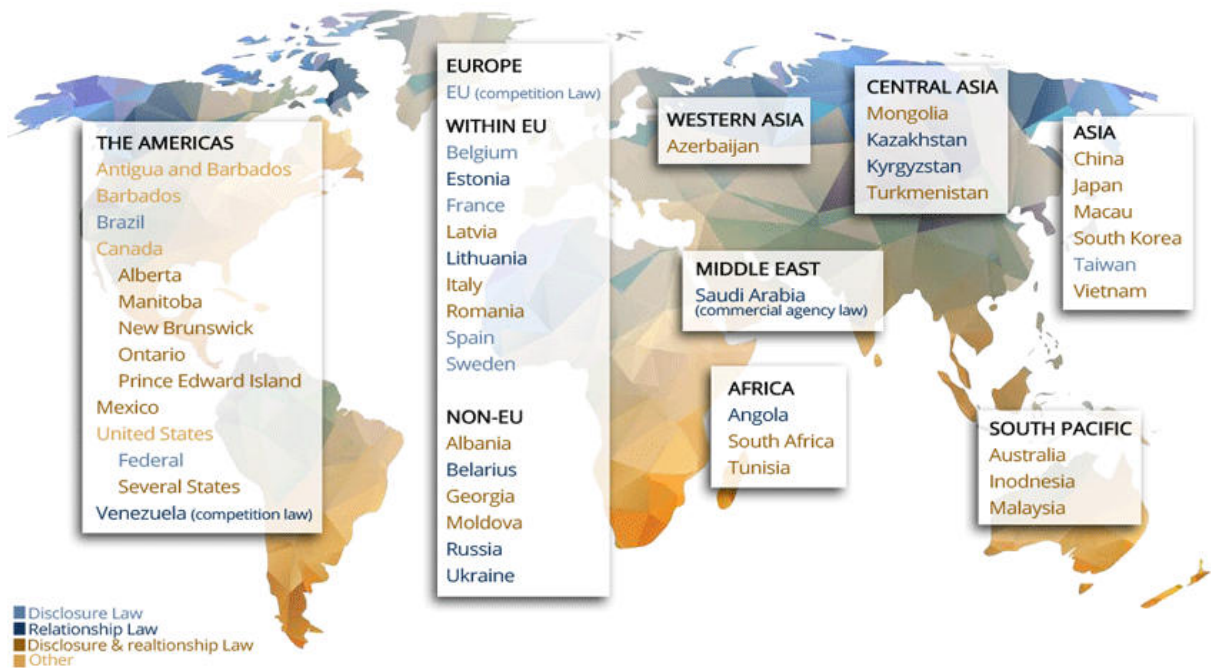




# INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



**SPAIN**



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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 offer and sale of franchises is governed by the Retail Commerce Act 7/1996 of 15 January, as amended by Act 1/2010 of 1 March.

Article 62 is particularly applicable to franchise agreements. The Act is completed by Royal Decree 201/2010 of 26 February on Franchise Agreements.

The administrative agency in charge of franchise matters is the Franchisors' Register, which is administered by the secretary of state for commerce at the Ministry for Economy and Competitiveness. Regional franchisors' registries can be created if the regions' respective legislation foresees it.

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

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Franchising rules are applicable to commercial franchise agreements independently of the sector. Nevertheless, a contract granting the exclusive commercial right of distribution is not necessarily a franchise contract if it is simply a contract through which a vendor promises to buy – under some circumstances – merchandise that is normally trademarked from a seller who grants the vendor exclusivity within a certain zone (also under certain conditions) and grants assistance to purchasers.

The following are not considered franchises:

- ⌚ the granting of a manufacturing licence;
- ⌚ the cession of a trademark to be used within a determined zone;
- ⌚ the transfer of technology;
- and
- ⌚ the granting of a logo or commercial trademark name.

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

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After the modification of the Retail Commerce Act, which has been in force since 3 March 2010, it is not necessary to have previously registered on the Franchisors' Register. Royal Decree 201/2010 of 26 February contains a number of elements regarding information that must be disclosed to potential franchisees before any agreement is signed or any payment is made.

### 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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In a master franchise agreement, the franchisor grants to the master franchisee the right to exploit a franchise in a particular market in exchange for financial compensation (either direct or indirect or both) with the intention of signing franchise agreements with third parties. The master franchisee



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assumes the position of the franchisor in this particular market. In case of a sub-franchising structure, therefore, pre-sale disclosure to sub-franchisees must be made by the master franchisee (sub-franchisor).

The information required concerning the franchisor and the contractual relationship between the franchisor and the sub-franchisor is the following:

- ⌚ identification of the franchisor:
    - ⌚ name;
    - ⌚ registered address;
    - ⌚ information about the entry in the Franchisors' Register;
    - ⌚ if it is a company, its capital stock in the last balance sheet, indicating what proportion is paid; and
    - ⌚ the Commercial Register information, if appropriate;
  - ⌚ if the franchisor was a foreign franchisor, information about its entry in the Franchisors' Register according to its legal obligation;
- and
- ⌚ proof of having obtained a licence for the Spanish use of the trademark and other devices of the Franchisor (indicating their duration), as well as any judicial procedures that could affect the use of the trademark.

Moreover, the sub-franchisor must give the Franchisors' Register the following information about its own franchisor: name, registered address, type of business entity, duration of the master franchise agreement and an assertion that it has signed the agreement granting the franchise by the main franchisor.

### Is there any obligation for continuing disclosure?

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There is no specific obligation for continuing to disclose information to current franchisees once the agreement has been signed. There is an obligation to update the information provided to the Franchisors' Register.

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

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The enforcement of disclosure requirements is usually entrusted to the competent bodies at the regional governments (autonomous communities) – usually the region's authority for commerce or economy. Lack of compliance with the disclosure requirements to franchisees can be considered a minor infringement, possibly leading to an administrative penalty of up to €6,000. Lack of compliance with the obligation to annually update information is considered a severe infringement and could lead to an administrative penalty of €6,000 to €30,000.



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## Laws and agencies that regulate the offer and sale of franchises

**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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General civil and commercial legislation principles are also applied to the offer and sale of franchises and, particularly, the principle of good faith in commercial relations and the principle of freedom of contract. The European Code of Ethics for Franchising is applied in Spain but it does not replace national or European rights.

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

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Other laws affecting franchise agreements include:

- 🔗 the Commission Regulation (EU) 330/2010 of 20 April 2010 on the application of article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices;
- 🔗 the Commercial Code (22 August 1885);
- 🔗 Act 3/1991 on Unfair Competition (3 January, modified by Act 29/2009 of 30 December);
- 🔗 Act 17/2001 on Trademarks (7 December, modified by Act 2/2011 of 4 March);
- 🔗 Act 11/1986 on Patents, Inventions and Utility Models (20 March, modified by Act 14/2011, of 1 June);
- 🔗 Royal Legislative Decree 1/1996 Intellectual Property Law (12 April, last modified by Royal Law-Decree 20/2011 of 30 December);
- 🔗 Royal Legislative Decree 1/2007 (16 November), General Act for Consumer Protection (last modified by Act 29/2009 of 30 December); and
- 🔗 Act 15/2007 on the Defence of Competition (3 July, last modified by Act 2/2011 of 4 March).