

Franchising in India

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India presently prohibits foreign direct investment (FDI) in multi-brand retailing and only allows up to 51% FDI in single brand retailing. As a result, franchising has become one of the most popular modes of entry into India used by foreign companies. In fact, the Indian franchise industry is growing roughly at the rate of 40% per year and there are approximately more than 850 franchisors and 60,000 franchisees in sectors ranging from education and retailing to hospitality and healthcare.

Franchise Regulation

There are no franchise-specific laws and no pre-disclosure requirements in India. Instead, franchises are subject to the general principles of contract law, much like other types of businesses. Generally, franchisors and franchisees are permitted to establish the majority of rules governing their relationship through the franchise agreement. The franchise agreement and exhibits can be written in a foreign language. Royalties and other payments to be made to a foreign franchisor pursuant to a franchise agreement may be made in a foreign currency. Under Indian law, a franchisor may restrict the franchisee's ability to transfer or assign its rights under the franchise agreement.

India does not recognize judgments rendered by U.S. courts, thus it is generally most beneficial for U.S. franchisors to include a mandatory arbitration clause in their franchise agreement. While India recognizes U.S. arbitral awards, the Indian Arbitration and Conciliation Act, 1996 (Arbitration Act) allows Indian courts to use discretion on whether to enforce the arbitral awards or use them only as evidentiary support. Therefore, in order to ensure that the arbitral awards are recognized in India, the U.S. franchisors should make sure that the franchise agreement expressly excludes the application of Part 1 of the Arbitration Act.

Franchise Fees and Royalties

The Indian government recently issued a press note allowing foreign franchisors to charge a lump-sum fee and royalty without any maximum limit for transfer of technology and royalty for use of trademark/brand name on the automatic route without requiring any prior approval from the Indian government. Prior to this press note, foreign franchisors could only charge royalties from the Indian franchisees up to 1% for domestic sales and 2% on exports for use of the foreign franchisor's brand name or trademark without transfer of technology and royalties up to 5% of domestic sales and 8% of exports and a payment of a lump-sum fee of up to U.S. \$2 million when the arrangement involved a transfer of technology. Arrangements involving payments above these limits had required prior permission of the Indian Government of India. While the Indian government has now fully liberalized royalty and lump-sum fees without any ceiling for the automatic route, all royalty and lump-sum payments remain subject to the Foreign Exchange Management Rules, 2000 as the rules may be amended.

IP Protection

India is committed to protecting trademarks and brand names as well as the copyright and designs of the foreign franchisor. India is a signatory to the international conventions on intellectual property rights. To ensure protection, trademarks shall be registered. Once registered a trademark is valid for ten years, unless renewed and maintained before expiration. India also recognizes and protects service marks. As such, foreign franchisors can license their service marks to franchisees in India and to enable the franchisee to render the franchisor's services in India.

Continued

Contact us if you'd like assistance with your international franchising initiatives. We can discuss the challenges, identify the obstacles, and lead you to solutions for expanding your franchise internationally.

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