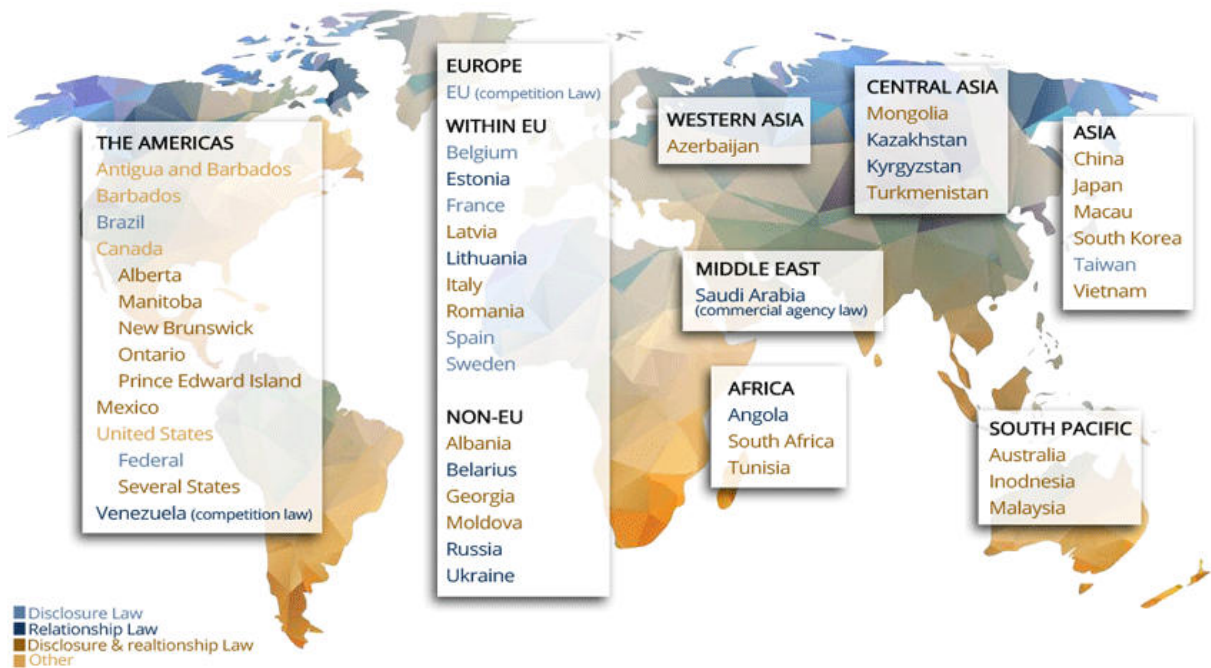




# INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



**FRANCE**



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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?

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As there is no codified mention of franchise agreements in French law, there are no specific legal provisions applicable to franchises.

General contractual aspects are governed by the Civil Code and commercial aspects are governed by the Commercial Code. In particular, it is worth mentioning articles L330-1 and L330-3 of the Commercial Code that apply to exclusivity or quasi-exclusivity undertakings and often impact on franchises.

There are no government agencies specifically dedicated to the regulation of the offer and sale of franchises. Nevertheless, competition law aspects of distribution (including franchises) fall under the respective authority of the General Directorate for Competition Policy, Consumer Affairs and Fraud Control, an administrative body within the Ministry of Economy, and of the Competition Authority, an independent authority.

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

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As French law does not provide for any specific franchise law or regulations, no exemptions or exclusions are applicable

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

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There is no such legal or regulatory requirement under French law.

Nevertheless, since a franchise is described by case law as the 'reiteration of a commercial success', the franchisor must be in a position to prove, prior to offering a franchise, that it has operated at least one similar commercial business in a manner and, for the time necessary to consider such business, as a success.

### 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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As franchise implies the transmission of a know-how and a relationship based on a strong *intuitu personae*, the franchisor is free to choose its franchisees and to discard candidates who do not seem to fulfill the personal and professional selection criteria set forth by the franchisor. However, pursuant to case law, a franchisor could be held liable if a candidate is excluded on the basis of selection criteria that are vague, or applied in a discriminatory manner.

The selection by the franchisor of the franchisee's suppliers is licit as long as the choice of the suppliers contributes to the image and identity of the franchise network. The selection of the suppliers could happen to be less justified in a services franchise than in a franchise for the sale of products. An exclusive supply obligation may even be imposed on the franchisee, provided that it is justified by the necessity to maintain the common identity and reputation of the franchise network .



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### **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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There are no specific provisions regarding sub-franchising structures in French law. Nevertheless, article L330-3 of the Commercial Code is applicable to 'any person who provides to another person a corporate name, trademark or trade name'. Hence, it is up to the subfranchisor, as the contracting party, to disclose the pre-contractual information. This would apply even more so where the sub-franchisor has altered the franchise concept in order to customise it to the geographical area granted to it by the franchisor.

The pre-contractual document mentioned in article R330-1 of the Commercial Code does not specifically require that a subfranchisor disclose information concerning the franchisor and the contractual or other relationship between the franchisor and the sub-franchisor. Nevertheless, since article L330-3 of the Commercial Code requires the disclosure of truthful information allowing the franchisee to commit to the contract with full knowledge of the facts, the sub-franchisor is under the obligation to disclose all relevant information, which may also relate to the franchisor. Such information may consist notably in the franchisor's name, its location, registration number, professional references, the identity of the managers, or the date of the company's creation.

In the event that there are direct contractual obligations between the franchisor and the sub-franchisee, the pre-sale disclosure might also be made by the franchisor.

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

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As explained above, there are no specific legal provisions applicable to franchises. Nevertheless, franchise agreements are characterised by the transfer of the franchisor's know-how to the franchisee. The European Code of Ethics for Franchising states that the franchisor shall inform and provide training to the franchisee in order to pass down its know-how; this transfer of know-how and training implies ongoing disclosure of the necessary information related thereto.

Moreover, franchise agreements must comply with general principles of contracts and the franchisor is under a general obligation to contract in good faith (see question 22). As a consequence of this good faith obligation, the franchisor must provide to the franchisee, after the execution of the agreement, all information that may have an effect on the franchise or the franchisee or both. In particular, according to case law, the franchisor should inform the franchisee of any significant change in its situation (for example, the franchisor must immediately inform the franchisee if it goes into receivership).

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

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There is no specific government agency involved in the enforcement of disclosure requirements. Any violation would be assessed by the courts that have material (typically, the tribunal de commerce) and territorial jurisdiction.



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

**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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It may not be sufficient to comply with the disclosure requirements of article L330-3 of the Commercial Code. According to the principle of good faith set forth in article 1134 of the Civil Code, the franchisor may have to disclose other significant information (for example, the fact that a previous franchisee in the same area declared bankruptcy two years ago. Article R330-1 of the Commercial Code requires that such information be given only for the previous year).

The French Franchise Federation issued a Code of Ethics which has been substituted by the one put out by the European Franchise Federation. It must be noted that membership of the French Franchise Federation is not mandatory. Therefore, the Code of Ethics may not be enforceable against any franchisor or franchisee, even though it may be viewed by French courts as a guide to what is commonly promoted.

### **Do other laws affect the franchise relationship?**

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Where a franchisor exercises an excessive amount of control over the franchisee, the latter could be qualified as an employee, which will lead to the applicability of labour law.

The provisions of French and EC competition laws are also applicable to certain obligations provided for in franchise contracts.