



The Legal 500 & The In-House Lawyer  
Comparative Legal Guide  
Angola: Franchise & Licensing

This country-specific Q&A provides an overview to franchise and licensing laws and regulations that may occur in Angola.

It will cover pre-offer, registration and other requirements; ongoing relationships; renewals and terminations; and general considerations.

This Q&A is part of the global guide to Franchise & Licensing. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/franchise-and-licensing/>



**Country Author: AVM**

The Legal 500



**Antonio Vicente Marques,  
Founding partner**

[avm@avm-advogados.com](mailto:avm@avm-advogados.com)

The Legal 500



**Pedro Manero Lemos,  
Associate**

[pml@avm-advogados.com](mailto:pml@avm-advogados.com)

## 1. **Is there a legal definition of a franchise and, if so, what is it?**

Yes, we confirm that franchise agreements are governed and defined by Law 18/03, of 12 August 2003, which applies to the Distribution, Agency, Franchising and Commercial Concession Contracts (hereinafter briefly referred to as “Law 18/03”). Article 37, 1 of the referred law defines franchising as “(...) *the contract by which a person (individual or a legal entity) assigns to other (the franchisee or licensee), with compensation, the commercialization of the franchisor’s goods or services, through the use of the trademark and further distinctive signals of the franchisor, according to the plan, methods and*

*guidelines prescribed by the franchisor.”*

**2. Are there any requirements that must be met prior to the offer and/or sale of a franchise? If so, please describe and include any potential consequences for failing to comply.**

Law 18/03 does not foresee any requirements prior to the offer and / or sale of a franchise. It is worth noting, however, that the Angolan Civil Code provides a general duty of good faith that parties should observe when negotiating and concluding a contract, the so-called *pre-contractual period*, which is foreseen in article 227, 1 of the Civil Code. According to this, parties are subject to three kinds of duties: i) protection duties: parties should refrain from undertaking any action that may harm (personally or financially) the counterparty; ii) information duties: namely regarding the circumstances that might be relevant for the agreement to be reached (especially when there is an unbalanced position between a stronger and a weaker party); iii) loyalty duties: which comprises the obligation to avoid behaviours that can be deemed disloyal to the other party, for instance, when a party has legitimate reasons to believe that a contract will be signed and suddenly negotiations are abruptly interrupted.

**3. Are there any registration requirements for franchisors and/or franchisees? If so, please describe them and include any potential consequences for failing to comply. Is there an obligation to update existing registrations? If so, please describe.**

There are no registration requirements for franchisors and/or franchisees. When a franchise agreement involves the assignment of Intellectual property rights, such as the use of a trademark, we advise that a licensing agreement and a trademark registration will be necessary. It should be noted that Angolan

jurisdiction only ensures proper protection to trademarks when they are duly registered before the Angola Industrial Property Institute (see our response to question 8. below).

- 4. Are there any disclosure requirements (franchise specific or in general)? If so, please describe them (i.e. when and how must disclosure be made, is there a prescribed format, must it be in the local language, do they apply to sales to sub-franchisees) and include any potential consequences for failing to comply. Is there an obligation to update and/or repeat disclosure (for example in the event that the parties enter into an amendment to the franchise agreement or on renewal)?**

Again, reference should be made to general information duties which every party is bound to when negotiating a contract. During the pre-contractual liability period, there is a general duty of providing information about certain essential technical qualifications of the parties, the scope of the agreement, and the business itself; both parties are bound to provide all the information required to enter into a fair contract, avoid misrepresentation of certain facts or misleading assertions. Regarding franchising agreements, this obligation should include the duty of the franchisor to inform the franchisee about the goods and the services included in the agreement.

As to when the disclosure should be made, there is no specific rule on that, but, in general, it is considered that the parties should provide the other with such information within a reasonable timing, depending on whether the disclosing party has already knowledge before entering negotiations, or during the referred negotiations.

The party that does not disclose the required information is liable for the same, as per article 227, 2 of the Angola Civil Code, which can lead to the

counterparty be entitled to claim compensation, and the contract being considered void (provided that the damaged party files a court action within 3 years of knowledge that the party has concealed or misrepresented information).

**5. If the franchisee intends to use a special purpose vehicle (SPV) to operate each franchised outlet, is it sufficient to make disclosure to the SPVs' parent company or must disclosure be made to each individual SPV franchisee?**

There are no limitations to the use of SPVs for operating franchises in Angola nor any specific duties of disclosure in this regard; in our view, this should be covered within the general duty of information mentioned above, which in the case of the franchisee, could be deemed as including specific details of the corporate and business structure which he intends to use for operating the franchises, including any SPVs should that be the case.

In this sense, we advise that if the parties agree to operate the franchises using SPVs, the franchising agreement should include a specific obligation of the franchisees to make such disclosure and specify whether this should take place to every individual SPV franchisee or the SPV parent company only.

**6. What actions can a franchisee take in the event of mis-selling by the franchisor? Would these still be available if there was a disclaimer in the franchise agreement, disclosure document or sales material?**

In general, the means by which a franchisee can react to such event would in principle involve filing a court action against the franchisor, upon giving a prior

reasonable period for it to remedy the infringing situation; in such court action, the franchisee can claim compensation for any misleading information provided in respect of the goods and services agreed to under the franchise agreement.

Regarding the use of any disclaimer in the franchise agreement, disclosure document or sales material, subject to reviewing the specific wording of such disclaimer, our view is that this would not prevent the risk of the franchisor being liable for any mis-selling, since, in theory, he should be responsible for providing the goods or assets in accordance with the quality standards which he has agreed to but this should be assessed on a case-by-case basis.

**7. Would it be legal to issue a franchise agreement on a non-negotiable, “take it or leave it” basis?**

Franchise agreements are usually negotiated between parties as this would involve a certain level of commitment and relationship of trust between the franchisor and the franchisee. In any event if one of the parties, usually the franchisor, does not wish to negotiate its terms but rather impose the contract to the franchisee on a “*take it or leave it*” basis, there is a risk that some of the clauses of the agreement might be deemed null and void.

According to the general contractual terms’ regime approved by Law 4/03, dated 18 February, when a contract has not been negotiated due to the fact that this was pre-conceived by the other Party and imposed to the other, some of its clauses might be deemed absolutely prohibited (i.e. which cannot, in any circumstance, be used in the contracts): e.g. ruling out any compensation due by law, rule out any liability for non-compliance with the contract, among others, while others are deemed as relatively prohibited (that is, its invalidity is dependent on the business framework to which they apply to, on a case by case basis, in which the correlation of forces between the parties might have relevance): e.g. excessive deadlines imposed on one party, faculty of one of the

parties to change its obligations, without due compensation, among others.

This said, subject to reviewing the content of such agreements, we advise that although it would not be illegal to have such kind of unnegotiable approach, this would significantly increase risk of the contracts being null and void or at least some of its clauses, if challenged before Angolan courts.

#### **8. How are trademarks, know-how, trade secrets and copyright protected in your country?**

The protection of intellectual property rights (such as trademarks) in Angola is granted by Law 3/92, dated 28 February (“Intellectual Property Law”). As mentioned above, for trademarks to benefit from such protection they must be registered towards the Angolan Institute of Intellectual Property (“IAPI”), which can be obtained following the submission of a request for registration. The application can be challenged by any interested party, within 60 days after its publication in the Industrial Property Bulletin, with the applicant having the right to respond to such opposition, upon which a final decision will be issued by IAPI. Parties can file an appeal to Administrative Courts if their request or opposition has not succeeded.

Although know-how and trade secrets are not specifically protected by the Intellectual Property Law, it is worth noting that Law 18/03, provides in its article 43, 1, paragraph c), that amongst the obligations of the franchisee, he has the duty to keep secret the information disclosed by the franchisor, including manufacturing processes and know-how, either during the contract period or after its termination. It should be also noted that, franchise agreements usually include confidentiality clauses and specific duties of secrecy which are generally accepted in Angolan law.

Copyrights are protected under Law 15/14, which foresees a general protection

to the copyright works throughout the life of the author and 70 years after his decease. The moral rights connected with copyright do not expire and are enforceable and actionable by the author's heirs.

Finally, we note that Infringement of trademarks also benefit from criminal and civil liability protection under Angolan law, for instance in case of counterfeit.

**9. Are there any franchise specific laws governing the ongoing relationship between franchisor and franchisee? If so, please describe them, including any terms that are required to be included within the franchise agreement.**

Law 18/03 regulates to some extent and in depth the contractual relationship between the franchisor and the franchisee. The main provisions to be considered and included within the franchise agreement are:

i) Forms of franchising (article 38) - i) Distribution, when the franchisee undertakes to sell certain products manufactured or distributed by the franchisor, through an establishment with the image and name of the franchisor; ii) Services, when the franchisee renders a service with the trademark and technique of the franchisor; iii) Production/Industrial, when the franchisee manufactures, in accordance with the instructions of the franchisor, certain products manufactured under the franchisor's trademark;

ii) Written form (article 39) - Franchising agreements needs to be mandatorily executed in writing, otherwise it will be deemed null and void;

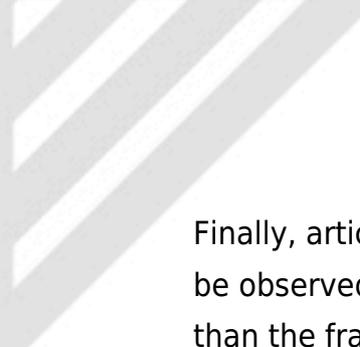
iii) Exclusivity clause (article 40) - Unless otherwise agreed in writing between parties, the franchisee cannot undertake activities which are in competition to the ones carried out by the franchisor; which in its turn cannot use other

franchisees for the same activity within the same area or circle of clients.

iv) Obligations and duties of the parties (articles 43 to 46) – the franchisee is required to i) to adopt and use the products and/or services presented by the franchisor; ii) to pay, as agreed, for the services rendered by the franchisor; iii) keep a secret on all the information that is transmitted by the franchisor, including on the manufacturing processes and know-how, during all the period of the contract and beyond its term; iv) not compete with the franchisor, namely after contract has expired, when a non-competing agreement has been entered into (which maximum acceptable period is 2 years); v) perform its activity under the guidelines of the franchisor and with the exhibition of the franchisor's distinctive signs. In addition, it might be agreed between parties to include the obligation of the franchisee to buy to the franchisor the products it distributes, and the duty to comply with several obligations in terms of supply, prices and accounting organization (article 43, 2 and 3).

The franchisor must also comply with certain obligations such as: i) give the franchisee license to explore the franchisor's distinctive signs, manufacturing processes and know-how, in the agreed terms; ii) supply the franchisee the agreed products/services; iii) provide technical assistance to the franchisee for the performance of its activity; iii) improve its methods, know-how and processes, patented or secret, and transmit the innovations to the franchisee; iv) support the franchisee, namely in terms of training, publicity, studies and projects.

Law 18/03 provides in article 46, to certain "*rights of the franchisee*" (which can be understood as additional obligations of the franchisor) and which refer to: i) use of trademarks, names and signs of the franchisor; ii) use of any other distinctive signs of the franchisor, including, if applicable, decoration and colours of the premises, as well as staff's clothing/outfit; iii) use, if applicable, of the franchisor's know-how; and iv) use of the franchisor's technical assistance.



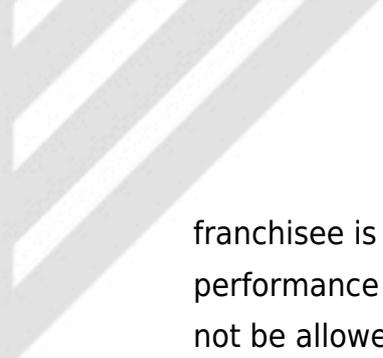
Finally, article 47 provides additional obligations of the franchisor, which must be observed when the franchisee carries out its activity: i) the franchisor (other than the franchisee's specific liability) is liable, towards the consumers, for the quality (or lack thereof) of the supplied products and the services rendered; ii) the franchisor also has the right (within reasonable terms) to inspect the establishment and the performance of the activities by the franchisee; iii) the franchisor has the obligation to indemnify the franchisee for any damages caused as consequence of defective performance.

10. **Are there any aspects of competition law that apply to the franchise transaction (i.e. is it permissible to prohibit online sales, insist on exclusive supply or fix retail prices)? If applicable, provide an overview of the relevant competition laws.**

The Angolan Competition Law (recently approved by Law 5/18, dated 10 of May) provides certain rules that could apply to the franchise transaction and be deemed as prohibited practices under that law, such as, abuse of economic dependence, in which a party imposes, directly or indirectly, fix retail prices, discounts or other commercial conditions that must be applied to the consumers, however this must be assessed taking into account the nature of the relationship between the franchisor and the franchisee, which of course requires a certain level of dependence.

11. **Are in-term and post-term non-compete and non-solicitation clauses enforceable?**

We confirm that non-compete and non-solicitation clauses are in principle enforceable in Angola, either during the performance of the franchising agreement and after its term; as mentioned above, one of the obligations of the



franchisee is precisely not to compete with the franchisor during the performance of the agreement. Also, parties can foresee that the franchisee will not be allowed to compete with the franchisor after the term of the contract, for a maximum period of 2 years within certain areas or circle of clients of the franchisor.

**12. Are there any consumer protection laws that are relevant to franchising? Are there any circumstances in which franchisees would be treated as consumers?**

The Consumer Protection Law in Angola (approved by Law 15/03, dated 22 July 2003) does not expressly predict any specific protection to franchisees, and, in general, franchisees are not considered as consumers, which are defined in article 3 no. 1 of the Consumer Protection Law as being: *“(...) any natural or legal person to whom are supplied goods and services or assigned any rights for purposes of using them as final consumer, provided that the supply or assignment are made by someone that undertakes an economic activity seeking profit.”*

As the franchisee would not in principle qualify as final consumer, but rather a retailer, we are of the view that he would not benefit from the provisions set out in the consumer protection law.

**13. Is there an obligation (express or implied) to deal in good faith in franchise relationships?**

Yes, Law 18/03 provides in article 41 that both the franchisor and the franchisee must act with good faith when performing their obligations.

**14. Are there any employment or labour law considerations that are relevant to the franchise relationship? Is there a risk that the staff of the franchisee could be deemed to be the employees of the franchisor? What steps can be taken to mitigate this risk?**

Franchise agreements are usually not considered employment contracts under Angolan law and the risk for the staff of the franchisee to be deemed as employees of the franchisor is relatively low; in order to prevent such risk, we usually advise that proper wording should be inserted in the agreement and the franchisor should have no direct contact with the staff of the franchisee; basically, every instructions given to the employees and remuneration paid should always come from the franchisee, in the capacity of the employer, and not from the franchisor to avoid having the employees claiming an employment relationship with the latter.

**15. Is there a risk that a franchisee could be deemed to be the commercial agent of the franchisor? What steps can be taken to mitigate this risk?**

Franchise agreements are conceptually different from agency agreements and clearly and separately defined in Law 18/03; while the agency agreement covers the relationship between the agent and the principal, according to which the former acts on behalf of the principal to promote and secure contracts on its behalf, upon payment of a consideration; the franchisee, in its turn, is granted with a right to use the franchisor's trademarks and distinctive signals when selling the goods/services supplied by the franchisor. In our view, if the contracts are properly drafted and performed accordingly between parties, the risk of confusion should be very low, if not non-existent.

16. **Are there any laws and regulations that affect the nature and payment of royalties to a foreign franchisor and/or how much interest can be charged?**

As a rule, every payment undertaken between Angolan entities and foreigners in connection with a contract and / or which involve transfer of funds in / out of the country, are subject to foreign exchange laws and regulations in Angola. In case of royalties paid by Angolan franchisees to foreign franchisors, we confirm this would be qualified as "*current invisible operations*" ("*operações de invisíveis correntes*"), which, usually do not require to be licensed by the Angolan National Bank ("Banco Nacional de Angola - BNA"), provided that the amount involved does not exceed the equivalent in national currency to AKZ 100,000,000 (taking as reference a period of 12 months). Nonetheless, we advise that several documents need to be submitted to the commercial bank for purposes of having the payments properly undertaken by the Angolan commercial bank.

With regards to how much interest can be charged, we advise that foreign exchange laws do not provide any limitations thereof, however, when the interest rate charged seems to be unreasonable or out of ordinary, considering Angolan standards, this could eventually delay the payment of the original invoices and be subject to additional approvals.

17. **Is it possible to impose contractual penalties on franchisees for breaches of restrictive covenants etc.? If so, what requirements must be met in order for such penalties to be enforceable?**

Yes, we confirm that it is possible for parties to agree on the provision of contractual penalties for breaches of restrictive covenants, such as non-compete, non-solicitation, or other contractual obligations; for such penalties to be enforceable, we usually advise that parties agree to include a specific penalty clause (according to which a certain amount of compensation shall be

due in the event of breach). Whenever this payment needs to be done from Angola to abroad, in principle this would require to be licensed and approved by the BNA.

18. **What tax considerations are relevant to franchisors and franchisees? Are franchise royalties subject to withholding tax?**

The following tax considerations should be deemed relevant to franchisors and franchisees when executing a franchise agreement in Angola. Royalties paid under such contract, shall be subject to 10% withholding tax according to the Capital Income Tax Code (*“Código do Imposto sobre a Aplicação de Capitais”*) articles 9, 1, I and 27, 2 IAC Code; franchisees will be required to withhold and deduct the amount of tax from the royalty payments due to the franchisors and deliver it to the Tax Authorities.

Franchisees established in Angola will be subject to general tax framework in Angola, namely corporate income tax due on the net profits obtained, which shall be 30% Industrial Tax (*“Imposto Industrial”*).

In addition to the above, franchise agreements are subject to Stamp Duty Tax (*“Imposto de Selo”*).

19. **Does a franchisee have a right to request a renewal on expiration of the initial term? In what circumstances can a franchisor refuse to renew a franchise agreement? If the franchise agreement is not renewed or it if it terminates or expires, is the franchisee entitled to compensation? If so, under what circumstances and how is the compensation payment**

## **calculated?**

Article 25 of Law 18/03 provides various reasons for terminating a franchise agreement, including expiration on its initial term or renewal. Franchise agreements can last for a specific period or an indefinite period, depending on what has been agreed upon between parties; in the first case, if the parties continue to perform the contract after its initial term, this shall be deemed to be converted into an indefinite term contract.

In principle, franchisees do not have the right to request for the renewal of the franchise agreements entered into for a definite period, unless this has been specifically agreed between parties and provided in the franchise agreement (for instance, if the parties agreed that the contract shall automatically renew on its term, etc.).

In relation to franchise agreements entered for an indefinite period, they shall terminate upon written notification sent by either party to the other, which an advance period of 1 month, if the contract has lasted for less than 1 year; 2 months, if the contract has already started its second year of execution; 3 months in the remaining situations. Failure to comply with the notice periods mentioned above, shall lead the infringing party with the duty to compensate the other party for the damages suffered with such breach.

Regardless of the reasons for the contract termination, it should be noted that franchisees can also be entitled to goodwill compensation (this is originally foreseen for agency agreements, but shall be applicable *mutatis mutandis* to the franchise agreement as well), whenever the following reasons are met:

- i) the franchisee has engaged new customers for the benefit of the franchisor or has significantly increased the business volume of the existing clientele;
- ii) the franchisor has significantly benefited from the franchisees' activity, even

after termination of the contract;

iii) the franchisee has failed to receive any subsequent payments due for contracts negotiated and concluded by the franchisees, after the termination of the franchise agreement.

20. **Are there any mandatory termination rights which may override any contractual termination rights? Is there a minimum notice period that the parties must adhere to?**

The provisions of Law 18/03 regarding termination of franchise agreements and potential compensation arising therefrom are mandatory; this means that despite what has been contractually agreed between parties on this matter, whenever this contradicts mandatory provisions of law, the latter shall prevail.

Furthermore, we do confirm the law foresees minimum notice periods for franchise agreements entered for an indefinite period – please see our response to question 18. above. If the parties fail to adhere to such notice periods, proper compensation shall be due from the infringing party.

21. **Are there any intangible assets in the franchisee's business which the franchisee can claim ownership of on expiry or termination, e.g. customer data, local goodwill, etc.**

Upon termination of the franchising agreement, the franchisee shall be required to return to the franchisor every objects, values and element which it possesses by virtue of the contract (this includes tangible and non-tangible assets, such as customer data, local goodwill, etc.) – article 36 of Law 18/03. In theory, the franchisee cannot claim ownership over these assets since these belong to the

franchisor, however, he has a general lien over such assets whenever he has pending credits to be settled by the franchisor in connection with the franchise agreement.

22. **Is there a national franchising association? Is membership required? If not, is membership commercially advisable? What are the additional obligations of the national franchising association?**

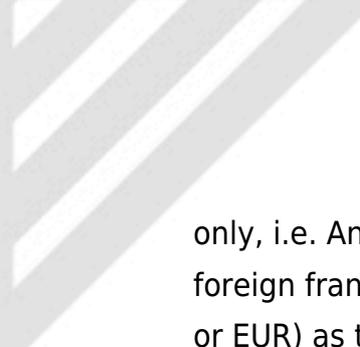
As far as we are aware of, there is no Franchising Association established in Angola.

23. **Are foreign franchisors treated differently to domestic franchisors?**

Law 18/03 does not provide any difference between foreign and domestic franchisors; nonetheless, we advise that foreign franchisors, are subject to additional foreign exchange requirements with regards to the payments made by the Angolan franchisees as mentioned in 16. above. Also, it should be noted that the supply and import of goods into Angola require franchisees to be duly licensed and the need to comply with several import requirements foreseen by law.

24. **Are there any requirements for payments in connection with the franchise agreement to be made in the local currency?**

When franchise agreements are concluded between two Angolan entities, the payments made in connection with the same must be made in local currency



only, i.e. Angolan Kwanza; in case of franchise agreements concluded with foreign franchisors, parties are free to choose a foreign currency (such as USD or EUR) as the relevant currency of the contract, however, the effective payments due under such contracts, depend on its availability at the local commercial banks.

25. **Must the franchise agreement be governed by local law?**

Pursuant to article 62 of Law 18/03, without prejudice to any mandatory provisions of the law, parties are free to choose the applicable law to the contracts, as long as such law corresponds to a serious interest of the parties or is in connection with an element of the contract, namely the parties' domicile, place of conclusion of contract or place of execution of the contract. In the event parties fail to choose an applicable law, the Angolan rules on conflicts of law shall apply.

26. **What dispute resolution procedures are available to franchisors and franchisees? Are there any advantages to out of court procedures such as arbitration, in particular if the franchise agreement is subject to a foreign governing law?**

In terms of dispute resolution procedures and without prejudice to the rules on international jurisdiction of the Angolan Courts, article 63 of Law 18/03 foresees that parties are free choose the competent courts for the settlement of the disputes arising from their contracts. Parties may also choose arbitration as the relevant dispute resolution mean, but in that case, the contract should foresee the applicable law to the proceedings, the nature of the disputes which can be settled, the arbitration court chosen, and the place of arbitration.

There are indeed some advantages that could be pointed out for choosing



international arbitration, namely if the franchise agreement is subject to a foreign governing law; in theory, a foreign arbitration would be more favourable to accept a foreign governing law on the merits, but this needs to be assessed on a case by case basis. We further note that Angola has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, so in theory foreign arbitral awards are now automatically enforceable in Angola, without being necessary to ensure its prior recognition and review as before.

27. **Does local law allow class actions by multiple franchisees?**

Although class actions are not specifically foreseen in the Angolan legal system, we note that the Civil Procedure Code provides in article 30, that plaintiffs with similar claims or similar interests, might colligate themselves into one single action.

28. **Must the franchise agreement and disclosure documents be in the local language?**

There is no mandatory provision that requires the franchise agreement and the disclosure documents to be written or translated in local language. However, as referred above, in the event of contracts concluded with a foreign franchisor, for payments to be properly made or licensed, it is necessary to submit the copies of the underlying franchise agreements which in that case need to be written or translated in Portuguese language.

29. **Is it possible to sign the franchise agreement using an**

### **electronic signature (rather than a wet ink signature)?**

There are no specific limitations of using physical or electronic signatures in Angola; it should be noted however, that Angola is not a very sophisticated jurisdiction, so the use of electronic signatures is still uncommon and therefore not recommended.

30. **Can franchise agreements be stored electronically and the paper version be destroyed?**

Again, there is no specific guidance on that, however, we recommend that at least one paper version should be stored to allow further certified copies to be obtained if necessary.

31. **Please provide a brief overview of current legal developments in your country that are likely to have an impact on franchising in your country.**

There are no significant recent developments to be noted in this regard. In 2015, a technical group was created with the purpose of drafting the terms of the Franchising Regulation, however, as far as we know, this was never approved or implemented accordingly.