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Editor
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Practice Guide

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9

Approaches to Resolving Cross-Border Disputes between Franchisee and Franchisor

Maisa Jean Frank[1]

This chapter discusses different approaches to resolving cross-border disputes between a franchisee and franchisor, including different types of resolution mechanisms and the various stages of each. It will consider the benefits and drawbacks to various methods of alternative dispute resolution, such as negotiation, mediation and arbitration, as well as litigation. It will also discuss particular considerations to keep in mind when conducting discovery across jurisdictions. Many of these dispute resolution mechanisms may be used together in a progression from least to most formal. Ultimately, the best approach will depend upon individual factors, such as the complexity of the dispute, the stakes and the temperament of the parties.

Informal negotiation

When a dispute arises between a franchisee and a franchisor, informal negotiation is generally the first method used to attempt to resolve the dispute. The parties will lay out their grievances and attempt to reach a resolution through direct exchanges with each other, and perhaps between counsel, but without engaging a third-party neutral to assist. The first exchanges might take the form of demand letters.

As the parameters of the dispute become more defined, the parties may decide that it would be beneficial to meet face to face for a more concentrated negotiation session. This meeting typically involves representatives from the franchisee and the franchisor, as well as their counsel, and the two sides talk through their competing positions and concerns. The goal is to negotiate a mutually acceptable resolution.

When planning a face-to-face negotiation session, the parties will need to consider the location. It is likely more costly for both parties to travel, but each party may resist the perceived imbalance of going to the other side's offices. The best solution may be to select a neutral location, such as a conference room or rental office in the city where one party is located, so that

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only one party has to incur travel costs. The language in which the negotiation will be conducted is another concern, with parties most commonly choosing to use the language of their franchise agreement.

Benefits

Informal negotiation can be particularly beneficial for franchisors and franchisees who want to remain in an ongoing business relationship. The negotiation process is less adversarial than arbitration or litigation, and that feature can help preserve the working relationship between the parties. A successfully negotiated resolution will likely require both parties to compromise and may leave them feeling somewhat dissatisfied with the result. But the process allows for the use of creative, business-oriented solutions that the parties craft together.

Negotiation is also much less costly than the other forms of dispute resolution, as it obviates the need for the parties to spend time and money on discovery, motion practice or even drafting a mediation statement. Like mediation, a benefit of negotiation is that the proceedings and the resolution may be kept confidential by agreement between the parties.

Downsides

The primary downside to informal negotiation is that there is no guarantee of reaching a resolution. The process is entirely voluntary and any party can withdraw at any time. Negotiation is also highly unstructured, which may be problematic for parties who feel ill will towards one another.

Mediation

Mediation uses a neutral third party to assist the parties in negotiating a resolution to their dispute. Mediation may occur at the outset of a dispute, or it may be done at some point during the process of an action in arbitration or litigation. Several ADR agencies (listed below) offer mediation services or at least help parties locate a private mediator. Private mediators generally charge an hourly fee that the parties most often choose to split, but the fee may be apportioned however the parties choose. Mediators may be retired judges or practitioners who have experience with franchise disputes or businesses in a particular industry. Alternatively, some courts may offer mediation services with magistrate judges at no charge to the parties.

The parties' discussions during the mediation proceeding, as well as the results of the mediation, are generally confidential. Parties often agree that any statements or offers made in mediation must be kept confidential and cannot be used in later court proceedings. Like negotiation, mediation is non-binding and completely voluntary, and any party may withdraw from the mediation at any time. The goal of mediation is to craft a written settlement agreement, or at least a term sheet outlining the agreed-upon settlement.

Before the mediation, the parties will typically submit for the mediator's review written statements outlining their positions on the facts and law at issue, as well as their settlement positions. The statements may also incorporate a few relevant documents. The mediation itself is usually a face-to-face meeting that might last anywhere from a few hours to a couple of days. Depending on the preference of the parties and the mediator, the mediation may begin with opening statements made by counsel in the presence of both parties, or the parties may decide that it is best to remain separate the entire time. The mediator then typically engages in shuttle diplomacy, travelling back and forth between the parties to discuss their positions.

There are two different approaches to mediation – facilitative and evaluative, with facilitative mediation being the more common type. In a facilitative mediation, the mediator will ordinarily present one party with the other party's offers and counter-offers, discuss the potential expense and risk of proceeding with arbitration or litigation, and may endeavour to explain the other side's view of the issues in dispute or any business realities that need to be addressed in the resolution. But the mediator will generally avoid providing their own analysis of the factual or legal merits of the dispute. On the other hand, in an evaluative mediation, the mediator will provide each party with an assessment of the strengths and weaknesses of its position. The mediator may also provide an analysis of the damages likely to be recovered by the parties. This tactic can be particularly useful if one or both parties have an unrealistic view of the case.

Benefits

Mediation has many of the same benefits as informal negotiation. It is a non-adversarial process ideal for parties who wish to remain in an ongoing business relationship or who are willing to compromise in resolving their dispute. It offers a very flexible procedure and allows the parties to work together to form creative, forward-looking solutions to disputes.

Mediation is generally quick and therefore relatively inexpensive. It does not use the same types of procedural mechanisms, such as discovery or motion practice, as arbitration or litigation, so the associated attorneys' fees are much lower.

Downsides

Like negotiation, the biggest drawback to mediation is that there is no guarantee of a resolution. The parties should think carefully about the best timing for mediation. While it might be most cost-effective to mediate a dispute as soon as it arises, parties may be in a better position to reach an appropriate settlement after fleshing out the facts through discovery. On the other hand, even if a settlement is not reached in early mediation, it can be a useful tool through which the parties may learn more about the other side's position.

It may be more difficult to enforce a mediated settlement agreement than it is to enforce an arbitration award, as there is currently no law in place that allows for easy cross-border enforcement. Parties generally turn to local contract laws for enforcement. However, on 20 December 2018, the United Nations Commission on International Trade Law (UNCITRAL) adopted the United Nations Convention on International Settlement Agreements Resulting from Mediation, known as the Singapore Convention on Mediation, which would allow parties to enforce such settlement agreements in court.[2] The Convention was opened for signing on 7 August 2019 and has been signed by more than 50 countries, including the United States, China, India, South Korea, and several other Asia-Pacific countries. The Convention will enter into force after it is ratified by at least three contracting countries, and the first countries may ratify the Convention in 2020. At that point, the Singapore Convention will become mediation's answer to the New York Convention, which applies to arbitral awards.

2 See text of Convention at https://treaties.un.org/doc/Treaties/2019/05/20190501%2004-11%20PM/Ch-XXII-4.pdf.

A final consideration for franchise systems is that settlements made through mediation do not establish precedent for other similar cases that might arise between the franchisor and other franchisees. This may be a positive or a negative depending on the dispute.

Conciliation

Conciliation is another form of dispute resolution that is very similar to mediation. Conciliation is conducted in the same manner as mediation except the third-party neutral will at some point suggest settlement terms to the parties rather than simply communicating their offers back and forth. Like mediation, conciliation is non-binding and the parties are free to accept, reject or renegotiate the terms of the settlement proposed by the conciliator. Conciliation is used more frequently in civil law countries.

Other alternative dispute resolution processes

There are a number of other types of alternative dispute resolution that are similar to evaluative mediation or arbitration in that a third-party neutral essentially acts as a fact finder, or at least gives an advisory ruling on an issue in dispute. These include early neutral evaluation, expert determination, or seeking an advisory (nonbinding) ruling through arbitration.

In an early neutral evaluation, parties to a court action or arbitration will first submit their dispute to a third-party expert in the field who will evaluate the strengths and weaknesses of each party's position. This may help drive the parties toward settlement. In an expert determination, one or more experts review submissions by the parties and then make a determination on a single issue or a set of claims.[3] The process is less formal than arbitration but may still result in a binding decision if the parties so desire. Finally, the parties may engage in a nonbinding form of arbitration where they seek a decision from an arbitrator that is merely advisory.

Arbitration

If a franchisee and franchisor are unable to resolve their dispute using one of the nonbinding methods discussed above, they will need to turn to arbitration or litigation. Arbitration is generally a binding procedure, in which the parties submit their dispute to an arbitrator or a panel of arbitrators who fully and finally make factual and legal determinations and issue an award.

The stages of arbitration are in many respects similar to those in a court action – the arbitration is commenced by filing an arbitration demand and paying a filing fee. The demand must then be served on the other party, although the rules for service are generally much more relaxed than those that apply in court proceedings. Once the demand is served, the defending party may respond to the demand and assert counterclaims. The parties will also need to select a mutually acceptable arbitrator or a panel of arbitrators, who will act as neutrals. The parties will typically then meet with the arbitrator to discuss case logistics and set a schedule for discovery, any motion practice and perhaps the arbitration hearing. At the arbitration hearing, the parties may present fact witnesses, documentary evidence and expert witnesses, using a process similar to that used in a trial. Following the hearing, the arbitrator will issue a decision and award.

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3 See World Intellectual Property Organization, WIPO Expert Determination Rules, www.wipo.int/amc/en/expert-determination/rules/index.html (last viewed 13 February 2020).

In cross-border arbitration, national evidentiary and procedural rules do not apply. When parties come from countries with very different procedures (eg, civil law versus common law countries), they commonly choose to adhere to the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration.[4] Attorneys from the United States may find the scope of discovery in international arbitration much narrower than that to which they are accustomed, while attorneys from civil law countries might find the opposite. Of course, parties are free to agree to follow any set of rules or procedure that they choose. Parties should be aware that, as discussed below, certain countries have rules restricting the movement of specific types of documents outside of the countries, which may make it more difficult to conduct cross-border discovery.

Although many arbitral forums have their own rules and procedures, the process of arbitration is governed by the contract between the parties. Therefore, the parties may determine in their contract the seat (or domicile) of the arbitration, the location in which it will take place, which forum to use, which rules apply, how much discovery to allow, and almost any other feature of the arbitration. The seat of the arbitration determines which country's laws govern the process of the arbitration, and which courts have a supervisory role over the proceeding.

There are several well-known alternative dispute resolution forums that provide arbitration services, and may also provide mediation services. Such forums include the:

- International Centre for Dispute Resolution (ICDR), the international arm of the American Arbitration Association;[5]
- International Chamber of Commerce (ICC);[6]
- JAMS;[7]
- London Court of International Arbitration (LCIA);[8]
- Hong Kong International Arbitration Centre (HKIAC);[9]
- Singapore International Arbitration Centre (SIAC);[10]
- World Intellectual Property Organization (WIPO), which provides services specifically for franchise disputes, among others;[11]
- Inter-American Commercial Arbitration Commission, which oversees countries throughout the Western hemisphere;[12] and

4 See International Bar Association, Practice Rules and Guidelines, www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx#Practice%20R ules%20and%20Guidelines (last viewed 13 February 2020).

5 International Centre for Dispute Resolution, www.icdr.org/ (last viewed 13 February 2020).

6 International Chamber of Commerce, Dispute Resolution Services, https://iccwbo.org/dispute-resolution-services/ (last viewed 13 February 2020).

7 JAMS, International, www.jamsadr.com/global/ (last viewed 13 February 2020).

8 LCIA, www.lcia.org/ (last viewed 13 February 2020).

9 Hong Kong International Arbitration Centre, www.hkiac.org/ (last viewed 13 February 2020).

10 SIAC, www.siac.org.sg/ (last viewed 13 February 2020).

11 World Intellectual Property Organization, WIPO Alternative Dispute Resolution (ADR) for Franchising, www.wipo.int/amc/en/center/specific-sectors/franchising/ (last viewed 13 February 2020).

12 See Inter-American Commercial Arbitration Commission, Commercial Arbitration and Other Alternative Dispute Resolution Methods, www.sice.oas.org/dispute/comarb/iacac/iacac1e.asp (last viewed 13 February 2020).

- UNCITRAL, which, although it does not administer arbitrations, has prepared a number of conventions, model laws, rules, and texts that may govern international commercial arbitration and mediation.[13]

Benefits

Arbitration has many benefits when compared with litigation. Chief among these is the relative ease of enforcing arbitral awards. The United States is one of 159 countries that are parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, known as the New York Convention (9 USC section 201 et seq), which provides for the recognition and enforcement of arbitral awards in courts, with limited grounds for challenge. There is no similar treaty that provides for the enforcement of court judgments. The United States is also a party to the Panama Convention, which is similar to the New York Convention but for Organization of American States member countries.

Arbitration also has a perceived neutrality, particularly in international disputes where parties may be hesitant to submit to foreign courts. The many well-established arbitral forums provide effective case management, procedures and rules for disputes submitted to arbitration. Yet, because the arbitration procedure is governed first and foremost by the contract between the parties, arbitration has much more flexibility than litigation. For example, the parties are free to choose which laws will apply, who will arbitrate the dispute (and whether the arbitrator should have expertise in franchising or in a particular industry), the procedural and evidentiary rules to be followed, and what language will be used.

The parties to the dispute, particularly franchisors, may like the fact that arbitrations are generally confidential. The arbitration hearing itself is typically closed to the public. The rest of the arbitration process may or may not be confidential, depending on the rules of the jurisdiction. Of course, the parties may always agree to make the results of arbitration confidential.

Finally, arbitrations may proceed more quickly than litigation, especially if motion practice and discovery is limited. This may also help reduce attorneys' fees.

Downsides

Perhaps the biggest downside to arbitration is that the arbitrator's decision is typically binding with very little likelihood of success on appeal. For example, to overturn an arbitrator's ruling in the United States under the Federal Arbitration Act, a party will have to demonstrate that the arbitrator acted fraudulently or with something akin to 'manifest disregard of the law'.[14] However, some forums do have internal review procedures, in which an independent arbitrator within the forum will review the award.

It is more difficult to obtain interim relief, such as a preliminary injunction, in arbitration, and this can be a huge downside for parties that are suffering irreparable harm. But several forums have rules and procedures that allow arbitrators to issue preliminary relief. In their franchise agreement, the parties can give the arbitrator the power to enter interim relief and can agree to treat such an order as final for enforcement purposes.

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13 See United Nations Commission on International Trade Law, International Commercial Arbitration & Conciliation, https://uncitral.un.org/en/texts/arbitration (13 February 2020).

14 See 9 USC sections 10, 11; *Hall St Assocs LLC v Mattel Inc*, 552 US 576, 584–85 (2008).

Another downside of arbitration, as compared with litigation, is that it may take longer to initiate, since the process of selecting an arbitrator itself can be an undertaking. Parties may also find that the arbitration process may not move much faster than litigation, especially if discovery and motion practice are not limited. However, many arbitral forums have expedited arbitration procedures that help streamline the arbitration procedure.

A final issue is cost. Arbitrators are paid by the hour, and their fees are paid in addition to the filing fees paid to the arbitral forum (which are usually much higher than court filing fees). Together, these fees are much greater than the cost of using a nationally funded court system. In addition, unless the arbitration process is truly streamlined, an arbitration proceeding may require the same amount of preparation as a court action, so attorneys' fees will be just as high.

Litigation

A party to a cross-border franchise dispute may decide to bring a civil lawsuit in a US court rather than pursue alternative dispute resolution, or it may choose to do so if alternative forms of dispute resolution, such as negotiation and mediation, have failed. While a court action offers certain advantages (including appellate rights and a greater receptivity to motion practice), litigating international disputes in US courts often takes longer and is more expensive than domestic commercial litigation. In particular, disputes involving foreign parties raise complex jurisdictional, evidentiary, and enforcement issues that litigants must navigate in the early stages of the litigation and throughout the proceedings. The following sections discuss the various stages of a cross-border court action and key issues that can arise during each of those stages.

Jurisdiction and venue

The United States uses a dual court system comprised of federal courts and the courts in each of the 50 states. For either a state or federal court to enter a binding judgment, it must have both subject-matter jurisdiction (the power to hear the type of case at issue) as well as personal jurisdiction (the power over the parties to the case). Accordingly, a key consideration in bringing a civil action in the United States is whether the court can exercise jurisdiction over the parties and the dispute.

A court can exercise personal jurisdiction over a defendant only if the defendant maintains sufficient contact with the place where the court is located. When a case is brought in federal court and personal jurisdiction is challenged, the court must first determine whether the defendant is subject to jurisdiction under the 'long-arm statute' of the forum state. A long-arm statute allows a court to obtain personal jurisdiction over an out-of-state defendant based on certain acts committed by the defendant. If the long-arm statute is satisfied, the court must then determine whether exercising jurisdiction over the defendant would comport with the requirements of due process. Due process requires that a non-resident defendant have 'minimum contacts' with the forum so that it does not offend traditional notions of 'fair play' and 'substantial justice' to hail the defendant into court.[15] State courts undertake a similar analysis.

Even if a foreign defendant has not physically entered a given state, commercial activity the defendant conducts over the internet expressly aimed at the forum, or advertisements by the defendant that are reasonably calculated to reach the forum, may be sufficient to confer

15 See *Int'l Shoe Co v Washington*, 326 US 310, 316 (1945).

personal jurisdiction. Although the outcome will depend on the facts of a given case, because of the interactive and ongoing nature of franchise relationships, a franchisee's business dealings with a franchisor in the franchisor's home jurisdiction will typically satisfy a minimum contacts analysis.[16]

With respect to subject-matter jurisdiction, state courts typically exercise general subject matter jurisdiction and can hear all cases not specifically selected for federal courts. Federal courts possess limited jurisdiction and can only hear cases (i) that raise a federal question (ie, cases that arise under federal law or the US Constitution), or (ii) where the parties to the lawsuit are citizens of different states (either foreign or domestic) and the amount at issue exceeds US$75,000 exclusive of costs and interest.

A party bringing a lawsuit in a US court must also select a proper venue. At the federal level, a plaintiff may bring an action against a foreign individual or corporation in any district.[17] As stated above, however, the defendant must have sufficient minimum contacts with the forum to satisfy due process requirements.

Given that a defendant located outside of the United States may not wish to litigate in a distant and unfamiliar forum, jurisdictional and venue disputes in international cases are not uncommon. Even if all jurisdictional requirements are satisfied, a defendant may still seek to dismiss the case based on the doctrine of *forum non conveniens*. Under that doctrine, a court may refuse to hear a case where the venue is inconvenient or unacceptable for various reasons and there is a more appropriate forum available to adjudicate the dispute.

Service of process

Another consideration in litigating an international dispute is the ability to serve legal process on defendants located in foreign countries. To commence a court action in the United States (at either the state or federal level), a plaintiff must serve the defendant with legal process, which includes a summons and a complaint. A defendant can be compelled to appear in court and be bound by the proceedings only if it is properly served with process.

Rule 4 of the Federal Rules of Civil Procedure governs service in federal courts and includes provisions for effecting service on individuals or corporations located outside of the United States. Under Rule 4(f), an individual located in a foreign country may be served by any internationally agreed means of service that is reasonably calculated to give notice. If there is no internationally agreed means available, Rule 4 authorises additional means of service, including the use of a letter rogatory or personal service if permitted by the law of the state where service is to be completed. Rule 4 provides additional guidelines for serving foreign corporations inside and outside of the United States.

Rule 4 specifically incorporates the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Service Convention) as a proper method of service upon individuals in foreign countries.[18] The Hague Service Convention provides procedures for service of process in civil or commercial matters outside of diplomatic

16 See generally *Burger King Corp v Rudzewicz*, 471 US 462 (1985).

17 28 USC section 1391(c)(3).

18 See Hague Conference on Private International Law, Service Section, www.hcch.net/en/instruments/conventions/specialised-sections/service (last viewed 13 February 2020).

channels. More than 70 nations have ratified the Convention, including the United States, China, the Russian Federation and many European Union member states. The available avenues of service under the Convention in any particular case depend on the rules of the state where the defendant is located. Typically, however, litigants effect service through the 'central authority' designated by the destination state to accept incoming requests for service.

The United States is also a signatory to the Inter-American Convention on Letters Rogatory and its Additional Protocol, which simplifies the process for serving court documents when litigation in the United States implicates parties located in Latin America.[19] Many Central and South American countries that have not ratified the Hague Service Convention are signatories to the Inter-American Service Convention. As with the Hague Service Convention, each signatory to the Inter-American Service Convention has established a central authority for receiving and fulfilling requests for service of process within its borders.

Streamlined procedures for requesting judicial assistance under the Hague Convention and the Inter-American Convention greatly reduce the time and burden associated with serving foreign parties. In the absence of an international treaty, plaintiffs may have to resort to the use of a letter rogatory, which is a formal request from the court where proceedings are under way to a court in another country to effect service of process. Letters rogatory are customarily transmitted via diplomatic channels, which is a time-consuming process.

Discovery

In addition to questions of jurisdiction over foreign parties, cross-border franchise disputes also present the challenge of obtaining evidence located abroad. Obtaining evidence or testimony from a witness in another country raises issues of judicial sovereignty and comity that can lengthen and complicate the proceedings, particularly given that discovery in the United States tends to be much broader than what is permitted in other jurisdictions.

When US litigation necessitates taking discovery in another country, where applicable parties will rely on the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters (the Hague Evidence Convention), which facilitates and governs discovery in member jurisdictions by creating standardised procedures for evidence gathering.[20] In some countries, use of the Hague Evidence Convention is the exclusive means to collect evidence for a foreign case, while in other countries it is one of several options. Signatory countries reserve broad discretion to opt out of the various provisions of the Convention and apply their own local procedures and rules in collecting evidence for use in foreign proceedings. Generally, however, discovery under the Hague Evidence Convention is initiated when the court overseeing the action transmits a letter of request to the central authority of the jurisdiction where the discovery is located. The central authority then submits the request to the appropriate judicial body for a response. If a jurisdiction does not participate in the Hague Convention, a litigant will have to resort to the discovery methods available in that jurisdiction.

19 See OAS, Department of International Law, Letters Rogatory, www.oas.org/en/sla/dil/private_international_law_topics_Letters_Rogatory.asp (last viewed 13 February 2020).

20 See Hague Conference on Private International Law, Evidence Section, www.hcch.net/en/instruments/conventions/specialised-sections/evidence (last viewed 13 February 2020).

Privacy limitations and data protection laws in other countries may also impact a litigant's ability to obtain documents or information in the international context. Many other jurisdictions have implemented strict privacy laws that may preclude the retention, dissemination or transfer of data that includes personal information, even where discovery requests are otherwise proper. In particular, the General Data Protection Regulation, implemented in May 2018, standardises data protection law across all European Union countries and imposes strict rules on controlling and processing personally identifiable information.

Trials

The trial of cross-border disputes poses additional challenges and considerations. By way of example, the parties may need to introduce foreign records and testimony or to translate documents and use interpreters to introduce evidence at trial. Foreign witnesses may not be available to appear in person, necessitating the introduction of deposition testimony instead of live testimony. To the extent the parties do not stipulate to the law that governs the dispute, the court also may have to undertake a choice of law analysis, and if foreign law applies, the court will have to determine the content of that law. All of these issues will require additional preparation in advance of trial.

In addition, case records and trial proceedings in US courts are presumptively public, which is another factor that a party may want to weigh when choosing between the various dispute resolution mechanisms.

Enforcement of judgments

Finally, if a dispute proceeds to trial and a judgment is rendered, the prevailing party may seek to enforce that judgment. The United States is not a party to any international convention or treaty governing the recognition and enforcement of US judgments abroad. Accordingly, recognition and enforcement of US judgments abroad is determined in accordance with the domestic law of the country where the judgment is sought to be enforced.

In addition, the United States has not enacted federal legislation to govern the recognition and enforcement of foreign judgments. As a result, in the United States, state law governs the recognition and enforcement of judgments issued by non-US courts. Some states have adopted the Uniform Foreign Money-Judgments Recognition Act of 1962, other states have adopted the Uniform Foreign-Country Money Judgments Recognition Act of 2005, and still other states have not adopted either of the Recognition Acts and instead follow a set of common law principles. Both of the Recognition Acts apply solely to judgments granting or denying a sum of money and exclude from their coverage judgments for injunctive, declaratory or other equitable relief. In addition, judgments for taxes, fines or other penalties are not within the scope of the Recognition Acts.

A party seeking to enforce a foreign judgment must first bring an action in federal or state court to have the judgment recognised as a US judgment. Under the Recognition Acts, the applicant must establish that the judgment is final, conclusive and enforceable in its country of origin. The party opposing recognition will have the opportunity to raise any grounds for non-recognition of the judgment, including that the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with due process of law. The court considering the recognition petition must also have personal jurisdiction over the judgment debtor or over the judgment debtor's assets in the forum state. If a US court is reasonably convinced that

a non-US judgment comports with the concept of due process, comity typically will be afforded. Once it is judicially recognised, a foreign judgment is enforceable as a domestic judgment, and the judgment creditor may proceed against the property of the judgment debtor in the forum state to satisfy the judgment amount.

Conclusion

As franchise systems grow on a global scale, cross-border disputes are inevitable, and multiple approaches can be taken (alone or in combination) to reach a resolution. Sometimes the facts of a given case will weigh strongly in favour of a particular approach, and other times not. Whatever the circumstances, both litigation and alternative forms of dispute resolution offer advantages and disadvantages that parties to international franchise disputes will want to carefully consider, taking into account the complexity of the issues involved, the availability of witnesses and evidence, and the time and expense that the parties are willing to commit to the matter.

Appendix 1

About the Authors

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Maisa Frank represents clients in a variety of litigation matters. Whether conducting pre-dispute investigations, navigating litigation or negotiating resolutions, Maisa's advice and strategy is vital to clients facing complex legal issues. She assists clients with commercial litigation, including breaches of contract and business torts such as fraud, misrepresentation, and interference with contract; trademark infringement disputes; enforcement of non-compete agreements; investigations, including conducting internal investigations and representing clients in government investigations; and Foreign Corrupt Practices Act compliance and advising.

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