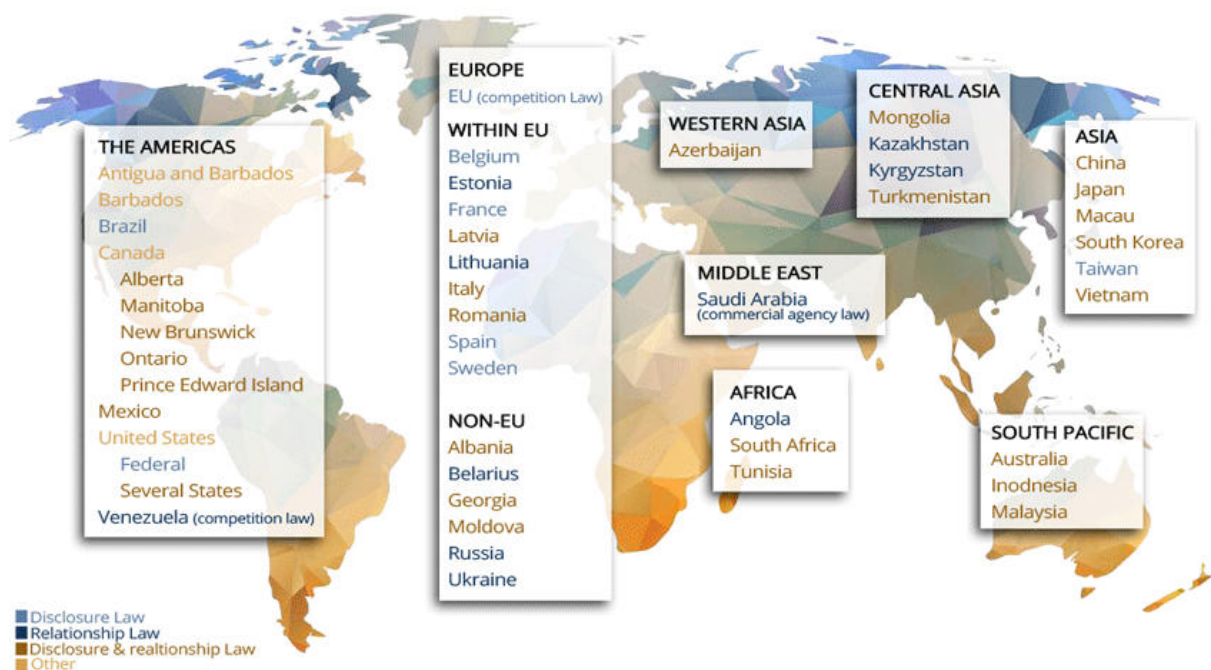




# INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



## CZECH REPUBLIC



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## 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 governmental agencies regulating the offer and sale of franchises in the Czech Republic.

Franchise agreements as such, are not specifically regulated under Czech law. Rather, they constitute an 'unspecified type of contract' according to section 1746 (2) of the (New) Civil Code (Act No. 89/2012), which can contain elements of different types of contract, especially of a licence agreement, an agreement for the transfer of know-how, a rental or leasing contract, a commercial agency agreement, a contract of sale (where goods are supplied) or a contract for the provision of services. General principles such as principles of good morals (bono mores) and principles of fair business conduct shall also apply.

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

As there is no special regulation of franchise agreements under Czech law, there are no exceptions.

However, it is noteworthy that not all business relationships, in which one contracting party provides the other with know-how, are considered as regulated by a franchise agreement. For instance, the mere provision of a licence for manufacturing activities, transfer of technology, consent to the use of a logo or of a commercial brand, is not a franchise agreement.

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

There is currently no law in the territory of the Czech Republic that would regulate the requirements to be fulfilled by a franchisor before it starts offering its franchise on the market, inform the franchisee or register with the franchise association. According to general legislation, a franchisor's proposal to enter into a franchise agreement should be sufficiently specific *i.e.* it should clearly state who is making the proposal, what the subject is and should indicate the franchisor's will to be bound by such an agreement if the proposal is accepted.

The Czech Franchise Association ([www.czech-franchise.cz](http://www.czech-franchise.cz)) lists numerous guiding principles in its Code of Ethics:

- ⚙ the franchisor must have successfully run a business concept for an appropriate period of time and with at least one pilot project before founding his franchise network;
- ⚙ the franchisor must be the owner or legitimate user of the company name, trademark or any other special labelling of his network;
- and
- ⚙ the franchisor must carry out initial training of the individual franchisee and must ensure ongoing commercial or technical support or both to the franchisee during the entire term of the contract.



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Naturally, the franchisor may freely conduct negotiations on the execution of a franchise agreement. If, however, the franchisor initiates or continues with such negotiations without having an intention to enter into the agreement at all, they shall be liable for damage incurred by the franchisee as a result of that. Similarly, the franchisor will be liable for damage if they decide not to conclude the agreement without any rightful reason although the negotiations of the agreement have reached such an advanced phase that the franchisee deemed its conclusion to be very likely. The same obligation to compensate damage also applies in relation to the franchisee. The 'rightful reasons' will depend on specific circumstances, and certain interpretation rules will undoubtedly be made more accurate by the decision-making practice of courts.

### **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?**

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There are no specific laws or government policies regulating the recruitment of the franchisee or selection of its or franchisees' suppliers.

### **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?**

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As Czech law does not regulate a franchise agreement as a special type of contract, it does not contain any express specification of rights and obligations between a master franchisor, master franchisee (sub-franchisor) and a sub-franchisee. As a result, Czech law does not expressly regulate the pre-contractual phase of entering into the franchise agreement, including any franchisor's duty to provide information (the same shall apply to sub-franchising contracts between sub-franchisor and sub-franchisee). Naturally, the general statutory requirements as to the specificity of all legal acts apply here, too.

Regarding the requirement of the specificity of legal acts the master franchisee (sub-franchisor) must disclose basic information to sub-franchisees not only about itself and the subject matter of agreement but also basic data regarding the franchisor's identity, including evidence of its existence (eg, by submitting an applicable extract from the Commercial Register) and to prove to subfranchisees that the master franchisee has the requisite permits and licences for sub-franchising at its disposal.

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

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As stated above, Czech law does not contain any express regulation of franchise agreements as a type of contract, and thus does not expressly regulate a franchisor's obligation for continuing disclosure.

Determining the obligations for cooperation is at the franchisor's and franchisee's discretion.

As a rule, a franchisor's obligations to provide advice and information relating to system development, information about market development in the applicable region and updated information about the



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sales and marketing strategy are incorporated in the contents of the franchise agreement. The general principles such as principles of good morals (bono mores) and principles of fair business conduct shall also apply.

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

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Czech law does not require the franchisor to disclose information relating to the franchise after the execution of the agreement. If such an obligation is included in the franchise agreement by agreement between both contracting parties, but the franchisor fails to discharge it, the franchisee may request its remedy before a court (there are no state agencies that would enforce the fulfilment of such an obligation), in other words, sue for performance of a contractual obligation. A franchisee may also claim damages caused by a franchisor's failure to comply with its contractual obligation of continuing 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?

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The entry into a franchise agreement is governed by general civil law rules for entry into contracts. The general private law principles, which also apply to a franchise agreement, include primarily the principles of contractual freedom, bona fides and fair business conduct. The process of entry into a franchise agreement should be consistent with the European Code of Ethics for Franchising, which only has an advisory nature (ie, it is not binding, just recommended).

### Do other laws affect the franchise relationship?

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The most significant legislation in force in the Czech Republic, which regulates the legal relationship between a franchisor and franchisee after the effective date of a franchise agreement, is as follows:

- ⌘ Commission Regulation (EU) No. 330/2010, on the application of article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices;
- ⌘ Act No. 89/2012, the New Civil Code (effective from 1 January 2014);
- ⌘ Act No. 90/2012, the Act on Business Corporations (effective from 1 January 2014);
- ⌘ Act No. 513/1991, the Commercial Code (will apply to the rights and obligations which occurred before 1 January 2014 based on or in connection with the contracts concluded before 31 December 2013);
- ⌘ Act No. 40/1964, the Civil Code (will apply to the rights and obligations which occurred before 1 January 2014 based on or in connection with the contracts concluded before 31 December 2013);
- ⌘ Act No. 143/2001, on the Protection of Economic Competition;
- ⌘ Act No. 441/2003, the Trademarks Act;



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- ⌘ Act No. 207/2000, on the Protection of Industrial Designs;
- ⌘ Act No. 527/1990, on Inventions, Industrial Designs and Rationalisation Proposals;
- ⌘ Act No. 455/1991, the Trades Licensing Act;
- ⌘ Act No. 143/2001, the Competitions Act;
- ⌘ Act No. 586/1992, the Income Taxes Act;
- ⌘ Act No. 235/2004, the Value Added Tax Act;
- ⌘ Act No. 216/1994, on Arbitration Proceedings and Enforcement of Arbitral Awards; and
- ⌘ Act No. 99/1963, the Civil Procedure Code.