



# INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



## NEW ZEALAND



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

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No government agencies regulate the offer and sale of franchises.

However, there are a number of laws that must be complied with, including the Commerce Act 1986, the Fair Trading Act 1986 and the Real Estate Agents Act 2008. If a broker is used by a franchisor to assist with the sale of franchises, the discussion in question 8 will be relevant.

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

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Not applicable.

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

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There is no law in New Zealand that would create such a requirement.

### **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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There are no laws, regulations or government policies that provide any restrictions in terms of this question.

### **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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Legally, none is required. However, if a franchisor belongs to the FANZ, it must comply with the Code of Practice and publish a disclosure document. A sub-franchisor would have to provide a disclosure document to a potential sub-franchisee if that sub-franchisor was a member of the FANZ.

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

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The short answer is no, in relation to the Code of Practice of the FANZ. However, if there have been any material changes since publication of the disclosure document and a franchisor does not disclose these to a potential franchisee who subsequently signs a franchise agreement, the franchisee may have grounds to cancel the franchise agreement in the future pursuant to the Contractual Remedies Act 1979.

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

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There is no enforcement by government agencies in relation to disclosure requirements. Nevertheless, please note what has been stated under question 10: if a franchisor is a member of the FANZ and it does not comply with the Code of Practice in relation to disclosure requirements, that franchisor can be ousted from the FANZ. If any franchisee suffers a loss at the hands of such a franchisor, the



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franchisee's remedies would be according to normal contractual laws and the franchisor would be vulnerable to an action for damages by the franchisee. As stated above, if there are any misrepresentations, the person suffering a loss may be entitled to make a complaint pursuant to the Fair Trading Act 1986 to the Fair Trading Division of the Commerce Commission.

**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 answer to the first question is not applicable. The answer to the second question is not applicable except in the case that, if the franchisor was a member of the FANZ, both the Code of Practice and the Code of Ethics would apply.

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

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No other laws affect the franchise relationship in New Zealand. As mentioned above, the Consumer Law Reform Bill 2011 may affect on franchising and the relationship as it will amend the Fair Trading Act 1986.