
FRANCHISING IN GOOD FAITH: THE NONRENEWAL
POWER, GOOD CAUSE, AND GOODWILL

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The power structure of franchise agreements generally favors franchisors. This preference, in policy, practice, or both, applies, inter alia, to issues arising with respect to renewal and nonrenewal, including: (1) disclosure requirements and time periods; (2) the role of franchisees in forming associations; (3) a franchisee's expectation of compensation for the goodwill that it has accrued; (4) the right of automatic renewal in some circumstances; (5) public policy, commercial reasonableness, and equity, including notions of estoppel and defenses to allegations of discrimination; and (6) the effect of consistently applied ideals – the benchmarks for good cause – on continuation of, or recommitment to, a franchise agreement.

In addition to case law, the primary impact on renewal arises from statutes, franchising codes of ethics, and, broadly, the concepts of good faith and fair dealing. Besides analyzing minimum performance standards and American jurisprudence, this article compares the renewal principles found in many nations. While other nations' legal and ethical precepts may not reach or otherwise reform the American law of renewal, the collective action of franchisees may rectify, at least in part, a pro-franchisor, anti-renewal predisposition based almost exclusively on contract language and traditional common law concepts.

Key words: Renewal, nonrenewal, franchise, franchisor, franchisee, disclosure, associations, ethics, good cause, goodwill, good faith, right to renew, international standards, public policy

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I. AN INTRODUCTION TO FRANCHISE RENEWALS

A. *Good Cause Requirements: The Foundation of Modern Franchise Law*

Renewal of franchise agreements is frequently an issue, and often franchisees are the clear losers. Franchisees have long claimed that a right to renew should always be accessible, regardless of whether it is specifically stated in the franchise agreement.¹ Franchisors, on the

¹ See Harris J. Chernow, Kerry J. Olson & Rebekah K. Prince, *Is That a Fair Deal? Best Practices for Negotiation of the Franchise Agreement*, A.B.A. 35TH ANN. F. ON FRANCHISING, Oct. 2012, at 1, 15–16 https://www.americanbar.org/content/dam/aba/publications/franchising_past_

other hand, typically contend that renewal rights should exist only if stated explicitly.²

Notwithstanding the contractual strict constructionists' assertions favoring almost absolute franchisor freedom (wherein franchisors are bound only by express terms in a contract that the franchisor writes), some jurisdictions require good cause for termination of the franchise agreement³ or for its nonrenewal.⁴ When considering termination, Title 13, Section 523H.7 of the Iowa Code defines "good cause" as:

[T]he failure of the franchisee to comply with any material lawful requirement of the franchise agreement, provided that the termination by the franchisor is not arbitrary or capricious when compared to the actions of the franchisor in other similar circumstances. The burden of proof of showing that action of the franchisor is arbitrary or capricious shall rest with the franchisee.⁵

However for nonrenewal, title 13, section 523H.8 of the Iowa Code defines "good cause" as "cause based on a legitimate business reason."⁶ Therefore, it should be understood that franchise

meeting_materials/2012/w6.pdf (on file with Columbia Business Law Review) (remarking that franchisees have a preference for the broadest possible renewal rights at the outset of contractual negotiations).

² See Daniel J. Oates & David M. Byers, *Is This Really the End? Dealing with Renewal and Nonrenewal of Franchise Relationships*, INT'L FRANCHISE ASS'N 48TH ANN. LEGAL SYMP., May 2015, at 1, 5 <https://www.millernash.com/asset/631a247e87b63> (on file with Columbia Business Law Review) (discussing courts' disinclination to recognize a right to renewal outside explicit contractual provisions); *Termination and Nonrenewal of a Franchise*, HG.ORG, <https://www.hg.org/legal-articles/termination-and-nonrenewal-of-a-franchise-22637> [<https://perma.cc/7CN3-CY2J>] (last visited Mar. 5, 2025).

³ Jeff Haff & Tami McKnew, *Important Franchise Case Law*, in REPRESENTING FRANCHISEES 299, 308 (Thomas R. Ayres & Howard E. Bundy eds., 2023) (discussing *BP Prods. N. Am., Inc. v. Hillside Serv., Inc.*, Nos. 09-4210 & 09-5143, 2011 WL 4343452 (D.N.J. Sept. 14, 2011)) ("The court disagreed, explaining that pursuant to the NJFPA, once a franchise relationship had begun, so long as the franchisee complied substantially with the terms of the agreement, the franchisee could not be terminated or refused renewal without good cause. . . . Interestingly, the court indicated that a permanent injunction was not a proper remedy; the act did not guarantee a perpetual franchise, but only required that good cause must support termination or nonrenewal."); see IOWA CODE § 523H.7 (2022).

⁴ See IOWA CODE § 523H.8 (2022).

⁵ *Id.* § 523H.7 (2022).

⁶ *Id.* § 523H.8 (2022).

nonrenewal in states such as Iowa cannot be on flimsy grounds; rather, there must be a change in competitive circumstances.⁷

Another important example is the New Jersey Franchise Practices Act (NJFPA), which protects countless rights of franchisees, with a good cause precondition for franchise termination.⁸ “Courts analyzing the ‘good cause’ requirement of the NJFPA have concluded that, absent a material breach of the franchise agreement’s terms, a franchisee has achieved substantial compliance such that renewal is required.”⁹ Conversely, good cause for nonrenewal or termination exists under the NJFPA if the franchisee materially breached a term that the parties agreed was “integral to the parties’ agreement.”¹⁰

An excellent example of an American court finding good cause for termination is an oft-cited case from the Midwest, *The Original Great American Chocolate Chip Cookie Co. v. River Valley Cookies, Ltd.*¹¹ In this case, the franchisor, Great American, attempted to terminate a franchise agreement with Robert and Paula Sigel, who had a franchise to operate a Great American Chocolate Chip Cookie store at an Aurora, Illinois shopping mall.¹² While the agreement was in effect, the Sigels neglected to furnish required insurance certificates, paid four invoices more than ten days after they were due, sent seven checks that bounced, failed several health and quality inspections, and underreported their sales by over \$40,000.¹³ Under the applicable Illinois law, “good cause” was defined as “the failure of the franchisee to comply with any lawful provisions of the franchise or other agreement”¹⁴ The court found that the termination based on these actions constituted good cause because the franchise agreement defined material breaches to include, among other things, failing to maintain the Cookie System Facility in a good, clean, wholesome manner; failing to pay any service fee within ten days after it is due; failing to pay any of the company’s invoices within that period; underreporting gross sales; or failing to maintain certain insurance

⁷ See *id.*

⁸ N.J. STAT. ANN. § 56:10-5 (West 2025).

⁹ David Oppenheim & Aaron Van Nostrand, *When Do Franchisee Actions Justify Termination? Can the Violations Be Cured?*, N.J. L. J. (May 27, 2021), <https://www.law.com/njlwjournal/2021/05/27/when-do-franchisee-actions-justify-termination-can-the-violations-be-cured/> [https://perma.cc/KQ67-GC62]; see also *Maple Shade Motor Corp. v. Kia Motors Am., Inc.*, 260 F. App’x 517, 518 (3d Cir. 2008) (explaining the “good cause” inquiry turns on whether a franchisee has breached a material obligation of the franchise agreement).

¹⁰ Oppenheim & Van Nostrand, *supra* note 9 (quoting *Maple Shade Motor Corp.*, 260 F. App’x at 518).

¹¹ 970 F.2d 273 (7th Cir. 1992).

¹² *Great Am. Chocolate Chip Cookie Co.*, 970 F.2d at 275.

¹³ *Id.* at 278.

¹⁴ *Id.* at 279.

coverage.¹⁵ Thus, the franchisor had good cause to terminate the relationship because the franchisee materially breached the franchise agreement.¹⁶

Requiring franchisors to have sufficiently good cause to terminate or not renew a franchise is crucial¹⁷ to the success of a franchise network because it keeps franchisors from taking advantage of the franchisee by arbitrarily terminating or not renewing their agreements.¹⁸ If it were not for good cause requirements, franchisors could, for example, choose to not renew the most profitable franchises, making it possible for the franchisor to take over the business and reap the benefits of the most lucrative locations.¹⁹ Further, the good cause requirement raises the franchisee's right to sue and diminishes the unfair leverage that a franchisor may have when overseeing its agreements, thereby leveling the playing field for both parties.²⁰

¹⁵ *Id.* at 278–79.

¹⁶ *Id.*

¹⁷ Jeff Haff & Tami McKnew, *Important Franchise Case Law, in REPRESENTING FRANCHISEES* 299, 308 (Thomas R. Ayres & Howard E. Bundy eds., 2023) (discussing *Hartford Elec. Supply Co. v. Allen-Bradley Co., Inc.*, 736 A.2d 824 (Conn. 1999) (“The termination, based on the dealer’s failure to meet the manufacturer’s sales expectation, violated the Connecticut Franchise Act. The act allowed termination or nonrenewal for good cause, but the burden was on the franchisor to prove good cause under an objective standard, namely, failure of the franchisee to substantially comply with ‘any material and reasonable obligation’ of the franchise agreement.”).

¹⁸ See Jacques Boulay & Odile Chanut, *The Performance Drivers of the Franchise Relationship: Narrative Synthesis and Perspectives*, INT’L SOC’Y OF FRANCHISING 2023 ANN. CONF., June 2023, at 1, 25 (on file with Columbia Business Law Review). In two specific distribution industries, automobile dealerships and retail gasoline dealerships, there are federal statutes protecting the franchisees (the dealers) from arbitrary termination. Automobile Dealers’ Day in Court Act, 15 U.S.C. §§ 1221–1225 (2025); Petroleum Marketing Practices Act, 15 U.S.C. §§ 2801–2806 (2025) (abbreviated “PMPA”). Both statutes require “good faith” for termination. 15 U.S.C. § 1222 (2025) (Automobile Dealers’ Day in Court Act provision restricting franchise termination); see 15 U.S.C. § 2802 (2025) (PMPA statute restricting franchise termination. “Good faith” is not a defined term in § 2802, however the statutory language tracks the 15 U.S.C. § 1221 definition.). But U.S. law has no such statute for franchising generally. Instead, there is simply the Federal Trade Commission’s rule mandating disclosure. 16 C.F.R. § 436 (2025) (requiring franchisors to furnish prospective franchisees with a Franchise Disclosure Document covering 23 specific items of detailed information).

¹⁹ Boulay & Chanut, *supra* note 18, at 25.

²⁰ Jeff Jianfeng Wang et al., *Conflict Aftermath: Dispute Resolution and Financial Performance in Franchising*, 96 J. RETAILING 548, 553 (2020) (explaining how good cause requirements cause a franchisor’s legal actions to only target more serious violations and a franchisee’s inexperience is less likely to harm the franchisee).

B. *The Current Structure of Modern Franchise Law and its Issues*

Despite some good cause protections, the power structure of franchise agreements leans strongly in favor of the franchisors who draft the agreements, have access to information and expertise, and usually have more money and relevant experience than prospective franchisees.²¹ Based on this power tilt, franchise agreements typically contain more pro-franchisor provisions than pro-franchisee provisions.²² As modern franchise agreements become more complex,²³ this problem is exacerbated, making integrated franchisee protections more important.

Domestically, the relationship laws and statutes of approximately twenty states provide various rules and regulations favoring the franchisee, allowing the franchisee to renew the franchise agreement if it has committed no material breach,²⁴ consistent with good cause requirements. Another protection that state relationship statutes sometimes afford to franchisees is still stronger: automatic

²¹ Franchisors enjoy a position of superior power in the bargaining stage as well as in the dealings thereafter. The power is derived from the ability of the franchisor to choose to license the use of the trademark, the right to decide whether to lease property and products, and the ability to decide whether to withhold services. See Jerrold G. Van Cise, *Franchising—From Power to Partnership*, 15 ANTITRUST BULL. 443, 444–46 (1970); see also Robert W. Emerson & Lawrence J. Trautman, *Lessons About Franchise Risk from Yum Brands and Schlitzsky's*, 24 LEWIS & CLARK L. REV. 997, 1008 (2020) (explaining that franchisees are not usually in a position to negotiate franchise agreements because the franchise agreements are drafted by the franchisor and the franchisee is in a “take it or leave it” position).

²² Robert W. Emerson, Final Statistical Analysis (last visited March 5, 2025) (unpublished data set) (on file with author); see *LaGuardia Assocs. v. Holiday Hosp. Franchising, Inc.*, 92 F. Supp. 2d 119, 125 (E.D.N.Y. 2000) (observing that the economic dominance of the franchisor in franchise agreements may result in practices unfair to the franchisee); Robert W. Emerson, *Franchise Contract Interpretation: A Two-Standard Approach*, 2013 MICH. ST. L. REV. 641, 686–701 (2013) (data from 1971, 1994, and 2013 showing, via detailed analysis of the numerous, typical clauses in a randomly chosen, large set of franchise agreements (100 each in 1994 and 2013) indicating a continuing trend toward contract terms strongly favoring the franchisor).

²³ See Emerson & Trautman, *supra* note 21, at 1008 (noting that the monitoring of a franchise encompasses “a complicated web of legal strands”).

²⁴ See Marc Lieberstein & Chris Williams-Lopez, *Franchise Termination Statutes State Law Survey*, LEXISNEXIS PRACTICAL GUIDANCE (Mar. 15, 2023), <https://ktslaw.com/en/insights/publications/2023/3/franchise%20termination%20statutes%20state%20law%20survey> [https://perma.cc/RSJ2-8X6M]; see also IOWA CODE § 523H.7 (2022) (outlining the requirements for proper franchise termination); ARK. CODE ANN. § 4-72-204 (2025) (outlining the requirement of good cause necessary for a franchisor to terminate or elect nonrenewal of a franchise). For more on franchise relationship statutes found in almost half of the fifty U.S. states, see *infra* Parts I.B.2, II, and II.A.

renewal of the agreement based on mutual consent, even when there is no written agreement.²⁵

Internationally, franchisee protections are neither clear nor consistent. There is no obvious answer as to whether there is an automatic right to renew, and unjust terminations are instead decided on a case-by-case basis.²⁶ In the United States, when franchisors terminate or choose not to renew a franchise agreement, they may face restrictions, such as notice requirements,²⁷ disclosure obligations,²⁸ and the implicit rights and self-imposed duties inherent to reasonable expectations.²⁹ The type of restrictions and the level of protection afforded to a franchisee varies from country to country. Surveying the approaches taken by a selection of international jurisdictions is thus quite useful for developing improved practices and laws within U.S. franchising.

While some domestic protections are a step in the right direction, they are far from adequate or universally recognized.³⁰ Even when pro-franchisee measures are recognized, some versions may not give enough protection.

²⁵ See Gillian K. Hadfield, *Problematic Relations: Franchising and the Law of Incomplete Contracts*, 42 STAN. L. REV. 927, 937 (1990) (showing 12.9% of franchise contracts studied had perpetual term length in 1986); Kerry L. Bundy & Robert M. Einhorn, *Franchise Relationship Laws*, in FUNDAMENTALS OF FRANCHISING 145, 157 (Rupert M. Barkoff et al. eds., 4th ed. 2015); see also Joseph Sheyka & Elizabeth M. Weldon, *Fees, Initial Terms, and Removal*, in THE ANNOTATED FRANCHISE AGREEMENT 33, 52 (Nina Greene, Dawn Newton & Kerry Olson eds., 2018).

²⁶ Compare Yu Qin, *China*, in INTERNATIONAL FRANCHISE SALES LAWS 145, 163 (Kendal H. Tyre, Jr. & Michael R. Laidhold eds., 3d ed. 2023) (“The term of the franchise agreement may not be less than three years, unless it is otherwise agreed upon by the Franchisee. This minimum period requirement does not apply to the renewal of a franchise agreement. . . . The 2007 Regulations do not impose any obligation on a Franchisor to renew the franchise contract, but if the Franchisor and the Franchisee decide to conduct negotiations to renew the franchise contract (basically a new franchise agreement), the 2007 Regulations do require the Franchisor and its Franchisee to negotiate the renewal in accordance with the principles of fairness and reasonableness.”), with Silvia Bortolotti & Alberto Venezia, *Italy*, in INTERNATIONAL FRANCHISE SALES LAWS 245, 262 (Kendal H. Tyre, Jr. & Michael R. Laidhold eds., 3d ed. 2023) (“[T]he duration of the franchise agreement, which must be sufficient to allow the Franchisee to realize the entire amortization of its investments in the franchise business and, in any event, must be no less than three years, when the agreement is for a limited term . . .”).

²⁷ FLA. STAT. ANN. § 686.413(3)(c) (West 2025).

²⁸ FTC Disclosure Requirements and Prohibitions Concerning Franchising, 16 C.F.R. § 436.5 (2025).

²⁹ See *Zubair Kazi v. KFC U.S., L.L.C.*, No. 19-cv-03300-RBJ, 2020 U.S. Dist. LEXIS 211285, at *16 (D. Colo. Nov. 12, 2020) (explaining that a franchisor vested with “contractual discretion” must exercise the discretion in line with reasonable expectations based on franchise agreement).

³⁰ See Lieberstein & Williams-Lopez, *supra* note 24.

One example of a franchisor taking unfair advantage of a franchisee despite statutory franchisee protections is evident in *Corp v. Atlantic Richfield Co.*³¹ Franchisee Craig Corp operated in Washington state which required the franchisor to act in good faith and prohibited the franchisor from terminating a franchise agreement without good cause and without compensating the franchisee.³² After the initial franchise period ended, the franchisor offered renewal, but on more onerous terms of operation.³³ Despite the franchisee's argument that the new terms were financially unreasonable—constituting a constructive termination, and thus triggering statutory compensation—the Supreme Court of Washington held that making the franchisee's terms less favorable did not amount to nonrenewal and did not violate the Franchise Investment Protection Act.³⁴

Essentially, the court in *Corp* permitted the franchisor to use its superior bargaining position to impose unreasonable terms despite an existing relationship and legislation that was in place to remedy this issue. It is apparent from scenarios like this that strong, consistent, and universally recognized good cause standards and other protections are necessary to give franchisees clarity and achieve adequate protection.

1. *Inconsistent international standards*

As mentioned, the inconsistent franchise agreement protections are an issue domestically and internationally. For comparison, just as states may have different definitions of what constitutes good cause, countries may differ on whether renewals are required.³⁵ We thus consider the law and practice in several nations.

- a. England and Wales

The British Franchise Association's (BFA) adoption of the European Franchise Federation's European Code of Ethics for Franchising (the Code) does not provide for an automatic right of renewal.³⁶ The BFA's interpretation of article 5 of the Code further

³¹ 860 P.2d 1015 (Wash. 1993) (en banc).

³² The court describes that the purpose of the Franchise Investment Protection Act is to deal with abuse of franchisees and unfair practices used by franchisors that are enabled by "an overwhelmingly strong bargaining position" of franchisors. *Corp*, 860 P.2d at 1018–19.

³³ *Id.* at 1017.

³⁴ *Id.* at 1018, 1021.

³⁵ See *infra* Part I.B.1.

³⁶ BRIT. FRANCHISE ASS'N, THE CODE OF ETHICS FOR FRANCHISING 13 (2023) (U.K.), <https://www.thebfa.org/wp-content/uploads/The-Code-of-Ethics-for-Franchising.pdf> [<https://perma.cc/Y7UQ-NESE>]; see also Iain Bowler, *England & Wales*, in FRANCHISE LAWS AND REGULATIONS 41, 50 (International Comparative

supports this “no mandatory renewal” principle, as it recognizes that the “minimum term for a franchise contract should be long enough for a franchisee to amortize their investment over the length of the term,” but it is silent as to whether renewal of the franchise agreement is a required part of helping the franchisee to amortize their investment.³⁷ Thus, there is ambiguity on exactly how long the initial term must be, and whether franchisees have the right to renewal if they have not recouped their initial investment by the end of the first term.

This approach is further supported by the French interpretation of the Code.³⁸ The national annexes to the Code are additions meant to interpret and elaborate on the Code’s provisions.³⁹ The French annex states that, with sufficient notice, the parties should inform one another reciprocally of either’s intention not to renew the present contract as it reaches the end of its term or not to enter into a new contract.⁴⁰ Based on the French interpretation, it can be reasonably assumed from the Code that franchise renewal is automatic unless either party provides notice of nonrenewal.⁴¹ Regardless of whether there is an implied right to automatic renewal, article 5.5 perhaps ensures that the franchisee can recoup investment costs and exploit the purpose of the franchise contract.⁴²

Legal Guides ed., 2024), <https://iclg.com/practice-areas/franchise-laws-and-regulations/england-and-wales> [<https://perma.cc/UZS9-3P7N>].

³⁷ BRIT. FRANCHISE ASS’N, *supra* note 36, at 11, 13 (stating that “the duration of the agreement ... should be long enough to allow Individual Franchisees to amortize their initial and subsequent investments specific to the franchise”).

³⁸ See *The European Code of Ethics for Franchising*, FRANCHISING.EU (Apr. 1, 2021), <https://franchising.eu/franchise-guide/26/the-european-code-of-ethics-for-franchising/> [<https://perma.cc/N779-L84S>].

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See BRIT. FRANCHISE ASS’N, *supra* note 36, at 10–11. The Code states:

The essential minimum terms of the [franchise] agreement shall include at least the following:

- i. the rights granted to the Franchisor
- ii. the rights granted to the Individual Franchisee
- iii. the Franchisor’s intellectual property rights on the brands, signs, etc., which should be established for a term at least as long as the term of the franchise agreement
- iv. the goods and/or services to be provided to the Individual Franchisee
- v. the obligations of the Franchisor
- vi. the obligations of the Individual Franchisee
- vii. the terms of payment by the Individual Franchisee
- viii. the duration of the agreement which should be long enough to allow Individual Franchisees to amortize their initial and subsequent investments specific to the franchise
- ix. the basis, including the notice which both parties must give, for any renewal of the agreement

Additionally, the United Kingdom has no mandatory disclosure requirements before entering into a franchise agreement.⁴³ However, article 3.3 of the Code requires member franchisors to provide prospective franchisees with a copy of the Code and a “full and accurate written disclosure of all information material to the franchise relationship, within a reasonable time prior to the execution of these binding documents.”⁴⁴

Similarly, even though there is no automatic right under English Law for the franchisee to renew the franchise agreement at the end of its term, article 5.5 of the Code may serve as an escape clause for that provision. Clause 5 of the BFA’s national annex suggests that reference must be made to article 5.5 of the Code, which states that the minimum term specific to the franchise and the franchise agreement “should be the period necessary to amortize those of a franchisee’s initial and subsequent investment”⁴⁵ However, this clause could be subject to national laws concerning the restraint of trade and may need to be met through renewal clauses. Further, clause 7 of the BFA’s national annex to the Code states:

The basis for contract renewal should take into account the length of the original term, the extent to which the contract empowers the franchisor to require investments from the franchisee for refurbishment or renovation, and the extent to which the franchisor may vary the terms of a contract on renewal.⁴⁶

There is no case law that solidifies the idea that article 5.5 may serve as a safety net for the lack of a right to renewal or otherwise to protect franchisees by ensuring they recoup their investment. Consequently, franchisees are still left in the dark regarding exactly how comprehensive the article’s protections will be.

x. the terms upon which the Individual Franchisee has the right to sell or transfer the franchised business as a going concern and the Franchisor’s possible pre-emption rights in this respect

xi. provisions relevant to the use by the Individual Franchisee of the Franchisor’s distinctive signs, trade name, trademark, service mark, store sign, logo, or other distinguishing identification

xii. the Franchisor’s right to adapt the franchise system to new or changed methods provisions for termination of the agreement

xiii. provisions for surrendering promptly upon termination of the franchise agreement any tangible and intangible property belonging to the Franchisor or other owner thereof.

Id. (emphasis added).

⁴³ Bowler, *supra* note 36, at 41.

⁴⁴ See BRIT. FRANCHISE ASS’N, *supra* note 36, at 9.

⁴⁵ *The European Code of Ethics for Franchising*, *supra* note 38.

⁴⁶ BRIT. FRANCHISE ASS’N, *supra* note 36, at 13.

Although there is no provision for good faith and fair dealing in English Law, article 2.4 of the Code proclaims that parties to the franchise “shall exercise good faith and fairness in their dealings . . . [via] written notice of any contractual breach and, unless inappropriate, grant reasonable time to the other party to remedy default.”⁴⁷ In light of the BFA’s interpretation of the Code, parties should understand that all franchise agreements must be made in good faith and fair dealing. While there may be moral or reputational consequences for a party that does not act in good faith, the BFA’s annex to the Code does not impose any legal requirement of good faith, leaving the onus on the parties to contract for such a requirement in the franchise agreement.⁴⁸

In sum, franchisees receive minimal protections in the United Kingdom and in Wales.⁴⁹ Despite there being no legal requirements that franchisors must abide by, ethical standards imposed by the BFA provide guidelines that protect franchisees to a certain extent.⁵⁰ While the Code does not provide a right of automatic renewal, it does create standards that attempt to ensure the franchisee recoups investment costs and reaps the benefits of the franchise agreement.⁵¹

b. Australia

In Australia, the Australian Competition and Consumer Commission (ACCC), which administers the Competition and Consumer (Industry Codes—Franchising) Regulation 2024 (the Franchising Code) outlines penalties for breach of disclosure requirements prior to a franchise agreement.⁵² Under section 20, franchisors must give franchisees a disclosure document before renewing or extending the term or scope of the franchise agreement.⁵³ Section 36 requires that franchise agreements must explicitly state that there is no option to renew the agreement.⁵⁴ This raises the question: if a specific nonrenewal clause is left out of the franchise agreement

⁴⁷ *Id.* at 8.

⁴⁸ Rachel Warren, *The Importance of Good Faith Clauses in Franchise Agreements*, FOOTANSTEY (Oct. 8, 2018), <https://www.footansteys.com/our-insights/articles-news/the-importance-of-good-faith-clauses-in-franchise-agreements/> [<https://perma.cc/4FZ4-LDYB>].

⁴⁹ See John Pratt, *What Are the Legal Requirements for Franchises in the UK*, WHAT FRANCHISE, <https://www.what-franchise.com/questions/what-are-the-legal-requirements-for-franchises-in-the-u.k> (on file with Columbia Business Law Review) (last visited March 5, 2025).

⁵⁰ *Id.*

⁵¹ See BRIT. FRANCHISE ASS’N, *supra* note 36, at 13.

⁵² See *Competition and Consumer (Industry Codes—Franchising) Regulations 2024* ch 2 pt 3 div 2 s 20 (Austl.).

⁵³ *Id.*

⁵⁴ See *id.* at ch 2 pt 4 div 2 s 36.

(i.e., there is no statement about renewal or nonrenewal), is there an implied automatic renewal?⁵⁵ The International Distribution Institute's "Report on Franchising – Australia" states that if a fixed term contract does not provide the option for renewal, the contract will come to an end.⁵⁶ The Australian Competition and Consumer Commission's franchisee information statement also highlights the risk for prospective franchisees, stating that franchisees must ensure important provisions (e.g., renewal provisions) are expressed in the franchise agreement.⁵⁷

In addition to these disclosure requirements, Australia's Franchising Code imposes a statutory requirement of good faith.⁵⁸ Like good faith requirements in other jurisdictions, Australia's is not statutorily defined.⁵⁹ However, the Franchising Code does require that franchise agreements are drafted carefully to give franchisors termination rights under specifically listed "special circumstances."⁶⁰ Requiring franchisors to outline special circumstances in which they may terminate the agreement presumptively would make it harder for franchisors to end the agreement for other reasons, effectively giving franchisees greater predictability. This concept, paired with good faith requirements, is similar to good cause requirements applicable in certain U.S. jurisdictions.⁶¹

⁵⁵ See *Weatherbeeta Ltd. v Hammersmith Nominees Pty Ltd.* [2019] VSC 559 (22 August 2019) (Austl.) (holding that where there was no express term regarding the termination or nonrenewal of a franchise agreement, factors such as the relationship of the parties and the perception of the franchisees are evaluated to determine what constitutes reasonable notice to terminate or not renew the agreement). This case may indicate that when nonrenewal is not explicitly mentioned in the franchise agreement, renewal is automatic, and termination requires reasonable notice. See also Iain Irvine & Tina Tran, *International Developments: Australia*, in ANNUAL FRANCHISE AND DISTRIBUTION LAW DEVELOPMENTS 301, 306 (2020).

⁵⁶ Tony Conaghan, *Country Report Australia*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 13 (2023) ("For a fixed term contract, unless the contract provides for a renewal option at expiry of the fixed term, the contract comes to an end.").

⁵⁷ See AUSTL. COMPETITION & CONSUMER COMM'N, INFORMATION STATEMENT FOR PROSPECTIVE FRANCHISEES 2–3 (2025).

⁵⁸ *Good Faith in Franchising*, HAARSMA LAWS., <https://www.haarsma.com.au/resources/good-faith-in-franchising> [<https://perma.cc/X7BY-GE9T>] (last visited Feb. 27, 2025).

⁵⁹ Australian caselaw defines "good faith" as the duty to act honestly and not to undermine the benefit bargained for and to act reasonably regarding the interests of the parties. See *Paciocco v Austl. & N.Z. Banking Grp. Ltd.* [2015] FCAFC 50 (8 April 2015) (Austl.).

⁶⁰ Tony Conaghan, *Australia's New Franchising Code*, IDI (Feb. 16, 2016), <https://www.idiproject.com/news/australias-new-franchising-code/> [<https://perma.cc/JY8L-9XGM>].

⁶¹ Bryan Dillon & Mackenzie Dimitri, *Claims Typically Arising after the Franchise Term Ends*, in REPRESENTING FRANCHISEES 287, 293 (Thomas R. Ayres &

Altogether, franchisees in Australia are not given the automatic right of renewal unless such a right is stated in the fixed term contract.⁶² In a perpetual term contract, reasonable notice based on the circumstances must be given to the franchisee to terminate the agreement.⁶³ However, the specific requirements for disclosures, good faith, and “special circumstance” termination mandated by the new franchising code⁶⁴ will likely make it easier for franchisees to navigate renewal.

c. Italy

In Italy, there are no specific statutory provisions on the termination of franchise agreements. However, for a fixed-term franchise contract, the franchisor must grant franchisees a term of at least three years⁶⁵ because this period allows the franchisee to amortize their investment. Recently, Italian courts have also applied the requirement of a minimum term to franchise contracts with indefinite terms.⁶⁶ While a franchisor may terminate an indefinite franchise contract pursuant to the terms of the agreement, it would still very likely violate the franchisor’s duty of good faith to do so before three years have elapsed.⁶⁷ The franchise agreement must also contain the following:

- (a) the amount of the investment and possible entry expenses to be incurred by the franchisee prior to commencing the activity;

Howard E. Bundy eds., 2023) (“In some states, the franchisor is required to provide the franchisee with advanced written notice of the intent not to renew, and others further require the franchisor must have ‘good cause’ not to renew. Some statutes require the franchisor to repurchase the franchise upon its election not to renew, while others require the franchisee have the opportunity to sell or recover the fair market value of the franchise. . . . In at least one Ninth Circuit case, the franchisor’s failure to timely offer a renewal constituted a waiver of its right to negotiate more favorable terms, allowing the franchisee to continue under the terms of its prior agreement.”).

⁶² Tony Conaghan, *Country Report Australia*, in INT’L COMPARATIVE LEGAL GUIDES, FRANCHISING COUNTRY REPORTS at 36 (2024).

⁶³ See *Weatherbeeta Ltd. v Hammersmith Nominees Pty Ltd.* [2019] VSC 559 (22 August 2019) (Austl.).

⁶⁴ See Conaghan, *supra* note 60.

⁶⁵ See Valerio Pandolfini, *Franchise Agreements in Italy: Duration, Renewal, Withdrawal, Termination*, FRANCHISING IN IT. (Nov. 29, 2022), <https://franchisinginitaly.com/duration-of-franchise-agreements-in-italy/> [<https://perma.cc/3X6W-HLPY>].

⁶⁶ See Fabio Bortolotti & Silvia Bortolotti, *Country Report Italy*, in INT’L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 20–21 (2022) (referring to Milan App. [Milan Cort of Appeals], 3 December 2021, n. 3528 (It.)).

⁶⁷ F. Bortolotti & S. Bortolotti, *supra* note 66, at 20.

- (b) the method of calculation and payment of the royalties, as well as an indication, if any, of a minimum collection to be attained by the franchisee;
- (c) the scope of the territorial exclusivity, if any, with respect to other franchisees or to channels and sales units directly managed by the franchisor;
- (d) the specification of the know how provided by the franchisor to the franchisee;
- (e) possible criteria of acknowledgement of the contribution of know-how by the franchisee;
- (f) the characteristics of the services offered by the franchisor in terms of technical and commercial assistance, planning and outfitting, training;
- (g) the conditions for renewal, termination, or possible assignment of the contract.⁶⁸

Some U.S. jurisdictions require good cause for the discontinuance of a franchise agreement or contract.⁶⁹ However, in certain European countries such as Italy, the good cause requirement can be satisfied by giving proper notice based on the contractual provisions.⁷⁰ Renewal conditions are often detailed in the agreement,⁷¹ and when two parties enter into a fixed-term franchise agreement, the agreement ceases to exist by the end of the term as the franchisor has no obligation to continue the agreement.⁷² Similarly, the franchisee has

⁶⁸ *Id.* at 8 (referring to Cass. Civ., [Court of Cassation], 2018, n. 11256 (It.)).

⁶⁹ See discussion *infra* Part II.B.

⁷⁰ Art. 1322 Cod. Civ. [Italian Civil Code] (It.) (stating that parties are free to determine the terms of the agreement, thus an agreement without renewal terms will not be construed to automatically renew); see also Silvia Bortolotti, *Italy: Termination of Distributorship Contracts: Abuse of Right and Violation of Good Faith*, (Apr. 18, 2018) <https://www.idiproject.com/news/italy-termination-distributorship-contracts-abuse-right-and-violation-good-faith/> [<https://perma.cc/HFU7-X56X>](explaining that even though termination by contractual provision with proper notice constitutes good cause, courts are free to determine if the termination was not in good faith by considering the contractual provision).

⁷¹ See, e.g., Tribunal of Bologna, 4 May 2012, Foro Amm. III, (It.). In this case, the franchise agreement stipulated that to terminate, eight months advanced notice had to be given. It did not mention a right to compensation based on termination. The court held that the franchisee was constrained to the specific remedies laid out within the contract; since eight months' notice had been provided, the franchisee was not entitled to compensation based on the contract's termination.

⁷² *Id.* For information on the case, see Silvia Bortolotti, *Italy: Italian Case-Law on Distribution and Franchise Contracts*, INT'L DISTRIB. INST. (July 15, 2013), <https://www.idiproject.com/news/italy-italian-case-law-distribution-and-franchise-contracts/> [<https://perma.cc/TV27-XLNG>].

no right to renew the agreement.⁷³ However, in some cases, parties to a fixed-term agreement agree to automatically renew the agreement for a shorter or equal period, unless a notice of termination is given by one of the parties in advance.⁷⁴

Despite Italy's lack of a rule requiring good cause for nonrenewal of the franchise agreement, courts do consider the aspect of "reasonable expectation" when a franchisor induces such expectations through reassurance or behavior.⁷⁵ While there is no duty to renew, the choice not to renew must be based on a sound business reason, else the franchisor would risk being found liable for an "irrational decision."⁷⁶ Furthermore, a unilateral decision to withdraw from the agreement prior to its expiration must be based on the principle of "good faith."⁷⁷

Essentially, even though there is not a statutory renewal requirement in Italy, franchisors are bound by *culpa in contrabendo* or the precontractual duty of good faith.⁷⁸ If a franchisor in a fixed term

⁷³ F. Bortolotti & S. Bortolotti, *supra* note 66. Franchisees also may not rely on the argument that the franchisor's termination was an abuse of the franchisee's economic dependence if the nonrenewal was exercised pursuant to a valid provision of the franchise agreement. See Francesca Romana Turitto, *A Primer on Franchising in Italy*, 39 FRANCHISE L.J. 235, 242–43 (2019).

⁷⁴ Pandolfini, *supra* note 65; see also Aldo Frignani & John H. Pratt, *Termination and Nonrenewal of Franchise Agreements in the European Union*, 37 FRANCHISE L. J. 15, 19 (2017). Frignani and Pratt support the "no mandatory renewal" proposition, but do not reference the code of ethics. Frignani & Pratt, note 74. Also, it seems that neither the Code nor the authors reference an "automatic right of renewal" (e.g., with parties bound to a new term unless one or both opt out in a timely fashion). *Id.*

⁷⁵ Art. 1337 Cod. Civ. [Italian Civil Code] (It.).

⁷⁶ See *id.*; see also Tommaso Febbrajo, *Good Faith and Pre-Contractual Liability in Italy: Recent Developments in the Interpretation of Article 1337 of the Italian Civil Code*, 2 ITALIAN L. J. 291, 295 (2016) ("[U]nder the narrow interpretation followed by Italian courts for almost fifty years, pre-contractual liability was considered an appropriate ground for legal action only upon breakdown of negotiations without a valid justification and upon knowledge of contract invalidity (Art 1338).").

⁷⁷ See Art. 1337, *supra* note 75.; see also Febbrajo, *supra* note 76, at 292–93 (noting that Italian case law tends to find liability under Art. 1337 for unilateral withdrawal prior to expiration where one party, by conduct or reassurances, induced reasonable expectation in the other).

⁷⁸ *Culpa-in-contrabendo* is a Latin term for "fault in contracting." *Culpa-In-Contrabendo Doctrine*, BLACK'S LAW DICTIONARY (11th ed. 2019). It is an especially significant doctrine in the Civil Law tradition. Friedrich Kessler & Edith Fine, *Culpa in Contrabendo, Bargaining in Good Faith and Freedom of Contract: A Comparative Study*, 77 HARV. L. REV. 401, 407, 419 (1964) (noting that the Latin term refers to "fault in negotiating," with the notion having its roots in Roman Law). A summary of the defining terms states that this concept has undergirded "[t]he principle that parties must act in good faith during preliminary contract negotiations; [and] that a breach by the offeror after the offeree has begun performance of a unilateral contract and is stopped by the offeror before completion will give rise to liability in tort." *Culpa-In-Contrabendo Doctrine*, BLACK'S LAW DICTIONARY (11th ed. 2019).

agreement has led a franchisee to believe that the agreement will be renewed for a period after the initial period ends, the franchisor will likely be bound by that expectation. To terminate or not renew the agreement, the franchisor would have to give the franchisee advance notice of nonrenewal.⁷⁹

d. Germany

Germany's approach is similar to Italy's in that, upon the expiration of the fixed-term agreement, the franchisor is not obliged to renew the agreement unless there is an automatic renewal clause.⁸⁰ In other words, the franchisee is not entitled to a renewal unless there was a unilateral agreement to do so in favor of the franchisee. However, nonrenewal rights of the franchisor are nuanced. In fixed term agreements, the franchisee is entitled to at least recoup its investment.⁸¹ This means that if the agreement is not renewed, the franchisee can claim damages for the high investment costs required or encouraged by the franchisor that were not covered by the franchisor towards the end of the agreement.⁸² Thus, a franchisor must consider its actions when deciding not to offer renewal. If the franchisor has led the franchisee to believe renewal would take place and subsequently decides otherwise, damages will likely be owed to the franchisee.⁸³

⁷⁹ Generally, this notion of a "reasonable expectation" is common in many nations. For example, the Civil Law tradition provides that "pre-contractual disclosure obligations mainly consist of a party's duty to inform and the other party's duty to investigate"; and this means that "[p]arties may rely on the accuracy of each other's information and must always bear in mind each other's reasonable expectations." Tessa de Mönink, *Country Report Netherlands*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 6 (2023). Likewise, the common law applies similar concepts. In the United States, "[t]he covenant of good faith and fair dealing is not meant to replace or supersede the explicit provisions of the franchise agreement but rather to ensure that parties behave in accordance with the *reasonable expectations* set forth in the contract." Ronald K. Gardner, Jr. & Beata K. Krakus, *Country Report United States*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 27 (2024) (emphasis added).

⁸⁰ Tom Billing & Jasmin Schulzweida, *Franchise Laws and Regulations Germany 2023*, INT'L COMPAR. LEGAL GUIDES (Oct. 21, 2022), <https://iclg.com/practice-areas/franchise-laws-and-regulations/germany> [<https://perma.cc/HB2V-6VM3>].

⁸¹ Benedikt Rohrßen & Giorgia Carandente, *Germany*, in L. BUS. RSCH. LTD., FRANCHISE 2022 57, 62 (Mark Kirsch ed., Tom Barnes pub., 2022).

⁸² *See id.*

⁸³ *Id.* This approach, perhaps requiring compensation of the franchisee's investments and costs (or perhaps goodwill), is found in many jurisdictions, especially those in Europe. *See, e.g., infra* Part I.B.1.e (France); Tessa de Mönink, *Netherlands*, in LEXOLOGY GETTING THE DEAL THROUGH: FRANCHISE 2024 174, 191 (Mark Kirsch ed., 2024).

In Germany, there is no statutory definition of “franchising.”⁸⁴ Although only partially recognized by the courts, the German Franchise Association defines franchising as a sales and distribution system through which goods, services, or technologies are marketed.⁸⁵ It is founded on a close and ongoing collaboration between legally and financially independent and self-employed businesses, the franchisor, and the franchisees.⁸⁶ The franchisor grants its franchisees the right, as well as the obligation, to operate a business in accordance with its concept.⁸⁷

One question widely debated in Germany is whether a franchisee has an overriding right to a renewal or extension of the franchise agreement at the end of the initial term, regardless of the franchisor’s wishes. In most cases, the answer is no, unless such a right for the franchisee is provided in the franchise agreement.⁸⁸ However, in certain exceptional cases, the franchisee may be allowed to renew or extend the franchise agreement on the principles of “contractual duty of care and loyalty.”⁸⁹ This is applicable to instances where, due to the order of the franchisor, the franchisee has made substantial investments on the franchise.⁹⁰ Even without an order, “if the franchisor has created trust in the franchisee that the franchisee

⁸⁴ See Rohrßen & Carandente, *supra* note 81.

⁸⁵ See *id.* While there is no legal definition of franchising in Germany, and thus no statutory law guiding franchisors, franchisee protection methods are developed under the principle of good faith. Christiane Berr & Sarah Liomin, *Germany: Franchise and Licensing*, in LEGALEASE LTD., LEGAL 500 COUNTRY COMPARATIVE GUIDES 2025 2 (2025), <https://www.legal500.com/guides/wp-content/uploads/sites/1/2025/10/Germany-Franchise.pdf> [<https://perma.cc/578X-M7JZ>].

⁸⁶ See Tom Billing & Jasmin Schulzweida, *Franchise Laws and Regulations: Germany 2023*, INT’L COMPAR. LEGAL GUIDES (Oct. 21, 2022), <https://iclg.com/practice-areas/franchise-laws-and-regulations/germany>. [<https://perma.cc/HB2V-6VM3>].

⁸⁷ See *id.*; see also Bürgerliches Gesetzbuch [BGB] [Civil Code], § 307, https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p0961 [<https://perma.cc/HXM9-RNRJ>] (Ger.).

⁸⁸ Christoph Schmitt, *Germany*, in GLOB. LEGAL GRP. LTD., THE INTERNATIONAL COMPARATIVE LEGAL GUIDE TO: FRANCHISE 2018 79, 84 (4th ed. 2018), https://www.acc.com/sites/default/files/resources/v1/membersonly/Article/147-0786_1.pdf (on file with Columbia Business Law Review); see also Gregoire Toulouse & Benedikt Rohrßen, *Germany*, in L. BUS. RSCH. LTD., FRANCHISE 2021 54, 59 (Philip F. Zeidman ed., Tom Barnes pub., 2021), <https://www.taylorwessing.com/en/insights-and-events/insights/2021/05/franchise-and-distribution-germany> [<https://perma.cc/9FX4-7BTF>] (explaining that automatic renewal is proper when the franchise agreement includes an automatic renewal clause, but otherwise, other protections such as reasonable notice periods protect franchisees sufficiently).

⁸⁹ See Schmitt, *supra* note 88, at 84.

⁹⁰ See *id.*

agreement will be renewed, a decision to the contrary may result in the [franchisor's] obligation to pay damages or frustrated expenses for investments not returned.”⁹¹

The codified concept of *Treu und Glauben* (“good faith”) is considered one of the most important pillars of Germany’s private law system;⁹² equivalent codified domestic concepts have impetus throughout the Germanic private law family.⁹³ The franchisor and franchisee are parties to a contract and are obliged to act in accordance with the general principle of good faith, taking customary practice into consideration per section 242 of the German Civil Code (*Bürgerliches Gesetzbuch*, or BGB).⁹⁴

This principle is evident in how franchisors may conduct themselves regarding termination. For example, while a franchise agreement with a definite term may be terminated for cause, such as failing to pay advertising fees as outlined in the agreement, the right may not be exercised until it is the last resort for the franchisor.⁹⁵ This idea directly puts the idea of good faith to a test of practicality – of life consequences, since it prohibits a franchisor from terminating for cause on comparatively weak grounds and gives the franchisee the opportunity to find a remedy.

There also arises a situation where a franchisor has announced its intention to renew the franchise contract, thereby encouraging the franchisee to invest in the refurbishment of business premises on the verge of contract expiration. In such cases, a refusal to renew the franchise contract without good reason may entitle the franchisee to claim damages.⁹⁶ For example, a franchisor leading a restaurant

⁹¹ Benedikt Rohrßen, Martin Rothermel & Giorgia Carandente, *Germany, in* L. BUS. RSCH. LTD., DISTRIBUTION AND AGENCY 2023 129, 134–35 (David Koch ed., 2023).

⁹² This principle of good faith applies to every contractual relationship as well as any legal obligation. Kevin Bork & Manfred Wandt, “Utmost” Good Faith in *German Contract Law*, 111 GER. J. OF RISK & INS. 243, 244 (2020), <https://doi.org/10.1007/s12297-020-00478-6> [<https://perma.cc/DY65-UWN5>].

⁹³ Jori Munukka, *The Contractual Duty of Loyalty: Good Faith in the Performance and Enforcement of Contracts*, 49 STOCKHOLM FAC. L. RSCH. PAPER SERIES 203, 203–04 (2015).

⁹⁴ Section 242 says that “an obligor has a duty to perform according to the requirements of good faith, taking customary practice into consideration.” *Bürgerliches Gesetzbuch [BGB] [Civil Code]*, § 242, http://www.gesetze-im-internet.de/englisch_bgb/index.html [<https://perma.cc/4GWV-ZLCY>] (Ger.).

⁹⁵ Karsten Metzlauff & Tom Billing, *Germany, in* L. BUS. RSCH. LTD., FRANCHISE 2018 64, 67 (Philip F. Zeidman ed., Gideon Robertson pub., 2018); *see also* Kammergericht [KG] [Court of Appeal] Berlin, Nov. 21, 1997, Case No. 5 U 5398/97 (Ger.) (*Burger King*).

⁹⁶ Benedikt Rohrßen & Giorgia Carandente, *Q&A: The Franchisor-Franchisee Relationship in Germany*, LEXOLOGY (July 12, 2021), <https://www.lexology.com/library/detail.aspx?g=f0a0f0a1-3bfc-4b1c-8d0f-d3c52bb67cca> [<https://perma.cc/49NW-H283>].

franchisee to believe that the franchisor intends to renew the agreement through the franchisor's actions or communications would trigger this concept. Any investment the franchisee made in reliance on renewal, such as purchases of new equipment or renovations to the premises, could be claimed as damages in the case of nonrenewal.

In a German case that illustrates this principle, a lease agreement was formed between a lessor and lessee of commercial property.⁹⁷ During the course of the lease, the lessor made representations that the lease would be renewed, such that the lessee relied on the representations when the lessee made substantial improvements to the commercial property.⁹⁸ The lessor also had full knowledge of the improvements the lessee was making.⁹⁹ After the lessor decided not to renew the agreement, the German court found that in effect the termination defied *Treu und Glauben*, and the court awarded damages to the lessee.¹⁰⁰

Section 241(2) of the BGB provides that an obligation may also, depending on its contents, require each party to take account of the rights as well as legal and other interests of the other party.¹⁰¹ Section 282 supports the enforcement of section 241(2) by authorizing claims for damages:

If the obligor breaches a duty under section 241 (2), then the obligee may, subject to the prerequisites set out in section 280 (1) having been met, demand damages in lieu of performance if it cannot reasonably be required of the obligee any longer to accept performance by the obligor.¹⁰²

Consistent with sections 241(2) and 282 of the BGB and the principle of *Treu und Glauben*, BGB section 311 requires parties

⁹⁷ Bundesgerichtshof [BGH] [Federal Court of Justice], June 14, 2006, NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 1381, 174 Entscheidungen des Bundesgerichtshofes in Zivilsachen 5 (Ger.) (Urteil des XII case - ZR 124/03), VIII ZR 249/05.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*; see ENTSCHIEDUNGEN DES BUNDESGERICHTSHOFES IN ZIVILSACHEN [BGHZ] 168 [Federal Court of Justice], 168, June 14, 2006, 5 (Ger.), NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 2322 (Urteil des XII case - ZR 124/03)).

O 64; MDR 2006, 1276.

¹⁰¹ Bürgerliches Gesetzbuch [BGB] [Civil Code], § 241(2), http://www.gesetze-im-internet.de/englisch_bgb/index.html [<https://perma.cc/K94H-R6NH>] (Ger.).

¹⁰² Bürgerliches Gesetzbuch [BGB] [Civil Code], § 282, http://www.gesetze-im-internet.de/englisch_bgb/index.html [<https://perma.cc/K94H-R6NH>] (Ger.).

intending to enter into a contract to negotiate honestly and openly.¹⁰³ This duty applies to franchise agreements and includes the obligation to disclose any matter that would alter the other party's decision to enter into the agreement or not.¹⁰⁴ Ideally, this would mean that franchisors always disclose any material dispositions about termination and renewal when negotiating the contract.

As a whole, franchisees in Germany are primarily protected by what resembles flexible legal principles rather than strict guidelines.¹⁰⁵ Concepts such as good faith, the right to recoup investment, and the duty to negotiate fairly all metaphorically embed franchisee protection into the German franchise system. However, while this framework produces gains in some instances, franchisees would still profit from more predictable renewal rights that give them even greater clarity on whether their business will be terminated or allowed to continue.

e. France

In France, courts have refused to recognize the franchisee's right to bring a claim for nonrenewal of an agreement absent an explicit automatic renewal clause.¹⁰⁶ Article 1212 of the French Civil Code provides that no party may demand renewal of a fixed-term contract.¹⁰⁷ Franchisors are not required to give franchisees prior notice and need not provide any basis for their decision not to renew the agreement.¹⁰⁸ If the parties continue to perform a fixed-term contract after its

¹⁰³ John R F Baer et al., *Disclosure in International Franchising*, 3 INT'L J. FRANCHISING 3, 22 (2005); Bürgerliches Gesetzbuch [BGB] [Civil Code], § 311, http://www.gesetze-im-internet.de/englisch_bgb/index.html [<https://perma.cc/K94H-R6NH>] (Ger.).

¹⁰⁴ Baer et al., *supra* note 103, at 22.

¹⁰⁵ An example of the orderly nature of these principles is the tiered structure for increasing notice periods if a franchisor decides against renewal. Per a German Federal Court case, Case No. VIII ZR 130/96 (*Benetton*) (July 23, 1997), statutory provisions regarding commercial agents have been applied by analogy for franchise agreements without a set termination point: for the franchise's notice of termination, there must be one month's notice during the franchise's first year, two months during the franchise's second year, three months during the franchise's third through fifth years, and six months as of the franchise's sixth year. Rohrßen & Carandente, *supra* note 96, at 116.

¹⁰⁶ Cecile Peskine & Clemence Casanova, *Franchise Laws and Regulations France 2025*, ICLG (OCT. 22, 2024), <https://iclg.com/practice-areas/franchise-laws-and-regulations/france> [<https://perma.cc/RN6Q-2GJL>].

¹⁰⁷ Code civil [C. civ.] [Civil Code] art. 1212 (Fr.).

¹⁰⁸ Mark Henderson, *France, in* INTERNATIONAL AGENCY & DISTRIBUTION LAW 685, 707 (Dennis Campbell ed., 3d ed., Juris pub., 2022); Claire Poirson & Lea Monel, *Q&A: The Franchisor-Franchisee Relationship in France*, LEXOLOGY (July 15, 2022), <https://www.lexology.com/library/detail.aspx?g=3993cc09-3d67-4758-8235-811690844b81/1000> [<https://perma.cc/Y6JW-JMWQ>].

expiration, it is an implied renewal,¹⁰⁹ and the renewed contract is one for an indefinite term.¹¹⁰

To bring a claim against the franchisor for nonrenewal of their agreement, the franchisee has little chance of success without the existence of an automatic renewal clause; in such cases, the franchisee must then establish that the franchisor abused its right of nonrenewal.¹¹¹ This is a high burden, requiring the franchisee to show more than that the refusal was unjustified, that there was unequal economic bargaining power between the parties, or that the franchisor prioritized opening company-owned branches in making its decision.¹¹²

In the case of a fixed-term agreement with an automatic-renewal-unless-notice-is-given clause, some international courts interpret what constitutes “reasonable notice” or “adequate notice.”¹¹³ Because of the absence of any statutory provision on this issue, French courts generally rely on common practices, such as notice periods of six to twelve months, and other factors including investment costs, the “mobility” of stores in respective markets, and the duration of the past agreement.¹¹⁴

Clause 10 of the National Annexure to the Code of Ethics for the Fédération Française de la Franchise (FFF) (French Federation of the Franchise) states, “As the case may be, the franchisor and franchisee inform one another reciprocally, and with sufficient notice, of either party’s intention not to renew the present contract as it reaches its term or of not wishing to sign a new contract.”¹¹⁵ This means that once a contract begins and when the contract duration is about to end, either party, franchisor or franchisee, must give notice of their intention not to renew the contract. Absent such notice, it is

¹⁰⁹ Rémi Delforge & Gilles Menguy, *France*, in INTERNATIONAL FRANCHISE SALES LAWS 169, 195 (Kendal H. Tyre, Jr. & Michael R. Laidhold eds., 3d ed. 2023).

¹¹⁰ Robert W. Emerson, *Franchising Constructive Termination: Quirk, Quagmire or a French Solution?* 18 U. PA. J. BUS. L. 163, 200 n.199 (2018).

¹¹¹ Poirson & Monel, *supra* note 108.

¹¹² *Id.*

¹¹³ Frignani & Pratt, *supra* note 74, at 21. In U.S. law, 15 U.S.C. § 2802 (c)(4)(a) (2024) is a provision describing adequate notice. “[N]otified in writing, prior to the commencement of the term of the then existing franchise[.]” See *Graeber v. Mobil Oil Corp.*, 614 F. Supp. 268, 275 (D.N.J. 1985) (holding that a letter to the franchisee fulfilling notice requirements of 15 U.S.C. § 2804 (c)(3) is sufficient notice). Here, Mobil even erred in its use of the terms “nonrenewal” and “termination” in its letter. Still, the court stated that the message got across to the franchisee. While that could have been confusing, the court did not rule in favor of the franchisee on that issue. See *id.* at 271–74.

¹¹⁴ See Frignani & Pratt, *supra* note 74, at 21.

¹¹⁵ European Franchise Federation, *European Code of Ethics for Franchising*, FRANCHISING.EU, (Apr. 1, 2021), <https://franchising.eu/franchise-guide/26/the-european-code-of-ethics-for-franchising/#france> [<https://perma.cc/3FF7-4CAX>].

implied that the franchise agreement will continue in perpetuity unless explicitly specified. Indeed, French franchisees “often have extensive rights to compensation for losses due to termination or, in exceptional cases (e.g., related to faulty notice), even nonrenewal.”¹¹⁶ This may constitute a type of indemnity,¹¹⁷ and it is regardless of any blame passing to the franchisor.¹¹⁸

Expanding beyond France to consider European franchise contracts generally, contracts are more easily renewed whenever one or more of these three characteristics are present:

- (1) neither the franchisee nor the franchisor notified the other side that it would not renew (French law), or
- (2) regardless of any notice provision, a franchise holdover went beyond the franchise term originally agreed upon (French and Brazilian law), or
- (3) the franchisor failed to show “good cause” or otherwise follow an elaborate process for avoiding the automatic renewal of a franchise (German law).¹¹⁹

So, Germany and other countries have franchisors and the law of contract, such that they generally may seem, juridically, to favor a strict construction of franchisees’ alleged customary or otherwise implied rights. In reality, however, many European judges, including those in France, may certainly be characterized as more “pro-franchisee” than judges in most U.S. courtrooms.

¹¹⁶ Robert W. Emerson, *The Good, the Bad, and the Ugly: Franchising Has a Joint Employment and Independent Contracting Problem*, 20 N.Y.U. J. L. & BUS. 367, 438 (2024) (citing LOUIS VOGEL & JOSEPH VOGEL, *FRENCH DISTRIBUTION LAW* 662, 667–70 (3d ed., 2020)). France has more protection from arbitrary nonrenewals than typical in the United States. See Emerson, *supra* note 116, at 437 (citing VOGEL & VOGEL, *supra* note 116, at 655–62 (discussing franchise terminations and nonrenewals under French law); Robert W. Emerson, *Thanks for the Memories: Compensating Franchisee Goodwill After Franchise Termination*, 20 U. PA. J. BUS. L. 286, 302–304 (2017) (referring to a number of cases involving termination of a franchisee’s lease and leaving the effectively terminated or nonrenewed franchisee a right to compensation for its lost, local goodwill).

¹¹⁷ See DIDIER FERRIER & NICOLAS FERRIER, *DROIT DE LA DISTRIBUTION* 72–73, 101, 128–30 (9th ed. 2020); Poirson & Monel, *supra* note 108.

¹¹⁸ Emerson, *The Good, the Bad, and the Ugly*, *supra* note 116, at 438 (citing VOGEL & VOGEL, *supra* note 116, at 678 (noting that a 2016 French Supreme Court decision affirmed that “an amicable termination of the [franchise] contract does not constitute a waiver of the franchisee’s right to seek reparation of the injury caused by [the franchisor’s] breach,” and concluding, “[t]he franchisee’s right to compensation is not limited to cases of termination at the fault of the franchisor.”).

¹¹⁹ Emerson, *The Good, the Bad, and the Ugly*, *supra* note 116, at 438.

f. Malaysia

In Malaysia, section 34 of the Franchise Act of 1998 requires a franchisor to renew the franchise agreement if the franchisee has not breached any of the agreement's terms and has provided the franchisor with written notice of intent to extend the franchise's term at least six months before the agreement's expiration.¹²⁰ Additionally, the renewed franchise agreement must contain terms that are similar to, or no less favorable than, the terms in the previous agreement.¹²¹ Under section 32, it is an offense to refuse the renewal of an agreement without compensating a franchisee where: (a) "the franchisee is barred by the franchise agreement, or by the refusal of the franchisor at least six months before the expiration date of the franchise agreement to waive any portion of the franchise agreement which [after the agreement expired] prohibits the franchisee from continuing to conduct" substantially the same business in the same territory under another mark; or (b) at least six months before the expiration date, the franchisor fails to give the franchisee a written notice of the franchisor's intent not to renew the franchise agreement.¹²²

In *Noraimi Alias v. Rangkaian Hotel Seri Malaysia*, the court found that nonrenewal without the requisite six-month notice and without compensation was invalid because it did not comply with sections 32 and 34 of the Franchise Act of 1998.¹²³ The franchisee was awarded compensation for the loss of profit which would have been received in the event of renewal.¹²⁴ Such compensation must take the form of a repurchase or other transaction at a price agreed to by the parties after considering the reduction in value of the franchised business caused by the franchise's expiration.¹²⁵

g. Japan

Franchisees in Japan are generally not entitled to an automatic right of renewal of their franchise agreement.¹²⁶ Although there is no statutory right to renewal in Japan, Japanese courts have developed case law emphasizing the maintenance of long-term contractual

¹²⁰ Franchise Act 1998 (Act 590), § 34(1)–(2) (Malay.).

¹²¹ Franchise Act 1998 (Act 590), § 34(3) (Malay.).

¹²² Franchise Act 1998 (Act 590), § 32 (Malay.).

¹²³ *Noraimi Alias v. Rangkaian Hotel Seri Malaysia* [2011] 1 L.N.S. 1918 (Court of Appeal).

¹²⁴ *See id.*

¹²⁵ *Id.*

¹²⁶ Kenichi Sadaka & Aoi Inoue, *Japan*, in INT'L COMPAR. LEGAL GUIDES, FRANCHISE 2022 105, 111 (Iain Bowler ed., 2022).

relationships.¹²⁷ Thus, the longer and more established a franchise agreement is, the harder it may be for a court to find good cause or unavoidable reason for a franchisor to terminate an agreement.¹²⁸ Even though franchisors have the contractual right not to renew an agreement, this right may be limited in certain cases where a court finds that the franchisee is dependent on the franchisor, and the franchisor lacks sufficient justification to outweigh the concern for the franchisee.¹²⁹ Additionally, where an agreement provides for continuous automatic renewal of the franchise agreement, the franchisor must show compelling circumstances in order to refuse renewal¹³⁰ of the agreement.¹³¹

Under Japanese law, long-term business contracts, including franchise agreements, may be terminated without a period of notice if there is a “grave” or “unavoidable” reason to do so.¹³² Otherwise, the franchisor may provide in the franchise agreement for circumstances giving rise to termination, or the franchisor may terminate if the franchisee breaches the agreement.¹³³ However, Japanese courts may be reluctant to provide for termination of a long-term contract, and they may inquire into the materiality of the franchisee’s breach to determine whether the termination is legal.¹³⁴

Generally, it seems that the protection franchisees receive in Japan comes from a judicial emphasis on the importance of longstanding contractual relationships and cultural fairness to the franchisee. While particular disclosure requirements are in place,¹³⁵

¹²⁷ Kentaro Tanaka & Souichirou Kozuka, *Japan: Franchising Comparative Guide*, MONDAQ (Oct. 10, 2023), <https://www.mondaq.com/corporatecommercial-law/1149650/franchising-comparative-guide> [<https://perma.cc/5H9D-HMHW>].

¹²⁸ *Id.* Japan’s good faith requirement is codified into its Civil Code and explained in Kentaro Tanaka, *Country Report Japan*, in INT’L. DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 19 (2023).

¹²⁹ Sadaka & Inoue, *supra* note 126, at 111.

¹³⁰ Souichirou Kozuka & Takashi Kanai, *Japan*, in INTERNATIONAL FRANCHISE SALES LAWS 271, 293 (Kendal H. Tyre, Jr. & Michael R. Laidhold eds., 3d ed. 2023).

¹³¹ Sadaka & Inoue, *supra* note 126, at 111.

¹³² Tanaka, *supra* note 128, at 22.

¹³³ See Etsuko Hara, *Q&A: The Franchisor-Franchisee Relationship in Japan*, LEXOLOGY (July 4, 2024), <https://www.lexology.com/library/detail.aspx?g=6220fa38-d49d-4eca-9d05-46e7cb834f37> [<https://perma.cc/24BA-KQGV>].

¹³⁴ *Id.*

¹³⁵ A general statutory duty of disclosure exists for franchisors who franchise small to medium size retailers. Otherwise, the extent of franchisor disclosure is governed by the Japan Franchise Association’s Code of Ethics, which imposes guidelines to increase transparency for franchisees. Baer et al., *supra* note 103, at 21. For a comprehensive discussion of the business and legal factors in evaluating franchisor openness and fairness, with analysis of federal regulation, gap-

franchisee concerns are considered using more of a values and fairness framework imposed by the court.¹³⁶ Viewing this sort of framework from a detached vantage point may seem to indicate that the franchisee is left unprotected due to its lack of statutory renewal rights or good cause requirements. It may help to understand the franchisees' needs and how taking them into account benefits the system holistically. Unfortunately, these values are most likely very hard to instill in persons that have not shared or experienced them.

h. Lithuania, Norway, and Sweden

In Lithuania, franchisees have the right to renew their franchise agreement at the end of its term, provided the franchisee had not breached the agreement.¹³⁷ However, franchisors may refuse to renew the agreement as requested by the franchisee, so long as the franchisors do not grant a similar franchise agreement to a new franchisee in that territory for the subsequent three years.¹³⁸ If the franchisor does intend to offer such a franchise agreement to another franchisee before the three years have elapsed, the franchisor will be required to offer those terms to the original franchisee.¹³⁹

In Norway, the absence of specific provisions on franchising has not prevented the nation from adopting a strong, pro-franchisee orientation. The Norwegian “renewal option” is now rather “standard.”¹⁴⁰ Moreover, as in Sweden, most Norwegian franchise agreements are limited to a five-year term, which typically can be renewed for another five years if the franchisee has met some rather low-level benchmarks.¹⁴¹

The franchise has fulfilled the agreement loyally throughout its term.

The franchise has the financial and administrative resources to continue operating.

filling court opinions, the hiring of lawyers, cooling-off periods, market forces, and financial performance representations, *see* Robert W. Emerson, *Transparency in Franchising*, 2021 COLUM. BUS. L. REV. 172 (2021).

¹³⁶ Kenichi Sadaka & Aoi Inoue, *Japan*, in INT'L COMPAR. LEGAL GUIDES, FRANCHISE 2023 97, 99 (Iain Bowler ed., 2023).

¹³⁷ CIVIL CODE OF THE REPUBLIC OF LITHUANIA art. 6.774(1) (Lith.).

¹³⁸ CIVIL CODE OF THE REPUBLIC OF LITHUANIA art. 6.774(2) (Lith.).

¹³⁹ *Id.*

¹⁴⁰ Endre Storløkken, *Norway*, in FUNDAMENTALS OF FRANCHISING EUROPE 295, 305 (Robert A. Lauer & John Pratt eds., 2017).

¹⁴¹ *Id.* at 305–306. This is in accord with the main legislation that drives Norwegian franchise law: the nation's general contract law and European Union legislation, especially its block exemption on vertical agreements and their guidelines. *Id.* at 298.

The franchisee does not owe debts to the franchisor, its group companies, or its chain suppliers.

The franchisee is willing to enter into the franchise agreement that the franchisor has developed at the time of renewal.

The franchisee must enter into a “cluster” franchise agreement where it is accepted—subject to certain obligations—that the franchisee operates several franchises of the franchisor.

The franchisee must invoke the right to renew a given period before the contract expiration, usually from six to nine months.¹⁴²

Likewise, in Sweden, a renewal option, for the franchisee to exercise unilaterally, “has almost become an industry standard.”¹⁴³ As with the Norwegian law and practice, almost every Sweden-based franchisee who is in compliance with the franchise system (generally demonstrated by the absence of warning letters for breach of contract)¹⁴⁴ can receive additional franchise terms,¹⁴⁵ with each new term added after the initial, and any subsequent term, has been completed.¹⁴⁶ Again, as customarily found in franchising worldwide, the renewal would be under the standard franchise agreement provisions used by the franchisor at the time of renewal.¹⁴⁷

i. Summary

In most nations, there is no de jure automatic right to renew. Out of the countries examined, Australia, England (and Wales), France, Germany, Italy, and Japan do not protect their franchisees with the automatic right of renewal. Rather, these countries mainly seem to rely on notions of good faith to ensure that franchisors are not taking advantage of franchisees. The good faith is expected in the franchisor-franchisee relationship as a matter of custom, so comprehensive franchise laws, while useful, are left unnecessary for purposes of renewal or nonrenewal.

On the other hand, Malaysia, Lithuania, Norway, and Sweden are among the many nations that do protect franchisees with the right of renewal. In these cases, the franchisee enjoys the right so long as it

¹⁴² *Id.* at 306.

¹⁴³ Anders Fernlund, *Sweden*, in FUNDAMENTALS OF FRANCHISING EUROPE 383, 390 (Robert A. Lauer & John Pratt eds., 2017).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* The franchisee would be, typically, five years long (but sometimes there would be a shorter term of as little as three years). *Id.* at 394.

¹⁴⁶ *Id.* at 390, 394.

¹⁴⁷ *Id.* at 390.

has not breached the agreement. In fact, as a practical matter, dozens of nations have statutes, rules, administrative or judicial holdings, or some combination thereof that touch upon franchise renewal; these countries have an approach that neither guarantees renewal rights nor bars what constitutes a constructive renewal. That is, if a franchise agreement has a fixed term (which most agreements have), and if it does not contain an automatic renewal provision (something most agreements do *not* have), and, thirdly, if a franchise party continues to perform the agreement even after the franchise agreement's original term has expired, then a large majority of these nations deem the franchise contract to have been extended tacitly for an indefinite duration unless the franchisor in effect opts out, thus opposing the extension or renewal of the agreement.¹⁴⁸

¹⁴⁸ In addition to the nations discussed heretofore in this Part of the Article, other countries with what may be deemed a form of constructive renewal include these 26 nations: Argentina, Austria, Belgium, Colombia, Chile, China, Denmark, Ecuador, Egypt, Finland, Greece, Mexico, Morocco, Netherlands, Nigeria, Pakistan, Paraguay, Poland, Portugal, Slovenia, Switzerland, Thailand, Turkey, Ukraine, Uruguay, and Venezuela. Osvaldo Marzorati, *Country Report Argentina*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 14 (2022); Daniel Liemberger, *Country Report Austria*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 21 (2022); Pascal Hollander & Pierre Vermeire, *Country Report Belgium*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 19 (2024); Cristian Sandoval, *Country Report Chile*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 12 (2024); Paul Jones, *Country Report China*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 29 (2023); Juan Carlos Uribe, *Country Report Colombia*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 17 (2023); Jacob Ørskov Rasmussen, *Country Report Denmark*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 9 (2021); Josemaria Bustamante, *Country Report Ecuador*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 10–11 (2023); Maged Ackad, *Country Report Egypt*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 13 (2023); Patrick Lindgren, *Country Report Finland*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 29 (2023); Yanos Gramatidis, *Country Report Greece*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 11 (2023); Eduardo Kleinberg, *Country Report Mexico*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 14 (2023); Nadia El Baroudi-Kostrikis, *Country Report Morocco*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 11 (2021); de Mönnink, *supra* note 79, at 17 (Netherlands); Tiwalola Osazuwa, *Country Report Nigeria*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 10 (2024); Faisal Daudpota & Junaid Daudpota, *Country Report Pakistan*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 9 (2023); Hugo Mersan, *Country Report Paraguay*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 16 (2024); Magdalena Kowalczyk-Szymanska, *Country Report Poland*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 17 (2023); Claudia Santos Cruz, *Country Report Portugal*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 12 (2022); Sebastjan Kerčmar, *Country Report Slovenia*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 20–21 (2022); Melanie Käser, *Country Report Switzerland*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 13 (2024); Pornchai Wisuttisak, *Country Report Thailand*, in INT'L

Even in the jurisdictions where franchisees enjoy a right of renewal, which is and for a long time has been a large number of nations,¹⁴⁹ the results of retention or termination may be unpredictable. For example, different countries may define what a material breach is differently, making it hard for international franchisees to predict with certainty when agreements will continue. Thus, since franchisees may only expect as much consistency as that which comes with the most unpredictable country, the adoption of consistent, internationally recognized renewal terms is necessary to foster comprehensive franchisee protection.

Each country's method and that method's effects must be studied to determine what are the most efficient ideas, policies, and practices. "Predictability" is the common element that can be found in these effective systems. The most valuable approaches will likely differ based upon cultural differences, such as the emphasis on fairness in Japan, but that should not dislodge this core value (predictability to the franchisee) as the remaining constant.¹⁵⁰

2. *Inconsistent good cause standards in the franchisor-franchisee relationship context*

Beyond the inconsistency of existing laws in the international context, there are also domestic irregularities, such as when some U.S. jurisdictions recognize a good cause requirement while other American

DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 11 (2023); Hikmet Koyuncuoglu, *Country Report Turkey*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 13 (2024); Anzhela Makhinova, *Country Report Ukraine*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 19 (2021); Gustavo Fischer & Federico Fischer Castells, *Country Report Uruguay*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 14–15 (2021); Ricardo Alberto Antequera, *Country Report Venezuela*, in INT'L DISTRIB. INST., COUNTRY REPORT ON FRANCHISING 1, 14 (2023).

¹⁴⁹ For the current status of renewal rights worldwide, e.g., dozens of nations with such rights, see *supra* note 148 and accompanying text. For the longstanding nature of these rights, found particularly in Europe for decades, see Robert W. Emerson, *Franchise Goodwill: Take a Sad Song and Make It Better*, 46 U. MICH. J.L. REFORM 349, 378–80 (2013).

¹⁵⁰ Adhuna Kamarul Ariffin & Michelle Loi Choi Yoke, *Malaysia*, in INTERNATIONAL FRANCHISE SALES LAWS 319, 336, 338–39 (Kendal H. Tyre, Jr. & Michael R. Laidhold eds., 3d ed. 2023) ("However, the Franchise (Amendment) Act 2020 seeks to remove such drastic effect, and provides that noninclusion of any of the minimum prescribed provisions in the franchise agreement will no longer render the agreement null or void. Nevertheless, failure to include in the franchise agreement the provisions prescribed under Section 18(2) of the Act remains an offense under Section 18(6) of the Act.").

states reject that criterion because there is no uniformity or clarity on what constitutes good cause.¹⁵¹

Several relationship laws prohibit franchisors from refusing to renew the franchise agreement absent good cause. But what establishes good cause? Some statutes refer to “good cause” as a failure of the franchisee to substantially comply with the franchise agreement,¹⁵² while others include examples¹⁵³ or expressly set forth exceptions to that requirement.¹⁵⁴

For example, section 42-133f(a) of the Connecticut Franchise Act (CFA) prohibits a franchisor from terminating, canceling, or failing to renew a franchise without good cause.¹⁵⁵ Good cause under the CFA includes but is not limited to “the franchisee’s refusal or failure to comply substantially with any material and reasonable obligation of the franchise agreement”¹⁵⁶ Alternatively, the CFA points to subsection (e) of this section, which generally covers situations when franchisors may elect to not renew a franchise agreement involving leased property from the franchisor to the franchisee.¹⁵⁷ Thus, the

¹⁵¹ Robert W. Emerson, *Franchise Terminations: “Good Cause” Decoded*, 51 WAKE FOREST L. REV. 103, 142–43 (2016) (comparing states that define good cause as the failure of the franchisee to comply substantially with the material terms of the agreement with states that define good cause with a list of specific defaults of the franchisee that give the franchisor good cause to terminate).

¹⁵² See e.g., CAL. BUS. & PROF. CODE § 20020 (2024) (“[G]ood cause shall be limited to the failure of the franchisee to substantially comply with the lawful requirements imposed upon the franchisee by the franchise agreement . . .”).

¹⁵³ See e.g., MINN. STAT. § 80C.14(3)(b) (2024) (“‘Good cause’ means failure by the franchisee to substantially comply with the material and reasonable franchise requirements imposed by the franchisor including, but not limited to: (1) the bankruptcy or insolvency of the franchisee; (2) assignment for the benefit of creditors or similar disposition of the assets of the franchise business; (3) voluntary abandonment of the franchise business; (4) conviction or a plea of guilty or no contest to a charge of violating any law relating to the franchise business; or (5) any act by or conduct of the franchisee which materially impairs the good will associated with the franchisor’s trademark, trade name, service mark, logotype or other commercial symbol.”).

¹⁵⁴ See e.g., 815 ILL. COMP. STAT. 705/19(c) (2022) (“‘Good cause’ shall include, but without the requirement of notice and an opportunity to cure, situations in which the franchisee: (1) makes an assignment for the benefit of creditors or a similar disposition of the assets of the franchise business; (2) voluntarily abandons the franchise business; (3) is convicted of a felony or other crime which substantially impairs the good will associated with the franchisor’s trademark, service mark, trade name or commercial symbol; or (4) repeatedly fails to comply with the lawful provisions of the franchise or other agreement.”).

¹⁵⁵ CONN. GEN. STAT. § 42-133f(a) (2024).

¹⁵⁶ *Id.*

¹⁵⁷ CONN. GEN. STAT. § 42-133f(e) (2024) (“A franchisor may elect not to renew a franchise which involves the lease by the franchisor to the franchisee of real property and improvement, in the event the franchisor (1) sells or leases such real property and improvements to other than a subsidiary or affiliate of the franchisor

definition of good cause is not limited to a franchisee's noncompliance. Rather, courts have confirmed that good cause is not limited to proving contractual breaches of the franchise agreement but may be based on a franchisor's legitimate business reasons."¹⁵⁸

Dissimilar to the CFA, some American jurisdictions enumerate specific occurrences that give the franchisor good cause to terminate the franchise agreement. For instance, in Arkansas, "good cause" is defined, among other things, as voluntary abandonment of the franchise, or an act by the franchisee that substantially impairs the franchisor's trademark, or the franchisee's failure to act in a commercially reasonable manner and with good faith.¹⁵⁹ Given that this standard does not allow for termination based on a franchisor's legitimate business reasons, this type of standard seems to take from the franchisor some of the discretion that the CFA allows.

Further, the California Franchise Relations Act states that any breach of a lawful provision of the franchise agreement may constitute good cause.¹⁶⁰ This type of approach will inherently favor franchisors more and more as time passes. Since 2013, franchise agreement clauses that stipulate grounds for termination have increased by nearly 100%.¹⁶¹ This means that franchisors have essentially doubled the ways that termination can occur automatically, which is problematic because an unsophisticated franchisee entering into an agreement in which it has much less bargaining power than the franchisor may fall for a deal outlining a plethora of common events that a franchisor may invoke to terminate the agreement. In this scenario, the franchisee would very likely carry out one of these covered actions or events, thus triggering the termination clauses and allowing the franchisor to contractually terminate the franchise agreement whenever it wishes. This situation not only allows unfair termination but may also give the franchisor another leg up in negotiations if the franchisor threatens termination unless the franchisee agrees to something it normally would not agree to. In situations consisting of less sophisticated franchisees and unequal bargaining power, this method of finding good cause will prove to be less effective because of this trend (increasingly detailed and, overall, expanding contents) in modern franchise agreements.

for any use; or (2) sells or leases such real property to a subsidiary or affiliate of the franchisor, except such subsidiary or affiliate shall not use such real property for the operation of the same business of the franchisee; or (3) converts such real property and improvements to a use not covered by the franchise agreement; or (4) has leased such real property from a person not the franchisee and such lease from such person is terminated or not renewed.").

¹⁵⁸ *Petereit v. S.B. Thomas, Inc.*, 63 F.3d 1169, 1184 (2d Cir. 1995).

¹⁵⁹ ARK. CODE ANN. § 4-72-202(5) (2024).

¹⁶⁰ CAL. BUS. & PROF. CODE § 20020 (2024).

¹⁶¹ Emerson, Final Statistical Analysis, *supra* note 22.

As seen by these examples, the range for what constitutes good cause in America is great. It can prove to be complex and difficult for a franchisee to navigate, especially when an owner chooses to operate franchises throughout different jurisdictions. Imposing statutory good cause requirements on the franchisor's ability to terminate or to not renew the franchise agreement is integral to the adequate protection of franchisees. However, a strong good cause standard that remains consistent is a necessary next step.

3. *Lack of protections for franchisee added goodwill*

While the concept of franchising is based on the franchisee gaining access to the valuable trademarks and associated goodwill of the franchisor, it is also common for franchisees to contribute to the overall goodwill associated with the franchisor's brand through the successful operation of their franchise.¹⁶² Customer goodwill is created, at least in part, by the personal relationships of the franchisee with their local customers and suppliers. One enduring concern in franchising has been whether to compensate franchisees for the value of this goodwill at the termination of the franchise agreement, since so much goodwill comes from the operations during the performance of the agreement.¹⁶³

To account for these circumstances, some states have developed laws protecting the goodwill added by franchisees upon termination of the agreement. For example, Hawaii requires that a franchisor compensate the franchisee for the loss of goodwill if the franchisor has refused to renew the agreement in order to convert the franchisee's location to a company-owned unit.¹⁶⁴ Pursuant to this approach, the franchisee is to be compensated for the value of the "sweat equity" it put into the business – a value from which the franchisor will benefit when it takes over the unit.¹⁶⁵ However, the approaches used under state law to compensate franchisees vary from state to state, and there is no clear national standard on this issue.¹⁶⁶ To

¹⁶² See Clay A. Tillack & Mark E. Ashton, *Who Takes What: The Parties' Rights to Franchise Materials at the Relationship's End*, 28 FRANCHISE L. J. 88 (2008).

¹⁶³ Emerson, *Thanks for the Memories: Compensating Franchisee Goodwill after Franchise Termination*, *supra* note 116, at 288–90 (discussing the derivation and ownership of goodwill associated with franchised businesses).

¹⁶⁴ HAW. REV. STAT. § 482E-6(3) (2024).

¹⁶⁵ IOWA CODE § 499 A.101 (2025) (defining "sweat equity" as, "[A]ny contribution made by a partner to the operations of the association, including but not limited to physical labor."). For more on franchise operations, such as manuals, the Lanham Act, trade secrets, and antitrust law, see Robert W. Emerson, *Franchising Lessons in the Age of Incivility: Operations Manuals and Trade Secrets*, 29 TEXAS INTELL. PROP. L.J. 305 (2021).

¹⁶⁶ See Emerson, *Thanks for the Memories: Compensating Franchisee Goodwill after Franchise Termination*, *supra* note 116, at 292–94.

better protect franchisees, it has been proposed that the legal framework governing the termination of franchise agreements should recognize goodwill created by the franchisee, and it should incorporate a uniform presumption in favor of compensating the franchisee.¹⁶⁷ Uniform protections such as these are a necessary development to ensure franchisees receive fair consideration for their interests upon termination or nonrenewal of their franchise agreement.

II. LEGAL TOOLS CURRENTLY IN USE

Ordinarily, the power structure of franchise agreements favors franchisors based on their unilateral negotiating power during the negotiation stage.¹⁶⁸ However, this presumed power structure may be subject to relationship statutes or other legal principles meant to protect franchisees. As discussed, a major, underlying issue in the franchisor–franchisee relationship is the use of good cause as an argument for nonrenewal of the franchise agreement.¹⁶⁹ To counter unjust termination, franchise relationship laws and statutes influence the regulations or case holdings that steer the renewal or nonrenewal of franchisees in a pro-franchisee direction. Additionally, cases arise in which there are no renewal terms or written agreements, and, in some instances, franchise agreements can be renewed based on mutual consent and conduct.¹⁷⁰

The subsections below divide the categories for renewal and nonrenewal of franchises into aspects of relationship laws protecting franchisees, renewal through mutual consent or conduct, the right to arm's length negotiations based on the duty of good faith and fair dealing, disclosure requirements (which discuss the impact disclosure time periods might have on renewal), the effect of good cause so as to not renew a franchise agreement, the role of franchisees in forming associations, the right of automatic renewal in certain circumstances, anti-discrimination statutes, and tenets of good faith, fair dealing, and estoppel.

¹⁶⁷ *Id.* at 337–39. Certainly, compensating for loss of local (i.e., franchisee generated) goodwill can be a tool in conjunction with the protection of franchisees. See *supra* note 83 and accompanying text (discussing such compensation in Europe generally and France, Germany, and the Netherlands specifically); Emerson, *Thanks for the Memories: Compensating Franchisee Goodwill after Franchise Termination*, *supra* note 116, at 302–03, 311–12, 318–20, 322, 324–25, 327–28, 336 (discussing the many ways, with respect to numerous franchise networks and the legal systems found, *inter alia*, in Canada, France, Germany, Greece, India, Japan, and Spain).

¹⁶⁸ See *supra* Part I.B.

¹⁶⁹ See *supra* notes 9–10, 18–19, 24, 75, 119, 129, 152–158 and accompanying text (providing examples of a possible nexus between good cause and the justification, or not, for nonrenewal).

¹⁷⁰ See *infra* Part II.B.

A. *Relationship Laws or Statutes*

Several states and the U.S. Virgin Islands have adopted laws regulating the renewal of franchise relationships.¹⁷¹ These laws broadly impose certain conditions or procedural requirements on franchisors who do not wish to renew their franchise agreements,¹⁷² such as requiring good cause. In addition, the franchisor must give the franchisee notice of nonrenewal within a specified period, provide an opportunity to cure when nonrenewal is based on a breach, and repurchase the franchisee's inventory and equipment.¹⁷³ Should the franchisor fail to follow these requirements, the laws in most states provide for monetary damages or injunctive relief to the franchisees.¹⁷⁴

Attorneys Charles Modell and Genevieve Beck conclude that the right of renewal will not be implied under statute or common law if the franchise agreement clearly excludes the right to renew.¹⁷⁵ This is less apparent when a fixed-term contract does not address renewal, although in these instances, most courts will not suggest a statutory or common law right to renew.¹⁷⁶ The information available on renewal

¹⁷¹ These states include Arkansas, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, Washington, Wisconsin, and Puerto Rico. Charles S. Modell & Genevieve A. Beck, *Franchise Renewals—“You Want Me to Do What?”*, 22 FRANCHISE L.J. 4, 4 (2002); *see also* ARK. CODE ANN. § 4-72-204 (West 2024); CAL. BUS. & PROF. CODE §§ 20022–25 (West 2024); CONN. GEN. STAT. § 42-133f (West 2024); DEL. CODE ANN. tit. 6, § 2555 (2024); HAW. REV. STAT. § 482E-6 (2024); 815 ILL. COMP. STAT. 705/20 (2024); IND. CODE § 23-2-2.7-1 (2024); IOWA CODE § 523H.8 (2024); MICH. COMP. LAWS § 445.1527 (2024); MINN. STAT. § 80C.14 (2024); MISS. CODE ANN. § 75-24-53 (West 2024); MO. ANN. STAT. § 407.410 (2024); NEB. REV. STAT. § 87-404 (2024); N.J. STAT. ANN. § 56:10-5 (West 2024); WASH. REV. CODE § 19.100.180 (2024); WIS. STAT. § 135.04 (2024); P.R. LAWS ANN. tit. 10, § 278 (2024); V.I. CODE ANN. tit. 12A, §§ 131–32 (2019). In Florida, it is unlawful for a franchisor, without due cause, to: (i) fail to renew a franchise on terms then equally available to all of its franchisees; (ii) terminate a franchise; or (iii) restrict the transfer of a franchise unless the franchisee receives fair and reasonable compensation for the inventory of the business. FLA. STAT. § 686.409 (2022). In Washington state, franchisors are required to compensate franchisees for goodwill, unless the franchisor agrees in writing they will not enforce the non-competition provision in the franchise agreement, as detailed in the state's Franchise Investment Protection Act. WASH. REV. CODE §§ 19.100.010 (RCW 19.100.180) (Part I, in particular). For a recent analysis of covenants against competition in the franchising context, *see* Robert W. Emerson, *Franchise Noncompetes: Their Legal Effect, Practical Impact, and Superior Alternatives*, 50 J. CORP. L. 653 (2025).

¹⁷² *See* Modell & Beck, *supra* note 171, at 4.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *See id.* at 5 (“In *Ziegler v. Rexnord*, one of the few reported decisions on the subject, the Wisconsin Supreme Court applied the Wisconsin Fair Dealership Law [when the franchise agreement was silent about renewal]. However, the court

issues is covered in the aspect of relationship laws that address franchise terminations and renewal.

B. *Renewal Through Mutual Consent or Conduct*

When renewal is not addressed in the franchise agreement, the intent of the parties, after expiration of the agreement's terms, must be determined. Attorneys Marcus A. Banks, Evan M. Goldman, and Trishanda L. Treadwell have discussed potential outcomes when the franchisor and franchisee have no renewal terms or written agreement,¹⁷⁷ as they follow a line of cases that found mutual consent to renew through conduct. As seen in some of these cases, if a franchisor does not send a notice of termination, instead continues to accept fees, and allows a franchisee to use the franchise system and trademarks for an extended period of time, then the franchisor has likely consented to the extension or renewal of some or all of the key terms in the initial franchise agreement.¹⁷⁸ Furthermore, when a renewal dispute arises, franchisees will often argue that even if an expressly stated right of the franchisor to nonrenewal is laid out in the franchise agreement, an established course of dealing waives that right.¹⁷⁹

Not only can franchise agreements be extended through conduct, but some courts have held that franchisors waive their right to terminate under certain provisions of the franchise agreement if they continue to operate “as if the franchise agreement was in place.”¹⁸⁰ However, precisely *what* conduct constitutes acting as if the franchise

did not have to decide whether the statute governed in the absence of a renewal provision because the parties apparently agreed that it controlled.”). Furthermore, “most courts will not imply a statutory or common law right to renew [fixed-term agreements that do not address renewal].” *Id.* at 7.

¹⁷⁷ See Marcus A. Banks, Evan M. Goldman & Trishanda L. Treadwell, *When the Franchise Agreement Ends But the Relationship Continues*, A.B.A. 41ST ANN. F. ON FRANCHISING, Oct. 10–12, 2018, https://www.americanbar.org/content/dam/aba/events/franchising/course-materials/2018/fr_9_paper.pdf. [<https://perma.cc/3NZH-RK8P>].

¹⁷⁸ *Id.* at 21–23.

¹⁷⁹ A franchisor may argue that, despite the course of dealing, it did not intend to alter the terms of the franchise agreement, and that permitting automatic renewal would be an unfair penalty for being lenient. Kerry L. Bundy & Scott H. Ikeda, *How Waiver, Modification, and Estoppel May Alter Franchise Relationships*, 30 FRANCHISE L.J. 3, 3 (2010) (explaining the arguments for why conduct should and should not be adequate to automatically renew a franchise agreement).

¹⁸⁰ See *ServiceMaster Residential/Com. Servs., L.P. v. Westchester Cleaning Servs.*, No. 01 Civ. 2229 (JSM), 2001 U.S. Dist. LEXIS 4807, at *5 (S.D.N.Y. Apr. 18, 2001) (holding that since the conduct of the franchisor impliedly renewed the franchise agreement, the one year non-compete clause of the agreement was still in effect more than one year past the original expiration date).

agreement is still in place remains a major question,¹⁸¹ leaving franchisees vulnerable to harm. For example, if a franchisee believes that the franchisor has consented to renewal through normal conduct and the franchisor abruptly terminates thereafter, the franchisee could be left unexpectedly without franchise rights if the court disagrees about whether the franchisor's conduct reached the level of consent needed to renew.¹⁸² Overall, courts appear to be comfortable extending these protections in franchisee relationships.¹⁸³ Conversely, if the exact conduct for renewal is defined, there would be no speculation about the franchisee's continuation of the agreement, and it could confidently maintain regular operations.

However, recognizing mutual consent through conduct is not a uniform practice for the courts. Sometimes, courts are much more reluctant to protect the franchisee based on the conduct of the franchisor. One such example of a court ruling against a franchisee is *Dunkin' Donuts Inc. v. Gav-Stru Donuts, Inc.*¹⁸⁴ In this case, a franchisee materially breached the franchise agreement by breaking the law.¹⁸⁵ The court held that, although the franchisor did not terminate the franchise agreement until six years after the crime, the franchisor had not waived its right to terminate.¹⁸⁶ The reasoning behind this holding was that waiver of a right to terminate requires "affirmative conduct" — "mere silence" or acquiescence to the terms of the agreement was insufficient.¹⁸⁷

Not only does recognizing mutual consent to renew the franchise agreement through conduct give the franchisee more certainty, it also protects the goodwill franchisees may build after the initial franchise term has expired. In a jurisdiction where renewal through conduct is common, franchisees may assume that a franchise agreement has been extended when they continue to operate in a normal fashion by doing things such as paying franchise fees and continuing to use the franchisor's trademark. Part of the bargain in the agreement being renewed is that the franchisee continued to accumulate goodwill for the franchisor partially in return for the franchisee's consideration. In the situation where a franchisor

¹⁸¹ See Banks, Goldman & Treadwell, *supra* note 177.

¹⁸² See *Barman v. Union Oil Co. of Cal.*, 50 F. App'x. 824, 828 (9th Cir. 2002) (holding that a franchisee's reliance on a franchisor's promise by declining a deal with another franchisor constituted reasonable reliance).

¹⁸³ W. MICHAEL GARNER, *FRANCHISE AND DISTRIBUTION LAW AND PRACTICE* § 8:23 (2023) (including 42 footnotes with citations related to promissory estoppel).

¹⁸⁴ 139 F. Supp. 2d 147 (D. Mass. 2001).

¹⁸⁵ *Id.* at 150, 152. The franchisee had engaged in an elaborate tax fraud scheme involving false invoices to the franchised business. *Id.* at 151.

¹⁸⁶ *Id.* at 157.

¹⁸⁷ *Id.*

prematurely terminates the extension, the franchisee may be robbed of the benefits it was relying on receiving from the implied renewal.

In such instances where franchisees expect the franchise agreement to renew through conduct, even perhaps simply by omission (by not actively declining to renew), it is important that courts recognize consent through conduct as a means of continuing the franchise, thereby protecting the franchisee from premature termination.¹⁸⁸

C. *Arm's Length Negotiations Between Parties*

Attorneys Keith Kanouse, Evan Goldman and Scott Salmon opine:

If the franchise agreement merely states that the franchisee has a right to renew, a court may presume that the terms of the renewal franchise agreement are the same as the existing agreement except for the extended term. If the franchise agreement does not contain an explicit right to renew, courts will not imply one.¹⁸⁹

When the franchisor refuses to negotiate a renewal agreement, Kanouse, Goldman, and Salmon propose the following hierarchy of solutions: (1) information dispute resolution; (2) mediation; (3) arbitration; and (4) litigation.¹⁹⁰ Of course, none of these options are likely to be excellent solutions for franchisees because of the time and cost involved. Further, franchisors typically have more resources to manage these approaches, so they retain the upper hand.

Regarding the aspect of using unconscionability and the implied covenant of good faith and fair dealing to challenge renewal decisions, the authors leave open the argument for franchisees that good faith and fair dealing requires that franchisors at least negotiate over renewal terms even if no such terms appear explicitly in the franchise agreement.¹⁹¹ Various courts across the country have begun taking judicial notice of the fact that the typical franchise agreement is a “contract of adhesion.”¹⁹² Generally, these agreements contain many unconscionable terms, and because offers to franchisees are usually on

¹⁸⁸ See *infra* Part II.G (discussing renewal by default, also known as automatic renewal).

¹⁸⁹ Keith J. Kanouse, Evan M. Goldman & Scott D. Salmon, *Are Material Changes to Renewal Franchise Agreements Subject to the Implied Covenant of Good Faith and Fair Dealing?*, 36 FRANCHISE L.J. 661, 661 (2017).

¹⁹⁰ See *id.* at 662–65.

¹⁹¹ See *id.* at 666.

¹⁹² *Id.* at 671.

a “take-it-or-leave-it” basis,¹⁹³ the franchisors have disproportionate bargaining power¹⁹⁴ and thus are not subject to arm’s length negotiations. The authors finally summarize in their study that the franchise relationship should be a long-term “win-win” commercial structure, such that when a franchisor grows greedy and sets renewal terms that are detrimental to the franchise business model, franchisees should band together to resolve the concerns on a system-wide level.¹⁹⁵

D. *Disclosure Requirements*

One tool that is used to protect franchisees is the Federal Disclosure Document (FDD). The FDD is a disclosure document that the Federal Trade Commission requires franchisors to provide to prospective franchisees before a franchise is sold.¹⁹⁶ The FDD is split up into different sections, each providing information that helps the prospective franchisee determine if it wants to invest in the franchise, such as fees, franchisor-franchisee relationship information, and entities associated with the franchise.¹⁹⁷ On the issue of renewal, item 17 of the FDD requires that franchisors disclose the terms of the franchise relationship, including any requirements the franchisee must

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 675. Independent contractors are not covered by the National Labor Relations Act. *See* National Labor Relations Act, 29 U.S.C. § 152(3) (2018). In franchising, there thus remains a challenge for franchisees seeking to use power to counter or negotiate with their franchisor. *See* Robert W. Emerson, *Franchising and the Collective Rights of Franchisees*, 43 VAND. L. REV. 1503, 1558–62 (1990) (proposing the enactment of right-of-association statutes and of antitrust exemptions for franchisee associations, thus providing franchisees, individually and as a group, with protections from some franchisor practices to undermine the development and influence of their associations; the franchisees would have a recognized right to organize and to push for, inter alia, collective bargaining with their franchisors, although without lawmakers having taken the final step of treating franchisee associations as having a right, comparable to that of certified labor unions, to compel collective bargaining); Robert W. Emerson & Uri Benoliel, *Can Franchisee Associations Serve as a Substitute for Franchisee Protection Laws?*, 118 PENN. ST. L. REV. 99, 112, 119–21, 124 (2013) (franchisees who attempt to organize are often met with retaliation, and franchisor advisory councils frequently prove ineffective while actually having the opposite effect of establishing new obstacles for franchisees).

¹⁹⁶ *What is a Franchise Disclosure Document?*, FRANCHISE.LAW, <https://franchise.law/franchise-disclosure-document/> [https://perma.cc/NZ7X-54EV] (last visited Sept. 18, 2025).

¹⁹⁷ *Id.*

meet to renew or extend,¹⁹⁸ and any provisions related to the franchisor's right to terminate.¹⁹⁹

The FDD merely remains a disclosure rule and does not mandate any filings with the government or outline certain substantive law requirements.²⁰⁰ However, the FDD does ensure that the federal disclosure requirements are met by the franchisor.²⁰¹ It also provides an example of franchise disclosures for states to utilize.²⁰² In *MTR Capital, LLC v. LaVida Massage Franchise Development, Inc.*,²⁰³ after the plaintiff-franchisee's massage business shut down due to poor performance, the franchisee sued the franchisor for violations of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), alleging violations of the FTC Franchise Rule through purported inaccurate disclosures in the franchisor's FDD.²⁰⁴ The court found that the defendant-franchisor's item 20 disclosure misrepresented the number of open franchisees, in violation of FDUTPA; the franchisor failed to identify in its quarterly FDD update that five locations had recently closed, and the court did not require a finding of reliance by the franchisee.²⁰⁵ This is an example of courts protecting franchisees using FDDs to ensure franchisors are accurately disclosing material information.

The FDD provides an example for states to use if needed, and prescribes a fourteen-day disclosure requirement by the franchisor to the franchisee.²⁰⁶ Some comparisons can be made with Mexico, whose Industrial Property Law (IPL) requires that prior to granting a franchise, the franchisor's information must be disclosed to the prospective franchisee at least thirty business days before the execution of the franchise agreement.²⁰⁷ Some information that requires disclosure includes bankruptcy information, business experience of the

¹⁹⁸ Stephen Giles & Penny Ward, *Australia, in* INTERNATIONAL FRANCHISE SALES LAWS 5 (Kendal H. Tyre, Jr. & Michael R. Laidhold eds., 3d ed. 2023) ("For purposes of the definition, any transfer, renewal, or extension of a franchise agreement is itself taken to be a franchise agreement and a motor vehicle dealership agreement is expressly considered a franchise agreement.").

¹⁹⁹ 16 C.F.R. § 436.5(q) (2025). Item 17 thus helps protect franchisees by allowing them to consider these terms before they make the decision to invest in a franchise.

²⁰⁰ Emerson, *supra* note 151, at 139 n.134.

²⁰¹ *Id.* at 139.

²⁰² *Id.*

²⁰³ No. 17-CV-13552-TGB, 2020 WL 6536954 (E.D. Mich. Nov. 6, 2020).

²⁰⁴ *Id.* at *1, *9.

²⁰⁵ *See id.* at *11–12.

²⁰⁶ *See* 16 C.F.R. § 436.2(a) (2023).

²⁰⁷ Jorge Mondragon, *What Franchisors Should Know About Doing Business in Mexico*, INT'L FRANCHISE ASSOC. (Aug. 8, 2019), <https://www.franchise.org/2019/08/legal-landscape-mexico/> [<https://perma.cc/U732-BM87>].

franchisor's executive team, pending litigation, and estimated initial investment.²⁰⁸ In the case of China, thirty days are required as a pre-contractual disclosure.²⁰⁹

Canada also has examples. It does not have a uniform franchise statute due to the federal structure of the government.²¹⁰ Six out of the ten Canadian provinces have enacted franchise-specific legislation, beginning with Alberta in 1971.²¹¹ The disclosure documents are similar to the United States and Australian contexts; Canadian franchisors are required to provide prospective franchisees a disclosure document at least fourteen days before signing the agreement.²¹² Even so, other nations are more pro-franchisee. For example, South Korea has very strong disclosure requirements.²¹³

E. *Good Cause: The Epicenter of Case Law for Just Treatment of Franchisees*

In certain cases, the contractual language of a franchise agreement does not include certain material conditions. In *N.I. Petroleum Ventures Corporation v. GL&S, Inc.*, the U.S. District Court for the District of Delaware found that the nonrenewal of a gasoline

²⁰⁸ Will Kenton, *What is a Franchise Disclosure Document (FDD)? Requirements*, INVESTOPEdia (Dec. 4, 2024), <https://www.investopedia.com/terms/f/franchise-disclosure-document.asp> [<https://perma.cc/95SL-QEH8>].

²⁰⁹ Dominic Hui & Danny Tsui, *A Primer on Franchising in China*, 40 FRANCHISE L.J. 293, 296 (2020).

²¹⁰ See Joseph Adler, Idan Erez & Stephanie Chong, *Franchise Laws and Regulations Canada 2022*, INT'L COMPAR. LEGAL GUIDE (Oct. 22, 2024), <https://iclg.com/practice-areas/franchise-laws-and-regulations/canada> [<https://perma.cc/S6B4-GQ34>] (each province regulates franchising in Canada).

²¹¹ See *id.* The Franchises Act, S.A. 1971, c. 38 (Can.).

²¹² *Id.*

²¹³ Among just a few of the many requirements imposed on franchisors in South Korea are: (1) a lengthy set of disclosures from franchisors to prospective franchisees before an agreement is signed or any fees are paid; (2) upon a potential franchisee's reasonable request, the franchisor must disclose supporting data for the franchisor's contentions (such as for estimated profits); and (3) a franchisor's failure to comply with the Act can lead, *inter alia*, to fines, potential imprisonment, and the franchisee's right to terminate the franchise as well as to receive refunds of deposits and fees. Fair Transactions in Franchise Business Act, Act No. 19912, Jan. 2, 2024 (S. Kor.), translated in Korea Legislation Research Institute online database; Hongki Kim, Hwijin (HJ) Choi, Kee Won Shin & Jennifer Yein Kwon, *Franchising 2025: South Korea*, CHAMBERS AND PARTNERS (Oct. 8, 2025), <https://practiceguides.chambers.com/practice-guides/comparison/> [<https://perma.cc/5TQ5-6KAY>]. South Korea has one of the highest franchise densities in the world. It is not a far leap to argue that expanded protections have led to a good franchise economy. See *South Korea Country Commercial Guide*, INT'L TRADE ADMIN. (Dec. 5, 2023), <https://www.trade.gov/country-commercial-guides/south-korea-distribution-and-sales-channels> [<https://perma.cc/NB39-UENB>]; see also Abhishek Dube & Sun Chang, *Franchising in South Korea*, 42 FRANCHISE L.J. 85 (2022).

supply contract for failure to comply with a minimum fuel purchase requirement was unjustified for lack of materiality because the franchisor's interest in full performance of the quota was satisfied in light of a financial sanction built into the agreement.²¹⁴ The court found that the compensation to the franchisor for sales below the benchmark satisfied the purpose of the minimum fuel level quota in providing minimum profit for the franchisor and was not a significant substantive requirement relating to the way the franchisee must run the business.²¹⁵ The district court also found it relevant that the minimum sales quota was not included among the enumerated material conditions of the franchise relationship, and therefore no just cause for termination of the franchise agreement.²¹⁶

Leon F. Hirzel states:

Whether the franchisor has the right to terminate [or not renew] the franchise agreement based on the franchisee's breach of a minimum performance provision in the franchise agreement requires an initial determination of whether the franchise agreement expressly states that a performance standard is material or whether the franchisor's right to terminate [or not renew] . . . is explicitly stated in the agreement, thereby implying materiality.²¹⁷

In these instances, if there is a failure to meet the minimum performance standards, the franchisor may choose to terminate or not renew the franchise relationship.²¹⁸ However, there is an exception to this rule.²¹⁹ There are instances where notice and cure requirements limit terminations of franchise agreements for failure to meet minimum performance standards.²²⁰ Sometimes in these cases, the law may limit the effect of termination of franchise agreements, despite the failure to meet minimum performance standards.²²¹

This is evinced by *Al Bishop Agency, Inc. v. Lithonia-Division of National Service Industries, Inc.*²²² Here, the court stated that meeting

²¹⁴ N.I. Petroleum Ventures Corp. v. GLeS, Inc., 333 F. Supp. 2d 251, 259–60 (D. Del. 2004).

²¹⁵ See *id.* at 259.

²¹⁶ See *id.*

²¹⁷ Leon F. Hirzel, *An Analysis of Franchise Agreement Terminations and Nonrenewals for Failure to Meet Minimum Performance Standards*, 37 FRANCHISE L.J. 123, 125 (2017).

²¹⁸ *Id.* at 124–25.

²¹⁹ *Id.* at 135 (discussing, inter alia, notice and cure exceptions).

²²⁰ *Id.*

²²¹ *Id.*

²²² 474 F. Supp. 828 (E.D. Wis. 1979).

minimum performance standards was an impossible task; the evidence showed a likelihood of defective cure requirements and inadequate notice.²²³ As such, the defendant's termination of the plaintiff violated the Wisconsin Fair Dealership Law.²²⁴

Similarly, in *Wadena Implement Co. v. Deere & Co.*, Deere sent a letter to one of its dealers that required the dealer to increase its regional market share to a target percentage.²²⁵ When the dealer failed to reach the market share target, Deere terminated the franchise agreement.²²⁶ Although Deere provided the mandatory notice and sixty day cure period prescribed under the Minnesota Agricultural Equipment Dealership Act, the court nonetheless found that the termination contravened the good cause requirement of the Act.²²⁷ The court found Deere's demand unreasonable because it required the dealership to increase its market share by 500% in just one year.²²⁸

While minimum performance standards are often used to suggest a numerical impartiality to the requirements imposed on franchisees, franchisors must still be careful to ensure that the standards are enforced against franchisees equally.²²⁹ As discussed by the Supreme Court of New Mexico, “[sales] quotas need to be applied uniformly to all franchisees, taking into account local conditions, because failure to meet quotas may be attributed to economic or market factors beyond the franchisee's control.”²³⁰ Even where a minimum performance standard is clear and reasonable, a franchisor still may not be able to simply terminate its agreement with a franchisee that falls below that standard.²³¹

F. *The Role of Third Parties and the Franchisee's Right to Associate*

Beyond disclosure and good cause requirements, franchisees have the ability to protect themselves further by associating with third parties. In Canada, Ontario's Arthur Wishart Act (Franchise Disclosure)²³² gives a franchisee the right to associate with other

²²³ *Id.* at 834.

²²⁴ *Id.* at 835; *see also* WIS. STAT. § 135 (2020).

²²⁵ *Wadena Implement Co. v. Deere & Co.*, 480 N.W.2d 383, 385 (Minn. Ct. App. 1992).

²²⁶ *Id.* at 386.

²²⁷ *Id.*

²²⁸ *Id.* at 388.

²²⁹ *See* Hirzel, *supra* note 217, at 124, 143.

²³⁰ *Key v. Chrysler Motors Corp.*, 918 P.2d 350, 360 (N.M. 1996).

²³¹ Susan Grueneberg & Beata Krakus, *United States, in* INTERNATIONAL FRANCHISE SALES LAWS 565, 601–04 (Kendal H. Tyre, Jr. & Michael R. Laidhold eds., 3d ed. 2023).

²³² Also known as the “Ontario Act.” Bruno Floriani et al., *Q&A: Offer and Sale of Franchises in Canada*, LEXOLOGY (July 4, 2024),

franchisees or join an organization of franchisees because of the often one-sided nature of franchise contracts.²³³ It also enables franchisees to form associations²³⁴ or unions without interference from the franchisor.²³⁵ Furthermore, in the case of *Ontario Limited v. Midas Canada, Inc.*, the court of appeals held that the provisions of the Ontario Act could be made applicable to other provinces even if they did not have any franchise legislation in place.²³⁶

Similarly, the ACCC provides Australian franchisees with the opportunity for collective bargaining with their franchisor.²³⁷ Two or more franchisees can either obtain a class exemption or can apply for authorization to boycott their franchisor collectively.²³⁸ By associating with other franchisees to create a bargaining group, the franchisees can combine their economic resources to offset the disparity in bargaining power the franchisees would face individually. Further, the Australian Franchising Code of Conduct prohibits franchisors from interfering with their franchisee's right to associate.²³⁹

Currently, there is no similar protection for U.S. franchisees who wish to collectively bargain with their franchisors.²⁴⁰ Even though

<https://www.lexology.com/library/detail.aspx?g=4323816a-3235-4031-8f8d-47fe1e3d024e> [https://perma.cc/764Y-5AG2] (last visited Oct. 25, 2025).

²³³ Arthur Wishart Act (Franchise Disclosure), S.O. 2000, c. 3, § 4(1) (Can.).

²³⁴ For general information about franchisee rights collectively, see Emerson, *supra* note 195; Emerson & Benoliel, *supra* note 195; see also Robert W. Emerson, *Assessing Awuah v. Coverall North America, Inc.: The Franchisee as a Dependent Contractor*, 19 STAN. J. L. BUS. & FIN. 203 (2014) (discussing the limitations of agency and contract law in managing franchising's unique problems and concluding that further protections should be available to franchisees, including the right to form associations and to enter into collective bargaining agreements); Robert W. Emerson & Bruce Louis Rich, *Simplifying Independent Contractor Classification: Using the Factors that Courts Actually Invoke in Franchise Cases*, 28 U. PA. J. BUS. L. (forthcoming 2026) (having conducted a data analysis of 696 U.S. federal and state court cases, concluding that "[i]n franchising, the data of what really drives court decisions can now guide the legal tests and make the determination of independent contractor or employee status more elegant, simple and in keeping with the reality of litigation and actual franchising practices.").

²³⁵ Arthur Wishart Act (Franchise Disclosure), S.O. 2000, c. 3, § 4(2) (Can.).

²³⁶ *Ont. Ltd. v. Midas Can. Inc.* [2010] 264 O.A.C. 111 (Can. C.A.).

²³⁷ *Collective Bargaining by Franchisees*, AUSTL. COMPETITION & CONSUMER COMM'N, <https://www.accc.gov.au/business/industry-codes/franchising-code-of-conduct/during-a-franchise-agreement/group-bargaining-by-franchisees> [https://perma.cc/G6ZZ-TLS7] (last visited Mar. 5, 2025).

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Eric Karp & Jason Williams, *Franchisee Associations*, in REPRESENTING FRANCHISEES 353, 367 (Thomas R. Ayres & Howard E. Bundy eds., 2023) ("Finally, Iowa and Rhode Island prohibit a franchisor not only from forbidding franchisees from associating with other franchisees or participating in an association but also prohibit franchisors from retaliating against a franchisee for its involvement in a

many courts have recognized that franchise agreements are often contracts of adhesion, U.S. franchisees still typically “negotiate” one-on-one with their franchisor.²⁴¹ By implementing collective bargaining and association protections for franchisees, these “take-it-or-leave-it” deals can become more balanced, and actually reflect the interests of each party.²⁴² With true bargaining between franchisees and franchisors, it is likelier that equitable renewal and termination provisions will be included in franchise agreements, leading to fewer disputes at the end of an agreement’s term.

A role for third parties in negotiating franchise agreements can exist in South Korea under article 27 of the Fair Transactions in Franchise Business Act.²⁴³ In South Korea, a franchise trader is defined as someone who passes the qualifying examination of the Fair Trade Commission and undertakes duties under article 28²⁴⁴ of the Act dealing with franchise agreements. A franchise trader’s duty under the Act is to facilitate the beginning and the operation of franchise agreements.²⁴⁵ Assuming such right to form associations can be taken in the American context, it is reasonable to suggest that potential outcomes stemming from the right to form associations in one

franchisee association. . . . While there is no federal equivalent to the state laws protecting the right of franchisees to associate, the Federal Trade Commission’s (FTC) requirement that franchisors disclose trademark-specific franchisee associations as part of the Item 20 disclosure unequivocally indicates that the FTC supports such associations.”).

²⁴¹ Peter C. Lagarias & Edward Kushell, *Fair Franchise Agreements from the Franchisee Perspective*, 33 *FRANCHISE L.J.* 3, 7 (2013) (“[F]ranchise agreements written by and for franchisors invariably favor the franchisor. However, it is not true that the franchise agreement terms in the offering circular cannot be negotiated, as some franchise salesmen told prospective franchisees for many years. The contract is always negotiable. At most, [though,] a negotiated change may require the franchisor to amend its registration and disclosure documents.”).

²⁴² See Emerson, *supra* note 195, at 1157–58.

²⁴³ See Fair Transactions in Franchise Business Act, art. 27 (S. Kor.), translated in Korea Legislation Research Institute’s online database, https://elaw.klri.re.kr/kor_service/lawView.do?hseq=69418&lang=KOR [https://perma.cc/ME79-BYD9] (“Any person who successfully passes the franchise trader qualifying examination conducted by the Fair Trade Commission and who completes on-the-job training, as prescribed by Presidential Decree, shall be qualified for a franchise trader.”).

²⁴⁴ See *id.* art. 28 (“Each franchise trader shall undertake the following affairs: 1. Review on the business profitability of franchising; 2. Preparation and modification of franchise disclosure documents and franchise agreements or provision of advice and suggestions thereon; 3. Provision of advice and suggestions on charges on franchisors and terms and conditions of business activities of franchising; 4. Provision of education and training of franchisees and advice and suggestions thereon; 5. Acting as an agent for filing an application for mediation of disputes arising from franchise transactions and stating opinions; 6. Acting as an agent for registering a franchise disclosure document.”).

²⁴⁵ *Id.*

particular state can also be made applicable to other states, inter alia, because the United States is a federal structure similar to Canada. Thus, legislation in the United States similar to Ontario's Arthur Wishart Act could successfully offer franchisees further protections without directly burdening the franchise agreement.

G. *The Automatic Right to Renew*

Automatic renewal, also sometimes called “renewal by default,” is somewhat different from renewal through mutual consent or conduct, another matter that courts approach differently across various jurisdictions.²⁴⁶ If a franchise agreement expires naturally, good cause is irrelevant. Other franchises may have the right to a renewal unless there is good cause for nonrenewal. In *Thompson v. Atlantic Richfield Co.*,²⁴⁷ the U.S. District Court for the Western District of Washington determined that the Washington Franchise Investment Protection Act does not give franchisees an automatic right to renew the franchise upon expiration of the franchise agreement,²⁴⁸ and permits the franchisor to not renew provided it compensates the franchisee under the statute.²⁴⁹

In many cases, there needs to be good cause for the termination of a franchise if the franchisor chooses not to renew.²⁵⁰ However, in other cases there can be franchisees in perpetuity and an unlimited renewal of a franchise relationship.²⁵¹ There are three jurisdictions that explicitly impose unlimited renewal requirements on franchisors: New Jersey, Puerto Rico, and Wisconsin.²⁵² The franchise relationship is “evergreen” in these three jurisdictions because the

²⁴⁶ See *supra* Part II.B.

²⁴⁷ 663 F. Supp. 206 (W.D. Wash. 1986).

²⁴⁸ *Id.* at 210.

²⁴⁹ See WASH. REV. CODE § 19.100.180(2)(i) (2024) (“For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to: . . . [r]efuse to renew a franchise without fairly compensating the franchisee for the fair market value, at the time of expiration of the franchise, of the franchisee’s inventory, supplies, equipment, and furnishings purchased from the franchisor, and good will, exclusive of personalized materials which have no value to the franchisor, and inventory, supplies, equipment, and furnishings not reasonably required in the conduct of the franchise business[.]”).

²⁵⁰ See, e.g., Lieberstein & Williams-Lopez, *supra* note 24.

²⁵¹ Julie Lusthaus & Gina Malandrino, *But I Already Bought the Franchise? Exploring Franchisor and Franchisee Rights in the Renewal/Successor Franchise Context*, A.B.A., 44TH ANN. F. ON FRANCHISING, Oct. 13–15, 2021, at 1, 12.

²⁵² N.J. REV. STAT. § 56:10-5 (2013); *Santa Paula Oil Corp. v. Caribbean Petroleum Corp.*, 2012 PR App. LEXIS 835, *30; WIS. STAT. § 135.03 (2024); see also Banks, Goldman & Treadwell, *supra* note 177 (including New Jersey, Puerto Rico, and Wisconsin in a list of jurisdictions and stating that the franchise agreement continues in perpetuity until the franchisor has good cause to terminate it).

franchisee has an unrestricted right of renewal as long as the franchisee does not materially infringe the franchise relationship's key duties.²⁵³

Section 56:10-5 of the New Jersey Franchise Practices Act says that it is a violation to terminate or fail to renew a franchise without good cause.²⁵⁴ Good cause is limited to a franchisee's substantial failure to comply with the requirements of the franchise agreements.²⁵⁵ Therefore, it can be understood that the statute and judicial interpretation make it clear that the franchise relationship continues perpetually as long as there is no material breach leading to good cause. Indeed, to cover just one industry nationwide, gas station dealerships,²⁵⁶ we could argue that, in the limited context of contracts between petroleum franchisors and franchisees (specifically, just their real estate leases, trademark agreements, and fuel supply arrangements),²⁵⁷ a franchisor's ability to refuse renewal is limited.²⁵⁸ While the PMPA lists many reasons for termination or nonrenewal,²⁵⁹ there are precedents highly useful for gas station dealers fighting undue pressure from petroleum franchisor.²⁶⁰ For example, in *L.M.P. Service, Inc. v. Shell Oil Co.*,²⁶¹ a franchisee's right of first refusal was contingent upon its renewing a franchise and supply agreement. The U.S. District Court of Maryland determined that the franchisor was violating the PMPA by trying to coerce the franchisee, a lessee of the station's real

²⁵³ See Oppenheim & Van Nostrand, *supra* note 9.

²⁵⁴ N.J. REV. STAT. § 56:10-5 (2013).

²⁵⁵ *Id.*

²⁵⁶ Petroleum Marketing Practices Act, 15 U.S.C. §§ 2801-2806 (2025).

²⁵⁷ Doug Luther, *The Petroleum Marketing Practices Act: Everything You Need to Know*, LUTHER LANARD, <https://franchiseelawyer.com/blog/the-petroleum-marketing-practices-act-everything-you-need-to-know/> [<https://perma.cc/MV5U-8E6Y>] (last visited Jan. 6, 2026) (“The PMPA only applies to three aspects of a contractual agreement between the petroleum franchisor and the franchisee: (1) The commercial lease for the real property, if the franchisor owns [or] controls the premises; (2) The trademark agreement associated with the motor fuel franchise is authorized to sell and branded with the trademark of the refiner; (3) The motor fuel supply agreement.”).

²⁵⁸ *Id.* (“While the FTC [Franchise] Rule governs pre-sale disclosures associated with franchise sales, the PMPA only applies to terminations and nonrenewals of franchise agreements. The PMPA addresses the imbalanced bargaining power between refiners, oil companies, and fuel purchasers, and aims to level the playing field and protect dealers and distributors from termination or nonrenewal.”); see *Anand v. BP West Coast Products LLC*, 484 F. Supp. 2d 1086, 1093–94 (C.D. Cal. 2007) (discussing at length, with numerous citations, the strongly pro-franchisee orientation of the PMPA).

²⁵⁹ 15 U.S.C. § 2802 (2025).

²⁶⁰ The court's inquiry, under the PMPA, is “whether the franchisor made the substantive decision [against renewal] in good faith and in the normal course of business “test[ing] the honest commercial judgment of the franchisor.” *BP West Coast Products LLC v. May*, 447 F.3d 658, 663 (9th Cir. 2006) (citing *Sandlin v. Texaco Ref. Mktg., Inc.*, 900 F.2d 1479, 1481 (10th Cir. 1990)).

²⁶¹ 128 F.Supp.2d 287 (D. Md. 2000).

estate, into buying the property and therefore forging a new relationship. Because the franchisee could not compel the oil company to sell the property at the price offered but without any conditions, the lawful resolution was to require the defendant oil company to renew the contract for another five years.²⁶²

H. *Resources for Franchisors After a Franchisee Qualifies for Renewal*

In situations where franchisees have satisfied all material conditions for renewal, some jurisdictions protect franchisees using methods such as exclusive rights to specific geographic areas, infinite franchise renewal rights, and certain statutory protections against discrimination that hinder franchisors from arbitrarily terminating the agreement.

For example, in *Dunkin' Donuts of America, Inc. v. Middletown Donut Corp.*,²⁶³ the New Jersey Supreme Court referred to section 56 of the New Jersey Franchise Practices Act,²⁶⁴ which spoke about the benefit of an “infinite franchise.”²⁶⁵ The court declared, “once a franchise relationship begins, all that a franchisee must do is comply substantially with terms of the agreement, in return for which he receives the benefit of an ‘infinite’ franchise— he cannot be terminated or refused renewal.”²⁶⁶ The discussion in *Dunkin’* detailed how franchise agreements of unspecified duration were construed to be terminable at will, and that many contracts for set periods contained franchise termination clauses which generally favored the franchisors: “[i]n response to a perceived disparity in bargaining power, many states passed legislation that afforded to franchisees protection against indiscriminate terminations by prohibiting cancellation or nonrenewal of franchises for other than good cause.”²⁶⁷

Further, in *Cambee’s Furniture, Inc. v. Doughboy Recreational, Inc.*,²⁶⁸ the Eighth Circuit Court of Appeals established standards that the franchisee was entitled to exercise, including the enforcement of exclusive rights to the franchise in a specific geographic area:

- (1) requiring a distributor to purchase a specific quantity of goods was not a franchise fee; (2) the

²⁶² *L.M.P. Serv., Inc. v. Shell Oil Co.*, 116 F.Supp.2d 645, 648 (D. Md. 2000).

²⁶³ 495 A.2d 66 (N.J. 1985).

²⁶⁴ N.J. Stat. Ann. § 56:10-5 (West 1985).

²⁶⁵ See *Dunkin’ Donuts*, 495 A.2d at 76.

²⁶⁶ *Id.*

²⁶⁷ *Id.* at 71; see 71 CAUSES OF ACTION 2d 241 (Clark Boardman Callaghan 2025) (discussing state franchise statutes as the basis for franchisee actions against their franchisor).

²⁶⁸ 825 F.2d 167 (8th Cir. 1987).

distributor was entitled to a reasonable period of time to recoup its investment, during which the distributorship could not be terminated without good cause; (3) the implied covenant of good faith and fair dealing did not state a claim separate from the breach of contract claim, but the distributor was entitled to have the trier of fact determine whether the manufacturer could overcome the recoupment claim by demonstrating good cause, asserted in good faith, for termination; and (4) until the distributor received reasonable notice of termination, it was entitled to exercise and enforce the exclusive rights it had in a geographic area.²⁶⁹

Standards such as those outlined in *Cambee's Furniture* protect the investments made by franchisees into their businesses. While the franchisor may still terminate the relationship, allowing the franchisee to exercise these rights allows them to recoup their investment in the franchise. A uniform standard of rights for franchisees that have satisfied the conditions for renewal is needed to better protect franchisees as well as the investments they have made in their businesses.

I. *Statutory Law Prohibiting Franchisee Discrimination*

Six states prohibit franchisor discrimination against franchisees with legislation.²⁷⁰ The legislation limits the conditions in which a franchisor may refuse to renew a franchise or otherwise discriminate against a franchisee. In most cases, franchisors may only choose not to renew a franchise when there is a good reason and no discriminatory purpose for the nonrenewal.²⁷¹

In *General Aviation, Inc. v. Cessna Aircraft Co.*,²⁷² the Sixth Circuit Court of Appeals held that the Michigan statute dealing with renewals of franchise agreements required the franchisor to renew its agreement

²⁶⁹ *Id.*

²⁷⁰ See ARK. CODE ANN. § 4-72-204 (West 2022); HAW. REV. STAT. ANN. § 482E-6(2)(C) (West 2018); 815 ILL. COMP. STAT. 705/18 (2020); IND. CODE ANN. § 23-2-2.7-2(5) (West 2021); WASH. REV. CODE § 19.100.180(2)(c) (2019); WIS. STAT. ANN. § 135.03 (West 2021).

²⁷¹ ARK. CODE ANN. § 4-72-204 (West 2022); HAW. REV. STAT. ANN. § 482E-6(2)(C) (West 2018); 815 ILL. COMP. STAT. 705/18 (2020); IND. CODE ANN. § 23-2-2.7-2(5) (West 2021); WASH. REV. CODE § 19.100.180(2)(c) (2019); WIS. STAT. ANN. § 135.03 (West 2021); see Mark J. Burzych & Emily L. Matthews, *Selective Enforcement of Franchise Agreement Terms and System Standards*, 23 FRANCHISE L.J. 110, 111–14 (2003).

²⁷² 13 F.3d 178, 179 (6th Cir. 1993). The franchise agreements at issue were covered by the Michigan Franchise Act of 1974 and its 1984 amendments.

with the franchisee in accordance with renewal terms the franchisor offered to other similarly situated franchisees. Similarly, the concept of unfair discrimination and nonrenewal was substantiated in *Ziegler Co. v. Rexnord, Inc.*,²⁷³ in which the court held that a franchisor may not unfairly discriminate between similarly situated franchisees when offering renewal contracts.

In some states like Hawaii, the franchisor has the burden of proving that the discrimination for refusal to renew the franchise relationship is reasonable.²⁷⁴ Section 482E-6(2)(H) states that it shall be an unfair or deceptive act or practice or an unfair method of competition for a franchisor or subfranchisor to:

Terminate or refuse to renew a franchise except for good cause, or in accordance with the current terms and standards established by the franchisor then equally applicable to all franchisees, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is reasonable, is based on proper and justifiable distinctions considering the purposes of this chapter, and is not arbitrary. For purposes of this paragraph, good cause in a termination case shall include, but not be limited to, the failure of the franchisee to comply with any lawful, material provision of the franchise agreement after having been given written notice thereof and an opportunity to cure the failure within a reasonable period of time.²⁷⁵

While the Hawaii statute places the burden of proof on the franchisor, the statute reflects the general approach of jurisdictions with anti-discrimination statutes. That is, the requirement that franchisors need a good reason to terminate the franchise relationship. Franchisees would be better protected if similar statutory language were adopted in the other forty-four states.

J. *Applying Principles of Good Faith, Commercial Reasonableness, and Estoppel*

Although there is no general right for renewal under common law and no implicit right to renewal unless and until it is specified in

²⁷³ 433 N.W.2d 8 (Wis. 1988).

²⁷⁴ HAW. REV. STAT. § 482E-6 (2023).

²⁷⁵ *Id.*

the franchise agreement,²⁷⁶ the Pennsylvania Supreme Court in *Atlantic Richfield Co. v. Razumic* held that the franchisor was bound by the duty to deal with its franchisees in good faith.²⁷⁷ Applying principles of estoppel, good faith, and commercial reasonableness, the court concluded that a franchisor cannot arbitrarily terminate its relationship with a franchisee.²⁷⁸ The Pennsylvania Supreme Court's holding was consistent with several other state high courts, which recognized that franchisors cannot arbitrarily terminate a franchise agreement, even without good cause.²⁷⁹

Alternatively, in *Consumers International v. Sysco Corp.*,²⁸⁰ the Arizona Appeals Court upheld the termination of a distribution agreement pursuant to the agreement's termination clause. The court held that good faith did not require the supplier to show good cause to terminate the agreement.²⁸¹ Absent a showing of bad faith, the no-cause termination of a distribution agreement by the supplier was found legal.²⁸²

As evidenced by the preceding cases, where a state statute does not govern the termination of a franchise agreement, states have taken different approaches in determining the extent to which good faith protects a franchisee. Because not all states are willing to imply a covenant against arbitrary termination of a franchise agreement, franchisees may have less protection in certain states, leading to inconsistent outcomes. This absence of strong common law protection is another reason why further development of the standards for franchise renewal is needed.

If future studies use the above situations, results can be more easily compared, allowing for the accumulation of a comprehensive data set that supports a review articulating the project's purpose. This, in turn, can be used to fill the gap in current research, providing more

²⁷⁶ Craig R. Tractenberg, Robert B. Calihan & Ann-Marie Luciano, *Legal Considerations in Franchise Renewals*, 23 FRANCHISE L.J. 198, 198 (2004).

²⁷⁷ *Atl. Richfield Co. v. Razumic*, 390 A.2d 736 (Pa. 1978).

²⁷⁸ *Id.* at 378–82.

²⁷⁹ See *Seegmiller v. Western Men, Inc.*, 437 P.2d 892 (Utah 1968); see also *Shell Oil Co. v. Marinello*, 307 A.2d 598 (N.J. 1973); *Ashland Oil, Inc. v. Donahue*, 223 S.E.2d 433 (W. Va. 1976).

²⁸⁰ 951 P.2d 897 (Ariz. Ct. App. 1997).

²⁸¹ *Id.* at 899–901.

²⁸² *Id.* at 901–04. For an example of bad faith, see *GTO Invs., Inc. v. Buchanan Energy*, No. 11 C 4135, 2012 WL 714802, at *1 (N.D. Ill. Mar. 5, 2012). The court held that franchisor Buchanan Energy acted in bad faith when it failed to renew the franchise agreement with franchisee GTO. The gasoline pricing under the proposed lease between the two parties could have had a crippling effect on GTO, and the evidence indicated that Buchanan priced GTO's gasoline in a discriminatory manner (charging more to GTO than to customers at a nearby gas station Buchanan owned). Therefore, the Court granted preliminary injunctive relief to GTO. *Id.*

solutions in renewal issues for franchise laws and moving researchers in the right direction for further investigation.

III. OTHER MEANS TO PROTECT FRANCHISEES

A. *Consistent Good Cause Standards*

1. *What constitutes good cause*

Sometimes, courts find that the franchisee's actions constituted good cause for the franchisor to terminate the franchise agreement.²⁸³ The case law varies, but *Ard Dr. Pepper Bottling Co. v. Dr. Pepper Co.*²⁸⁴ shows that there are different standards for good cause. The court held the agreement would continue as long as the distributor performed satisfactorily – sufficient to satisfy a reasonable person.²⁸⁵

For instance, in *Brown Dog, Inc. v. Quizno's Franchise Co., LLC*, Quizno's master franchisor was terminated for failing to meet a quarterly development quota for opening new restaurants within its territory for six consecutive quarters.²⁸⁶ After a bench trial, the court ruled against the area director's claim of wrongful termination under the Wisconsin Fair Dealership Law.²⁸⁷ The court found that good cause existed to terminate the area director marketing agreement because the development quotas were "essential and reasonable requirements"²⁸⁸ and that the master franchisor failed to "substantially comply"²⁸⁹ with the quota.²⁹⁰

In *Dunkin' Donuts of America, Inc. v. Middletown Donut Corp.*, the Supreme Court of New Jersey upheld Dunkin' Donuts' termination of a franchise agreement where the franchisee had been underreporting the gross sales of their franchise.²⁹¹ Because the franchisee's underreporting constituted substantial *noncompliance* with his responsibilities under the franchise agreement, this was good cause for Dunkin' Donuts to terminate the agreement.²⁹²

²⁸³ Emerson, *Franchise Contract Interpretation*, *supra* note 22, at 665–67.

²⁸⁴ 202 F.2d 372 (5th Cir. 1953).

²⁸⁵ *Id.* at 377–78.

²⁸⁶ *Brown Dog, Inc. v. Quizno's Franchise Co., LLC*, No. 04-C-18-X, 2005 WL 3555425, at *7–8 (W.D. Wis. Dec. 27, 2005).

²⁸⁷ *See id.*

²⁸⁸ *Id.* at *16.

²⁸⁹ *Id.*

²⁹⁰ *See id.*

²⁹¹ *See Dunkin' Donuts of Am., Inc. v. Middletown Donut Corp.*, 495 A.2d 66, 76 (N.J. 1985).

²⁹² *Id.* at 73; *see* notes 263–267 and accompanying text (concerning *Dunkin' Donuts of Am., Inc. v. Middletown Donut Corp.* and the idea that, due to the legal protections enacted in many state statutes, there is no "good cause" to terminate or

Similarly, in *Jiffy Lube International, Inc. v. Weiss Bros., Inc.*, the U.S. District Court of New Jersey upheld the termination of a franchise agreement where the franchisee had underreported sales of their franchise.²⁹³ Here, the franchisee underreported sales to offset the amount of unpaid royalties they believed the franchisor, Jiffy Lube, owed them.²⁹⁴ Even though the court recognized that there was a genuine dispute as to whether the franchisee had been underpaid by the franchisor, this did not rise to the level of “fraud, accident, mistake, duress, or undue influence” that would override the franchisor’s claim of good cause.²⁹⁵ The court noted that the franchisor’s right to terminate the contract for good cause exists independently of any claims the franchisee may have against it.²⁹⁶

2. *What does not constitute good cause*

There are cases in which the court has not found good cause for termination. For example, in *Crest Furniture Inc. v. Ashley Homestores, Ltd.*, the court determined that failing to renew franchise agreements without good cause supported viable claims against the franchisor for violation of the New Jersey Franchise Practices Act (NJFPA), breach of common law franchise rights, equitable estoppel, unfair competition, and fraud.²⁹⁷ In this case, the franchisor, Ashley, notified Crest that it would not renew four of five Pennsylvania-based agreements.²⁹⁸ In denying the defendants’ motion to dismiss, the court explained that the terminations were part of a larger plot between Ashley and Crest’s competitors to take over all of Crest’s stores,²⁹⁹ constituted discrimination against Crest,³⁰⁰ and were a violation of the principles of good faith and fair dealing.³⁰¹

In *Wadena Implement Co. v. Deere Co.*, the Minnesota Court of Appeals upheld the district court’s summary judgment ruling enjoining the termination of Wadena’s agricultural dealership agreement for failure to comply with a market penetration requirement.³⁰² The

not renew a substantially compliant franchise, who therefore, in practice, may be deemed to have a franchise of potentially unlimited duration – an “infinite franchise”).

²⁹³ *Jiffy Lube Int’l, Inc. v. Weiss Bros., Inc.*, 834 F. Supp. 683 (D.N.J. 1993).

²⁹⁴ *See id.* at 686–87.

²⁹⁵ *Id.* at 689.

²⁹⁶ *Id.*

²⁹⁷ *Crest Furniture, Inc. v. Ashley Homestores, Ltd.*, No. 1:20-cv-01383, 2020 U.S. Dist. LEXIS 202688 at *16, 17, 20, 23, 27 (D.N.J. Oct. 30, 2020).

²⁹⁸ *Id.* at *2.

²⁹⁹ *See id.* at *26.

³⁰⁰ *See id.* at *27–30.

³⁰¹ *See id.* at *17–21.

³⁰² *Wadena Implement Co. v. Deere Co.*, 480 N.W.2d 383, 389 (Minn. Ct. App. 1992).

dealership in *Wadena Implement Co.* received a letter from Deere, dated January 27, 1989, telling it to increase market share.³⁰³ The franchise agreement was later terminated based on inadequate market share for the 1989 year.³⁰⁴ The court found that Deere's termination letter did not comply with the good cause notice and opportunity to cure requirement under the Minnesota Agricultural Equipment Dealership Act (MAEDA).³⁰⁵ The court reasoned that a franchisee must "unambiguously be informed of the requirement before the year begins."³⁰⁶ In addition, Deere failed to establish that Wadena "consistently failed" to meet the market penetration requirements so as to support termination of the dealer in 1990 under MAEDA: "1989 was the first year for which specific market share requirement could be inferred, and . . . at least two years of noncompliance was required for consistent failure to be found"³⁰⁷

Finally, in *Soderholm Sales & Leasing, Inc. v. BYD Motors Inc.*, the plaintiff (Soderholm) was a licensed motor vehicle dealer under Hawaii's Motor Vehicle Industry Licensing Act (MVILA); the defendant (BYD) was a manufacturer of rechargeable electric batteries and vehicles.³⁰⁸ The parties entered into a written agreement that gave Soderholm the non-exclusive right to buy and promote BYD's products and to sell BYD's vehicles in Hawaii and other Pacific Islands if certain performance criteria were maintained.³⁰⁹ The agreement was terminable by BYD with notice.³¹⁰ BYD attempted to terminate the agreement and Soderholm sued, alleging that the termination was improper under MVILA.³¹¹ The court found that BYD engaged in bad faith because it did not comply with the required sixty-day notice³¹² and then refused to communicate with Soderholm.³¹³ BYD also failed to prove that Soderholm breached the parties' agreement or interfered with prospective contracts.³¹⁴ Soderholm was entitled to damages and reasonable attorneys' fees and costs pursuant to the MVILA.³¹⁵

³⁰³ *Id.* at 385–86.

³⁰⁴ *Id.* at 386.

³⁰⁵ *See id.* at 387–88; *see also* MINN. STAT. § 325E.062 (2024).

³⁰⁶ *Wadena Implement Co.*, 480 N.W.2d at 387–88.

³⁰⁷ *See id.* at 388. This case is also discussed *supra* notes 225–228 and accompanying text.

³⁰⁸ *Soderholm Sales & Leasing, Inc. v. BYD Motors Inc.*, No. 19–00160, 2021 U.S. Dist. LEXIS 122011 at *3 (D. Haw. June 30, 2021).

³⁰⁹ *See id.* at *5.

³¹⁰ *Id.*

³¹¹ *See id.* at *5, *22–23, *27.

³¹² HAW. REV. STAT. § 437-58(a)–(d) (2024).

³¹³ *See Soderholm Sales & Leasing, Inc.*, 2021 U.S. Dist. LEXIS 122011 at *44.

³¹⁴ *See id.* at *51.

³¹⁵ *See id.* at *53. In New Jersey, when courts do not find good cause for termination of a franchise agreement, they also provide remedies for the franchisee.

3. *A consistent standard*

While several states have good cause requirements for terminating a franchise agreement, they may take different approaches³¹⁶ to what that standard means. As noted, some state statutes enumerate what activities serve as the basis for good cause, while others are less explicit.³¹⁷ Despite these nuances, common threads have emerged, making it possible to articulate a consistent standard.

Good cause requires the franchisor to have a reasonable business-related justification for terminating the franchise agreement. This justification generally involves the failure of the franchisee to substantially meet its obligations under the franchise agreement, or the franchisee's willful violation of either the agreement or the law.

Requiring franchisors to meet a uniform good cause standard before terminating a franchise agreement would better protect franchisees and ensure more predictable outcomes.

4. *Materiality test: franchisees must meet their material obligations*

For courts to determine if a franchisee's actions fall into the good cause category, the good cause standard must be defined and applied consistently. The definition of good cause varies but generally includes the franchisee's failure or refusal to comply with the *material*

The court in *Westfield Centre Serv., Inc. v. Cities Serv. Oil Co.*, 432 A.2d 48, 57 (N.J. 1981), states: "In summary, we hold that a franchisor who in good faith and for a bona fide reason terminates, cancels or fails to renew a franchise for any reason other than the franchisee's substantial breach of its obligations has violated N.J. STAT. ANN. 56:10-5 and is liable to the franchisee for the loss occasioned thereby, namely, the reasonable value of the business less the amount realizable on liquidation. These are the damages contemplated by N.J. STAT. ANN. 56:10-10, permanent injunctive relief not being appropriate."

³¹⁶ Bryan Dillon & Mackenzie Dimitri, *Claims Typically Arising after the Franchise Term Ends*, in REPRESENTING FRANCHISEES 287, 288 (Thomas R. Ayres & Howard E. Bundy eds., 2023) ("The definition of good cause will vary between jurisdictions, so you must research and determine if the facts of your case qualify. . . . In Iowa, the statute defines 'good cause' as a 'legitimate business reason,' and states that, while a failure to comply with the provisions of a franchise agreement may suffice, the termination cannot be 'arbitrary or capricious' compared to the actions of the franchisor in other similar circumstances, which might be helpful for franchisees that have been singled out or treated unfairly by the franchisor. In addition to restricting termination, some state statutes proscribe particular notice periods, and may require the franchisor provide the franchisee with an opportunity to cure the purported default. If the franchisor has failed to comply with these notice provisions, the notice may be invalid.").

³¹⁷ See *supra* note 24 and accompanying text.

and *reasonable* obligations under the franchise agreement.³¹⁸ Many franchise relationship statutes are ambiguous as to what constitutes a material obligation. Under common law, there is not one single definition of materiality, but all interpretations include the same theme: a material breach of the contract goes to the “whole consideration”³¹⁹ or “root or essence”³²⁰ of the contract. These legal definitions are intentionally “imprecise and flexible;” determining the materiality of an alleged breach of contract is a specific factual inquiry that is typically reserved for the fact finder.³²¹

The materiality determination looks to the intent of the parties as evidenced by the full circumstances of the transaction.³²² Along with the Restatement (Second) of Contracts factors, some courts have looked to the extent of partial performance (i.e., substantial performance), the relative hardship on the parties, and the willful, negligent, or innocent behavior of the party failing to perform.³²³ Under the good cause statutes of some jurisdictions, courts also inquire as to the reasonableness of the minimum performance standard.³²⁴ For example, in *Brown Dog, Inc. v. Quizno’s Franchise Co., LLC*, the court upheld a franchisor’s termination of the agreement due to the franchisee’s failure to open the number of restaurants provided for in the development schedule.³²⁵ In reaching this holding, the court evaluated the franchisor’s use of this metric as a minimum performance standard, finding it was reasonable given the rapid growth of Quizno’s brand and the franchisor’s desire to continue this expansion in the franchisee’s market.³²⁶ The court found that the franchisee falling one restaurant short of the requirement, even after conclusion of the sixty day cure period, was a substantial breach of the minimum performance standard.³²⁷

³¹⁸ *Wilson v. Amerada Hess Corp.*, 773 A.2d 1121,1126–27 (N.J. 2001) (explaining that a comment to the Second Restatement of Contracts states that “[g]ood faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose . . .”).

³¹⁹ 17 AM. JUR. 2D *Contracts* § 446 (1964) (reasoning that a material breach of contract “goes to the whole consideration of the contract.”).

³²⁰ 6 SAMUEL WILLISTON, WILLISTON ON CONTRACTS § 106 (rev. ed. 1936).

³²¹ RESTATEMENT (SECOND) OF CONTRACTS § 241 (A.L.I. 1981).

³²² *Sahadi v. Cont’l Ill. Nat’l Bank & Tr. Co.*, 706 F.2d 193, 196 (7th Cir.1983).

³²³ *See Wilson*, 773 A.2d at 1127.

³²⁴ *Hirzel*, *supra* note 217, at 135. *See* discussion *supra* note 217 and accompanying text.

³²⁵ *See supra* notes 286-290 and accompanying text.

³²⁶ *Id.*

³²⁷ While the court noted that “perfection cannot be the standard,” *Brown Dog’s* failure to meet the requirement by one restaurant was considered substantial in this case because there were only eight restaurants in *Brown Dog’s* territory. *Id.*

Another clear example of a material breach is evident in *Dunkin Donuts Inc. v. Guang Chyi Liu*.³²⁸ In this case, the franchisee materially breached the franchise agreement because it failed to make the payments due.³²⁹ The breach was material because the lawful and reasonable terms of the agreement were violated, and the violation went to the root of the essence of the contract.³³⁰

To the contrary, in *Express Services v. Averette*, the court rejected the defendant's argument that the plaintiff's failure to pay taxes constituted a material breach of the contract.³³¹ The court reasoned that this breach did not affect the essence of the bargain and did not materially limit the defendant's ability to perform its contractual obligations.³³²

The materiality standard aims to increase consistency of franchise terminations for good cause. By requiring that the breach be "material," the standard ensures that franchisors are not terminating franchisees for trivial or otherwise pretextual reasons.

B. *Protections for Goodwill Obtained by Franchisees*

Good cause for nonrenewal is closely tied to the principle of good faith. Franchise law expert W. Michael Garner, explains that most American states limit the franchisor's power to terminate the agreement and also limit the power to refuse renewal.³³³ In other words, unless a franchisor complies with the nonrenewal provisions, it must renew the franchise agreement upon its expiration.³³⁴ Garner further explains that for the franchisor to refuse to renew the franchise agreement, the franchisor must give reasonable notice and good cause to the franchisee.³³⁵ The franchise agreement cannot expire on its own at a given date; rather, the franchise agreement is perpetual until it is otherwise terminated.³³⁶

The concept of requiring good cause and adequate notice is related to the principle of good faith and fair dealing because it prevents a franchisor from violating the "spirit of the bargain" by terminating the franchise agreement.³³⁷ For instance, allowing

³²⁸ 79 F. App'x 543, 547 (3d Cir. 2003).

³²⁹ *Id.*

³³⁰ *See id.*

³³¹ *Express Servs., Inc. v. Averette*, No. CIV-06-820-C, 2007 U.S. Dist. LEXIS 47597, at *2 (W.D. Okla. June 29, 2007).

³³² *Id.*

³³³ GARNER, *supra* note 183, at §10:9.

³³⁴ *See id.*

³³⁵ *See id.*

³³⁶ *See id.*

³³⁷ Catherine P. Kelly, *What You Should Know About the Implied Duty of Good Faith and Fair Dealing*, A.B.A. (July 26, 2016),

termination without just cause and without adequate notice would enable a franchisor to terminate a franchise agreement, even when the agreement is still benefitting both parties, and carrying out this termination for a trivial or unwarranted reason such as a personal vendetta or to further anti-competitive practices.³³⁸

C. *Tying Good Cause to Good Faith and Public Policy*

1. *The connection between good cause and good faith*

This connection is apparent in *Wilson v. Amerada Hess Corp.*,³³⁹ in which a party with an express unilateral right to set the price of goods under a franchise agreement could breach the implied duty of good faith and fair dealing by exercising that right arbitrarily or capriciously, making it impossible for the franchisee to meet its operating costs and perform its contractual obligations.³⁴⁰ In such a scenario, the franchisor might come forward and claim good cause for nonrenewal because the franchisee did not meet its requirements. But the main issue here may be that the franchisor's right to determine franchise agreement clauses puts the franchisee at an inherent disadvantage, making it unable to meet its obligations to the franchisor.

What may constitute good cause in some circumstances may not be so in others, as much based on franchisor-franchisee relations and a situation beyond simply the strict terms of the franchisor-drafted written franchise agreement. For example, in *Hartford Elec. Supply Co. v. Allen-Bradley Co., Inc.*, a distributor's failure to meet required sales quotas did not amount to good cause for termination when the state economy was depressed, and the distributor showed that it made good

<https://www.americanbar.org/groups/litigation/committees/business-torts-unfair-competition/practice/2016/duty-of-good-faith-fair-dealing/> (on file with Columbia Business Law Review) (explaining how the duty of good faith and fair dealing requires that neither party do anything that will destroy the right of the other to receive the benefit of the contract).

³³⁸ Consider the case, *BMW of N.A., LLC v. MacLean*, No. 20AP-326, 2021 WL 2941776, at *1, *6 (Ohio Ct. App. July 13, 2021). There, the common pleas court upheld an order by the Motor Vehicle Dealers Board, under Ohio Rev. Code. Ann. § 4517.56 (LexisNexis 2021), that a franchisor did not meet its burden of showing good cause to deny a franchise ownership transfer transaction and directed approval of the transfer because, inter alia, the court was not directly reviewing the franchisor's "business judgment[.]" *Id.* Instead, the Board acknowledged an expert's testimony casting doubt on the objective criteria applied by the franchisor, and the Board rejected the franchisor's request for purportedly relevant information from the proposed transferee about his financial stability and credit application because the franchisor was, at that same time, instead entering into transitional agreements with another dealership. *Id.*

³³⁹ 773 A.2d 1121, 1132 (N.J. 2001).

³⁴⁰ See U.C.C. § 1-203 (AM. L. INST. & UNIF. L. COMM'N 1977).

efforts towards compliance with the quota.³⁴¹ While sales quotas and other performance standards can provide a basis for good cause termination, the reasonableness of the termination must be determined in light of the outside factors that impact the performance of a franchise agreement.

The connection between the duty of good faith and fair dealing and the requirement to find good cause to terminate or not renew requires a sliding scale power dynamic between franchisors and franchisees to ensure that franchisees are adequately protected. For instance, if a franchise agreement dramatically shifts the power balance towards the franchisor,³⁴² courts should find that the duty of good faith and fair dealing compels franchisors to not find good cause for nonrenewal or termination.³⁴³ On the contrary, if the franchise agreement heavily favors the franchisee and there are other protections for the franchisee, such as disclosure requirements, courts may be able to find good cause more easily. The reason for this is that the franchisee is adequately protected from ancillary aspects of the relationship and the related environment. Essentially, with courts looking at good cause as more of a fluid concept than simply defining what good cause strictly is, such would allow for more flexibility and would prevent arbitrary nonrenewal decisions as well as nonrenewal decisions seemingly based on solid reasoning but not necessarily for the best reason.³⁴⁴

³⁴¹ *Hartford Elec. Supply Co. v. Allen-Bradley Co., Inc.*, 736 A.2d 824 (Conn. 1999).

³⁴² Jeff Haff & Tami McKnew, *Important Franchise Case Law*, in REPRESENTING FRANCHISEES 299, 307 (Thomas R. Ayres & Howard E. Bundy eds., 2023) (discussing *Maintainco, Inc. v. Mitsubishi Caterpillar Forklift Am., Inc.*, 975 A.2d 510 (N.J. Super. 2009)) (“The NJFPA precluded termination or nonrenewal for any reason other than good cause, even if it reflects ‘a sound and non-discriminatory business strategy.’ The act applied to constructive termination, the court held, and it did not require a dealer to submit to termination before seeking relief.”).

³⁴³ There are many instances when judges should insist upon convincing proof that the franchisor has acted in good faith, in accord with the spirit of the franchise agreement. Robert W. Emerson, *The Faithless Franchisor: Rethinking Good Faith in Franchising*, 24 U. PA. J. BUS. L. 411, 424–428, 443–461, 466–471 (2022) (arguing broadly for the use of good faith to structure fair franchising arrangements, including to deter free-riding or other opportunistic behaviors of franchisees or franchisors, with a standard test for franchising good faith and fair dealing not just to deter or at least correct parties’ bad acts but also to encourage franchise parties to engage in mutually beneficial actions while both reaching and then implementing their commercial relationship).

³⁴⁴ Some courts directly tackle arbitrary nonrenewal. *See Seegmiller v. W. Men, Inc.*, 437 P.2d 892, 894 (Utah 1968) (stating that “[W]hen parties enter into a contract of this character, and there is no express provision that it may be cancelled without cause, it seems fair and reasonable to assume that both parties entered into the arrangement in good faith, intending that if the service is performed in a satisfactory manner it will not be cancelled arbitrarily.”).

Legal scholar Tracey Nicastro observed that courts have traditionally followed one of two approaches concerning franchise termination disputes: the protectionist view, which favors protecting the interests of the franchisee from the more powerful franchisor; and the economic view, which recognizes that there are situations where the franchisor should terminate an agreement due to increased efficiency or a failing business model.³⁴⁵ In her article, Nicastro proposes an approach that balances these views, under which a court would analyze factors including the motive of the franchisor, the harm to the franchisee's investment from termination, and the market conditions affecting the franchisor's business.³⁴⁶ A more fluid approach such as this one recognizes that good cause does not necessarily fall within an enumerated list of circumstances. Instead, as proposed by Nicastro, good cause should be determined by evaluating the specific factors affecting the franchise relationship at issue.

One enduring concern related to franchise termination provisions is that franchisors may argue that they rely on these provisions to protect their businesses and trademarks from abuse by franchisees.³⁴⁷ By adopting a more fluid standard of good cause, franchisors will be encouraged to draft these termination provisions more neutrally to ensure their interests remain protected under the new standard. Rather than drafting wide-ranging termination provisions that franchisees must agree to on account of bargaining power disparity, franchisors will target the grounds for termination to circumstances that reflect the good cause analysis utilized by the courts. In doing so, franchisors will no longer subject franchisees to arbitrary termination or nonrenewal but will retain the ability to protect their interests in a strong franchise brand from an underperforming franchisee.

This concept, and the general goal of protecting a franchisee or like parties to a contract subject to unequal bargaining power, is ingrained in legislation and reflected in case law regarding different commercial relationships. For example, in *Consumers Int'l v. Sysco Corp.*, the court discussed how the Arizona legislature intended to statutorily modify the freedom to contract in certain situations, such as franchise relationships.³⁴⁸ This flexible approach is also adopted in chain-style franchise agreements that do not expressly provide for termination without cause, because without a strong good cause requirement, a

³⁴⁵ Tracey A. Nicastro, *How the Cookie Crumbles: The Good Cause Requirement for Terminating a Franchise Agreement*, 28 VAL. U. L. REV. 785 (1994).

³⁴⁶ *Id.* at 816–19.

³⁴⁷ David A. Eisenberg, *Balancing a Relationship—Good Cause Termination of Franchise Agreements in Michigan*, 72 U. DET. MERCY L. REV. 369 (1995).

³⁴⁸ *Consumers Int'l v. Sysco Corp.*, 191 Ariz. 32, 34 (Ariz. Ct. App. 1997) (citing A.R.S. §§ 44-1551 to –1562). This case is also discussed *supra* notes 280–282 and accompanying text.

large franchisor entering into an agreement that does not stipulate that termination must be for cause may be at a large advantage compared to the franchisee.³⁴⁹ To better protect the rights and interests of franchisees, courts and legislatures have historically been willing to weaken a franchisor's contractual ability to terminate the franchise agreement.

2. *Grossly unfair and against public policy*

Requiring good cause and adequate notice to terminate a franchise agreement aligns with favorable public policy.³⁵⁰ In the classic, early case of *Shell Oil Co. v. Marinello*, the court ruled that the lease and dealer agreement provisions that permitted Shell Oil to unilaterally terminate a business relationship without cause on only ten days' notice was grossly unfair and against public policy.³⁵¹ Similarly, the court found that clauses permitting termination at will were unenforceable as a matter of state public policy and, in that situation, New Jersey common law.³⁵²

In comparison, the argument that franchisors are acting against public policy fails. In *Ashland Oil, Inc. v. Donahue*, for example, Donahue challenged the oil company's right to terminate his dealership on ten days' notice, despite a provision in the lease permitting such action.³⁵³ Donahue's contention was that an implied good cause limitation on termination was part of the agreement.³⁵⁴ In addition, Donahue asserted that the termination provision should be declared void as against public policy. The trial court, however, granted Ashland's motion to strike the defenses, granted immediate possession to Ashland, and, on its motion, certified the question of the legal sufficiency of Donahue's defenses to the Supreme Court of Appeals.³⁵⁵

These competing views are rooted in the ideas that good cause requirements are necessary for public policy reasons and that the ability

³⁴⁹ Seegmiller v. W. Men, 20 Utah 2d 352, 353–54 (1968).

³⁵⁰ GARNER, *supra* note 183, at §1:5 (writing on the policy reasons for termination, W. Michael Garner notes, "In 16 states, there are statutes that specifically regulate termination or nonrenewal of franchise agreements generally; the Federal Automobile Dealer's Day in Court Act limits the power of automobile manufacturers to terminate dealers, while the statutes of 49 of the 50 states have broader limitations on termination or nonrenewal of automobile dealer agreements.").

³⁵¹ *Shell Oil Co. v. Marinello*, 307 A.2d 598, 603 (N.J. 1973).

³⁵² *See id.*

³⁵³ *Ashland Oil, Inc. v. Donahue*, 223 S.E.2d 433, 439 (W. Va. 1976).

³⁵⁴ *See id.*

³⁵⁵ *See id.* at 441.

to freely contract is essential for economic reasons.³⁵⁶ While the economic interest must be considered, disregarding good cause requirements would lead to a system in which franchisees can be taken advantage of, thus leading to fewer franchise agreements and, in turn, less economic activity.

While the exact public policy reasons for requiring good cause are undefined, the reasons have to do with franchisors' history of abusing the freedom to contract principle.³⁵⁷ In most situations, the franchisor is a major player with more resources than the franchisee.³⁵⁸ Thus, the franchisee does not have much of an opportunity to choose between competing offers.³⁵⁹ This typical model enables leverage and greater financial success for the franchisors.³⁶⁰

With this imbalance of power, it can be presumed that requiring good cause is in line with positive public policy because it evens the playing field. Without a good cause requirement, the franchisee's business model would be unsustainable. Franchisors could call for franchisee concessions and even abruptly invoke possible terminations as leverage. Incentive structures could be re-negotiated with possible franchise changes in ownership or nonrenewal on the line.³⁶¹ Franchisees' potential misfortune could spread to the open

³⁵⁶ See Nicastrò, *supra* note 345, at 793. See also *The Original Great Am. Chocolate Chip Cookie Co. v. River Valley Cookies, Ltd.*, 773 F. Supp. 1123, 1130 (N.D. Ill. 1991) (stating that the legislator's public policy goals of protecting the franchisees from arbitrary termination would be harmed without strong good cause requirements), *rev'd*, 970 F.2d 273, 279 (7th Cir. 1992).

³⁵⁷ William Riddick Armstrong Jr., *Contract—Dealer Franchisee—Termination of Franchise Without Good Cause is Void as Against Public Policy*, 45 MISS. L.J. 252, 256–57 (1974).

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ It has long been maintained that franchisors use the franchising structure to expand rapidly, let others (franchisees) take the risk, and then the franchisor can acquire the more profitable units as the franchise network matures. See ROBERT L. PURVIN, JR., *THE FRANCHISE FRAUD* 129 (1994) (“[A] common abuse occurs when a franchisor intentionally exploits its franchise network to pave the way for company-owned offices. Typically, the franchisor encourages investors to open several units knowing some will succeed and some will fail. The franchisor actually hopes the franchisee will be overextended and will give up the good units in order to escape the failed ones. Effectively, the franchisor retains the successful offices and abandons the losers—all with the franchisee's capital at risk.”). However, the empirical support for this contention – “that franchisors eventually do, in fact, tend to buy back their franchises, or that they even want to do so, has not been proven.” Robert W. Emerson, *Franchise Territories: A Community Standard*, 45 WAKE FOREST L. REV. 779, 784 n.22 (2010) (citing numerous studies). Indeed, research continues on why franchise networks have a particular mix of franchised and company-owned units, with recent investigation perhaps refuting the long-held notion that established systems adhere to a rather static percentage of franchised-versus-franchisor-owned

market through higher costs and fewer options for consumers. Thus, public policy favors keeping a level playing field between franchisees and franchisors.

IV. CONCLUSION

The United States, with a federal system of government, provides little uniformity on contract or franchise law. This can be highly problematic for areas, including renewals, where franchisors' preferences – matters of policy, procedures, and predispositions – tend to dominate. Besides just case law, the rise or fall of rights to renew can arise from statutes, franchising codes of ethics, and – broadly – the concepts of good faith and fair dealing. An evenhanded, comprehensive methodology would not just look at the details: the figures for meeting minimum performance standards and, at the other end of the continuum, for approaching truly exceptional, heretofore simply aspirational, accomplishments. This line of attack would incorporate not just American jurisprudence but the renewal principles – the best practices – adopted throughout the world of franchising.

Guidance could be drawn from the laws and traditions in dozens of other nations, where, for example, a form of automatic or constructive renewal for franchisees with good to outstanding performance records is often common. Franchised parties should be able to invoke well-established principles of commercial reasonableness, equal treatment, and promissory estoppel; these are benchmarks of good faith that, when applied properly, can be verifiable standards to either show good cause for termination or nonrenewal or, at the other end of the scale, the grounds for continuation of or recommitment to the franchise relationship. There can and should be: (1) a good cause standard for judging the franchisor's critical decisions about life or death for a franchised business, and (2) recognition that, ordinarily, a nonrenewed franchisee justifiably expects compensation for the goodwill that it has accrued. Together, good cause (a heightened or extended form of good faith and fair dealing) and protection or compensation for the franchisee's

units, and likely should do so. See Francine Lafontaine & Kathryn L. Shaw, *Targeting Managerial Control: Evidence from Franchising*, 36 RAND J. ECON. 131, 146–48 (2005) (once in place for over 8 years, with more than 15 units, a franchise network may settle into a stable divide – about 85% of the system's units being franchised and 15% being company-owned); Steven Chong Xiao & Jihadi Xu, *Unlocking Local Market Information through Franchising* (Oct. 3, 2025), <https://ssrn.com/abstract=4811276> (on file with Columbia Business Law Review) (finding that companies rely on franchisees to take risks and gather information while the franchisees expand into new markets; the fraction of franchised versus company-owned units may thus vary considerably throughout the long life of a well-established franchisor).

goodwill helps both the franchisor and franchisee to forge a free and fair franchise network.

When the law fails to provide practical answers, the path to a just franchisor-franchisee contract may be found, collectively, in franchise associations that protect the interests of the franchisees. Without such direct, independently focused efforts, typically covering just one business network in one industry, the wide-ranging effort to adapt and then adopt other nations' legal and ethical precepts simply may not reach or otherwise broadly reform the American law of franchise renewal. Many powerful associations could bring a narrow, precise negotiating position to the fore, and their one-on-one engagements with a franchisor may, as a whole, still produce a collective set of franchisee actions that ultimately work for franchising altogether. These franchisee "unions" could successfully confront a rather one-sided, pro-franchisor, anti-renewal predilection based almost exclusively on contract language and traditional common law concepts. That may help reset the balance of power and, in challenging the status quo, actually enhance the promise, the business, and the law of franchising overall.