

## FRANCHISING IN AUSTRALIA

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Franchising is one of the fastest growing business sectors in Australia. There are over 800 franchise systems operating in Australia, with the number of franchisees estimated to be 40,000. The United States has had a strong influence on the development of Australia's franchise industry with major U.S franchisors including KFC, McDonalds and Pizza Hut establishing operations in Australia in the late 60's early 70's. Australia continues to be one of the major markets for international franchise expansion.

Successful expansion into the Australian market requires strategic planning combined with an understanding of the market and regulatory system.

Franchisors considering expanding their operations into the Australian market have a number of different options available to them. They can:

- set a branch office or subsidiary company to develop and operate the franchise system
- grant an area or master franchise for Australia
- grant licenses or franchises direct to franchisees in Australia
- enter into joint venture agreements or partnerships with local companies

The vehicle ultimately chosen by the franchisor to expand its operations will be influenced by a number of factors, including:

- the franchisor's financial resources and personnel levels
- the refinements required to the franchise system to suit the Australian market
- economic and financial incentives offered by the Australian government to foreign investors
- the taxation system
- the regulatory or legal system that regulates the industry and business practices
- the franchisor's overall aims, goals and expectations with respect to the Australian market.

Whichever franchise structure is adopted, it will be necessary for the franchisor to ensure that its trade marks and other intellectual property rights are protected. These rights are the most valuable assets of a franchise system and their protection should be secured before any expansion plan is implemented. In Australia, intellectual property rights are protected by statute and common law. Australia has trade mark, design and patent registration systems which are administered by IP Australia.

The Australian government has not adopted any specific foreign investment policies directed at franchising. However, to the extent that setting up a franchise operation in Australia involves the acquisition, takeover or control of Australian companies or businesses or the acquisition of interests in urban real estate, it will be subject to regulatory controls in that area. [\[1\]](#)

Australia's foreign investment regulatory scheme is complex and government policies vary according to industry sectors, such as banking, aviation, shipping, media, broadcasting, telecommunications and tourism. Generally foreign investment is encouraged in Australia if it is in the 'national interest'.

The franchising industry in Australia is regulated. The Australian *Franchising Code of Conduct* ("the Code") is a mandatory code prescribed under the *Trade Practices Act 1974 (Cth)*. The Australian Competition and Consumer Commission (ACCC) is responsible for the administration and enforcement of the Code. The disclosure requirements under the Code have been based on the US Uniform Franchise Offering Circular (UFOC). New amendments to the Code came into effect as of 1 March 2008 [2]. Overseas franchisors considering entering the Australian market, must comply with the Code. Formerly, exemption was available where only one franchise was granted in Australia and there was no sub-franchising. The Parliamentary Joint Committee on Corporations and Financial Service is also currently reviewing the Code and is expected to release its report in December 2008.

In addition to compliance with the Code, franchisors also have to comply with other business, trade practices and consumer protection laws. Franchisors proposing to expand their operations into the Australian market are advised to seek expert legal advice.

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[1] Foreign investment is regulated by the Foreign Acquisitions and Takeover Act 1975 and Australian Government policy set down by way of Ministerial statements and guidelines. The Treasurer is responsible for the administration of foreign investment regulations and policies and is assisted by the Foreign Investment Review Board.

[2]For further discussion of the amendments effective 1 March 2008, please see "Franchising Code of Conduct - Australian Rules Amended Effective 1 March 2008" <http://www.stephens.com.au/view/22/2008021193437> .