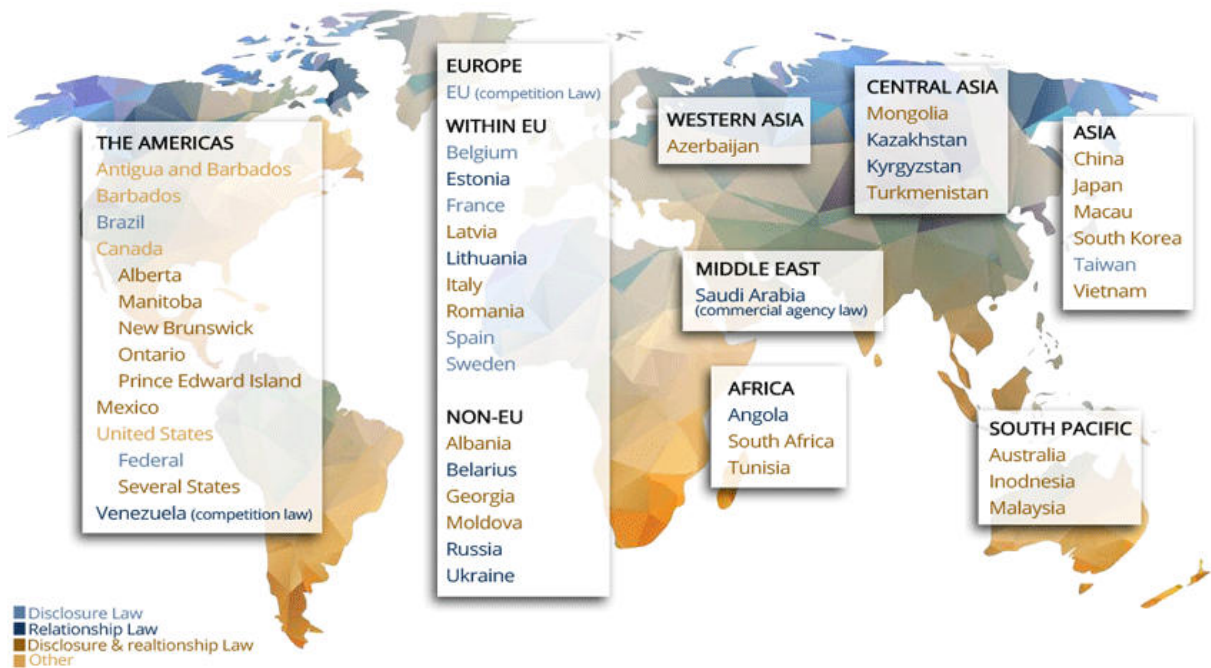




# INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



**HONG KONG**



# HONG KONG

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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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There is no franchise-specific legislation that governs the offer and sale of franchises in Hong Kong. Neither are there exchange controls, antitrust laws, foreign equity participation or local management participation regulations in place at the moment. Franchises in Hong Kong are not required to register with the government of the Hong Kong SAR or any trade associations. Hence, the offer and sale of franchises is subject to the common law (with special regard to contract law principles), where the principle of caveat emptor applies.

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

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At present there are no franchise laws or regulations in place in Hong Kong.

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

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No legal requirements that govern franchise operations exist in Hong Kong.

### **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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No laws, regulations or government policies that restrict franchise operations are in place in Hong Kong, save for general principles of contract law, where the principle of caveat emptor applies, meaning that a franchisee should exercise its own discretion when entering into franchise agreements.

### **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 requirements for pre-sale disclosures that must be made to sub-franchisees in the case of a sub-franchising structure, because no specific legislation provides for the operation of franchises in Hong Kong at present.

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

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Not applicable.

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

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Disclosure requirements specified in the Code of Ethics drawn up by the HKFA are not legally binding in nature, and as such are not subject to enforcement by government agencies.



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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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The offer and sale of franchises is not governed by any specific legislation or government agency, but the general principles of contract law apply. The Code of Ethics published by the Hong Kong Franchising Association also provides general principles that franchisors and franchisees should adhere to in franchise agreements, although the Code is not legally binding.

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

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There are no specific laws relating to franchising in Hong Kong.

Franchise agreements are treated the same way as other commercial contracts. However, certain areas of law, for instance, contract law, play a larger role in franchise relationships.

The Personal Data (Privacy) Ordinance protects individuals' right to privacy by regulating the handling of personal data. It applies to any individual or organisation, both public and private, that processes, collects and holds personal data. Hence, all business operations in Hong Kong, including franchises, are subject to the regulations on the handling of private data as stipulated in the Ordinance, as long as they handle personal data. Breach of the Ordinance attracts both criminal and civil liability.

In a franchise agreement, data protection laws may be violated when the franchisor requires the franchisee to provide them with customer information. Hence, care should be taken when the franchisor and the franchisee handle personal data provided by customers.

Moreover, it is not uncommon for franchise agreements to contain clauses that aim to exempt or limit franchisor's liability for precontractual representations made to franchisees. Clauses contained in franchise agreements, like other commercial contracts, are governed by the Control of Exemption Clauses Ordinance and will only be valid if they are fair and reasonable.