



Franchise

in 33 jurisdictions worldwide

Contributing editor: Philip F Zeidman

2009



Published by
GETTING THE DEAL THROUGH
in association with:

- Advokatfirmaet Storløkken AS
- Akademia Rozwoju Systemów Sieciowych Sp z oo
- Allen & Overy LLP
- Al Sarraf & Al Ruwayeh
- Anderson Mo-ri & Tomotsune
- Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)
- Attorneys-at-Law Juridia Ltd
- Bahas, Gramatidis & Partners
- Bersay & Associés
- Bowman Gilfillan Inc
- DLA Piper UK LLP
- DLA Piper US LLP
- Duro & Lorang
- Gateway Law Corporation
- Gonzalez Calvillo SC
- Kanga & Co
- Koan Legal Strategies
- Lapointe Rosenstein LLP
- Lee & Ko
- Longan Law Firm
- Makarim & Taira S
- Mason Sier Turnbull
- Mboya & Wangong'u Advocates
- McConnell Valdés LLC
- Nörr Stiefenhofer Lutz
- Nörr Stiefenhofer Lutz OOO
- Palacios & Asociados
- Raffalli de Lemos Halvorssen Ortega y Ortiz
- Rödl & Partner
- Stewart Germann Law Office
- Thylin Advokatbyrå AB
- Tov Noerr Stiefenhofer Lutz
- Wong Jin Nee & Teo

China

Tian Fengchang

Longan Law Firm

Overview

- 1 What forms of business entities exist that would be relevant to the typical franchisor?

Foreign enterprises have two options when establishing a franchise in China.

FIEs

The first option is to establish a foreign-invested enterprise (FIE) that would then act as a sub-franchisor. There are three typical FIE structures that could act as a subsidiary to the foreign enterprise: wholly foreign-owned enterprises (WFOEs), equity joint ventures (EJVs) or cooperative joint ventures (CJVs).

A wholly foreign-owned enterprise is independently owned by a foreign enterprise without the aid of a Chinese partner. Though this business structure is preferable because the investor can keep 100 per cent of the profits, the law strictly regulates the establishment and operation of a WFOE and, in some industries, is entirely prohibited. Although current franchise regulations are silent as to whether a WFOE may create a franchise within China, it is likely that the law would permit a WFOE to take the position of a sub-franchisor. This sub-franchisor would then be in the position of granting licences to any local corporate franchisee by entering into a sub-franchise agreement. However, due to the strict, often misunderstood, guidelines on the formation of businesses, it is not advisable to have a WFOE establish a franchise in China.

Joint ventures are the most functional way of creating the necessary local know-how when establishing a business entity in China, especially for franchises. An EJV is a limited liability partnership between a foreign company and a Chinese legal person. Profit distribution and shareholding is directly proportional to each partner's investment. CJVs are becoming more accepted in China but are still prohibited in many industries. This business structure allows the foreign entity and Chinese legal person to have more flexibility in structuring the shareholding and profit-sharing. Similar to the WFOE, both of these joint ventures would be considered as a subsidiary to the parent franchise abroad. As such, each would have the same legal rights and liability as the franchisor.

Direct contractual relationships

The second option for a foreign investor is to avoid creating a business entity in China and create a direct contractual relationship with a local franchisee. In doing so, the foreign business can establish a local network while maintaining its domicile abroad. Exercising this option allows the foreign investor to avoid the legal barriers that are faced when establishing a FIE.

For domestic franchisors, the regulations are seen as another type of contract. These franchisors engage in a direct contractual relationship with their franchisee.

- 2 What laws and agencies govern the formation of business entities?

The Company Law of the People's Republic of China (PRC) provides the general legal framework for all limited liability companies, domestic and foreign. All foreign entities must also comply with the Catalogue for the Guidance of Foreign Enterprises (FIE catalogue), which is updated regularly and categorises foreign businesses and industries into 'encouraged', 'restricted' and 'prohibited'. Generally, any business or industry not listed in the catalogue is permitted.

Other relevant laws that govern the formation of business entities include, inter alia the Labour Contract Law (2007), the Enterprise Income Tax Law (2007), the Contract Law (1999), the Labour Law (1994) and the Land Management (1998). The Partnership Enterprise Law (2007) applies to Chinese legal persons wanting to establish a business partnership in China with no foreign entities.

On a national level, the State Council is the chief administrative authority for the formation of business entities. Acting in the interest of the State Council is the Ministry of Commerce, the State Administration for Industry and Commerce (SAIC), and the National Development and Reform Commission. Investors go directly to these administrations only if the business meets certain national thresholds or if the business is interprovincial. In most circumstances, the local-level administration evaluates and approves the business proposal. These administrations vary according to autonomous region, province or municipality.

- 3 Provide an overview of the requirements for forming and maintaining a business entity.

During the initial stage, the foreign entity and their Chinese partner, if applicable, must supply to either the local agency or the Ministry of Commerce (MOFCOM):

- a general application letter introducing the investor and planned business project in China;
- articles of association (including all of the details of management and capitalisation of the company);
- a feasibility study report including planned business activities and financial background information;
- a letter of creditworthiness;
- a valuation report of state-owned assets (if applicable);
- a list of merchandise to be imported or exported;
- a list of FIE directors;
- a copy of land-use rights document or lease, or both;
- a power of attorney for representative handling the application; and
- a copy of any trademark licences, patents, tech transfer, service contracts, etc.

After obtaining a certificate of approval from the local agency or MOFCOM, the investor files an application with the SAIC in order

to obtain a business licence. If a business falls within the 'restricted' category as per the FIE catalogue, then preliminary approval must be granted by the National Development and Reform Commission (NDRC) before submitting the application to the Ministry of Commerce. Additional administrative approval might be required depending on the location and type of business.

In order to maintain a its position as a business entity, the business must annually update any new information to the necessary officials, pay taxes quarterly, and ensure that all practices comply with the laws of the PRC.

4 What restrictions apply to foreign business entities and foreign investment?

The FIE catalogue contains a comprehensive list of all the restricted and prohibited industries that may not be established by a foreign business entity. In addition to the restrictions outlined in the FIE catalogue is the generic provision that a business may not go against the health, morals or development of the People's Republic of China.

5 Briefly describe the aspects of the tax system relevant to franchisors. How are foreign businesses and individuals taxed?

All business entities are subject to the new Enterprise Income Tax Law of the PRC (2007). This law created a unified 25 per cent tax rate for both domestic and foreign entities. Prior to the new tax law, preferential treatment was given to all foreign entities by the granting of tax exemptions and reductions. Currently, the Notification of the State Council on Carrying out the Transitional Preferential Policies Concerning Enterprise Income Tax contains a comprehensive outline of specific industries and locations that qualify for a tax exemption or reduction. Typically, a franchise will not qualify for a tax reduction or exemption; however, the franchise may deduct payments already paid abroad to offset taxes in China, but this amount may not exceed the tax payable.

Since a franchise engages in the sale and importation of goods in China, the franchisor or sub-franchisor must pay a value added tax (VAT) of 17 per cent at the time of importation. In addition, a franchise must pay a business tax that ranges from three to five per cent depending on the revenues generated. If a business withholds profits, the business tax can be between 10 and 20 per cent, depending on the business's domicile.

Businesses are required to audit every month and taxes, except for VAT, are paid quarterly. Reconciliation is done at the end of the year, usually at the end of December.

6 Are there any relevant labour and employment considerations for typical franchisors? What is the risk that a franchisee or employees of a franchisee could be deemed employees of the franchisor? What can be done to reduce this risk?

There is a general provision that states that a franchisor's obligations to a franchisee are to provide, business guidance, technical support and business training. However, there are no specific provisions that address labour or employment considerations. As such, any labour or employment consideration is addressed by the Labour Law of the PRC.

This law states that an employee (aged 16 and over) may not work more than eight hours a day and 44 hours a week. Should the employee exceed one hour of overtime per day or three hours due to a special reason, he or she is entitled to 150 per cent pay. If the employee is not granted a guaranteed day of rest within a week, the employee is entitled to 200 per cent of his or her pay. Finally, if an employee works on a national holiday, he or she may be paid 300 per

cent pay. Wages are generally determined by economic factors such as the daily cost of living in the area.

In addition, the employer must promote good health, safety and the welfare of its employees. This includes contributing to a number of social insurance and welfare funds that assist employees with healthcare, housing and pensions.

Since a contractual relationship does not exist between the franchisor and the employees of the sub-franchisor, there is only a low risk that these employees will be deemed employees of the franchisor. In order to prevent such confusion, the franchisor may require that the sub-franchisor add a provision in each employment contract that severs the franchisor from employment liability.

7 How are trademarks and know-how protected?

The regulations stipulate that the protection of trademarks and know-how shall be handled in accordance with all applicable law and administrative regulations.

According to the trademark law, the first person to register the mark receives trademark protection. Unregistered marks may also be protected if the mark has been declared as a 'well-known mark' by a court or administrative authority. The application process takes 12 to 18 months and protects service marks, collective marks and certification marks.

The Anti-Unfair Competition Law ensures that the business know-how of the franchisor is sufficiently protected. This law provides protection for any information that is not known to the public, provides economic benefits to the owner, is of practical application, and has been subject to steps by the owner to maintain its secrecy. Any misuse of the franchisor's business know-how is subject to criminal prosecution.

8 What are the relevant aspects of the real estate market and real estate law?

Because most land is state-owned, enterprises and individuals may only possess the right to use land, not the right to own it. Franchises may obtain this right for up to 40 years. Upon expiration of the grant term, the land and the title to all the structures and attachments reverts to the state without compensation. Investors wanting to avoid reversion must, before the term of use expires and under new contractual terms, apply for an extension to the local branch office or Ministry of Land and Natural Resources (MLNR).

Land-users cannot resell property; instead, the land-use right may be transferred through assignment or lease. An assignment occurs when the land-user transfers all rights to use the land to an assignee through a written contract. A lease occurs when the land user transfers his right to use the land for a period of time to a lessee. The lessee pays rent to the lessor throughout its possession of the right to use, but the lessor remains responsible for continued performance of the original land grant contract.

In addition, current law restricts foreign development of land, especially the development of land for leisure activities. In fact, due to exploitation concerns, the government forbids foreigners from acquiring land from the state. As such, if a foreign entity wants to develop land, it must first establish a network with a domestic partner who has the legal right to acquire land from the state and then develop the land accordingly. Some stipulate that this rigid requirement will be altered as China continues to attract a significant amount of foreign investors.

Laws and agencies that regulate the offer and sale of franchises

9 What is the legal definition of a franchise?

A franchise refers to a business operation by which a franchisor, an entity that possesses a registered trademark, enterprise mark, patent, know-how, or any other business resource, confers by way of contract the resources to another business operator (franchisee). The franchisee pays franchising fees to the franchisor and conducts business operations under the uniform business model as stated by the contract. No entity or individual other than an enterprise may conduct the franchise business as a franchisor (that is, no natural person may engage in franchising).

10 Which laws and government agencies regulate the offer and sale of franchises?

The relevant agencies that regulate the offer and sale of franchises, in descending authority, include the State Council, MOFCOM and the Ministry of Commerce of specific provinces, autonomous regions or municipalities under the Central Government. Other agencies might apply depending on the industry.

The controlling law for franchising in China is the Regulations on Administering Commercial Franchise (2007). Ancillary to this law are the Administrative Measures for Archiving Commercial Franchises and the Administrative Measures for the Information Disclosure of Commercial Franchise (2007).

11 Describe the relevant requirements of these laws and agencies.

The law requires that both the franchisor and franchisee are legal entities. Prior to the acceptance of the contractual terms, the franchisor must disclose all relevant information to the franchisee as outlined in the Administrative Measures for the Information Disclosure of Commercial Franchise. Within 15 days of the conclusion of the contract, the franchisor must submit a signed copy of the agreed upon terms and all of the relevant parties' contact information to the local Ministry of Commerce as per the Administrative Measures for Archiving Commercial Franchises. Upon submitting the required documents, the Ministry of Commerce will review the application and issue an approval of the franchise within 10 days. Approval from the Ministry of Commerce must be granted before the franchisee may engage in daily business transactions.

12 What are the exemptions and exclusions from any franchise laws and regulations?

The current franchise law does not contain any exemptions or exclusions. Even though the franchise regulations do not contain any exemptions or exclusions, certain business stipulations by the government might apply. These stipulations vary depending on the industry and location. Other than the industry-based stipulations, no franchise may burden the public welfare or be against the government's beliefs.

13 In the case of a sub-franchising structure, who must make pre-sale disclosures to sub-franchisees? If the sub-franchisor must provide disclosure, what must be disclosed concerning the franchisor and the contractual or other relationship between the franchisor and the sub-franchisor?

In the case of sub-franchising, the sub-franchisor assumes the same legal responsibilities as a franchisor. As such, the sub-franchisor must disclose all presale information that a franchisor would be required to disclose. In addition, the sub-franchisor must disclose the contrac-

tual relationship between franchisor and the sub-franchisor to the sub-franchisee.

14 What is the compliance procedure for making pre-contractual disclosure in your country? How often must the disclosures be updated?

A franchisor must disclose all of the information outlined in the franchising regulations at least 20 days prior to the conclusion of the franchise contract.

All changes in information must be submitted by the franchisor to the franchisee in a timely manner. Failure to submit changes in a timely manner warrants rescission by the franchisee and criminal fines may be instituted by the Ministry of Commerce. The franchisor must also submit changes to the Ministry of Commerce in the first quarter of every year.

15 What information must the disclosure document contain?

At a minimum, a franchisor must provide:

- the name, domicile, legal representative, registered capital, business scope of the franchisor, and basic information in respect of the franchised operations;
- the basic information in respect of the registered trademark, enterprise mark, patent, know-how and business model of the franchisor;
- type, amount of franchising fees and payment method;
- prices and requirements for providing the franchisee with products, services and equipments;
- specific contents of business training and other services to be continuously provided to the franchisee, as well as the methods and implementation plans;
- concrete measures for guiding and supervising the business activities of the franchisee;
- the investment budget for the franchise outlet;
- the business evaluation of franchisees currently existing within the territory of China;
- digests of the financial statements and audit reports for the past two years;
- the condition of all franchise-related lawsuits and arbitration for the past five years;
- any record of major illegal business operations; and
- any other information as prescribed by the commerce department under the State Council.

Additional requirements are outlined in the Administrative Measures for the Information Disclosure of Commercial Franchise.

16 How do the relevant government agencies enforce the disclosure requirements?

Failure to disclose information in accordance with the law results in legal action by the Ministry of Commerce. If the error is minute, the department may order the franchisor to make corrections or impose a fine of between 10,000 and 50,000 renminbi (approximately US\$1,460 to US\$7,300). In more serious circumstances, a fine of between 50,000 and 100,000 renminbi (approximately US\$7,300 to US\$14,600) will be imposed and an announcement will be delivered.

Additionally, if a franchisor wilfully fails to disclose or fraudulently misrepresents information, it will be subject to criminal liabilities. If a crime has not been committed but an entity acted in bad faith, the entity will be punished by the public security organ in accordance with the Law of the PRC on Public Security Administrative Punishments.

- 17 What actions can franchisees take to obtain relief for violations of disclosure requirements? What are the legal remedies for such violations? How are damages calculated? If the franchisee can cancel or rescind the franchise contract, is the franchisee also entitled to reimbursement or damages?

According to the general franchise regulations, the franchisee may unilaterally rescind the contract if a franchisor violates the minimum disclosure requirements. If the franchisor required a down-payment, the franchisee may also be entitled to a reimbursement of funds.

Compensation will be granted only if the franchisee has strong evidential support that there was a breach of contract. In such a case, contract law sets precedent as to the compensation of damages. Generally, any monetary loss that is reasonable or foreseeable, or both, will be compensated.

- 18 In the case of sub-franchising, how is liability for disclosure violations shared between franchisor and sub-franchisor? Are individual officers, directors and employees of the franchisor or the sub-franchisor exposed to liability? If so, what liability?

A sub-franchisor assumes all the rights and responsibilities of the franchisor. As such, all regulations that apply to the franchisor apply equally to the sub-franchisor, including legal liabilities. Furthermore, it appears that since a franchise may only be established by a legal person, only a business entity may be legally liable, not a natural person (individual officers, directors and employees). However, the court ultimately decides in the preliminary hearing whether or not to enjoin a party. Hence, depending on the claim, an individual officer, director, or employee, or all, may be added as a party to the suit along with the business entity. In such a case, each party is equally liable.

- 19 In addition to any laws or government agencies that specifically regulate offering and selling franchises, what are the general principles of law that affect the offer and sale of franchises? What other regulations or government agencies or industry codes of conduct may affect the offer and sale of franchises?

The law is vague as to the specific principles and codes of conduct that must be followed when engaging in the offering and selling of franchises. In general, contract law, company law and the general principles of civil law set the legal precedents on engaging in transactions such as offering and selling a business entity. The State Council, the Ministry of Commerce and the SAIC, along with any local administrations, regulate these transactions. The application of other regulations, the involvement of other government agencies, or the institution of certain codes of conduct vary depending upon the industry.

- 20 What other actions may franchisees take if a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises? How does this protection differ from the protection provided under the franchise sales disclosure laws?

China's franchise regulations do not explicitly state the legal remedies available to a franchisee when a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises. However, the franchisee will be entitled to consequential damages if it can provide evidential support for a breach of contract or a violation of the principles of fairness and reasonableness.

Legal restrictions on the terms of franchise contracts and the relationship between parties involved in a franchise relationship

- 21 Are there specific laws regulating the ongoing relationship between franchisor and franchisee after the franchise contract comes into effect?

There are no specific laws regulating the ongoing relationship between franchisor and franchisee. The only applicable law would be the Contract Law of the PRC, which states that the franchisor and franchisee must deal at arms-length and obey the principles of fairness and reasonableness.

- 22 Do other laws affect the franchise relationship?

Other laws might apply depending on the industry. New stipulations might be adopted in the near future as the implementation of the law matures and the market begins to evolve. For the most up-to-date information on laws that affect the franchise relationship, visit the MOFCOM website.

- 23 Do other government or trade association policies affect the franchise relationship?

As previously stated, the franchise regulations of the PRC are in their initial stages of implementation. As such, the law is very vague as to whether other government or trade association policies affect the franchise relationship. In practice, other government or trade association policies might apply depending on the industry.

- 24 In what circumstances may a franchisor terminate a franchise relationship? What are the specific legal restrictions on a franchisor's ability to terminate a franchise relationship?

The franchisor has an obligation to keep the contractual relationship with the franchisee for three years. After three years, the franchisor may terminate the contract without any legal restrictions. The contractual relationship may terminate before the end of the three-year span only if there is strong evidential support that there is a breach of contract or a violation of good faith.

- 25 In what circumstances may a franchisee terminate a franchise relationship?

A franchisee may unilaterally terminate the contract if the franchisor fails to disclose information. Other circumstances are not outlined in the franchise law, but, according to the Contract Law of the PRC, a franchisee may terminate the franchise relationship if there is a justified breach of contract.

- 26 May a franchisor refuse to renew the franchise agreement with a franchisee? If yes, in what circumstances may a franchisor refuse to renew?

After the requisite three-year period, a franchisor may refuse to renew the franchise agreement with a franchisee. The law is silent as to what circumstances permit renewal; nevertheless, according to the Contract Law of the PRC, the franchisor must still be fair and reasonable when deciding to terminate the franchise relationship (that is, act in good faith).

- 27 May a franchisor restrict a franchisee's ability to transfer its franchise or restrict transfers of ownership interests in a franchisee entity?

Yes. The franchisee must seek permission from the franchisor before there can be a transfer of ownership. The franchising regulations do

Update and trends

As the franchise regulations mature, more clarification will be given on how to establish and maintain a franchise in China. In fact, the State Council is continuously producing declarations or supplemental regulations that provide more guidance on the implementation of the initial law. As such, it is essential that each interested investor keeps up to date with information on the law.

Current and future franchisors should pay attention to the effects of the newly enacted anti-monopoly law. Many foreign investors fear that this law will be used as a tool to further restrict foreign industry. Of course, due to the recent enactment of the law, these concerns remain unfounded in practice. Nevertheless, this new law provides hope for

foreign investors that the Chinese are becoming more liberal with their regulations on establishing a business in China

Another trend that investors must keep an eye on is the constant revision of intellectual property (IP) rights, especially if the franchise necessitates patent protection. The State Council is constantly refining the law in order to ensure adequate protection, but has yet to acquire a strong enforcement mechanism that prevents numerous IP infringements. Recently, there have been several proposals, symposiums and declarations from the government addressing issues regarding the lack of protection.

Finally, investors, both foreign and domestic, should acquire legal counsel to help navigate the evolving laws of the PRC.

not restrict the franchisor from preventing a transfer of ownership from occurring; however, according to the Contract and Company Laws of the PRC, the franchisor must act reasonable when denying a transfer of ownership.

28 Are there laws or regulations affecting the nature, amount or payment of fees?

The current franchise regulations are silent as to the nature, amount or payment of fees. As such, the parties are free to negotiate the payment of fees. The Contract and Company Laws of the PRC prevent any corrupt transactions that violate the practices of good faith and the goodwill of the country. Criminal prosecution could result if the parties are found to have engaged in corrupt practices, especially for unjust enrichment.

29 Are there restrictions on the amount of interest that can be charged on overdue payments?

The current franchise regulations do not contain any restrictions on the amount of interest that can be charged on overdue payments. Other relevant laws are also silent as to the amount of interest that may be charged for overdue payments. In practice, the general rule is that the franchisor may charge interest as long as the interest charged is reasonable and not punitive.

30 Are there laws or regulations restricting a franchisee's ability to make payments to a foreign franchisor in the franchisor's domestic currency?

If a foreign franchisor establishes a FIE in China, the business entity is required to file the foreign exchange account with the State Administration of Foreign Exchange (SAFE). The government does not guarantee that the renminbi generated by the franchisee will be converted into foreign currency. Comparatively, if the franchisor maintained its domicile abroad while engaging in a contractual relationship with a franchisee, then it may possess an offshore account where minimal legal restrictions apply. In such a case, the money generated may be freely transferred to the franchisor's domestic currency as long as neither party engages in an illicit activity.

31 Are confidentiality covenants in franchise agreements enforceable?

Yes. The general regulations contain a specific provision that makes confidentiality covenants binding.

32 Is there a general legal obligation on parties to deal with each other in good faith? If so, how does it affect franchise relationships?

Yes. Article 4 of the Commercial Franchise Regulation specifically states that, 'the principles of free will, fairness, honesty, and good faith shall be followed. In addition, the Company and Contract law of the PRC both state that parties must deal in good faith'.

Acting in good faith implies that both parties must act at arm's-length from each other. As such, unconscionability, fraud, misrepresentation, deceit and other practices of bad faith warrant rescission by the promisee and the payment of damages from the promisor.

33 Must disclosure documents and franchise agreements be in the language of your country?

The franchise regulations do not stipulate whether the disclosure documents and franchise agreements given to the franchisee must be in Chinese; however, all information submitted to the local agencies and MOFCOM or the SAIC must be in Chinese. Furthermore, the Chinese government requires that all claims and documents be translated in Chinese prior to submitting a claim to court or the arbitration committee.

34 What restrictions are there on provisions in franchise contracts?

The regulations do not provide specific provisions that restrict the terms of a franchise contract; nevertheless, there are several laws that provide certain restrictions on doing business in China. Recently, the State Council released a general declaration emphasizing that businesses may not limit the transfer of high-tech know-how, engage in wilful deceit (especially in regards to the validity of patent rights) or create contractual burdens. Most importantly, China has recently adopted an anti-monopoly law which will add certain restrictions as to establishing franchises in China. Generally speaking, the government restricts any practice that would be against the national interest including, inter alia, illicit trade, exploitation of others and wilful misrepresentation. Specific restrictions depend on the location and type of industry the franchise is engaged in.

It is important to note that the new regulations seem to impact foreign franchisors more than domestic franchisors. Domestically, these regulations are merely a different type of contractual relationship. For the foreign entity, not only must it comply with all the applicable regulations according to its industry, but it must also obey the current stipulations. Overall, the current regulations have added another layer of restrictions for the foreign franchisor. In addition, foreigners often run into cultural barriers, especially when establishing a franchise. In order to limit these systemic barriers, it is strongly

advisable that each foreigner engages in ongoing consultation with a Chinese partner.

35 Describe the aspects of competition law in your country that are relevant to the typical franchisor. How are they enforced?

In order to best protect the evolving needs of the current market economy, China has adopted its first anti-monopoly law, effective as of 1 August 2008. This law provides guidelines towards limiting the monopolisation of the market by both foreign and domestic enterprises. The law itself is intentionally vague so as to allow industry specific regulations to take precedent. Overall, the law prohibits certain types of agreements unless they fall within an exemption, prohibits behaviours classified as abuse of dominant market position, provides a framework for determining when dominance exists, establishes a broad merger review scheme and, most importantly, prohibits abuse of government administrative powers restraining competition.

36 Very briefly describe the court system. What types of dispute resolution procedures are available relevant to franchising?

The highest court is the Supreme People's Court, which supervises all subordinate local and special people's courts. The Local People's Court includes, in ascending order, the Grass-roots People's Court, the Intermediate People's Court and the Higher People's Court. Generally, the Grass-roots People's Courts are located at the municipal district and autonomous county level. The Intermediate People's Courts are established in capitals or prefectures at the provincial level. The Higher People's Courts, located in all provinces, autonomous regions, and municipalities, are directly under the control of the Central Government. China practises a system of courts characterised by 'two instances of trial' where the judgments and orders of the appeal shall be seen as final decision of the case. It is important to note that most cases are rarely litigated and are rather settled through administrative agencies or party negotiations. Preferable for franchising claims is arbitration, which is considered another practical and quick approach for dispute resolution.



隆安律師事務所
LONGAN LAW FIRM

Tian Fengchang

tianfc@longanlaw.com, tianfc@hotmail.com

188 Beijing International Club
21 Jianguomenwai St
Beijing 100020
China

Tel: +86 10 65325588
Fax: +86 10 65323768
www.longanlaw.com
www.tianfengchang.com