

Key Franchising Considerations: Overview (Italy)

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Status: **Law stated as of 01 Mar 2025** | Jurisdiction: **Italy**

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A Practice Note providing an overview of the key legal and commercial considerations for foreign counsel to consider when advising clients on establishing a franchising arrangement in Italy, including applicable laws and regulations, key provisions in the franchise agreement, and termination considerations.

Franchising is an arrangement in which franchisors, in exchange for an upfront payment or a series of payments, grant franchisees the right to operate a business and sell or distribute goods and services identified with the franchisors' trade marks, trade names, and other intellectual property (IP). Unlike in agency and distribution arrangements, franchisors typically exercise significant control over, or provide significant assistance in, the franchisee's business by requiring them to operate according to franchisor requirements.

Franchising can have many benefits for a foreign supplier, including the ability to expand and capture new markets quickly with limited capital expenditure. However, foreign counsel advising suppliers planning to establish a franchising arrangement in Italy should consider the risks and requirements that may arise.

This Note considers the following aspects of franchising:

- Common types of franchising arrangements in Italy.
- Key legal and regulatory requirements governing franchising arrangements in Italy, including:
 - industry codes;
 - competition law;
 - tax and currency regulations;
 - product regulatory requirements and product liability laws; and
 - legal formalities.
- Important considerations when appointing a franchisee in Italy, including laws governing employment, IP, and real property.

- The typical structure of a franchise agreement in Italy.
- Issues related to termination of the franchising relationship in Italy.

For guidance on franchise laws and regulations in other countries, see Quick Compare Chart, Franchise Laws and Regulations.

Franchising Arrangements

Legal Definition of Franchising

Franchising is a business collaboration agreement between two legally and economically independent legal entities. In a franchise, one party, which produces or resells goods or offers services (the franchisor), grants another party (the franchisee):

- The right to use the franchise trade marks and other distinctive signs, know-how, and business model.
- Training services and assistance.

In exchange, the franchisee pays a fee for the franchisor's IP and assistance. By executing the franchise agreement, the franchisee becomes part of the franchisor's chain of production or its resale of goods or services operations (see Execution Requirements).

[Law no 129/2004](#) (Franchise Law) governs the relationship between the franchisor and franchisee. The business agreement is based on the contracts the parties execute in compliance with the Franchise Law.

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Franchising can provide advantages for both parties, such as:

- The franchisor may increase its market presence at reduced costs.
- The franchisee may obtain operational advantages by having:
 - guaranteed visibility, based on a well-recognised brand name, and a network of franchisees that, by operating under the same brand name, can make the business appear larger than that of a single franchisee;
 - proven management processes; and
 - greater buying power for products and services when leveraging the franchise network.

An agreement that contains characteristics of a franchise as defined under Article 3 of the Franchise Law, but which is named something else (for example, distribution, joint venture, or licensing) risks being deemed a franchise by a court. Consequently, the party granting the distribution or licence can fail to comply with the legal obligations required by law of a franchisor (see Disclosure Requirements).

The distinguishing features of a franchise are:

- The franchisor's right to receive royalties from franchisees who receive access to the franchise business.
- A close working relationship between the parties for the duration of the franchise agreement in which the franchisor provides a uniform operating method for the franchisee to adopt and suitable organisational and management support.

Overview of Franchising

Franchising is common method for distributing goods and services in Italy, as it has a mature franchising market. However, compared to France and Germany, franchising is an underexplored entry mode into the distribution market.

Methods of Franchising

The most common franchising business model in Italy is the direct business franchise format, which comprises:

- Collaboration between two independent entities.
- Granting a series of rights for a fee, such as trade marks, patents, know-how, and advertising.

- Control mechanisms to maintain the quantity and quality of goods.
- Business operations that specific contractual obligations regulate.
- Marketing goods or services within a defined territory.

Governing Legislation and Regulation

The Franchise Law governs franchising, which is essentially a disclosure law. [Ministerial Decree no 204/2005](#) contains the procedural rules regulating the Franchise Law. Under the duty of good faith, franchisors must provide potential franchisees with any necessary and useful information to evaluate or assess the deal and technical assistance. Franchisors that do not comply with a request for information and data must provide an explanation to the requesting franchisee. (Article 6, Franchise Law.)

In addition to the Franchise Law, franchise arrangements must comply with:

- Contract laws under the Civil Code (*Codice civile*), such as:
 - Article 1322 of the Civil Code, which gives the parties the freedom to contract. Most franchise relationships are controlled by the terms of their franchise agreement; and
 - Articles 1175, 1337, 1366, and 1375 of the Civil Code on the rules and principles of fairness and good faith, which require the franchisor to act transparent by providing all information necessary to understand the franchise business model and fairly during negotiations.
- Consumer protection laws, including [Legislative Decree no 206/2005](#) (Consumer Code).
- Competition laws, including Law no 287/1990 (Competition Act), [Law no 192/1998](#) (Economic Dependence Law), and EU competition laws.
- Tax laws, including [Presidential Decree no 600/1973](#) and [Legislative Decree no 66/2014](#).
- IP laws, including [Legislative Decree no 30/2005](#) (Industrial Property Code).
- Dispute resolution laws, including [Legislative Decree no 28/2010](#) and [Legislative Decree no 149/2022](#).

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Italian case law can also regulate a franchise agreement. For example, the [Supreme Court of Cassation](#) has clarified aspects on the minimum duration of open-ended franchise agreements by suggesting that, even in light franchising contracts, which involve low costs and investments, a franchisor must wait at least three years before exercising a right of withdrawal (see [Supreme Court of Cassation, Decision no 11737 \(2 May 2024\)](#)). Notably, an early withdrawal from this term violates the principles of good faith. Therefore, the early withdrawal is considered abusive and arbitrary, as the three-year period is sufficient to allow the affiliate to amortise the investment made.

Voluntary Franchising Codes

The [Italian Franchising Association](#) (*Associazione Italiana Franchising*) (AIF) adopted a code of ethics ([AIF Code of Ethics](#)) that has no legal force but is binding on its members. Members who violate the AIF Code of Ethics can be expelled from the association at the discretion of the AIF's board of directors.

The AIF Code of Ethics primarily addresses the franchisor's obligations to:

- Inform the prospective franchisee of all relevant economic terms of the franchise relationship before entering a written contract.
- Provide the franchisee with a written contract containing:
 - fair contract terms;
 - an exclusive franchise territory that is adequate in geographic scope and duration; and
 - the terms of termination.
- Train the franchisee and its employees to operate the franchise business.
- Grant the franchisee a use licence to the franchisor's trade marks and other distinctive signs.

It is uncommon to incorporate the AIF Code of Ethics into a franchise agreement.

Product Regulatory Requirements and Product Liability Laws

The Consumer Code regulates consumer goods. In Italy, the ultimate seller or service provider is responsible to consumers for the good's safety. In a franchise, the franchisee is responsible to consumers

for any product complaints but can seek recourse and indemnification from the franchisor or the good's manufacturer. For more information on Italy's product liability laws, see Practice Notes:

- [Consumer Product Regulation and Safety: Overview \(Italy\)](#).
- [Medical Devices: Sources of Regulation \(Italy\)](#).
- [Global Consumer Product Safety: Overview](#).

Competition Laws

The Competition Act governs competition law, which the [Italian Competition Authority](#) (*Autorità Garante della Concorrenza e del Mercato*) (ICA) enforces (see ICA, [Competition](#)). The Competition Act is based on EU competition rules and principles (Article 1(4), Competition Act).

The Vertical Block Exemption Regulation ((EU) 2022/720) (VBER) exempts certain vertical agreements, which can include franchising, from the Competition Act. An agreement must meet the safe harbour criteria, which requires:

- The franchise agreement to not restrict competition (Article 4, VBER).
- The market share of each franchisor and franchisee to not exceed 30% of the relevant market (Article 3, VBER). A full competition analysis under the Competition Act is required if the market share of either party exceeds the 30% threshold to establish if the franchise agreement appreciably restricts competition.
- The parties to not be actual or potential competitors.

Under the VBER and its accompanying guidelines ([OJ 2022/C 248/01](#)) (VBER Guidelines), franchise agreements may include clauses that:

- Give the franchisee exclusivity rights or impose territorial or customer restrictions (paragraphs 165 and 166, VBER Guidelines).
- Require the franchisee to:
 - meet minimum purchase targets (paragraph 298, VBER Guidelines); or
 - restrict the supply sources available to the franchisee (paragraph 322, VBER Guidelines).
- Discriminate among franchisees if the franchisor does not:

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- breach its duty to act correctly and in good faith (Articles 1175 and 1375, Civil Code); or
- abuse its dominant position or contractual rights when the franchisee is in an economic subordinate position.
- Grant a licence to use the franchisor's IP, except if the franchisor holds a dominant position. Article 3 of the Competition Act prohibits a franchisor from abusing its dominant position in any way connected with its IP rights.

Resale price maintenance (RPM) (also known as fixed or minimum resale price) is a hardcore restriction prohibited under the Competition Act. Examples where RPM is permitted include:

- The launch of a new product.
- A preplanned, short-term, low-price campaign (generally, between two to six weeks).
- A recommended price or maximum price, if the recommendation does not result in a fixed or minimum sale price. This may come from pressure or incentives offered by the franchisor.

The franchisor must demonstrate the pro-competitive effects of the RPM. (Paragraph 197, VBER Guidelines.)

For more information on:

- The ICA, see [Practice Note, Italian Competition Authority: Overview](#).
- Abuses of dominance in Italy, see [Practice Note, Abuse of Dominance in Italy](#).
- The EU competition framework and its application to franchise agreements, see [Practice Note, Competition Issues for International Franchising Agreements: EU Framework](#).
- EU vertical agreements, see [Practice Note, EU Vertical Agreements](#).

Non-Compete Clauses

Restrictive covenants, such as non-compete or exclusive distribution agreements, are generally permitted in franchising arrangements. The law perceives these covenants as generating efficiencies, protecting the know-how transferred to franchisees, and maintaining the common identity of the franchised network.

The non-compete obligation must be in writing and limited to:

- Up to five years during the franchise term.
- Up to one year post termination.
- A specific geographical territory or activity.

(Article 2596, Civil Code.) Non-competes must comply with Article 5(3) of the VBER and the VBER Guidelines.

The Civil Code has strong protections for franchisees against abuses by franchisors. Under the Economic Dependence Law, a party can abuse its superior bargaining power without being a dominant firm in that market.

For more information on non-compete clauses, see Practice Notes:

- Competition Issues for International Franchising Agreements: [Exclusivity and Non-Compete Terms](#) and [Abuse of Economic Dependence](#).
- [Competition Issues for Distribution and Supply Agreements in Italy](#).
- [Abuse of Dominance in Italy](#).

Tax and Currency Regulations

Tax Overview

By itself, a foreign franchisor appointing an Italian franchisee does not create a permanent establishment. Foreign franchisors are not subject to the national Italian tax regime unless they have a permanent establishment. All Italian-source income is subject to withholding taxes (see Withholding Tax).

Under the Italian tax regime, a franchisee:

- Remains an independent entrepreneur with their own accounting and tax responsibilities.
- Can operate under the flat rate, simplified, or ordinary tax regime. The most suitable option depends on the type of franchising.
- Can generally deduct the initial fee (often as a multi-year cost), royalties, supplies, and similar costs. Under the flat rate regime, the franchisee cannot deduct costs.
- Is subject to value-added tax (VAT) unless it is operating under the flat-rate regime, in which case VAT is not applied to the invoice. In this case, the franchisee must obtain a VAT number and register with the [Chamber of Commerce](#).

For more information on tax residency in Italy, see [Practice Note, Tax Residency of Companies in Italy](#).

Withholding Tax

In Italy, the withholding tax rate for foreign companies and individuals on dividend payments is 26%. A foreign taxpayer can request a refund of up to 11/26th of the applicable withholding amount (Article 27(3), Presidential Decree 600/73 and Article 3, Law Decree 66/2014). EU companies and European Economic Area resident companies are subject to a 1.2% rate if they are subject to income tax in their resident state (Article 26(3-ter), Presidential Decree 600/73).

Domestic-source interest payments have a 26% withholding tax rate (Article 26, Presidential Decree 600/73). Italy implemented the Interest and Royalties Directive (2003/49/EC), which abolished withholding taxes on interest payments arising in a member state under certain qualifying conditions (Article 26-quarter, Presidential Decree 600/73).

The taxes on dividend and interest payments may be reduced or eliminated under double taxation treaties. Additionally, the Parent-Subsidiary Directive (2011/96/EU) exempts intra-group dividends from corporate and withholding tax if the foreign company:

- Has a recognised corporate structure.
- Holds at least a 10% ownership interest in the local subsidiary.
- Keeps its distributions in Italy for a period not less than 12 months.

For information on tax considerations when conducting business or other transactions in Italy, see Practice Notes:

- [Tax Residency of Companies in Italy](#).
- [Tax Considerations in Joint Ventures \(Italy\)](#).
- [Tax: Private Company Acquisitions \(Italy\)](#).
- [Lending to a Company in Italy: Structuring the Transaction: Tax Implications](#).

Currency Regulations

Italy does not have currency restrictions or exchange controls. Therefore, foreign franchisors can freely transfer funds in and out of Italy. However, certain reporting requirements, restrictions, or both may apply. For more information, see [Practice Note, Regulation of Foreign Investment in Italy](#).

Legal Formalities

Registration, Licensing, and Consents

Under Italian law, there are no formalities or registration obligations that franchisors must abide or follow when setting up a local franchise except disclosure requirements (see Disclosure Requirements). However, franchisors should enter a written agreement with the franchisee to clearly set out the terms and conditions governing the franchise relationship.

Disclosure Requirements

The franchisor must disclose certain information to the franchisee. Specifically, at least 30 days before the franchisee signs the franchise agreement, the franchisor must deliver to the prospective franchisee:

- A copy of the franchise agreement, except for the schedules to be treated as confidential (namely, the franchising manuals) (see The Franchise Agreement).
- A separate disclosure document containing all information necessary to thoroughly assess the agreement. The required information depends on the location of the franchisor's principal operations, which is classified as operating:
 - exclusively in Italy;
 - both inside and outside of Italy; or
 - exclusively outside Italy when the disclosure is provided.

(Article 4, Italian Franchising Law and Articles 1-2, Ministerial Decree 204/2005.)

The distinctions in the franchisor's principal operations are to help reduce overwhelming franchisees with too much information about the franchisor's international operations across multiple countries, which can make it difficult for the franchisee to analyse and assess the franchise system (Article 4(2), Franchise Law).

The franchise agreement must disclose:

- The franchisor's contact information (such as email address and phone number).
- The franchisor's registered capital.
- The franchisor's financial statements (by providing copies of the past three years or however many

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since the inception of the franchise business if operating for less than three years).

- A list of the trade marks used in the franchise system, including their corresponding registration information, any third-party licences granted to the franchisor, and all documents showing proof of use of the marks.
- A description of the franchise business.
- A list of all the franchisor's directly owned and operated locations.
- A list of all current franchisees with their corresponding location and an indication of the variation of the number of franchisees, year by year, for the last three years (or since the inception of the franchise business if operating for less than three years).
- A summary of all legal claims, including arbitration proceedings, filed against the franchisor regarding the franchise system within the past three years, including claims filed by franchisees, third parties, and public authorities.

(Article 4(1), Franchise Law.)

A franchisor operating exclusively outside of Italy must provide franchisees with:

- A list of all countries where the franchise operates, including the number of franchise stores per country.
- The address and other contact information for at least 20 franchise stores on request of the prospective franchisee.
- Changes in the number of franchisees per country in each of the past three years (including points of sale locations).

(Article 2, Ministerial Decree 204/2005.)

Although Ministerial Decree 204/2005 is meant to apply only to franchise agreements governed by Italian law, the prevailing interpretation is that it also applies to agreements governed by foreign law. Additionally, if one party has provided false information, the other party can void the contract and recover damages (Article 1439, Civil Code and Article 8(1), Italian Franchising Law).

Other Legal Formalities

Foreign franchisors can use all corporate structures customary to international franchise businesses to enter the Italian market. For example, a foreign franchisor can enter a franchise agreement without

establishing a wholly owned subsidiary or branch office in Italy. However, foreign franchisors who do not establish a local subsidiary or branch must sign an international franchise agreement.

If a branch is used, a foreign franchisor must:

- Register the branch office with the Italian register of companies.
- Keep separate accounting books and balance sheets of the branch office.
- File income tax returns for the branch office.

The Italian government is generally in favour of foreign investments. When available, foreign companies can apply for business incentives under the same conditions that apply to domestic companies. For a summary of the key corporate features of Italian legal entities, see [Practice Note, Trading Vehicles: Overview \(Italy\)](#).

Appointing a Franchisee

Foreign franchisors planning to establish a franchising system in Italy should bear in mind considerations relating to employment, IP, and real property.

Employment Considerations

By itself, entering a franchising agreement does not create an employment relationship between the franchisor and franchisee or franchisee's employees. Typically, the relationship between the franchisee and franchisor is commercial and does not include the key elements of an employment relationship. For example, franchise relationships ordinarily involve the franchisee paying the franchisor to use the franchise's proprietary systems and marks while running the day-to-day business on its own account.

The considerations to determine if a franchisor may be liable for a franchisee's employment obligations include whether:

- The franchisee operates within the franchisor's organisation.
- The franchisee enters the contract under their personal name, rather than through a legal entity.
- The franchisor uses the franchisee as a leased employ or is under secondment.
- The franchisor can control and direct the franchisee.

If any of the elements listed in the above bullet list are present, joint employment may exist that makes

the franchisor liable for the franchisee's employees or causes the franchisee to claim they are in effect the franchisor's employee. For example, a franchisor was de facto managing the franchisee's personnel when the franchisor's employees managed the recruitment of the franchisee's personnel, gave them directions on the work to be performed, and set their work hours. The real employers were both the franchisor and franchisee. (*Bellotto vs Body Shop Milano S.r.l. and Dorado S.r.l.*, Tribunal of Milan (25 June 2005).)

Intellectual Property (IP) Considerations

IP Rights Granted

Franchisors typically license to franchisees the right to use the trade name and trade marks used in the business and the franchise operating system. The franchise agreement contains the rights, obligations, and conditions of use.

Generally, the IP rights licensed in a franchise agreement include:

- Know-how.
- Trade marks.
- Trade names.
- Trade dress.
- Copyrights.
- Domain names.
- Store signs.
- Logos.

In Italy, it is not mandatory to register a franchisee as the licensee of a registered trade mark. Franchisees can conduct franchise business, including using the franchise marks, without registering the licence. For example, franchisees can import goods bearing the franchise trade mark without proof of a licence. However, the parties can agree to register the licence with the [Italian Trademark and Patent Office](#).

Protection of Franchisor's IP

While not mandatory, it is best practice to register a trade mark in Italy. A franchisor should register the franchise trade marks before commencing any business to best protect its IP rights from a third party's unauthorised use or registration.

Trade marks obtain full legal protection when registered through either:

- The [Italian Patent and Trademark Office](#).
- The Madrid System under the Madrid Protocol for international registration of marks. For more information, see [Practice Note, Registering a Madrid Protocol Trademark](#).
- The European Union Intellectual Property Office. For more information on EU trade mark (EUTM) filings, see [Practice Note, Registering a European Union Trademark \(EUTM\)](#).

(Industrial Property Code.)

To keep these protections, registered trade marks must be used within five years of registration and not discontinued for more than five years (Article 24, Industrial Property Code). For an overview on filing a trade mark application in Italy, see [Practice Note, Trade Mark Registration and Maintenance: Overview \(Italy\)](#).

A registered trade mark holder can make exclusive use of the trade mark and prevent third parties from using, in economic activity:

- A sign identical to the registered trade mark for the goods or services identical to those for which it has been registered.
- A sign identical or similar to the registered trade mark for goods or services identical or similar to those for which it has been registered, if due to the indistinguishable or similar nature a risk of confusion can be created for the public. This includes a risk of association between the two signs.
- A sign identical or similar to the registered trade mark for goods or services that are not similar to those for which it has been registered, if:
 - the registered trade mark is famous; and
 - the user, without justification, would unduly profit from the mark's distinctive character or fame or its use would damage the mark.

(Article 20, Industrial Property Code.)

Unregistered trade marks can only receive legal protection in the geographic area where the trade mark is used. Therefore, the level of protection is weaker compared to a registered trade mark. Unregistered trade marks can be defended in a

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court action if the holder can demonstrate the marks are widely used in the territory and have attained name recognition (Article 12(1)(a), Industrial Property Code).

It is common practice for a franchise agreement to include:

- A licence to the franchisee to use the trade mark, trade names, and know-how (generally, the IP rights used in the franchise system) solely to operate the franchise within the franchise territory.
- An obligation from the franchisee to monitor and report any third-party infringement of the franchise trade marks and to support the franchisor in pursuing any subsequent legal actions.
- A warranty by the franchisor that it is entitled to license the trade marks.
- A commitment by the franchisor to indemnify the franchisee for any loss derived from the infringement of a third party's right over the licensed trade mark.
- A reservation of the franchisor's right to grant to others use licences to its IP, including the franchise trade marks.
- An acknowledgement that all other IP rights belong to the franchisor, which the franchisee cannot acquire through the franchise agreement.

For more information on the protection and enforcement of IP rights in Italy, see Practice Notes:

- [Counterfeiting Protection and Enforcement: Overview \(Italy\)](#).
- [Scope of Patent Protection \(Italy\)](#).
- [Terminating Licences of IP Rights \(Italy\)](#).
- [Trade Mark Registration and Maintenance: Overview \(Italy\)](#).

Goodwill

Italy recognises goodwill. Generally, franchise agreements state that the franchisee:

- Assigns all rights and interests arising from its use of the franchise IP to the franchisor.
- Is not entitled to compensation for any goodwill it has generated.
- Refrains from actions that could damage the franchise's goodwill.

Use Restrictions

Franchisors should impose restrictions on the use and disclosure of confidential information to protect their IP rights. Post-termination confidentiality obligations are generally enforceable. For an overview of the key issues to consider when entering a confidentiality agreement, see [Practice Note, Confidentiality Considerations: Overview \(Italy\)](#).

Real Property Considerations

There is no specific provision or restriction on ownership or leasing of real estate properties when a franchised activity is performed on the property. Real estate property leased for a commercial or industrial activity must:

- Have at least a six-year term (nine years for hotels).
- Automatically renew unless the landlord demonstrates that the property is needed for an Article 27 purpose.

(Articles 27 and 28, [Law no 392/1978](#).)

Additionally, a franchisor who leases real estate to their franchisees and terminates the lease (including refusing to renew) must indemnify the franchisee for the loss of goodwill unless the franchisee is in default or did not request the lease's renewal (Article 34, [Law no 392/1978](#)).

The Franchise Agreement

Execution Requirements

The parties must include certain provisions in the franchise agreement and comply with specific execution formalities (Article 3(1)(4), Franchise Law). Specifically, the franchise agreement must be in writing and contain:

- The total initial investment amount, including expenses, the franchisee must pay the franchisor or others to establish the franchise system.
- The royalty fee, payment due date, and formula used to calculate the franchise fee
- Any applicable minimum required cashflow to operate.
- A list of the exclusive geographic territories assigned to other franchisees and franchisor-controlled franchise systems.

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- A description of the know-how the franchisor provides to the franchisee. Know-how is a package of non-patented practical information, resulting from experience and testing by the supplier, which is:
 - secret, that is, not generally known or easily accessible;
 - substantial, that is, significant and useful to the franchisee for the use, sale, or resale of the contract goods or services; and
 - identified, that is, described in a sufficiently comprehensive manner to make it possible to verify that it fulfils the secrecy and substantiality criteria.

(Article 1(3)(a), Franchise Law.)

- How any improvements to the franchise system and additions by the franchisee are treated (see Goodwill).
- Any methods of recognising the franchisee's contribution to know-how.
- Any services, support, training, and assistance the franchisor provides to the franchisee.
- The conditions for renewing, terminating, and assigning the franchise agreement.

(Article 3(1) and (4), Franchise Law.) The contract is void if the parties failure to adhere to the requirements in the above bullet list.

AIF members must following additional contracting obligations (see Voluntary Franchising Codes).

For more information on the formation and execution of contracts under Italian law, see Quick Compare Charts:

- Contracts - Creating Enforceable Contracts.
- Contracts - Termination Rights.
- Contract Execution - The Signing Process and Formalities.
- Contract Execution - The Execution Clause (Signing Block).

Rights and Obligations Generally

Customarily, the franchisor grants the franchisee, for the duration of the agreement a right to:

- Use its trade marks, trade names, and know-how (generally, the IP rights used in the system).

- Operate the franchised business within the assigned territory.
- Exclusivity.

Exclusivity clauses in a franchise agreement are permitted under the Competition Act and VBER (paragraph 167. VBER Guidelines). An agreement should clearly indicate if it is exclusive, including the terms of exclusivity (see Competition Laws).

In addition to the franchisor's disclosure obligations, the franchisor must act in good faith, honestly, and fairly during:

- The negotiations (duty of fair dealing).
- The term of the agreement.

(Articles 4 and 6, Franchise Law and see Disclosure Requirements.) For more information on the duty of good faith and fair dealing, see Quick Compare Chart, Contracts - Good Faith and Fair Dealing.

Italian franchise agreements customarily include restrictive covenants to protect the franchisor's interests, such as:

- Non-compete provisions that prohibit the franchisee from competing against the franchisor during the term of the agreement and post-termination.
- The franchisor's right of first refusal to purchase the franchisee's business when:
 - the franchisee wants to transfer its company or business; or
 - the franchise agreement expires.
- Provisions on the ownership of the customer database.
- Confidentiality obligations restricting the franchisee's use and disclosure of the franchise IP, such as trade marks and know how, unless in the public domain (Article 5, Franchise Law).
- Prohibitions on the franchisee:
 - directly or indirectly engaging in any business similar to the franchise;
 - acquiring a financial interest in the equity of a competing franchisor; or
 - assigning their rights and obligations under the franchise agreement without the franchisor's consent.

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The Franchise Law prohibits franchisees from:

- Relocating the franchised business to a new location, if specified in the franchise agreement, without the franchisor's prior consent, except due to force majeure (Article (5)(1), Franchise Law).
- Disclosing confidential information about the franchise system, including after the franchise agreement terminates or expires, which applies to the franchisee and its agents and employees (Article 5(2), Franchise Law).

Some franchise agreements include no-poaching clauses, which prohibit franchisees from hiring or employing personnel from other franchises belonging to the same network or directly from the franchisor. Notably, these clauses have not been officially banned or regulated in Italy. The existence of no-poaching clauses have been partly hidden due to the lack of transparency requirements. While these clauses are often justified to protect investments in personnel training, there can be some concerns about their alignment with Italian competition law and the VBER.

Payment Considerations

Italian law does not impose restrictions on the parties' freedom to set fees and payments under the franchise agreement. Customarily, franchisees must pay the franchisor:

- Initial and ongoing franchising fees.
- Ongoing licence and advertising expenses.
- Royalties.
- Renewal costs.
- Other negotiated charges.

Term of the Agreement

The initial term of an Italian franchise agreement must be:

- Generally, at least three years (Article 3(3), Franchise Law).
- At least six years for commercial property lease agreements (nine years for hotels) (Article 27, Law no. 392/1978).

The parties can agree to a longer duration. The term should allow enough time for the franchisee to recover its investment. Given the lengthy legally prescribed

initial terms, it is common for Italian franchise agreements to include a probationary period.

Renewal rights are common in franchise agreements. These rights can be subject to preconditions, such as:

- Paying a renewal fee.
- The absence of material breaches of the franchise agreement.
- Satisfying predefined performance targets or conditions.
- Refurbishing the premises.
- Executing the most current form of the franchise agreement.

It is customary for the parties to renegotiate the agreement's economic conditions before renewal.

Operation and Compliance

To ensure compliance with the franchisor's business standards, systems, and requirements, it is common to provide franchisees with an operating manual. If a franchisee must comply with an operating manual:

- The franchisor must provide the franchisee with a copy.
- A copy of the manual must be attached to the franchise agreement.

The franchisor can provide the manual in hard copy, an electronic format (for example, the franchisor's website), or both.

The franchisor can unilaterally amend the operating manual unless prohibited by the franchise agreement or law. The franchisor must notify the franchisee of any modifications or amendments.

Disputes, Choice of Law, and Forum

Local law does not require a specific dispute resolution mechanism or dictate the governing law and venue applicable to a franchise agreement. The parties can choose the contract's governing law and any dispute resolution mechanism, including litigation, arbitration, mediation, or other alternative methods to resolve disputes arising under or regarding the franchise agreement. Therefore, any dispute is resolved in accordance with the terms of the franchise agreement. If the parties choose to litigate in court, they must first submit their dispute to mediation (Legislative Decree no 149/2022).

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It is common in Italy for franchise agreements to contain a dispute resolution clause in favour of arbitration. Both local and foreign arbitrations are common due to the highly specialised nature of franchises. For more information on:

- Managing disputes in Italy, see [Managing Disputes \(Litigation and Arbitration\) Toolkit \(Italy\)](#).
- Mediation in Italy, see [Practice Note, Mediation: Overview \(Italy\)](#).
- Choice of law and forum selection in Italy, see [Practice Note, Governing Law and Jurisdiction Clauses: Overview \(Italy\)](#).

Terminating the Franchise Agreement

The Franchise Law does not regulate terminating a franchise agreement. General Italian contract law governs the termination rights and obligations, such as events of good cause, notice of termination, or post-termination obligations.

To terminate an agreement for breach of contract, the non-breaching party must prove the other party's material breach (Article 1455, Civil Code). The parties can include in the franchise agreement:

- The actions or events that can result in good cause for termination, including whether the party must provide prior notice or a cure period (Article 1456, Civil Code). Common actions or events include:
 - closing the franchise business;
 - an inability to pay debts; or
 - a revocation or suspension of the licence to conduct the franchise business.
- A penalty provision for breaches of a non-compete covenant or confidentiality obligation.

The franchisor must exercise its termination rights fairly and in good faith to avoid a claim of contract

rights abuse by the franchisee (Articles 1175 and 1375, Civil Code). For more information on unilateral termination rights, see [Quick Compare Chart, Contracts - Termination Rights](#).

Clauses providing for terminating an agreement on a party's bankruptcy are void, as they prevent the receiver from entering the agreement on the bankrupt company's behalf ([Royal Decree no 267/1942](#)). If the franchise agreement includes a lease of real property, the franchisor must comply with a minimum term and extend renewal options to the franchisee (see [Real Property Considerations](#)).

Franchisees are not statutorily entitled to compensation on early termination but can attempt to demand:

- Severance payments based on the increase in the number of customers attributable to their actions. Generally, severance payments for franchising activities are unlikely.
- Performance based on the duty of fair dealing in unfair termination disputes (including refusals to renew the franchise agreement).

Franchising Trends

The current labour and entrepreneurship market for franchising is more dynamic than in the past. After the COVID-19 pandemic, several new opportunities paved the way for faster access to foreign markets, such as those created by Rete Casa and Quiposte.

There has been a constant increase in commercial affiliation contracts, especially in the service, clothing, and specialised trade sectors. In 2023 and 2024, there was an increase in the active franchising contracts and total employees working under these contracts. Further increases in overall activity through franchise agreements are projected, including significant estimated increases in the personal care and wellness sectors.

Franchise networks are progressively incorporating advanced technologies, including AI, to enhance customer experiences and optimise internal operations. The adoption of AI technology in franchising is emerging as a pivotal strategic lever to improve efficiency, personalize the customer experience, and enhance cybersecurity.

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