



# INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



## MEXICO



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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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Franchises in Mexico are governed and regulated by the IPL and its regulations. The governmental agency in charge of applying the IPL is the IMPI. In addition, there are other laws that may have an application to franchises depending on the type of activity performed in Mexico, such as the Commerce Code, the Consumer Protection Federal Law, the Economic Competition Federal Law (the Antitrust Law), the General Law of Business Organisations and the Federal Civil Code.

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

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The IPL is the general applicable law, therefore all franchises operating in Mexico, either through the scheme of master franchise, subfranchise or individual or unit franchise, are subject to its provisions.

The IPL does not provide for any exemptions or exclusions as to its applicability to franchises and does not provide the regulatory authority in charge of its application (IMPI) with the discretion to determine whether a particular distribution or similar arrangement is considered a franchise or not, regardless of its name. There are no exemptions for partnership relationships, wholesale distribution agreements or specific industries (for example, gasoline dealers or automotive dealers) if the relationship meets the definition of a franchise set forth in the IPL.

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

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In terms of the IPL and its regulations, the only requirement that must be met before a franchisor may offer a franchise is the submission of the disclosure document.

### **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, there are no restrictions as to the manner in which a franchisor may recruit franchisees or select its or its franchisees' suppliers.

### **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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The IPL makes no distinction in its applicability to master franchises or individual or unit franchises. Its provisions and the disclosure obligations apply to all types of franchises to be established in Mexico. The IPL requires 'the grantor of a franchise' to provide disclosure to a prospective franchisee. This requires any franchisor, including a master franchisee acting as franchisor, to provide disclosure to the prospective franchisee.



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Assuming the master franchisee holds sufficient rights in the franchise to execute a sub-franchise agreement, then the master franchisee would also qualify as the grantor of a franchise and be required to provide disclosure to a prospective sub-franchisee.

Even if the franchisor is a party to the sub-franchise agreement, the master franchisee must provide the disclosure since it is the actual grantor of a franchise. In the case of a sub-franchising structure, the disclosure document must contain the same level of information applicable to any franchise, but, in addition, it must describe the relationship between the franchisor and the master franchisee, from which the rights of master franchisee to grant sub-franchises derives.

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

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Once the disclosure document is delivered and the obligation contained in the applicable provisions of the IPL is fulfilled, no ongoing disclosure obligation exists. Though not addressed by the IPL, disclosure should be provided to both a renewing franchisee and to a transferee franchisee, but this does not imply the creation of a continuing disclosure obligation.

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

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The disclosure obligation may be enforced by the IMPI through the imposition of fines in the event of a violation of the said obligation.

### **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 only laws that govern the offering and selling of franchises are the IPL, the Regulations of the IPL, the Commerce Code and the Federal Civil Code. As previously stated, franchise transactions are ruled by the general principle of contractual liberty, provided that the terms and conditions contemplated by or contained in the relevant agreements are not against these laws.

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

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In addition to the laws regulating a franchise relationship mentioned in question 25, the Federal Law for Personal Data Protection Possessed by Private Persons may have a direct and significant impact on the operation, structure and risk administration of companies involved in the franchising industry that process personal data. The main purpose of this law is to protect personal data held by private persons in order to regulate the lawful, informed and controlled treatment of said data, with the objective of ensuring the right to privacy as well as the right of control over personal data for persons. The law protects personal data that is subject to treatment, use or transfer, at a national and international level.