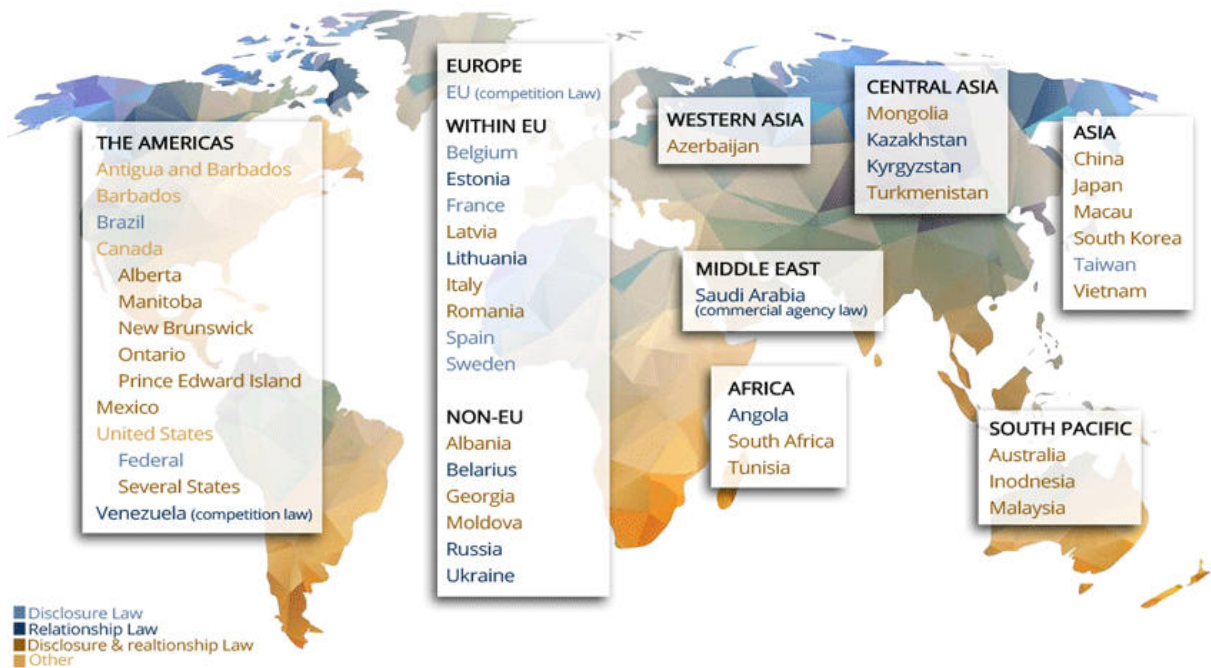




INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



INDIA



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

There are no laws or government agencies which regulate the offer and sale of franchise. There are no special provisions of law in respect of the offer and sale of franchises in India. Normally, commercial principles govern the grant of franchises in India and an examination of the provisions of the Contract Act would not be remiss. Indian jurisprudence also recognises the principle of 'caveat emptor' or 'buyer beware', and the Sale of Goods Act, 1930 provides for certain implied conditions and warranties (some of which can be contractually waived).

Franchise arrangements normally include a (limited) licence in favour of the franchisee to use the trademarks of the franchisor. While there is considerable freedom of contract exercisable by the parties in relation to the grant of licence, it is common to seek a registration of the trademarks by the franchisor under the Trade Marks Act.

Furthermore, payment of royalty amounts pursuant to a grant of a licence by an international franchisor to an Indian franchisee would be subject to the provisions of FEMA.

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

This is not applicable.

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

There are no such requirements and any entity competent to contract under the Indian Contract Act, 1872 (the Contract Act) can enter into a franchise agreement and must adhere to the applicable law.

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?

While there is no specific statutory restriction, there are certain conditions that would apply in case a foreign franchisor is seeking to make an equity investment in a local franchisee.

As regards single-brand retail trading (ie, retail trading of products that are sold under a 'single brand' under which brand name the products are sold internationally), equity investment in excess of 49 per cent would require prior regulatory approval. Where foreign direct investment (FDI) exceeds 51 per cent, at least 30 per cent of the value of raw materials or goods purchased are required to be sourced from India, preferably from micro, small or medium enterprises, village and cottage industries, artisans and craftsmen. Some additional conditions are that the products must be sold only under a single brand and products must be branded during the manufacturing process.

FDI in multi-brand retail is permitted only to the extent of 51 per cent, with prior regulatory approval. While the sourcing requirement similar to the one mentioned above is also applicable to the multi-brand retail space, there are further conditions applicable, which include a minimum investment threshold of US\$100 million, and directions on investment in back-end infrastructure.



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Additionally, each state in India is permitted to prescribe any additional conditions on multi-brand retail that it deems fit.

In this regard please also refer to the section on updates and trends, and for greater detail reference may be made to the FDI Policy, issued by the Ministry of Commerce and Industry, Government of India, which sets out the criteria and conditions in connection with FDI in India.

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?

There are no requirements for disclosures and such arrangements may be contractually agreed to between parties.

Is there any obligation for continuing disclosure?

There is no such requirement.

How do the relevant government agencies enforce the disclosure requirements?

This is not applicable.

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?

As mentioned above, there are no special provisions of law in respect of the offer and sale of franchises in India. Normally, commercial principles govern the grant of franchises in India and an examination of the provisions of the Contract Act would not be remiss.

Indian jurisprudence also recognises the principle of 'caveat emptor' or 'buyer beware', and the Sale of Goods Act, 1930 provides for certain implied conditions and warranties (some of which can be contractually waived).

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Do other laws affect the franchise relationship?

India is a unique place when it comes to doing business. The sheer number of licences and permits required to do business is overwhelming and the accompanying bureaucratic labyrinth is highly complex and often impenetrable for a foreign franchisor. For example, a hotel requires more than a hundred approvals before it can open its doors. Therefore, reliance on the Indian franchisee in relation to navigating the local landscape is very high and this needs to be taken into account while drafting the agreements.