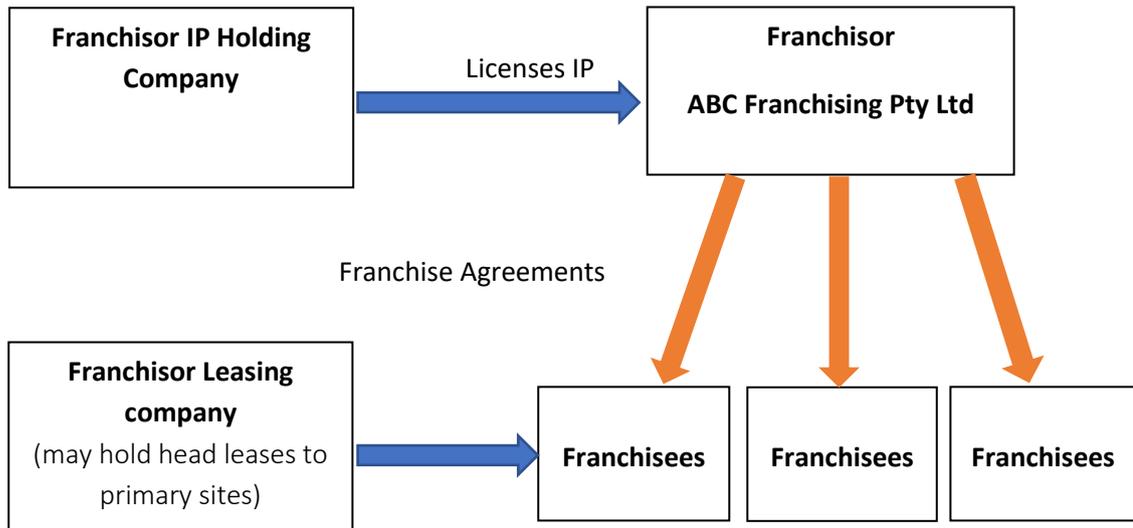


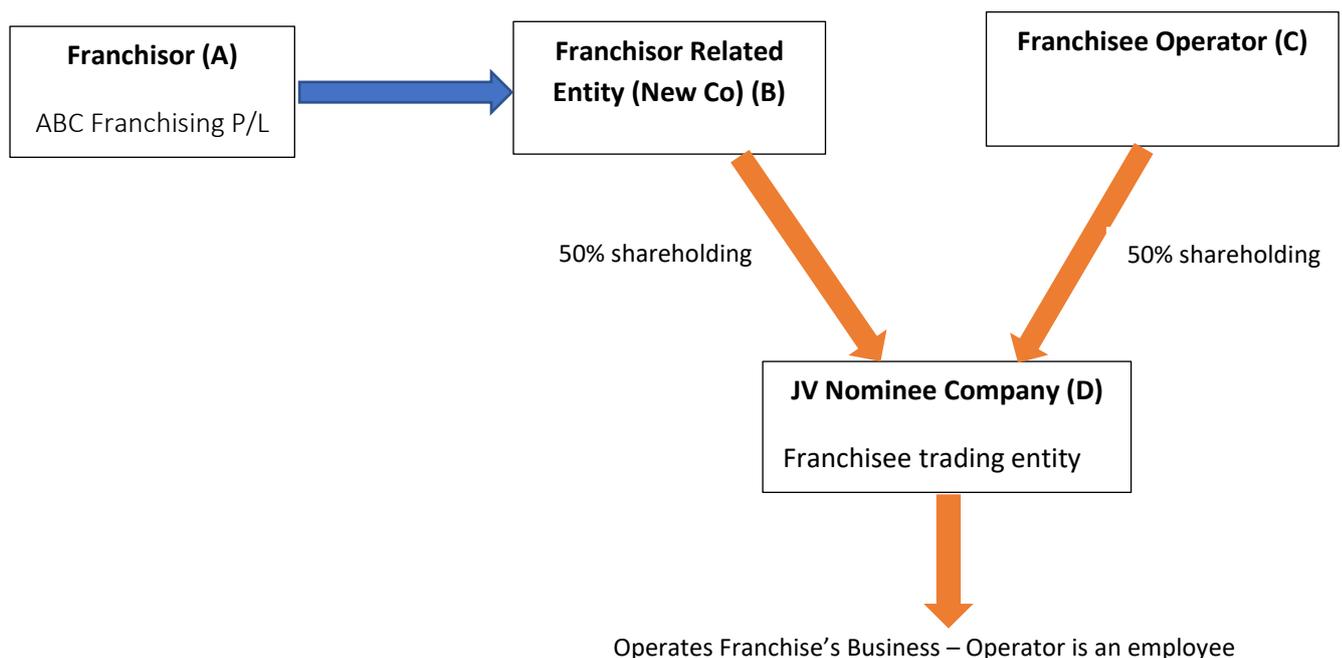
2020 Franchising Corporate Models

A. Traditional vertical model – Franchisor appoints Franchisee



In the traditional model, the Franchisor and Franchisee are completely independent so there are no payroll issues.

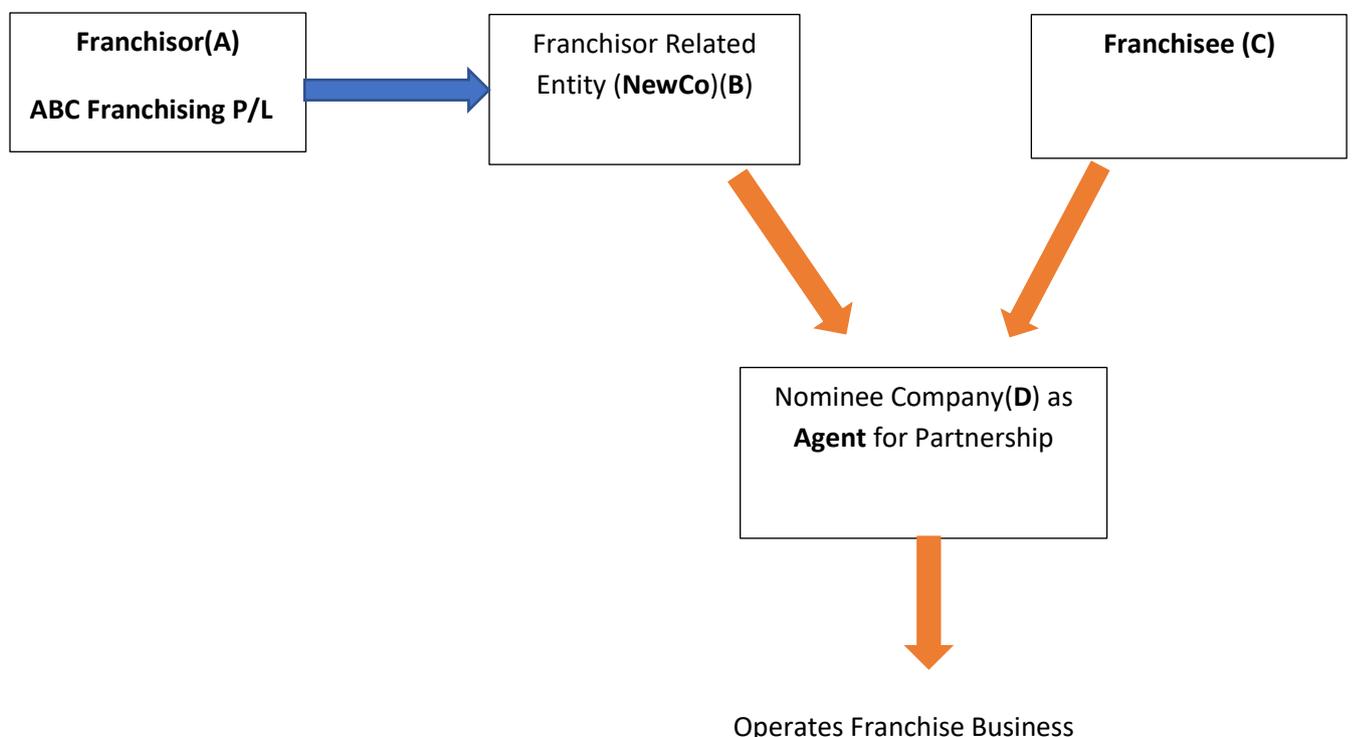
B. JV Model Incorporated Nominee Company (shared equity model)



Notes to B Model:

- a) Corporations Act applies between shareholders in the JV Nominee company **D** above.
- b) Operator **C** is an employee of JV Nominee Company **D**.
- c) Any losses of the enterprise are trapped in **D** and cannot be used to offset other income.
- d) For the Franchisee to access CGT concessions it must hold a minimum of 20% (significant interest) in **D**. Now the \$6 million threshold Business Asset Test (takes into account the whole value of **D**, not just Franchisee's equity in it) so more restrictive to qualify for CGT concessions.
- e) JV company must pay Super Guarantee Contribution (SGC) for franchise Operator **C**.
- f) Possible payroll issue for Franchisor if it has control or more than 50% equity in **D**– Control Test (Section 50 of Corporations Act).

C. JV/ Partnership (unincorporated) model: This could be a partnership of trusts, or partnership of a trust and the individual (Franchisee operator)



Notes to model C:

- a) Better tax position for franchisee.
- b) No Company Law issues as Corporations Act does not apply as they **are not** shareholders.
- c) Franchisor's interest in partnership can be part of the Franchisor's consolidated group for tax.
- d) Profit can be brought back to Franchisor's consolidated group as can losses as losses are not trapped in the nominee agent **D as in model B**.
- e) Franchisee can hold a 1%, 5%, 15% or 49% partnership interest and still access the CGT Small Business Concessions.

- f) Parties should ensure they have a Partnership Agreement to govern their rights, obligations and exit rights.
- g) A negative issue for the Franchisor is they can be made liable for acts of Franchise partner.
- h) No payroll tax issues for Franchisor – they can have control of partnership as no control test applies here) even if the Franchisor holds 50% or more equity.
- i) Consider a Nominee Entity **D** to act as agent for partnership to limit liability of the Franchisor entity **A**.
- j) The Franchisor's entity **B** should not hold other Assets to limit risk.

CONTACT:

Robert Toth | rtoth@franchisedevelopments.com.au

Accredited Commercial Law and Franchisee Specialist | Member of the Franchising Council of Australia (FCA) | Member of the International Franchise Lawyers Associations (IFLA)

