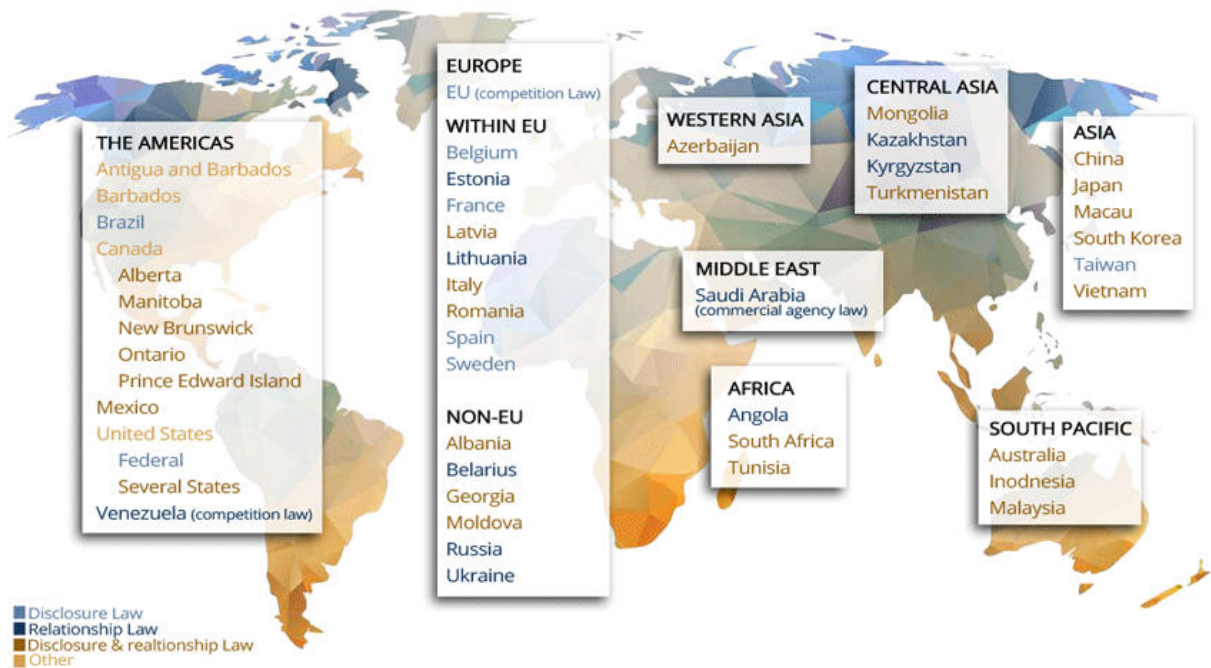




INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



FINLAND



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

There is no special legislation in this field, but there are a number of statutory regulations that must be heeded. The most important of these are the Contracts Act, the Unfair Business Practices Act, the Trademarks Act and the Competition Restrictions Act.

No government agency regulates the offering or sale of franchises, nor is there any regime for registering or recording franchise contracts. It is advisable to have a trademark licence recorded.

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?

No, there is no law or regulation on this matter. Nevertheless, pursuant to the FFA's Code of Ethics, prior to setting up a franchise network the franchisor should have used the business concept successfully and for a reasonable time and in at least one unit.

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?

No, with the exception of the general rule under the Unfair Business Practice Act pursuant to which in trade and industry, any representation untrue or misleading in respect of the business, whether one's own or that of someone else, and apt to either affect the demand for or supply of a product, or to do harm to the business of somebody else must not be used.

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?

The sub-franchisor (the master franchisee) is responsible for making disclosures.

Is there any obligation for continuing disclosure?

Since the principle of good faith and fair dealing is continuous by nature, disclosures need to be updated whenever circumstances change.

How do the relevant government agencies enforce the disclosure requirements?

No government agency enforces disclosure requirements. In practice, it is up to the franchisee to ensure that his or her rights will not be encroached upon.



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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?

Finnish contract law exhibits important principles, such as freedom of contract, freedom of form and the principle that a contract based on the consent of the parties to it is binding (*pacta sunt servanda*) and must be negotiated and executed in good faith. Accordingly, the principle of culpa in contrahendo (obligations in negotiation) is emphasised.

The guiding force is loyalty between the parties: each party ought to deal loyally with the other, paying attention to the other party's advantage as well. The main thrust of the general rule admitting the competent court to adjust the contract is that, should the court deem a contract term unfair or should the application of such term lead to an unfair result, the term may be adjusted or set aside.

The networks that are members of the FFA have established a certain self-regulation by their commitment to comply with the FFA Code of Ethics, which constitutes a set of standards similar to those of the EFF and, accordingly, deals to a considerable extent with matters relating to the offer and sale of franchises. The member networks have undertaken to furnish the potential franchisee, well in advance of the signature of a binding agreement, with 'any written information capable of being furnished on the franchising relationship between the parties'. The standards on recruitment and advertising are similar to those of the EFF. The same is true where a franchisor imposes a pre-contract on a potential franchisee.

Do other laws affect the franchise relationship?

Yes – whether directly or indirectly, a number of other statutes affect the franchise relationship. These include the Consumer Protection Act, the Employment Contracts Act, the Damages Act, the Product Liability Act and, should parties seeking settlement of a dispute have elected for arbitration in lieu of ordinary court procedures, the Arbitration Act.