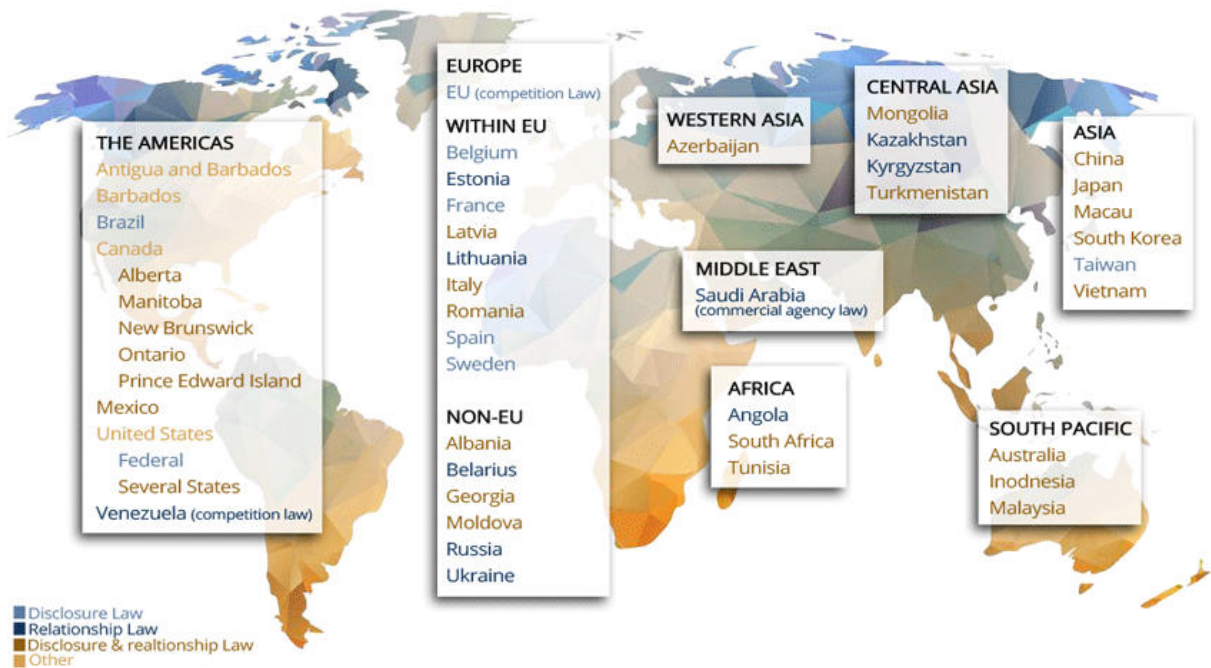




# INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



**SWITZERLAND**



# SWITZERLAND

---

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

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

---

Franchise contracts are not regulated by a special statute; nor are they monitored by a specific agency. In particular, there are no pre-contractual disclosure provisions.

Therefore, the general provisions of the CO, the CC and, to some extent, the United Nations Convention on Contracts for the International Sale of Goods (CISG, also known under the term 'Vienna Sales law', which applies automatically under Swiss law unless it is explicitly excluded), intellectual property laws, the Swiss Unfair Competition Act and the Swiss Act on Cartels and other Restraints of Competition are applicable. The CISG itself does not apply to franchise contracts. However, it might be applicable to cross-border sales contracts between the franchisor and the franchisee which take place under the umbrella of the franchise agreement. The principle of good faith plays an important role with regard to contractual negotiations and the conduct of the parties under the franchise contract. Therefore contractual negotiations have to be serious and any disclosed information, particularly with respect to the basic elements of the franchise contract, has to be true. Furthermore, the disclosed information shall also contain all information a franchisee may, in view of the disclosed information and under the principle of good faith, expect to be disclosed.

As regards general terms and conditions, which play an imminent role in franchise relationships, Switzerland does not have a specific legal act on general terms and conditions. Nevertheless, pursuant to the Swiss Federal Supreme Court, there exist certain rules with regard to the adoption and interpretation of general terms and conditions. These rules have recently been specified through a revision of the Swiss Unfair Competition Act, which, however, only applies to the relationship between consumers and companies (B2C), but not to the relationship between companies (B2B). Individual agreements differing from the general terms precede the provisions in the general terms and conditions.

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

---

Not applicable.

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

---

No, under Swiss law no such requirements exist. Nevertheless, the Swiss Franchise Association ([www.franchiseverband.ch](http://www.franchiseverband.ch)), a private, self regulatory trade organisation with no official function, requires that potential members fulfil certain requirements in order to be admitted: for example, they must have been in business for a minimum period of two years prior to the admission, and they must operate their franchise system with at least two franchisees in Switzerland.



# SWITZERLAND

---

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

### **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?**

---

No, there are no specific rules on this matter, and it is up to the parties to a franchise contract to decide by agreement whether they want to introduce certain restrictions, e.g. by limiting the number of franchisees with which the franchisor can conclude a contract.

It is worth noting that the Swiss Unfair Competition Act puts constraints of a more general nature on the way in which franchisors can recruit franchisees. If a franchisor were to aggressively entice away franchisees who are working for competitors, or even incite them to break the contract with the competitor, such actions could constitute unfair competition which is a criminal offence. In summary, however, franchisors benefit from a high freedom.

### **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?**

---

As already indicated, pre-contractual disclosure provisions are neither regulated by a special statute nor monitored by a specific agency, and this is the case for franchise as well as for sub-franchise contracts. The general provisions of the CO and CC and the respective rules apply.

Nevertheless, the ethics code of the Swiss Franchise Association contains certain provisions regarding disclosure and, in particular, pre-contractual disclosure with which members of the Swiss Franchise Association must comply.

In summary, pre-contractual disclosure must contain information about the market relating to the franchise, the products or services to be the subject of the franchise relationship, the franchisors' organisation and its experience with regard to the respective franchise system, the franchise package, the contractual duties (in particular the estimated financial commitment of the franchisee), the franchise contract and all related documents and all alternative distribution channels for the contractual products or services. Members of the Swiss Franchise Association must disclose such information in writing at least 20 days before signing the franchise contract. These rules apply for the relationship between the franchisor and its franchisees and between the master franchisees, as sub-franchisors, and sub-franchisees. Nevertheless, the rules of the ethics code of the Swiss Franchise Association do not apply to the relationship between (master) franchisors and master franchisees.

Since disclosed information may contain business and/or industrial secrets, including know-how, conclusion of a confidentiality agreement before the disclosure is highly recommended.

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

---

Swiss law does not provide for specific obligations relating to continuing disclosure. According to Swiss legal doctrine and Swiss case law, a franchise contract is deemed to be an ongoing contractual



# SWITZERLAND

---

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

relationship involving close cooperation between the franchisor and the franchisee. In particular, the franchisee receives ongoing assistance, training and advice and the franchisor usually reserves the right to issue directives and, accordingly, to maintain a certain control over the business activities of the franchisee. Thus, the contracting parties have a general duty to act in good faith and assist each other in achieving contractually agreed objectives. Therefore, the franchisor is not only interested but also generally obliged to inform its franchisees about material developments, particularly the marketing concept, and about all other material aspects that the franchisee needs to know of in order to run its business successfully.

Because Swiss law does not provide specific obligations in this regard and ongoing disclosure obligations may vary from case to case depending on the specific circumstances, it is advisable to include specific disclosure obligations in the franchise contract.

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

---

Not applicable.

### **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?**

---

See previous questions.

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

---

Like the offer and sale of a franchise, the franchise relationship itself is mainly regulated by the general provisions of the CO. To some extent it is also regulated by the special provisions of the CO regarding the application of labour and agency law provisions by analogy (see question 6), the CISG with regard to cross-border sales contracts between the franchisor and the franchisee which take place under the umbrella of the franchise agreement, the CC, the Swiss Unfair Competition Act, the Swiss Cartel Act and intellectual property laws (trademarks and patents).