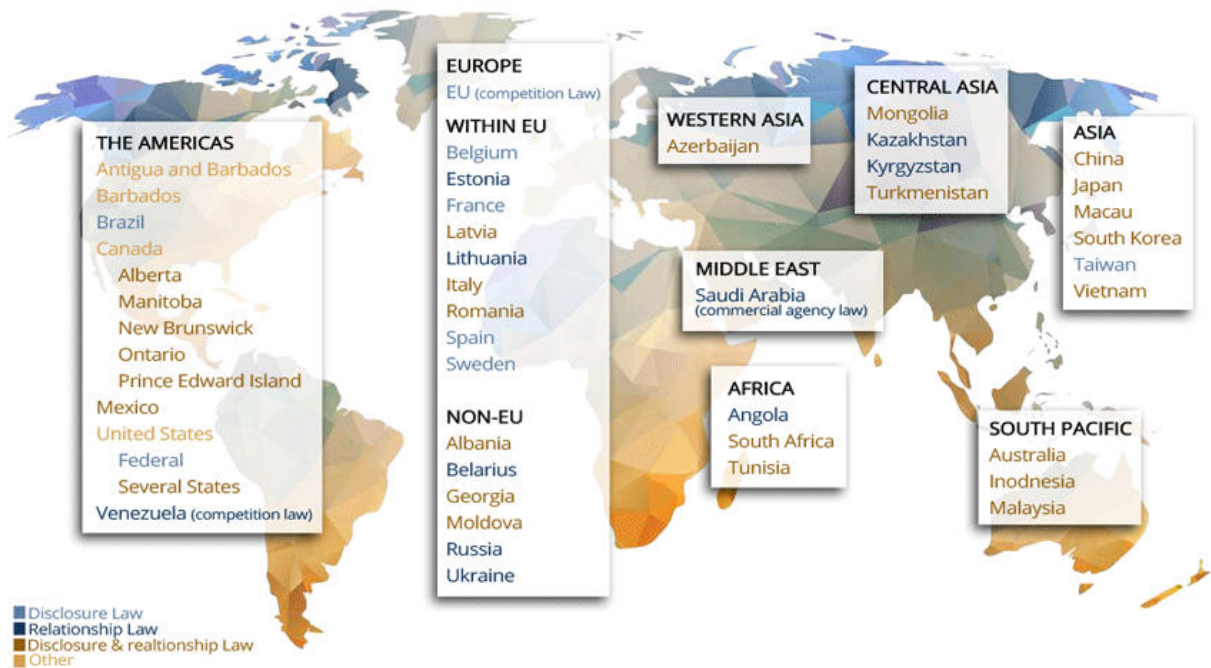




INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



SINGAPORE



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

There are no specific laws or government agencies that regulate the offer and sale of franchises in Singapore. General contract law governs the relationship between the franchisor and the franchisee.

The Franchising and Licensing Association (FLA) is the national franchise body in Singapore and a member of the World Franchise Council. The FLA was established in 1993 'with the mission to nurture and develop Singapore's franchise industry'. It is not mandatory for a franchise to become a member of the FLA. There are currently 137 member franchises.

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

There are no franchise laws or regulations in Singapore. Accordingly, there are no applicable exemptions or exclusions.

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

There are no laws that 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?

There are no such laws, regulations or government policies. For franchisors that are members of the FLA, the FLA Code of Ethics states that a member franchisor shall only select and accept a franchisee who, upon reasonable investigation, appears to possess the basic skills, education, personal qualities and financial resources adequate to perform and fulfil the needs and requirements of the franchise.

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?

There are no laws relating to pre-sale disclosures to sub-franchises. There are also no requirements regarding pre-sale disclosures to subfranchises in the FLA Code of Ethics

Is there any obligation for continuing disclosure?

There is no requirement to provide disclosure documents on an ongoing basis to existing franchisees.

How do the relevant government agencies enforce the disclosure requirements?

No government agencies in Singapore provide or enforce disclosure requirements for franchises.



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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?

Currently Singapore's franchise industry remains largely unregulated by any specifically created legislation. Instead, general contract law governs the relationship between the franchisor and the franchisee.

Do other laws affect the franchise relationship?

Depending on the structure of the franchisor–franchisee relationship and the terms of the franchise agreement, certain Singapore laws may regulate various aspects of franchising. Examples are given below.

The Multi-Level Marketing and Pyramid Selling (Prohibition) Act

The Multi-Level Marketing and Pyramid Selling (Prohibition) Act of 2000 prohibits multi-level marketing and pyramid selling because it encourages distributors to focus more on recruiting investor distributors than on retailing products. A franchise structure could potentially fit into such a prohibited multi-level structure if a franchisor, or someone holding a master franchise, sublicenses the rights of the franchise to several tiers of sub-franchisees.

An amendment made to the Multi-Level Marketing and Pyramid Selling (Prohibition) Act expressly excludes some franchise schemes that fulfil certain conditions as set out in section 2(b) and (c) of the Multi-Level Marketing and Pyramid Selling (Excluded Schemes and Arrangements) Order. In general, schemes that provide safeguards, behavioral checks or sharing of commission are not unlawful.

Income Tax Act

Where the franchise relationship is with a foreign franchisor, payments made to the foreign franchisor such as royalties and management fees are likely to be subject to withholding tax.

Unfair Contract Terms Act

The Unfair Contract Terms Act provides that certain contractual terms that are unfair will not be enforceable. It provides that a person may not exclude or restrict liability for death or personal injury resulting from negligence. In the case of other losses or damage, a person cannot exclude or restrict liability unless it is reasonable to do so.

Clauses prohibiting the franchisee from carrying out similar or competitive businesses during or after the term of the franchise are prima facie void unless they are reasonable (taking into consideration all the circumstances) to protect the franchisor's interest. Factors such as the period and geographical scope of the restriction compared with the franchise term and the territory granted to the franchisee are relevant in considering whether the clause is reasonable.