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Franchise Alert

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Conducting an audit of international franchise operations

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Conducting an audit of international franchise operations and understanding key filing requirements can help global franchisors avoid penalties in top international franchise markets.

What's the impact?

- A thorough review of a global franchisor's international operations must include a country-by-country audit of filing requirements.
- In many countries, local government filings are mandatory, and penalties for non-compliance can include fines, public disclosure, and loss of the ability to offer or sell franchises.

The international expansion of franchise systems brings with it a complex web of regulatory obligations, particularly regarding filing requirements with local governmental authorities. For global franchisors, a comprehensive audit or review of international operations must include a detailed assessment of these obligations to ensure compliance, mitigate legal risk, or maintain

[1] Portions of this article were based on information discussed in the book – *ABA International Franchise Sales Laws* (Kendal H. Tyre Jr. & Michael R. Laidhold eds., 3d ed. 2023).

the ability to offer and sell franchises in certain jurisdictions. This article summarizes the governmental filing requirements in key jurisdictions, the timing and content of such filings, and the consequences of non-compliance, focusing on those countries where such requirements are explicit and significant.

Franchise filing requirements across the globe

AUSTRALIA

The Australian Competition and Consumer (Industry Codes – Franchising) Regulation 2014 (Cth) (Franchising Code) includes provisions for a Franchise Disclosure Register (Register). The Register was introduced to enable prospective franchisees to assess potential franchise opportunities because certain information is now publicly searchable on the Register.

The Register requires franchisors to disclose information about the franchise and their franchise agreements publicly. Franchisors (other than franchisors who will have a single master franchisee and no other franchisees) must register on the franchise disclosure register at least 14 days prior to entering into a franchise agreement. The information required in the register is relatively brief and reflects certain content from the disclosure document. The most commercially sensitive information needed is information regarding the costs of establishing and operating the franchise. The register is publicly accessible online.

Template franchise documents (i.e., disclosure documents, franchise agreements, and key facts sheets) may be uploaded, but the uploading is not required, and most franchisors do not do it.

Registrations must be updated annually on or before the fourteenth day of the fifth month following the end of the financial year. Franchisors in Australia who fail to update the Franchise Disclosure Register by this date or who do not annually maintain updates may face a penalty.

CHINA

In China, franchisors are subject to specific annual filing requirements with local governmental authorities. The Measures for the Administration of Commercial Franchise require all franchisors operating in China to file a record of their franchise activities with the Ministry of Commerce or its local counterparts. This filing must be completed within 15 days after the execution of the first franchise agreement in China. Thereafter, franchisors are required to update their filings annually, with the annual update due by March 31 of each year. The annual filing must include updated information on the franchisor, its franchise network, and any changes to the franchise agreements or disclosure documents.

Failure to comply with these filing obligations can result in administrative penalties, including fines and public announcements of non-compliance. In serious cases, authorities may order the cessation of franchise activities in China. Accordingly, it is critical for global franchisors to ensure timely and accurate annual filings to maintain compliance and avoid regulatory sanctions.

INDONESIA

Franchisors operating in Indonesia are subject to specific annual filing requirements under the country's franchise regulations, notably Government Regulation No. 42 of 2007 and Ministry of Trade Regulation No. 71 of 2019. Both foreign and domestic franchisors, as well as master franchisees and franchisees of foreign franchises, must submit an annual report on their franchise activities to the Ministry of Trade. This report must include details such as the number of franchisees, outlets, and information on the use of local products and suppliers, reflecting compliance with local content obligations.

The annual report is due by June 30 of the following year. Failure to comply with these annual reporting obligations can result in administrative sanctions, including written warnings, suspension, or revocation of the Franchise Registration Certificate, which would prevent the franchisor from legally offering or operating franchises in Indonesia.

KOREA

In South Korea, the Act on Fairness in Franchise Transactions requires franchisors to register their disclosure documents with the Korea Fair Trade Commission (KFTC) before offering franchises. The registration must be renewed annually, with the updated disclosure document and supporting materials submitted to KFTC. The annual renewal must be completed before the expiration of the previous registration, and the KFTC may review and request amendments to the disclosure document.

Failure to renew the registration or to provide accurate and complete information can result in administrative fines, orders to cease franchise sales, and, in some cases, criminal liability for willful violations. The KFTC also publishes a list of non-compliant franchisors, which can have significant reputational consequences.

MALAYSIA

Malaysia's Franchise Act 1998 (as amended) requires all franchisors, including foreign franchisors, to register their franchise with the Registrar of Franchises before offering or selling franchises in Malaysia. The registration must be renewed annually by submitting an updated disclosure document, a sample franchise agreement, the latest financial statements, and other prescribed information.

The annual renewal must be filed within 30 days of the anniversary of the initial registration. Failure to comply with the annual filing requirement can result in administrative penalties, including fines and the suspension or cancellation of the franchise registration, effectively barring the franchisor from operating in Malaysia.

MEXICO

Mexican law requires franchisors to provide a disclosure document to prospective franchisees at least 30 business days before the execution of a franchise agreement. While there is no explicit requirement for an annual filing of the disclosure document with a governmental authority, franchise agreements that include trademark licenses must be registered with the Mexican Institute of Industrial Property (IMPI) to be enforceable against third parties and to facilitate the remittance of royalties abroad.

There is no annual renewal requirement for the registration itself, but any amendments to the franchise agreement or changes in the parties must be registered promptly with the IMPI. Failure to register the agreement can result in the inability to enforce intellectual property rights.

SAUDI ARABIA

Saudi Arabia's Franchise Law, effective April 2020, requires franchisors to register both the franchise agreement and the disclosure document with the Ministry of Commerce within 90 days of signing. While there is no explicit requirement for annual renewal of the registration, franchisors must register any amendments to the franchise agreement—including changes in parties, terms, renewals, or extensions—within 90 days of such changes.

Failure to comply with filing obligations can result in administrative penalties, including fines, public disclosure of the violation, and civil liability for damages. The Ministry of Commerce is empowered to enforce these requirements, and non-compliance can also prejudice the franchisor's ability to enforce franchise rights in Saudi Arabia.

UNITED STATES

In the United States, franchise regulation is characterized by a dual system of federal and state oversight. At the federal level, the Federal Trade Commission (FTC) requires franchisors to prepare and provide a Franchise Disclosure Document (FDD) to prospective franchisees but does not mandate annual filings with the FTC itself. However, several states—commonly referred to as "franchise registration states"—impose their own annual filing and renewal requirements.

These states include California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin. In these jurisdictions, most franchisors must renew their registration annually, typically accompanied by an updated FDD and audited financial statements. The timing of these filings varies: in some states, the renewal is effective upon filing, while in others, the renewal is not effective until the state issues an order of effectiveness.

The content of the annual filing generally includes the updated FDD, audited financial statements (current within 90 or 120 days of filing), and an auditor's consent form. Renewal filing fees range from $100 to $450 per state. Failure to comply with these annual filing requirements can result in the inability to lawfully offer or sell franchises in the state, administrative penalties, and, in some cases, civil liability to franchisees for rescission or damages.

VIETNAM

Vietnam's franchise regulations require franchisors to register their franchise activities with the Ministry of Industry and Trade before commencing operations. The registration must be updated annually, with the submission of financial statements, information regarding the franchisor's background, and information on the franchise network in compliance with local regulations.

The annual update is typically due before January 15. Non-compliance can result in administrative penalties, including fines and suspension of the right to offer franchises in Vietnam.

Comprehensive compliance and jurisdictional filing reviews

A thorough audit of a global franchisor's international operations must include a jurisdiction-by-jurisdiction review of filing requirements. The consequences of non-compliance are significant and may include administrative penalties, loss of the right to offer or sell franchises, and civil or criminal liability. Franchisors should implement robust compliance systems to track filing deadlines, ensure the accuracy and completeness of required submissions, and respond promptly to regulatory inquiries. Regular legal review and coordination with local counsel are essential to maintaining compliance and supporting the continued growth of a franchise system worldwide.

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