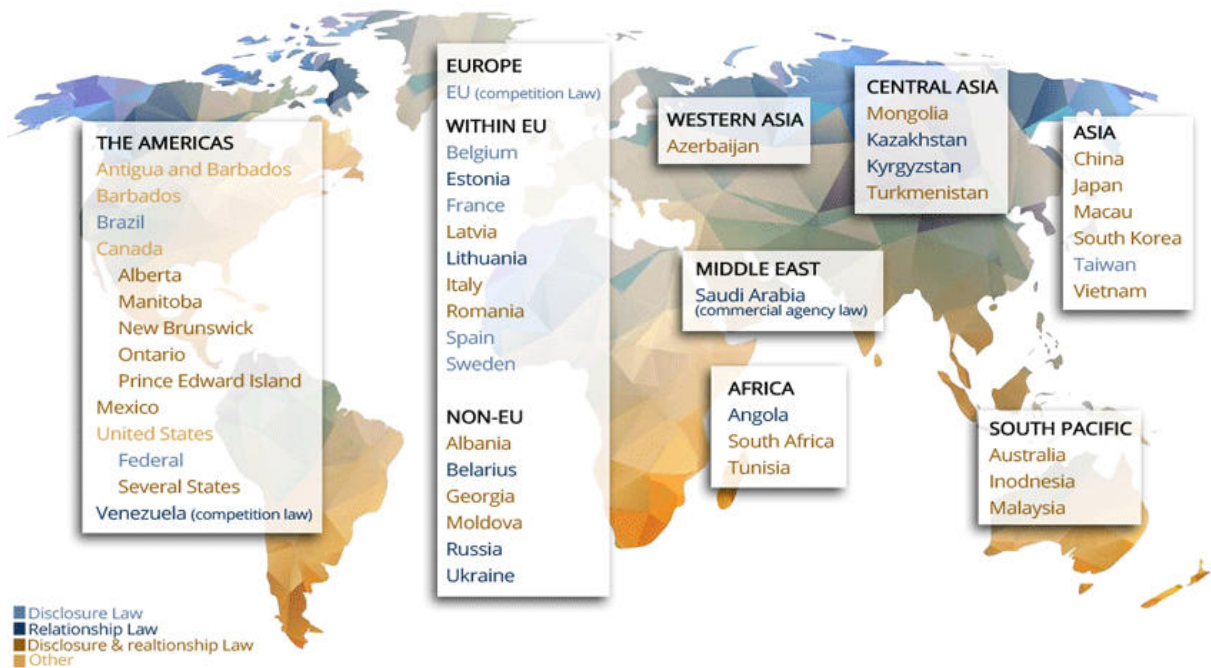




INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



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

If the franchise business falls within the scope of a specified chain business, the MSRCPA regulates the disclosure obligations related to the offer and sale of franchises. The Ministry of Economy, Trade and Industry, as well as other Ministries, depending on the products sold by the franchise business, have overall responsibility in this regard.

From the perspective of competition law, the Franchise Guidelines regulate the offer and sale of franchises in connection with the Antimonopoly Act, and the Fair Trade Commission has overall responsibility in this regard.

The JFA has also implemented voluntary rules, such as the Japan Franchise Association Code of Ethics and the Voluntary Standard Regarding Disclosure and Explanation of Information to Prospective Franchisees.

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

There are no exemptions under the MSRCPA or the Franchise Guidelines. Nevertheless, if a franchisor's business does not fall within the definition of a franchise under such laws or regulations, those laws or regulations will not apply.

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

There is no such requirement in general, except for those provided in the MSRCPA and the Franchise Guidelines. If the industry of the franchise is regulated by industry-specific laws, it is necessary to check those regulations.

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?

The Franchise Guidelines require a franchisor, when recruiting a franchisee, to disclose sufficient information to the franchisee in order to avoid any misunderstandings about the business by the franchisor. However, there are no restrictions on or requirements as to the number of franchises or franchisees or the number held by a single franchisee.

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?

In the case of a sub-franchise, the relationship between the subfranchisor and the franchisee needs to be analysed; if it falls within the definition of a specified chain business under the MSRCPA, the sub-franchisor owes a disclosure obligation. In such a case, the information relating to the sub-franchisor must be disclosed. The relationship between the franchisor and the sub-franchisor must also be



JAPAN

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analysed; if it too falls within the definition of a franchise, the franchisor has a disclosure obligation as well.

Is there any obligation for continuing disclosure?

The MSRCPA and the Franchise Guidelines do not provide any continuing disclosure obligation on current franchisees.

How do the relevant government agencies enforce the disclosure requirements?

The Ministry of Economy, Trade and Industry and the relevant ministry which administers the distribution of the specific products sold by the franchise business have the authority to enforce the disclosure obligation under the MSRCPA. They may issue a recommendation to comply to a franchisor that does not comply with disclosure obligations under the MSRCPA (paragraph 1, article 12), and if the franchisor does not follow the recommendation, the minister may disclose such fact to the public (paragraph 2, article 12).

Do other laws affect the franchise relationship?

Various laws affect the franchise relationship. From a competition law perspective, the Antimonopoly Act is relevant. The Franchise Guidelines and the Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act (11 July 1991, the Distribution Guidelines) specify what kinds of activities are problematic under the Antimonopoly Act. The Trademark Act (Act No.127 of 1959), the Unfair Competition Prevention Act (Act No. 47 of 1933), the Act on Specified Commercial Transactions (Act No. 57 of 1976) and other laws are relevant in the areas of intellectual property, know-how and advertisements. As described in questions 20 and 36, the general obligations under the Civil Code often affect the franchise relationship, especially when there is neither a specific law nor a clause in the agreement addressing a particular issue.