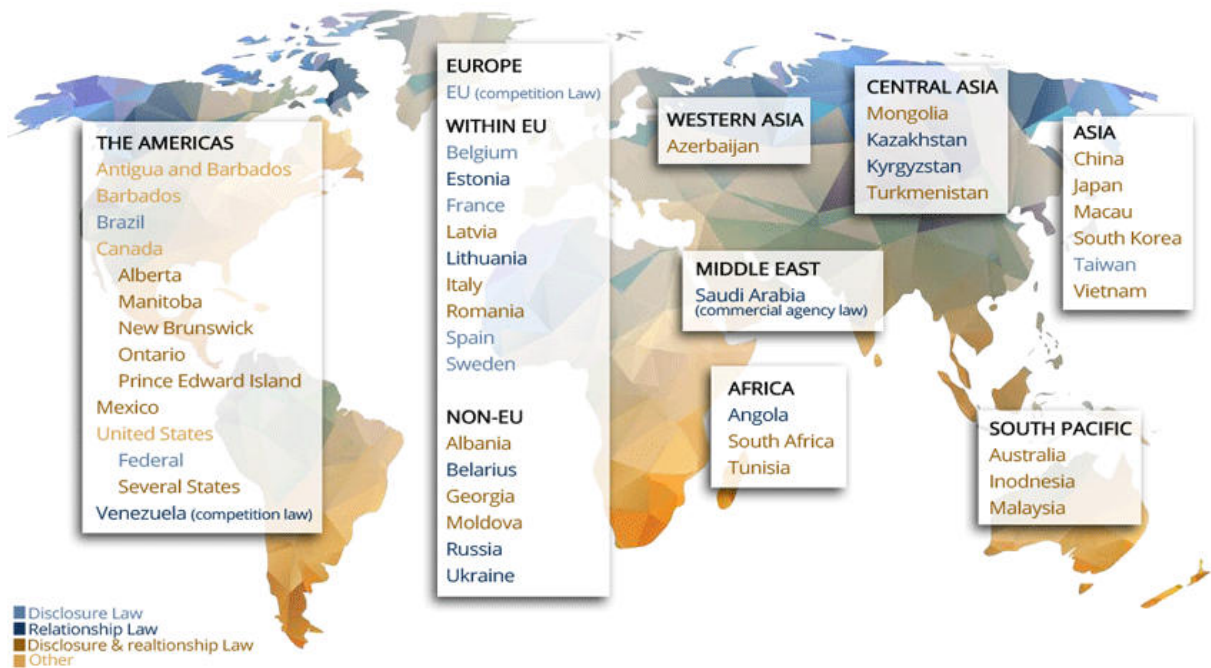




INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



PUERTO RICO



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

The offer and sale of franchises is not expressly regulated under Puerto Rican laws or by any government agency. Puerto Rico, however, is subject to US laws and regulations, including the Federal Trade Commission Franchising Regulations.

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

Law 75 protects 'dealers'. As stated in the answer to question 9, under Law 75, a dealer is defined as any person who is effectively in charge of the Puerto Rico distribution, agency, concession or representation of a given merchandise or service. To the extent the person is effectively in charge, that person will be considered a dealer, regardless of whether it is an exclusive or non-exclusive relationship or if the agreement is in writing. There has been much litigation over who is or is not a dealer protected by Law 75. The courts have adopted the following characteristics to assist them in determining who is considered a 'dealer' under Law 75:

- ⌚ promotion of the product;
- ⌚ closing of contracts;
- ⌚ keeping an inventory;
- ⌚ fixing prices;
- ⌚ negotiating terms of sales;
- ⌚ delivery and billing responsibilities;
- ⌚ authority to extend credit;
- ⌚ advertising campaigns;
- ⌚ assumption of risk;
- ⌚ purchasing the product;
- ⌚ maintaining facilities; and
- ⌚ offering product-related services to clients.

The courts have continually applied the above criteria to determine who is considered a dealer under Law 75. The courts have also repeatedly stated that these criteria are not exhaustive and no one criterion is determinant nor is any particular criteria entitled to more weight than others. The absence of one or two or a few of the activities of a dealer is not sufficient grounds to sustain that the person is not a dealer. The courts generally take into consideration the totality of the activities of the person.

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

See first question



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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?

See first question.

Is there any obligation for continuing disclosure?

See first question.

How do the relevant government agencies enforce the disclosure requirements?

See first question.

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?

Franchise agreements will be subject to the general principles of contract formation found in the Civil Code of Puerto Rico.

Also, please note that typically franchise agreements are contracts of adhesion. In an effort to correct the presumed economic imbalance between the parties to an adhesion contract, Puerto Rican case law has established that the agreement shall be analysed in the manner most favourable to the weaker party, in all probability, the franchisor.

Do other laws affect the franchise relationship?

The franchise relationship will be subject to Puerto Rican and US antitrust laws. Puerto Rican antitrust laws are modelled on and closely resemble those of the US.