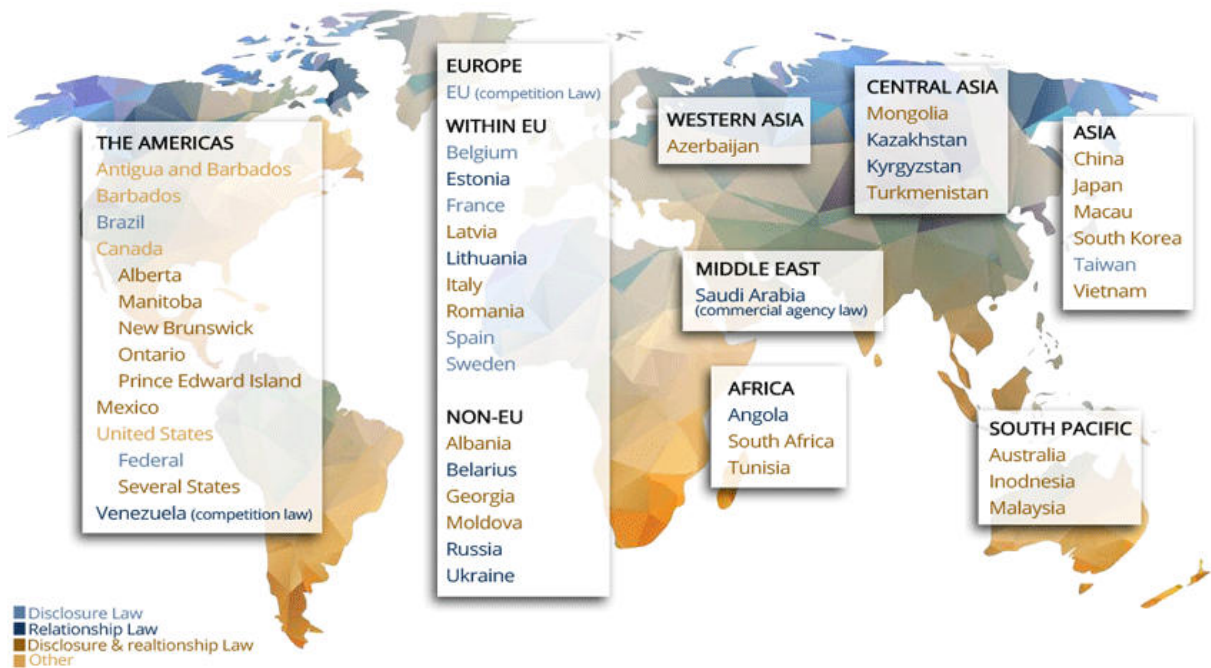




# INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



## AUSTRIA



# AUSTRIA

---

## Laws and agencies that regulate the offer and sale of franchises

### Which laws and government agencies regulate the offer and sale of franchises?

---

There are no specific laws or government agencies that regulate the offer and sale of franchises in Austria. The principle of freedom of contracts applies.

For offers and sales of franchises, besides the general provisions of contract law of the Civil Code, the following Austrian laws must be taken into consideration: the Consumer Protection Act, the Commercial Code, the Unfair Trade Practices Act and antitrust law.

Generally, according to the Austrian Civil Code, all potential contractual parties are obliged to ensure that the relevant facts have been clearly presented and that all necessary and relevant information regarding the envisaged agreement has been disclosed prior to the conclusion of an agreement (pre-contractual negotiations). The content and scope of this duty depends on the individual case, taking into account the experience and the knowledge of the franchisee.

The franchisor shall provide all relevant information about how the franchise system works as well as his sales forecast. Any lack of information or any misleading information may entail liability for a breach of pre-contractual disclosure obligations.

The provisions of the Austrian Civil Code concerning general business terms are applicable. All standard form contracts are subject to a 'fair and reasonable' test. Of particular application are section 864a and section 879, paragraph 3 of the Austrian Civil Code.

Section 864a applies to clauses which carry abnormally unusual content or matters which shock the party made subject to the terms; section 879, paragraph 3 addresses situations where one of the parties has received a 'raw deal', was discriminated against or was otherwise made subject to a bad deal. In these situations, regarding section 864a violations, the offending clause(s) lacks validity provided the affected party was not made aware of the content before becoming a signatory thereto. Regarding the violation of section 879, paragraph 3, such clauses are always invalid.

Further, the franchise agreement may not be *contra bonos mores* (against generally accepted standards of moral turpitude and public decency).

### What are the exemptions and exclusions from any franchise laws and regulations?

---

See previous question.

### Does any law or regulation create a requirement that must be met before a franchisor may offer franchises?

---

Under Austrian law, there are no specific laws or regulations regarding requirements to be met before a franchisor may offer franchises



# AUSTRIA

---

## Laws and agencies that regulate the offer and sale of franchises

### **Are there any laws, regulations or government policies that restrict the manner in which a franchisor recruits franchisees or selects its or its franchisees' suppliers?**

---

According to the Austrian Equal Treatment Act (Gleichbehandlungsgesetz), any direct or indirect discrimination due to sex, origin, status of marriage, etc, with regard to the founding of a company or the start of any other form of self-employed work is prohibited. The affected person is entitled to claim compensation for the financial loss and for the personal injury suffered.

The Code of Ethics for Franchising, a legally non-binding document adopted by the Österreichischer Franchise Verband, states that a franchisor should only accept those franchisees who, after diligent examination, prove to have the required knowledge and education, the financial needs and the personal capability.

Apart from that, a franchisor is not restricted by any law, regulation or government policy when recruiting franchisees or selecting suppliers and the freedom of contract applies.

### **In the case of a sub-franchising structure, who must make pre-sale disclosures to sub-franchisees? If the sub-franchisor must provide disclosure, what must be disclosed concerning the franchisor and the contractual or other relationship between the franchisor and the subfranchisor?**

---

There are no pre-sale disclosure regulations regarding franchise agreements. As their contractual partner, the sub-franchisor is required to make pre-sale disclosures to potential sub-franchisees.

However, the general rules of the Austrian Civil Code regarding precontractual negotiations apply.

### **Is there any obligation for continuing disclosure?**

---

There are no specific laws governing franchises or disclosure, nor regarding continuing disclosure. Prior to the conclusion of an agreement all relevant information should have been presented, but there is no duty for ongoing or continuing disclosure by law. Any lack of information or any misleading information may result in liability for a breach of pre-contractual disclosure obligations.

### **How do the relevant government agencies enforce the disclosure requirements?**

---

In Austria there are no statutory provisions for compliance procedures for pre-contractual disclosure.

### **In addition to any laws or government agencies that specifically regulate offering and selling franchises, what are the general principles of law that affect the offer and sale of franchises? What other regulations or government agencies or industry codes of conduct may affect the offer and sale of franchises?**

---

See first question



# AUSTRIA

---

## Laws and agencies that regulate the offer and sale of franchises

### Do other laws affect the franchise relationship?

---

Certain provisions of the Commercial Agents Act are applicable to franchise agreements (for example, compensation claims). By applying section 24 of the Commercial Agents Act by way of analogy, under certain circumstances a franchisee may be entitled to (goodwill) indemnification if the agreement is terminated. The franchisee may be entitled to an indemnity if they have brought in new customers or has significantly increased the volume of business with existing customers and the franchisor continues to derive substantial benefit from the business with such customers. The payment of this indemnity has to be equitable having regard to all the circumstances.

The amount of the indemnity may not exceed a figure equivalent to the franchisee's average annual revenue calculated on the basis of his income over the preceding five years.

The provisions of the Austrian Civil Code concerning standard form contracts may also be applicable. Besides the general provisions of contract law of the Austrian Civil Code, the following Austrian laws must be taken into consideration: the Consumer Protection Law, the Commercial Code, the Unfair Trade Practices Act, antitrust law, intellectual property regulations, tax law and data protection law.

In Austria the initial founder is protected by consumer protection law. Not all provisions of the Commercial Code may apply to the franchise agreement with the initial founder.