



INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



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

No specific laws or government agencies regulate the offer and sale of franchises.

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

Not applicable.

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

No law or regulation creates a requirement that must be met before a franchisor may offer 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?

It would be expected that the sub-franchisor makes any relevant disclosure to sub-franchisees. There are no specific items required; however, experience indicates that any potential sub-franchisee would expect certainty as to the rights of the sub-franchisor to sub-franchise the franchise. In some cases, potential sub-franchisees ask for certification or written evidence.

Is there any obligation for continuing disclosure?

Continuing disclosure is not regulated. Accordingly, any such disclosure to current franchisees should be governed by the franchise agreement.

How do the relevant government agencies enforce the disclosure requirements?

Disclosure requirements are not regulated.

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?

Civil law provides for the general principle that all entities are responsible for damages caused by their tortious intent or negligence. Following case law, clauses limiting such responsibility are considered to be unconstitutional.

According to the Code of Commerce, it is presumed that dealings among merchants are done in good faith.



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Do other laws affect the franchise relationship?

Yes, there are laws that regulate the different legal provisions contained in a franchising agreement.

The Mediation, Conciliation and Arbitration Law sets out the principles and guidelines for the establishment of mediation, conciliation and arbitration panels; the maximum time frame for the processes; types of arbitration proceedings, including ad hoc arbitration and arbitration conducted in a foreign language selected by the parties; and other topics. The Law applies to parties arbitrating in El Salvador who have specifically chosen the parameters of this Law, as applicable.

The Monetary Integration Law establishes the US dollar as legal tender. It applies to all foreigners and nationals living or conducting business in El Salvador.

The Investment Law provides equal legal treatment for foreign and national investors; provides a series of rights, including repatriation of capital and goods, subject to registration of the investment done in El Salvador; and applies to foreign investors doing business in El Salvador. It affects franchising in cases when a franchisor invests locally in the franchised business: that is, when a franchisor buys property and builds its own premises to enter into future franchising, or when a franchisor sets up a local training center, distribution center or similar.

The Civil Code provides the general rules for civil contracting.

It regulates obligations, contracts, ways of terminating a contract, conditional contracts, contractual objects, etc, and applies in the territory of El Salvador.

The Commercial Code provides the general applicable rules for contracting between merchants and general behaviour rules for commercial activity, unfair competition, corporations, etc. It applies to merchants conducting business activities within the territory of El Salvador.

The Law for Promoting and Protecting Intellectual Property regulates trade secrets – when these are protected – and liability that arises from infringement, among many other intellectual property issues. It applies to creators of artistic, literary and artistic works, inventors, holders of confidential information and persons or companies for the protection of their copyrights, invention patents, utility models, industrial designs and trade secrets.

The Law Against Money and Asset Laundering defines what is understood by money and asset laundering; creates felonies; delegates the prosecution authority; and provides particular obligations to banks when opening accounts for clients (namely, banks shall report to the attorney general all transactions exceeding US\$57,142.86 and those that are unusual when considering the client's record).

The Consumer Protection Law protects consumers against unfair dealings by merchants, non-compliance of offers, abusive contractual clauses and misleading advertisement, among others.



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