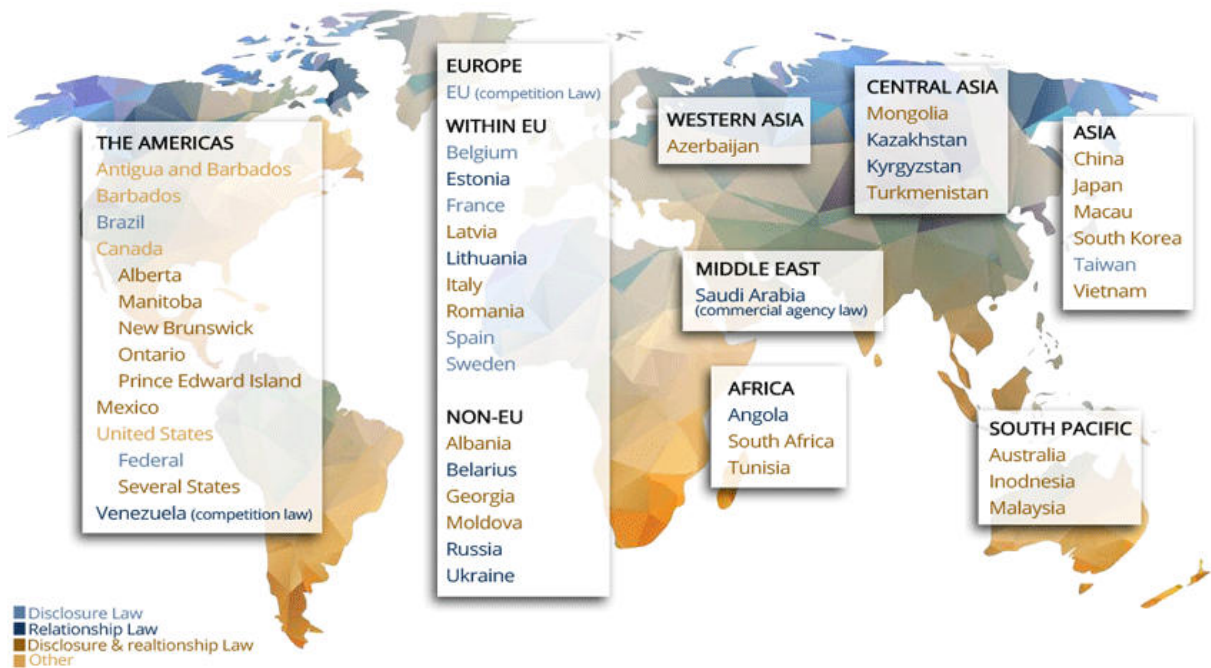




INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



BELGIUM



BELGIUM

Laws and agencies that regulate the offer and sale of franchises

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

The most important statutes are the Law of 6 April 2010 Relating to Market Practices and Consumer Protection, and the Law on the Protection of Economic Competition consolidated on 15 September 2006 and modified by the provisions of the Law of 6 May 2009 making general amendments. These laws transpose into Belgian statute the applicable EU legislation.

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

There is no specific law on franchising as such. The (national and EU) rules on competition law must be respected.

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

The Law on Pre-Contractual Information regarding Agreements to Form a Commercial Business Relationship (the Law of 19 December 2005) regulates the pre-contractual information that must be provided by all franchisors to candidate franchisees at least one month before the signature of the contract.

The Law requires that a draft contract and a pre-contractual information document must be provided setting out certain information in accordance with a mandatory list.

Failure to respect the requirements of the Law will entitle the franchisee to invoke nullity of the contract for a period of two years starting from the date of signature of the contract. There are no particular requirements concerning the franchisor company's own experience, either as regards a minimum number of company-owned operations or a minimum period for establishment of franchisor company-owned operations.

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?

When a retail business has a customer-accessible sales area of more than 400 square metres, a socio-economic permit must be obtained (Law of 13 August 2004 on commercial establishments, as amended by the Law of 22 December 2009 implementing certain requirements of Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market).

The request for the socio-economic permit may be filed with the municipal administration where the business is to be established, by any person who is directly concerned with the establishment of the business. The permit is issued by the municipal administration; in certain cases it may be accompanied by a prior opinion from the National Socio-Economic Committee for Distribution (CSEND).



BELGIUM

Laws and agencies that regulate the offer and sale of franchises

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?

In accordance with the Law of 19 December 2005, required precontractual information must be given by the sub-franchisor to all proposed sub-franchisees. The contract between the sub-franchisor and the sub-franchisees does not have to be disclosed. The franchisor does not assume responsibilities with regard to the sub-franchisees.

These responsibilities are assumed by the sub-franchisor alone. Nevertheless, if the franchisor has committed an actionable fault with respect to the sub-franchisee, the latter may bring an action directly against the franchisor.

Is there any obligation for continuing disclosure?

No.

How do the relevant government agencies enforce the disclosure requirements?

Respect for the legal requirements is ensured by the courts having regard to the litigation that is brought before them. There are no other controls.

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?

The most important statutes are the Law of 6 April 2010 Relating to Market Practices and Consumer Protection and the Law on the Protection of Economic Competition consolidated on 15 September 2006 and modified by the provisions of the Law of 6 May 2009 making general amendments. These laws transpose into Belgian statute the applicable EU legislation.

These laws seek not only to protect consumers but also to guarantee honest conduct in commercial matters between competing companies and to ensure that conditions of free and effective competition are not compromised by prohibited practices such as retail price maintenance or agreements between companies that have as their object or effect the restriction of free competition.

Do other laws affect the franchise relationship?

The Belgian Civil Code and the customary law of contract (what might be referred to as the 'common law') are the foundation of the relationship between the franchisor and franchisee after the franchise contract comes into effect.