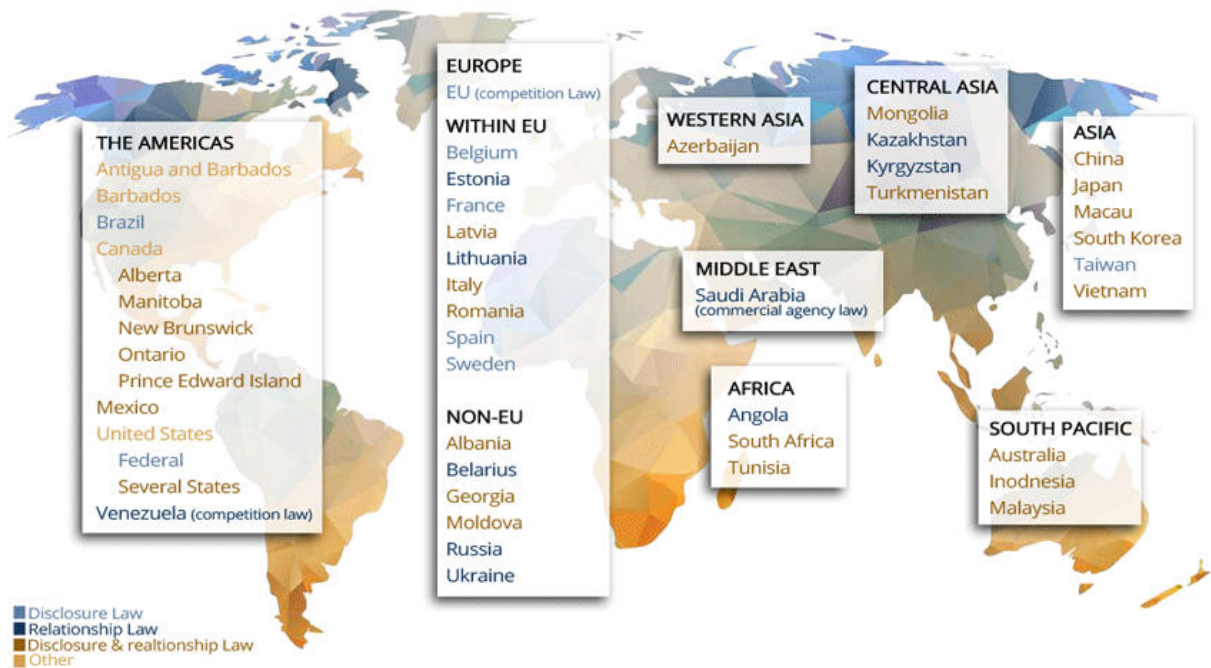




INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



GERMANY



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

There are no specific laws or government agencies that regulate the offer and sale of franchises. Therefore, the offer and sale of franchises is only governed by the general provisions of contract law (the German Civil Code), consumer law, commercial law (the German Commercial Code) and unfair trade and antitrust law. According to the law, the franchisor must disclose all necessary information to the franchisee. In particular, the provisions of the German Civil Code concerning standard terms can be applied where the franchisee has signed on a take-it-or-leave-it basis (section 307 of the German Civil Code). Accordingly, all contractual provisions need to be reasonable, otherwise they are void.

Further, according to German consumer credit law, a franchisee is entitled to revoke the contract if it is, on entering into the contract, establishing an independent business enterprise, and the contract contains an obligation to repeatedly take supplies of goods. But such right of revocation does not exist if the total value of the franchisee's investments exceeds an amount of €75,000.

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?

German statutory law does not provide for special requirements that a franchisor must meet prior to offering franchises. Nevertheless, the German Franchise Association (www.franchiseverband.com) 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 assure ongoing commercial or technical support or both to the franchisee during the entire term of the contract.

Observance of the stated principles is obligatory in order to become and remain a member of the Franchise Association, and to demonstrate fair business practices.

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?

There are no such laws, regulations or government policies in Germany.



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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?

Under German law, pre-contractual disclosure in connection with franchise contracts is not regulated by special statute or monitored by a specific agency. Only the general provisions regarding the opening of contractual negotiations apply. Therefore, prior to the conclusion of the franchise contract, the franchisor or sub-franchisor must ensure that all the relevant facts have been clearly presented to the potential franchisee. In the case of a violation of the franchisor's duty to present the relevant facts, the franchisee has the right to claim damages. The content and the scope of the duty depend on the individual case, taking the experience and knowledge of the franchisee into account. The courts have stressed that, as a general rule, the franchisee is obliged to obtain information at the franchisee's own initiative about the general market conditions and the impact of those conditions on the prospective franchise business. Nevertheless, an exception to that rule applies if there are particular circumstances of which only the franchisor is aware and which are recognisably of importance to the other party's decision as to whether to enter the franchise contract or not.

Thus, the scope of disclosure requirements depends on the franchisee's need for information and on the existing possibilities for the franchisee to obtain information. As a result, the franchisor must provide information about the way the franchise system works and its prospects of success. It follows from court decisions that the franchisor must refrain from providing misleading information on the franchise system and must disclose all relevant information about it in order to avoid subsequent damage claims. Any lack of information or any misleading information may lead to liability on the basis of a breach of pre-contractual disclosure obligations. A non-binding guideline for franchisors about disclosure in Germany is the German Franchise Association's code of ethics for franchising that is available on the above-mentioned website.

The sub-franchisor must, at least, offer information about the master-franchise and the allocation of tasks between franchisor and sub-franchisor. He or she must show the extent of the derivation of rights from the franchisor (particularly as to trademarks and know-how).

Is there any obligation for continuing disclosure?

An obligation for continuing disclosure can follow from the principle of good faith that is a basic principle of German law. By invoking good faith, a court may establish collateral obligations owed between contracting parties. This may include protective obligations, such as information (disclosure) about developments having an impact on the franchisee's business or on the franchise system in general (for example, the franchisor's trademark being challenged by a third party).



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How do the relevant government agencies enforce the disclosure requirements?

This is not relevant for German jurisdiction.

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?

See first question.

Do other laws affect the franchise relationship?

Besides the general provisions of contract law, commercial law, competition and antitrust law, the franchise relationship can be affected in particular by laws regarding the protection of intellectual property, such as trademark law and the laws regarding patents.