had a practice that specializes in franchise law and providing all necessary legal services to franchisors. He is a member of the International Franchise Association, where he served as a Member of the IFA Board of Directors and as Chair of its Supplier Forum Advisory Board, and the Canadian Franchise Association, where he serves as Chair of the CFA's Legal and Legislative Committee and on the CFA Board of Directors. He is also the Immediate Past Chair of the International Bar Association's International Franchising Committee and is a Past-Chair of the Ontario Bar Association's Franchise Law Section. Larry was the founder of, and to date has organised and chaired four Ontario Bar Association annual franchise law conferences. He is a member of the American Bar Association's Forum on Franchising, and in 2006, he was the first Canadian lawyer to be appointed Director of the ABA Forum's International Division and to a leadership role on its Governing Committee. In 2009 he had the honour of being Co-chair of the ABA's 32nd Annual Forum on Franchising conference. In 2004 he acted as co-editor of the ABA Forum on Franchising's book entitled ***Fundamentals of Franchising-Canada***. In 2017, he again acted as co-editor of the 2nd edition of this publication. As well he was co-editor and co-author of the Canadian Franchise Association's first and still only official book publication entitled, ***How To Franchise Your Business***. He is a co-author of the chapter on Canada for the ABA Forum's book entitled ***International Franchise Sales Laws***. In 2004, 2005, and each year from 2009 to 2019 Larry was named by Franchise Times to their "Legal Eagles" list of the top franchise lawyers in the United States and Canada. He and Cassels Brock are each listed in the *Lexpert*® Canadian legal directory as being among the leaders in Canada in franchise law. In 2014, 2015 and 2016 Larry received Who's Who Legal's one and only worldwide Lawyer of the Year award for Franchise law, and in 2014, the *Lexpert*® Zenith Award. Larry was called to the Bar of the Province of Ontario in 1989.

Professional Biography for Donald P. Wray, Jr.

Donald Wray is Senior Corporate Counsel at Domino's Pizza LLC in Ann Arbor, Michigan. His practice is focused on the company's international legal affairs, particularly with regard to franchise development, franchisee relations and compliance, intellectual property, marketing and advertising, supply chain and vendor agreements. Prior to joining Domino's, he served as Senior Managing Counsel, Global Contracts at Subway Restaurants and also as International Counsel at Little Caesar Enterprises, Inc. Mr. Wray has a B.A. from Vanderbilt University and a J.D. from St. Louis University School of Law.

Professional Biography for Tao Xu

Tao Xu devotes his practice to franchising and distribution matters, especially international franchising, licensing and distribution transactions. Tao counsels a broad range of clients in their international expansions, including master franchising, multi-unit licensing, area development, single-unit licensing and direct investment (both joint venture and wholly owned). Tao is particularly active in food and beverage, hospitality and leisure, and retail industries, having acted for a number of high profile US brands in their international expansion efforts. Tao is deeply involved in franchising activities in China, having both acted for a number of clients in entering the Chinese market and lobbied on behalf of the International Franchise Association in connection with the Chinese government's franchise regulations and their implementation rules.