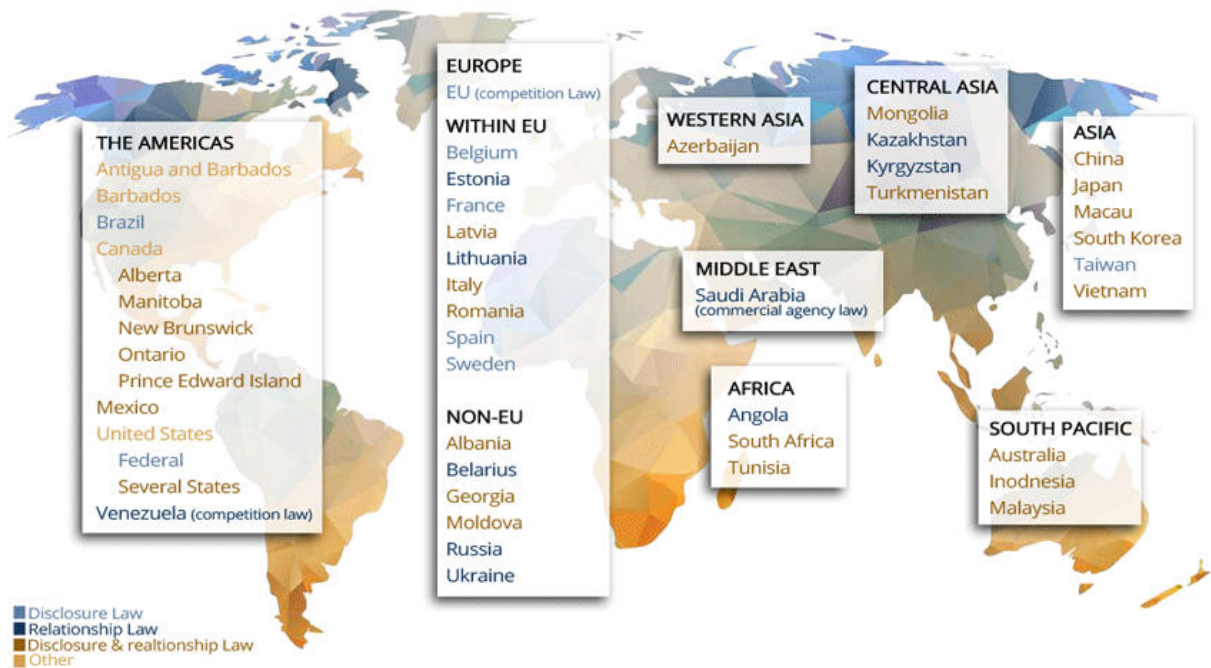




# INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



**KOREA**



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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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The Franchise Act that was enacted on 1 November 2002 and most recently amended on 17 February 2012, and its Presidential Decree, are the primary statutes applicable to the franchisor-franchisee relationship. Additionally, the Monopoly Regulation and Fair Trade Act (MRFTA) and regulations promulgated by the Korea Fair Trade Commission (KFTC) and the Korean Commercial Code are generally applicable to the relationship.

The KFTC regulates franchises in Korea. The KFTC has a franchise-related department and has the authority to impose administrative measures against those who engage in unfair activities. In this regard, the KFTC has the discretion to determine the unfairness or reasonableness of the activities of the franchisor and to levy penalties and issue corrective orders against those violators depending on the unfair nature of the activity. However, the violator may seek a district court's judicial review of the KFTC's findings.

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

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Article 3 of the Franchise Act provides that the Act will not be applicable, for example, to the delivery of a disclosure document to a prospective franchisee, if the total franchise fee paid by the franchisee to the franchisor for a six-month period beginning from the date of initial payment of the franchise fee does not exceed an amount of 1 million won or if the franchisor's annual sales amount is less than 50 million won. The 1 million won and 50 million won are prescribed by the Presidential Decree of the Franchise Act.

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

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Although the disclosure requirement under the Franchise Act requires a franchisor to disclose information if the franchisor operated or is operating a franchise, there is no law or regulation that mandates that the requirements must be satisfied before a franchisor may offer franchises.

### **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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A master franchisor need not provide a disclosure document to a subfranchisee if the master franchisor is not in a contractual relationship with the sub-franchisee: that is, a master franchisor has no obligation to provide a disclosure document if it is not a party to the franchise or any other agreements with a sub-franchisee.

Disclosure documents must contain a description of the general status of the franchisor (see question 16 for a list of information to be disclosed). Although neither the Franchise Act nor its Presidential Decree specifically requires that the information concerning the master franchisor and the contractual



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or other relationship between the master franchisor and the sub-franchisor be included in the disclosure documents, as the information relates to the 'description of general status of the franchisor', it would be appropriate to include a rough summary of such information.

### Is there any obligation for continuing disclosure?

According to the Franchise Act, if disclosures have been made in accordance with the Franchise Act, under article 5-3(1) of the Enforcement Decree, franchisors are required to prepare and register (or report) with the KFTC an amendment to the disclosure document within:

- ⌚ 30 days from the date the changes occurred (if the changes pertain to the general status of the franchisor);
  - ⌚ 30 days from the end of the quarter in which the change occurred (if the changes pertain to obligations of the franchisee, or conditions of and restrictions on business activities);
- or
- ⌚ 120 days from the end of the fiscal year in which the change occurred (if the changes pertain to the current status of the franchisor's franchise).

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

Where franchisors have violated their duties to provide a disclosure document or have provided false or exaggerated information, the KFTC may require the franchisor to provide or amend the disclosure document; report on necessary plans or actions taken or any other measures necessary for correction of such violations (corrective measures); or it may arrange a plan for correction and recommend that a franchisor follow such a plan (recommendation of corrective measure). With respect to such violations, the KFTC may impose an administrative fine of an amount not exceeding 2 per cent of the franchisor's total sales.

Furthermore, in the event that a franchisor violates certain provisions of the Franchise Act relating to disclosure requirements (for example, where a franchise fee has been accepted or a franchising agreement has been executed before providing the disclosure document, or where a franchisor has provided false or exaggerated information or omitted important information), the KFTC may file a criminal complaint with the attorney general. It is worth noting that a complaint from the KFTC is required for a public criminal action to be instituted for violation of the Franchise Act.

### 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?

The general fair trade principles under the MRFTA may affect the offer and sale of franchises (see question 10). No other regulation, government agency or industry code, besides the KFTC, may affect the offer and sale of franchises.



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### Do other laws affect the franchise relationship?

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The guidelines provided by the KFTC may affect the franchise relationship.