Legal 500
Country Comparative Guides 2025

India
Franchise & Licensing

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This country-specific Q&A provides an overview of franchise & licensing laws and regulations applicable in India.

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India: Franchise & Licensing

1. Is there a legal definition of a franchise and, if so, what is it?

There is no legal definition of a franchise under Indian law.

2. Are there any requirements that must be met prior to the offer and/or sale of a franchise? If so, please describe and include any potential consequences for failing to comply.

Indian law does not prescribe any requirements that must be met before offering or selling a franchise in the country.

3. Are there any registration requirements for franchisors and/or franchisees? If so, please describe them and include any potential consequences for failing to comply. Is there an obligation to update existing registrations? If so, please describe.

There are no specific registration requirements that franchisors or franchisees must meet in India. Foreign franchisors are not required to form an Indian entity to grant franchise rights to Indian franchisees.

4. Are there any disclosure requirements (franchise specific or in general)? If so, please describe them (i.e. when and how must disclosure be made, is there a prescribed format, must it be in the local language, do they apply to sales to sub-franchisees) and include any potential consequences for failing to comply. Is there an obligation to update and/or repeat disclosure (for example in the event that the parties enter into an amendment to the franchise agreement or on renewal)?

Franchisors are not required to make any pre-contractual disclosures to franchisees or government agencies prior to the sale of a franchise in India. However, franchisors must not make false representations regarding the franchised business to prospective franchisees.

5. If the franchisee intends to use a special purpose vehicle (SPV) to operate each franchised outlet, is it sufficient to make disclosure to the SPVs' parent company or must disclosure be made to each individual SPV franchisee?

Franchisors are not required to make any pre-contractual disclosures to prospective franchisees prior to the sale of a franchise in India.

6. What actions can a franchisee take in the event of mis-selling by the franchisor? Would these still be available if there was a disclaimer in the franchise agreement, disclosure document or sales material?

If a franchisor induces a franchisee to enter into a contract through misrepresentation, the franchisee may have the right to declare the contract void and seek damages for any losses suffered.

7. Would it be legal to issue a franchise agreement on a non-negotiable, "take it or leave it", basis?

While "take it or leave it" contracts are allowed, such contracts must not be based on misrepresentation, fraud, or undue influence.

8. How are trademarks, know-how, trade secrets and copyright protected in your country?

There are various ways in which intellectual property (IP) can be safeguarded in India, with both common law and domestic legislation covering the protection and enforcement of IP rights. For instance, trademarks are protected under the Trade Marks Act, 1999 (TM Act), and copyrights, patents and industrial designs also have their own dedicated statutes.

The TM Act lays out actions for the infringement of registered trademarks and for the passing-off of unregistered marks under common law. Remedies for infringement and passing off typically include injunctions, damages, account-of-profits and search-and-seizure in anti-counterfeiting cases. Interestingly, in India, trademark infringement can be subject to both civil and criminal action.

There is currently no dedicated legislation for the protection of know-how. Instead, know-how and trade secrets are generally protected and enforced through contractual arrangements. A typical franchise agreement with an Indian franchisee should contain robust confidentiality obligations, as well as provisions setting out what constitutes the franchisor's trade secrets and the consequences of their misuse. Separate non-disclosure agreements can also be considered during the process of vetting and negotiating with potential franchisees.

9. Are there any franchise specific laws governing the ongoing relationship between franchisor and franchisee? If so, please describe them, including any terms that are required to be included within the franchise agreement.

There are no such franchise-specific laws, and the franchisor-franchisee relationship is primarily governed through the contractual arrangement between the parties. However, in addition to the franchise agreement, the parties are subject to a number of other laws, such as foreign exchange control regulations, antitrust laws, intellectual property laws, tax regulations, data privacy laws, and anti-corruption legislation.

10. Are there any aspects of competition law that apply to the franchise transaction (i.e. is it permissible to prohibit online sales, insist on exclusive supply or fix retail prices)? If applicable, provide an overview of the relevant competition laws.

The Competition Act, 2002 is the primary antitrust legislation in India. Although it does not have any express provisions in the context of franchisor-franchise relationships, it prohibits enterprises or persons at different stages of the production chain from entering into an arrangement for the production, supply, distribution, acquisition or control of goods, or provision of services that will cause an appreciable adverse effect on competition.

Exclusive supply and distribution agreements, agreements for refusal to deal, or resale price maintenance between enterprises at different stages or levels of the production chain can be declared void when such agreements cause an appreciable adverse effect on competition in India.

The restrictions commonly imposed under a franchise agreement are not deemed anticompetitive per se if they are reasonable and aim to enhance the standard, efficiency and uniformity of a franchise system. However, the Competition Commission of India, on receipt of complaints, may examine the reasonableness of the restrictions contained in a franchise agreement on a case-by-case basis.

11. Are in-term and post-term non-compete and non-solicitation clauses enforceable and are there any limitations on the franchisor's ability to impose and enforce them?

In-term non-compete and non-solicitation clauses are valid under Indian law.

Generally, under Indian law, agreements in restraint of trade are void. The enforceability of post-term non-compete provisions is determined on a case-by-case basis, depending on the reasonability of the restrictions. However, such provisions may be challenged by Indian franchisees, and enforcement of such provisions by foreign franchisors may be challenging.

Post-term non-solicitation clauses in commercial agreements have generally been held as valid under Indian law.

12. Is there an obligation (express or implied) to deal in good faith in franchise relationships? If so, what practical effects does this have on the relationship between franchisor and franchisee?

The Indian Contract Act 1972 does not expressly incorporate the doctrine of good faith. However, some courts have opined that every contract inherently includes the principle of good faith. Therefore, franchisors and franchisees should generally deal in good faith to avoid potential enforcement challenges. Additionally, Indian law expressly states that contracts based on misrepresentation or fraud are void contracts.

13. Are there any employment or labour law considerations that are relevant to the franchise relationship? Is there a risk that the staff of the franchisee could be deemed to be the employees

of the franchisor? What steps can be taken to mitigate this risk?

No, unless the franchisor establishes an entity in India and employs people directly. Typically, employment and labour laws do not apply in a franchisor-franchisee relationship. It is unlikely that a franchisee would be deemed an employee of its franchisor.

14. Is there a risk that a franchisee could be deemed to be the commercial agent of the franchisor? What steps can be taken to mitigate this risk?

Generally, no such risk exists under Indian law. Franchise agreements should however contain express provisions stating that there is no relationship of agency between the parties. Furthermore, the franchisee must refrain from engaging in any conduct that may imply an agency relationship with the franchisor. Such activities may include, for example, entering into contracts on behalf of the franchisor, or representing the franchisor in negotiations with third parties,

15. Are there any laws and regulations that affect the nature and payment of royalties to a foreign franchisor and/or how much interest can be charged? Are there any requirements for payments in connection with the franchise agreement to be made in the local currency?

There is no restriction on the amount of royalty or interest that can be charged on overdue royalties. However, the Reserve Bank of India (RBI) prescribes the maximum amount of interest that can be charged by a foreign party in respect of overdue service fees. The maximum interest rate that can be charged on overdue payments for services is the benchmark rate plus 300 basis points spread. The benchmark rate is widely accepted interbank rates applicable to the currency of the transaction. The maximum permissible rate of interest is occasionally adjusted by the RBI and is therefore subject to change.

Indian law does not restrict a franchisee from making payments to its foreign franchisor in the franchisor's domestic currency.

16. Is it possible to impose contractual penalties on franchisees for breaches of restrictive covenants etc.? If so, what requirements must be met in order for such penalties to be enforceable?

Penalties for breach of contract are not enforceable under Indian law. Only reasonable compensation for the loss or damage arising from the breach may be awarded. Parties are, however, free to specify liquidated damages in the contract, provided such amounts represent a genuine pre-estimate of the likely loss. If the actual loss suffered is less than the specified liquidated damages, only the actual loss may be awarded by the court.

17. What tax considerations are relevant to franchisors and franchisees? Are franchise royalties subject to withholding tax?

The Income-Tax Act, 1961 (the IT Act) is the primary legislation on income taxes. The IT Act requires Indian franchisees to deduct the prescribed withholding tax on royalties, service fees and other payments made to franchisors, and Act prescribes different withholding tax rates for different categories of services and these rates change from year to year.

India has signed double taxation avoidance agreements (DTAA) with various countries. The IT Act provides that withholding tax should be deducted at the rate prescribed in the IT Act or the relevant DTAA of the home country of the foreign resident, whichever is more beneficial to the foreign resident.

Goods and Services Tax (GST), which is the primary form of indirect taxation in India, applies uniformly across the country. GST is levied on royalties and service fees as well. In a domestic franchise arrangement—where both the franchisor and the franchisee are based in India—the franchisor is required to charge GST on royalties and service fees and remit the collected GST to the tax authorities.

However, in a cross-border franchise arrangement involving a foreign franchisor and an Indian franchisee, the foreign franchisor is not obligated to charge or collect GST. Instead, the Indian franchisee is required to discharge the GST liability under the reverse charge mechanism by directly paying the applicable tax to the Indian tax department.

18. How is e-commerce regulated and does this have any specific implications on the relationship between franchisor and franchisee? For example, can franchisees be prohibited or restricted in any

way from using e-commerce in their franchise businesses?

While India has specific laws and regulations governing e-commerce entities, these are primarily focused on consumer protection, regulation of data and information transmitted through online platforms, and monitoring of foreign investment in Indian entities. These regulations do not, per se, impact the franchise-franchisee relationship and do not prohibit a franchisee from engaging in e-commerce activities. However, any franchisee undertaking e-commerce activities must ensure compliance with all applicable e-commerce regulations.

19. What are the applicable data protection laws and do they have any specific implications for the franchisor/franchisee relationship?

Currently, data protection in India is governed by the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information Rules), 2011 (SPDI Rules). These are set to be replaced by the more-comprehensive Digital Personal Data Protection Act, 2023 (DPDP Act), in the near future (which has been discussed later).

There are certain requirements under the SPDI Rules that must be met by the franchisee if a franchisor wishes to gain access to the 'sensitive personal information' of customers in India. The franchisee is also required to comply with all requirements under the SPDI Rules (such as having a privacy policy in place, seeking consent for the processing of sensitive personal information, and appointing a grievance officer to address data subject grievances).

20. Is the franchisor permitted to restrict the transfer of (a) the franchisee's rights and obligations under the franchise agreement or (b) the ownership interests in the franchisee?

Such restrictions are permissible and may be imposed through the franchise agreement.

21. Does a franchisee have a right to request a renewal on expiration of the initial term? In what circumstances can a franchisor refuse to renew a franchise agreement? If the franchise agreement is not renewed or it if it terminates or expires, is the franchisee entitled to compensation? If so, under what circumstances and how is the compensation payment calculated?

Issues such as renewal and termination are purely contractual and are governed by the terms and conditions set out in the agreement. If the agreement provides for renewal as a matter of right, the franchisor's refusal to renew without valid reasons may constitute a breach of contract, entitling the franchisee to claim damages. No termination payment will be applicable unless expressly provided for in the agreement.

22. Are there any mandatory termination rights which may override any contractual termination rights? Is there a minimum notice period that the parties must adhere to?

The applicable law does not provide for any mandatory termination rights; issues relating to the termination of a contract are purely contractual and are governed by the terms of the agreement.

23. Are there any intangible assets in the franchisee's business which the franchisee can claim ownership of on expiry or termination, e.g. customer data, local goodwill, etc.

Issues relating to the franchisor's claim over the franchisee's intangible assets will be determined based on the terms of the contract.

24. Is there a national franchising association? Is membership required? If not, is membership commercially advisable? What are the additional obligations of the national franchising association?

There is no national franchising association in India with mandatory membership requirements. However, there are several privately run franchising associations in India, membership of which is voluntary. The Indian Franchise Association and the Franchising Association of India are two such associations. These associations primarily provide a platform for stakeholders to network and discuss issues facing the industry. Certain associations also assist stakeholders with finance-raising, market insights, and business solutions. Generally, each association has its own code of conduct or by-laws for its members.

25. Are foreign franchisors treated differently to domestic franchisors? Does national law/regulation impose any debt/equity restrictions? Are there any restrictions on the capital structure of a company incorporated in your country with a foreign parent (thin capitalisation rules)?

Indian law does not treat foreign franchisors any differently from domestic franchisors. However, in cross-border franchise agreements, foreign exchange laws may impose certain additional conditions and restrictions, such as those relating to remittances of payments, acquisition of assets by the franchisors in India, and establishment of an entity in India by foreign franchisors.

26. Must the franchise agreement be governed by local law?

Although Indian law does not expressly prohibit foreign franchisors from agreeing to a foreign governing law in contracts with Indian parties, Indian courts are not comfortable adjudicating disputes under such contracts due to their lack of familiarity with foreign law.

Therefore, a foreign franchisor may opt for a foreign governing law should it decide to resolve disputes through arbitration seated in India or in a foreign country.

27. What dispute resolution procedures are available to franchisors and franchisees? Are there any advantages to out of court procedures such as arbitration, in particular if the franchise agreement is subject to a foreign governing law?

India has a unified judicial system, with the Supreme Court at the top of the hierarchy followed by the high courts of each state. The district court is positioned below the state's high court and is followed by various subordinate courts. In addition to the regular civil courts, various tribunals (including appellate tribunals) have been set up for specialised matters, such as income taxes, debt recovery, intellectual property and company law. Appeals from the orders of these tribunals lie with either the designated appellate tribunals, the state's high court or the Supreme Court, as the case may be.

Indian law does not prescribe a separate set of procedures for the resolution of franchise-specific disputes. If parties to a franchise agreement decide to resolve their dispute in Indian courts, then all such disputes will be resolved according to the Code of Civil Procedure, 1909, which applies to all contractual and other civil cases.

There is a huge pendency of cases in India. On average, it takes approximately five to seven years for the disposal of a suit by the original court and approximately three years in appeal cases. As such, arbitration of disputes, as opposed to litigation in courts, is preferred. The Arbitration and Conciliation Act, 1996 (the Arbitration Act) governs domestic arbitration, international commercial arbitration and the enforcement of foreign arbitral awards. The Arbitration Act defines an international commercial arbitration as an arbitration involving commercial disputes arising from a legal or contractual relationship between two or more parties, wherein one of the parties is a foreigner.

The parties to an international franchise agreement may opt to arbitrate either in India or in any other country that is

a. a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the Geneva Convention on the Execution of Foreign Arbitral Awards; and
b. notified as such by the Indian government.

Other than arbitration, there are no effective or binding alternative dispute resolution mechanisms in India.

28. Must the franchise agreement and disclosure documents be in the local language?

There is no requirement for the agreement to be in a local language. English is commonly used and is the language of the courts in India.

29. Is it possible to sign the franchise agreement using an electronic signature (rather than a wet ink signature)?

While use of electronic signatures is not prohibited, Indian law prescribes certain specific modes for signing documents electronically, such using a 'Digital Signature Certificate' issued by the competent authority in India. Should a party dispute execution of a franchise agreement which has been executed using an electronic signature not specifically provided for under Indian law, the non-disputing party will have to prove that the agreement was in fact signed by the disputing party.

30. Do you foresee any significant commercial or legal developments that might impact on franchise relationships over the next year or so?

The DPDP Act, while passed into law by the Indian Parliament in 2023, has not yet been put into force. It is expected that it will be implemented in the next year or two (upon the issue of a notification to this effect by the government).

The DPDP Act puts into place specific obligations on data controllers (referred to in the law as data fiduciaries) regarding obtaining consent of data subjects (referred to in the law as data principals) for processing their personal data, ensuring data minimisation and purpose limitation, data breach notification requirements, and instituting grievance redressal mechanisms for data subjects.

The law also provides data subjects with various rights (such as right to access, correction and erasure of personal data, and the right to withdraw consent) and makes data controllers squarely responsible for ensuring that these rights are provided to data subjects.

Penalties under the DPDP Act have also been significantly enhanced from the current regime, with contraventions of the DPDP Act punishable with penalties of up to INR 2.5 billion (approximately USD 30 million). Indian franchisees who act as data controllers under the DPDP Act, as well as foreign franchisors who may fall under this classification, would be liable for compliance with the DPDP Act once it is put in force.

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