

Franchise disclosure items in Europe

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There are six (6) European countries that have enacted a franchise disclosure law. These countries are Belgium, France, Italy, Romania, Spain and Sweden.

In addition there are a number of countries that have general "good faith" type laws that can give rise to franchise disclosure obligations ("Good Faith Laws"). These countries are Germany, Austria, Portugal and Lithuania. The focus of this essay will be on countries with specific franchise disclosure laws. Whilst countries with "Good Faith Laws" rely on the general principle that parties owe to each other a duty of good faith and fair dealing during pre-contractual negotiations and do not list the items to be disclosed, countries with franchise disclosure laws provide a specific list of disclosure items. In all disclosure law countries except Italy the franchisor is required to make two distinctly different types of disclosure. Firstly, the franchisor is expected to summarise certain important contractual provisions ("Contract summaries"). Secondly, the franchisor is required to make certain commercial disclosures ("Commercial Disclosures").

Contract Summaries

With "Contract Summaries" the intention appears to be that the franchisor should draw attention to particular clauses contained in the franchise agreement. As franchise agreements can be sizeable documents that a non-lawyer may find difficult to follow it appears sensible to require the franchisor to highlight key rights and obligations. The corresponding disclosure can be described as a "Contract Summary". The main difficulty that arises with Contract Summaries in franchise disclosure documents is the level of detail that should be given. Based on the US experience, where franchisors have repeatedly been penalised for inaccurate summaries, the safest course of action for franchisors would appear to be a repetition in full of the relevant extracts from the agreement. For example, if a disclosure of renewal conditions must be given the US approach would be to repeat in full the text of the renewal clause rather than summarise it. The disclosure document sets out in full the text already contained in the franchise agreement. Obviously, this can be unhelpful for the franchisee, as it may struggle to follow the technical legal language. On the other hand, the franchisor will not want to take the risk of abbreviating or simplifying legal matters for fear of being accused of providing an inaccurate summary.

Commercial Disclosure Items

The second element of European franchise disclosure laws is concerned with certain commercial aspects of the franchise. Here a range of financial and general commercial data must be made available to the franchisee to enable it to evaluate the financial and commercial risks it is taking. Very broadly speaking the disclosure items that fall into this category look at the following aspects:

- The franchisor and its people
- the franchise system
- the existing franchise network
- certain financial aspects such as the investment required and the fees payable to the franchisor
- in some countries a market analysis must also be provided

Whilst a summary of the franchise system and an overview of its existing distribution is easily given, the financial items and market studies can cause considerable difficulty, particularly to foreign franchisors that are not familiar with local market conditions and local prices.

In this article an overview of how different disclosure countries approach these issues will be given.

France

The Loi Doubin of 31st December 1989 was the first European Franchise Disclosure law. It applies before the parties enter into an agreement that involves the exclusive or "semi-exclusive" right to use a trade name, trade mark or sign. The Loi Doubin applies to franchise agreements as the Franchisor usually grants to the franchisee the right to use a trade mark and certain proprietary signage. Additionally, there is semi exclusivity as most franchisors will impose a non competition obligation on the franchisee and grant to the franchisee an exclusive territory.

Under article 1 of the Loi Doubin a disclosure document containing specified information must be given to the franchisee 20 days before signature of the contract. No deposit can be taken from the franchisee before the expiry of the 20 day period¹.

¹ Article 1 of the Law of 31 December 1989; Also if money is demanded prior to execution of the Agreement, especially to grant rights of exclusivity of a Territory, the undertakings made in consideration of such payment have to be described in writing along with the reciprocal obligations of the parties in case of forfeiture.

Contract Summary

In France the Contract Summary must contain an overview of a number of important contractual provisions. This draws key clauses in the franchise agreement to the attention of the franchisee. The mandatory provisions required to be disclosed under the Law of 31 December 1989 are the term and the renewal conditions, the termination provisions, the transfer clause and the scope of exclusivity granted².

Commercial Disclosure

The Commercial Disclosure which must be made in France is as follows. The franchisor must provide details regarding the company that grants the franchise and its directors as well as banking references and a summary of the professional experience of the managers³. The Franchisor must also provide copies of its accounts for the last two (2) years.

Further, the Franchisor has to disclose "Details of investments and expenses to be borne by the Franchisee". This can be a difficult disclosure for international franchisors. Whilst it is easy for Franchisors to summarise the fees payable to them, they often find it difficult to accurately describe the likely costs of other investments such as fit out costs for franchised stores, rent and staff wages. Foreign franchisors are at a particular disadvantage as the law forces them to make statements about important financial aspects of the franchise that they are ill-qualified to provide. Furthermore the franchisor is required to provide a market study. The information about the market which must be disclosed is the state of the general and local market and the potential for the market's development. Most foreign franchisors struggle with the requirement to present information on the local domestic market in France as they do not have the necessary knowledge of the French market. Generally, foreign franchisors therefore need to commission a market study from a third party to comply with their disclosure obligations.

Consequences of Non-Disclosure

Initially there was some uncertainty whether any breach of the provisions of the Doubin law would enable the Franchisee to walk away from the contract. However, the Supreme Court (Cour de cassation) eventually ruled that agreements should only be annulled where the missing or incorrect information affected the decision of the franchisee to enter into the Agreement⁴.

This would not be the case where, for example, the franchisee already knows the relevant market and does not depend on the franchisor market study or other disclosure when making its decision to join the System. The burden of proof is with the franchisee⁵.

There have however been cases where the franchise agreement was annulled⁶. Examples include cases where there were financial difficulties in the network which were not disclosed⁷ and a case where the business projections were unrealistic⁸.

Belgium

Belgium has a history of giving the "weaker" party in third party relationships, such as exclusive distribution networks⁹, a high level of protection¹⁰. However, until February 2006 there was no legislation in Belgium specifically dealing with franchise disclosure.

Even before the new franchise law was adopted there was a body of case law which established a basic duty of disclosure similar to culpa in contrahendo in German law¹¹. This provided that the parties had to disclose to each other all material facts. For franchise agreements this was applied by the courts to mean that the franchisor would normally be expected to disclose information about the franchise system and the expected profitability of franchised outlets.

The new Belgian franchise law came into effect on 1 February 2006¹². It applies to what is called "commercial partnerships". A commercial partnership is defined as an "agreement made between two persons where one person grants to the other the use of a commercial formula, a common sign, the transfer of know-how and commercial or technical assistance"¹³. A franchise typically involves the use of certain confidential know-how in connection with the sale of goods or the provision of services under a common trade mark. It follows that most franchise systems can be classified as "commercial partnerships".

The law gives rise to a duty of pre-contractual disclosure. A disclosure document must be handed to the franchisee by the franchisor one month before the parties enter into a binding agreement. No payment may be taken from the franchisee before proper disclosure has been made. The consequences of non-disclosure are severe. Pursuant to Article 5 of the law a franchisee may rescind the agreement within two years following the conclusion of the franchise agreement where no disclosure has been made. If any of the items to be contained in the "Contract Summary" are not disclosed, the relevant clauses in the franchise agreement are unenforceable.

² Commercial Court of Creteil, 9 May 2000, L'Off. De la fr. No 30, pg 94

³ This is similar to disclosure under Item 2 prescribed for a US UFOC where details of persons with 'management responsibility' must be disclosed

⁴ Cass. Corn., 10 February 1998, Bull. Civ. IV n°71 recently confirmed by Cass. Corn., 7 July 2004, n° 02-15950.

⁵ Cass. Corn., 7 July 2004, n° 02-15950.

⁶ Cass. Corn., 16 May 2000, LPA n°48, 8 March 2001 and Cass. Corn., 6 May 2003, FFF Toute la franchise 2004, p.25.

⁷ Commercial Court of Creteil, 9 May 2000, L'Off. de la fr. N°30, p. 94.

⁸ Paris Court of appeal, 16 January 1998, Fr. Mag., April-May 1998, n° 145, p. 19.

⁹ Act of 27 July 1961 (as amended 13 April 1971) Concerning the Unilateral Termination of Exclusive Distributorship Agreements.

¹⁰ 10 DOC 51 1687/007 (legislative procedure).

¹¹ Cass. 4th April, 1941, Pas 1941, I, 121; Van Crombrughe- Chaper on Belgium, Franchising in European Franchising-Law and Practice in the European Community, Mark Abell (Waterlow) 1991

¹² www.eff-franchise.com (unofficial translation of disclosure law). Law adopted on December 19, 2005 which came into force 1 February 2006.

¹³ Article 2 DOC 51 1687/007 Chamber of Representatives of Belgium 7 July 2005 Draft Bill of Law governing pre-contractual information within the framework of commercial partnership agreements.

The Contract Summary

In Belgium the franchisor must summarise the obligations of the parties and state the consequences of not meeting these obligations. It must also provide a description of the non-compete clauses and all exclusive rights granted. Clearly these disclosure items are directed towards the provision of a "Contract Summary". The Franchisor must also highlight the grounds available to it for early termination of the franchise. This is likely to be of great practical significance as most franchise agreements contain numerous termination provisions giving the franchisor the right to terminate the franchise early. If those termination clauses are not summarised accurately in the disclosure document, it is to be expected that they will not be enforceable. Any rights of first refusal or a purchase option(s) in favour of the franchisor and the rules as to the value assessment of the business when these rights are invoked must also be given in the Contract Summary. Finally, it must summarise the conditions which apply to a renewal of the franchise.

The Commercial Disclosures

In the second part of the disclosure document the franchisor must disclose certain commercial information important for the evaluation of the franchise.

The Commercial Disclosure must cover the name and address of the franchisor. If the franchisor is a legal entity, the identity and capacity of the persons representing the franchisor has to be given. The franchisor must also summarise the nature of the activities of the franchisor and the IP rights, that can be used by the franchisee. The franchisor's annual accounts for the last three years must also be provided. A summary of the historic development of the franchised network and the number of franchisees has to be given. This includes statistics on joiners and leavers.

Unusually, the law forces the franchisor to make statements not only about the investment required to be made by the franchisee but also about the likely period of amortisation. This disclosure requirement can cause some difficulty as it can be interpreted to suggest that the franchisor must disclose not only the fees payable to the franchisor but also other costs of investment to be incurred by the franchisee such as rent, purchase of equipment, staffing etc and provide guidance on the likely time it will take the franchisee to break even. Until there is case law available on this issue franchisors will have considerable difficulty with this disclosure.

Finally the franchisor must provide a market study to the franchisee. This requirement follows the French Loi Doubin which also requires the Franchisor to provide a market study to the Franchisee. Whilst this requirement appears appropriate in domestic franchising it has been the cause of some difficulty for international franchisors. Typically international franchisors will not have any knowledge of the Belgian market. The disclosure law forces them to commission

market studies from external consultants at great expense and at the risk of getting it wrong. Often the franchisee will know more about the local market than a foreign franchisor. An exception for international franchising and large sophisticated franchisees (such as the high net worth exception in the USA) would certainly have been appropriate. It can only be hoped that the Belgian Courts will follow French case law on this point¹⁴.

Consequences of Non-Disclosure

In Belgium the consequences of non-disclosure are particularly severe. They are specifically provided for in the franchise disclosure law.

Pursuant to Article 5 of the law the franchisee is entitled to terminate the franchise agreement at any time within a period of 2 years from the date when the agreement was made if a disclosure document is not served at least a month prior to execution of the agreement as required under Article 3. This appears to leave no room for an argument that the franchisee has not suffered any detriment. Despite the wording of the law there are voices that say that the termination right of the franchisee should be limited to cases where it can be shown that the franchisee would not have entered into the agreement if proper disclosure had been made.

The other point to note about consequences of non-disclosure in Belgium is that failure to provide an accurate and complete "Contract Survey" (all the information listed under Article 4) can result in the, unenforceability of those specific provisions. In the absence of case law on this point it is to be expected that those provisions which are not summarised accurately will not be valid and enforceable.

Italy

Italian Law no. 129 "Regulation on franchising" which came into force on 25th, May 2004 regulates certain aspects of franchising in Italy. The law has been controversial. The law regulates various aspects of franchising including disclosure.

Contract Summary

Other than France and Belgium, the Italian law requires no "Contract Summary". It simply requires that a copy of the written contract must be provided to the franchisee. In addition the contract must contain provisions that deal with the certain key items. The contract must address the exact amount of the franchise fee and investment that the franchisee is required to make and the method of payment of royalties. Where the franchisee is expected to achieve a certain minimum turnover the contract must address this. It must also address the exclusive territory granted to the franchisee (if any). The contract must further contain a description of the know how and a description of the services to be provided by the franchisor, such as technical and commercial

¹⁴ See page 2 and 3 above.

assistance, planning and training. Finally the contractual conditions relevant to the renewal, termination and the transferability of the contract must be clearly set out in it.

Obviously any well drafted Franchise Agreement will contain this information.

Commercial Disclosure

The law imposes a commercial disclosure obligation on the Franchisor.

At least 30 days before the date of execution of the franchise contract, the franchisor must deliver to the franchisee a definitive draft of the contract together with a disclosure document containing certain commercial information.

The document must set out certain corporate information relating to the franchisor. When requested by the franchisee, the franchisor's balance sheets for the three previous financial years must be provided. Documentation relevant to the franchisor's trade marks must be disclosed and a description of the characteristic elements of the franchisor's commercial system must be given. Similar to France and Belgium, a list of all the franchisees belonging to franchisor's network must be made available and an indication of any fluctuations in the number of franchisees during the previous three years must be given. Similar to US disclosure item 3 of the Uniform Franchise Disclosure Document¹⁵ (UFDD) issued by the Federal Trade Commission applicable from 1st July 2008, which is acceptable in all fifty states; a concise description of any judicial lawsuits or arbitral procedures filed against the franchisor in the previous three years is also required. Most of these requirements are straight forward for both domestic and international franchisors to comply with.

Exemptions

Foreign franchisors that enter the Italian market for the first time do not have to satisfy the disclosure obligations. This temporary "relief" is, of course, of little practical value as franchisors do not commonly enter a foreign market with a view to opening a single outlet. Once the second franchisee is found, the exemption ceases to apply as the franchisor is no longer "entering the Italian marketing for the first time". The exemption is therefore of no real practical benefit.

Consequences of Non-Disclosure

The Italian franchise disclosure law provides that if one party has provided false information, the other party may ask for annulment of contract according to article 1439 of the Civil Code and has the right to seek damages, if due. If the contract is annulled, the parties commonly have to return to each other the profits and benefits received. Thus the Franchisor will have to repay franchise fees (then the value of any service and support given).

Romania

Romania was one of the first Eastern European countries to adopt franchise specific legislation. On 28th August 1997 the Romanian Government issued Ordinance 52/ 1997 ("the Ordinance") on the legal regime applicable to franchising. The Ordinance sets out what a franchise agreement should include and the type of information which has to be disclosed to prospective franchisees during the pre-contractual phase.

The reason for this is to enable the franchisee to make an informed decision when entering into the franchise relationship. However, the Ordinance does not stipulate an exact time period within which the franchisor has to disclose the information to the prospective franchisee. One assumes that a reasonable period has to expire before a binding contract is made so as to enable the franchisee to evaluate the information provided.

D.I. Contract Summary

Again we encounter the idea of a Contract Summary. The franchisor is expected to summarise the financial provisions of the contract namely the provisions setting out the initial fee, ongoing system fees like royalties, cost of advertising or carrying out services and taxes. Also the duration of the franchise agreement, conditions for renewal, termination and transfer of the agreement have to be disclosed. Details of any restrictions on the source of products or services have to be provided. Similar to Italy the franchise agreement must also have a certain mandatory minimum content. Under Article 5 of the Ordinance, the contract must address the following:

- the object of the contract
- the rights and obligations of the parties
- the financial conditions
- the term of the contract
- the modification, extension or termination of the contract

15 Now applicable in all 50 states from 1 July 2008

Commercial Disclosures

Romanian law expects franchisors to make certain commercial disclosures. These are similar in nature to the disclosure items already encountered in France and Belgium.

The franchisor must provide the name of the franchisor and a summary of the know-how that will be shared with the franchisee. He must also give information on the type of exclusivity granted and the size of the exclusive area. Finally, and importantly the franchisor is expected to disclose certain data which will enable the franchisee to evaluate the total investment costs.

As regards investment costs the same difficulty that has already been identified in respect of France and Belgium arises, particularly for foreign franchisors.

Consequences of Non-Disclosure

Non-compliance with the disclosure requirements does not automatically lead to the nullity of the franchise contract as a whole and does not automatically represent a ground for termination of it¹⁶. Usually, the franchisee will be entitled to claim damages under Romanian Law¹⁷.

Spain

Franchising in Spain is regulated by Law 7/1996 regarding Retail Commerce and Royal Decree 2485/1998. There are also certain rules and principles (including agency laws), contained in the Spanish Civil Code and Commercial Code.

The law defines franchising¹⁸ as follows: "A company, (the franchisor), assigns to another, (the franchisee), the right to exploit a franchise for the marketing of certain types of products or services, which includes the use of a common sign and a uniform layout of premises communication of know-how and the on-going provision of commercial or technical assistance."

Article 62 of the law requires franchisor to deliver a pre-contractual disclosure document at least 20 days prior to the execution of a contract or the payment of a fee¹⁹. The disclosure document must be in writing²⁰ and be "accurate and non-deceiving"²¹.

All information necessary to allow the potential franchisee to decide whether he should join the franchise network must be disclosed.

Contract Summary

Since a franchise agreement is not a "categorised" agreement it is possible for parties to include whichever clauses they wish provided it complies with the basic contractual requirements contained in the Civil Code and Commercial Code. Article 1261 of the Spanish Civil Code 1889 requires that for a contract to be valid there has to be consent of all the contracting parties, a determined object has to form the subject matter of the contract and consideration for the undertaking is established.

Commercial Disclosure

A wide range of commercial data must be disclosed to the franchisee in Spain.

The information must include²² franchisor's statutory identification data such as filing details, register number, capitalisation and a description of the franchisor's experience, starting with the date the franchisor company was incorporated and describing the different phases of the franchise network's development. In addition, a general description of the franchise (describing the system, the know-how and the technical assistance that the franchisor will provide) must be given.

Furthermore the franchisor must provide proof of ownership or licence to use the relevant IP rights. Like in Italy, Belgium and France the size of the franchisors distribution network must be given listing both franchised and corporate outlets. Finally an estimate of the investment that the franchisee will have to make has to be given.

Consequences of Non-Disclosure

The law does not state what consequences of failure to provide disclosure are. These follow from general principles of Spanish law. Accordingly the franchisee can seek to terminate the agreement for non-disclosure where it can be shown that the franchisee would not have entered into the agreement if a correct and truthful disclosure had been made. Otherwise, a claim can be brought in damages.

16 Dr. Jorg Kenzer and Rusandra Sandru, Franchising under Romanian Law, p.2, www.richmondlawtax.com.

17 Articles 13 and 14 of the Ordinance.

18 Royal Decree 2485/1998 Article 2.

19 "With a minimum notice of 20 days before the signing of the contract or pre-contract, or prior to the payment by the franchisee to the franchisor of any amount prior to the signing of the definitive contract, a franchisor must provide a franchisee with all information regarding the franchise network in writing in order for the franchisee to be able to decide freely and knowingly about his incorporation into the franchise network".

20 Royal Decree 2485/1998 Article 3.

21 Royal Decree 2485/1998 Article 3.

22 Royal Decree 2485/1998 Article 3.

Sweden

The Disclosure Act 2006 came into force on 1st October 2006. It sets out a requirement to disclose certain information a reasonable period of time before a franchise agreement is entered into. Some authors have suggested that a reasonable period of time would be 14 days²³.

Contract Summary

Similar to most other disclosure countries Sweden requires that the franchisor makes available a "Contract Summary". Helpfully, the Swedish legislation has identified which contractual provisions are considered of such importance that they must be brought to the particular attention of the franchisee by way of disclosure. These are: (1) Information on in term and post term non compete clauses that are contained in the franchise agreement, (2) Information on the term, the conditions for amendment, renewal or termination, (3) The financial consequences in case of termination, (4) Information on how disputes in relation to the contract are to be resolved and the provisions on liability for costs in relation to such a dispute.

The requirement to summarize "the financial consequence of termination" is unusual. It is unclear if this is a contract summary or a commercial disclosure item. As most franchise agreements will not contain specific provisions detailing the financial consequences of termination it appears that this requirement goes beyond a mere summary of what is already in the contract.

Commercial Disclosures

In terms of commercial data to be made available to the franchisee by way of pre-contractual disclosure the franchisor must provide a description of the franchise together with certain information on other system franchisees and the scope of their operations.

Information on the fee to be paid by the franchisee and other financial terms must be set out in the disclosure document. Information on the categories of goods or services that the franchisee is required to purchase must also be given. Finally, as in Spain, information regarding the intellectual property rights that are the subject of the franchise must be given.

Consequences of failure to disclose

Interestingly, the consequences of failure to disclose on the part of the franchisor are limited to a court action for specific performance before the Swedish Market Court²⁴ by the franchisee or by industry action groups. The Market Court may impose on the franchisor the obligation to disclose such information as is required by the Disclosure Act 2006. There is no express termination right on the part of the franchisee if disclosure is not made, nor does the Act give the franchisee a right to claim damages. Possibly non-disclosure may be a factor which may be used to convince the Market court to declare a franchise agreement to be unenforceable where the agreement also contains a number of "unfair" contract clauses²⁵.

²³ Anders Fernlund, Sweden in International Franchise Disclosure, ABA Franchise Forum.

²⁴ Marketing Act 1970, section 1.

²⁵ Anders Fernlund, Sweden in International Franchise Disclosure published by the ABA Franchise Forum.

Conclusion

As can be seen from the above there is a certain similarities in approach to disclosure in Europe. All formal disclosure countries require a Contract Summary and certain Commercial Disclosures to be given.

Contract Summaries

The table below shows the most frequent disclosure items required to be given in "Contract Summaries" in tabular form.

Contract Summary

	Agreement Personal	Obligations	Consequences of Breach	Termination	ROF Options	Renewal	Scope of Exclusivity	Fees	Minimum/ targets	Transfer	Post term Non-compete	Dispute resolution
France				X			X					
Belgium	X	X	X	X	X	X	X (product fees)					
Spain												
Italy		X Services of ZOR		X		X	X Excl. territory	X Fees and method of payment	X	X		
Sweden				X		X				X		
Romania				X		X		X			X	X

Interestingly, the table shows that the provisions to be summarised in the disclosure document vary significantly from country to country. In each country the legislator seems to have a different view of the provisions that are so important that they must be highlighted by way of disclosure.

Only the term of the agreement and termination rights feature in 5 countries. This is followed by disclosure on renewal rights which must be made in 4 countries whilst other commercially important provisions such as exclusivity and restrictions on competition are being neglected by the legislator. De lege frenda a uniform approach would be desirable.

Commercial Disclosures

	Franchisor Corporate Detail	The System	IPR	Historic development of network and list of fees	Level of investment	Profitability/ Amortisation	Market Study	Accounts	Litigation
France	X	X	X	X	X		X	X 2 Years	
Belgium	X	X	X	X	X	X	X	?	
Spain	X	X	X	X	X				
Italy	X	X	X	X				X 3 years on request	X
Romania	X	X			X				
Sweden		X	X	X					

In the area of Commercial Disclosure items there is more consistency. The table below shows that there is great similarity in approach between all six disclosure countries as regards non-financial disclosure. All countries except Sweden look for certain corporate detail regarding the Franchisor. A summary of the franchise system/knowhow is also commonly expected together with a description of the IPR which is being licensed. Another popular disclosure item regards the network (often including a list of current and former franchisees).

Financial disclosures are more controversial. In the USA, franchisors can opt to make no financial disclosure²⁶. In Europe the picture is that Romania, France, Belgium and Spain require that the franchisor provides guidance on the level of investment to be made by the franchisee. Commonly franchisors provide a list of fees payable to them and their affiliates and avoid commenting on other investment costs such as staff wages and rent. Belgium stands out for forcing the franchisor to comment on the "amortisation period". This has been interpreted to mean that the time it takes for the franchisee to break even may need to be given.

In the view of the author it is not appropriate to force franchisors to make financial disclosures. A reputable franchisor would not normally want to give any promise of financial success to its franchisees and legislators should not create laws that force franchisors to do so. This criticism extends to countries that require the franchisor to list "investment cost". Whilst it seems reasonable to expect the franchisor to disclose the fee structure, it seems unreasonable to expect the franchisor to go beyond that and comment on third party charges such as salaries or rent. Certainly for international franchisors this disclosure obligation is almost impossible to fulfill with any degree of accuracy.

The same concern applies to market studies. Whilst domestic franchisors may be able to comment on the domestic market in France or Belgium, foreign franchisors lack the necessary market knowledge. As a rule, the local franchisee will have a better knowledge of the domestic market than the foreign franchisor. Accordingly, an exemption for foreign franchisors needs to be created. This could possibly be limited to new arrivals, following the Italian model²⁷. Once franchisors have a certain number of local units and the relevant local market knowledge that flows from this, the exemption would no longer be needed.

26 FTC Rule at 436.8 when the total amount of payment required any time or within 6 months after commencing operation of the franchisee's business is less than USD \$500; the franchise relationship is a fractional franchise; the franchise relationship is a leased department; the franchise relationship is governed by the Petroleum Marketing Practices Act 15 U.S.C 2801; the franchisee is making a major initial investment of more than USD \$1 million; the franchisee in question is a large franchisee i.e. at least five years in business with net worth of at least USD \$5 million; the franchise sale in question is an insider franchise purchase involving owners or officers of the franchise system or managers with at least two years' management experience in the franchise system. The New Rule issued by FTC at 16 CFR 436 (2007) clarifies that it only applies to the US, this implies that international franchises are not affected.

27 Ministerial Decree no 204/2005

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