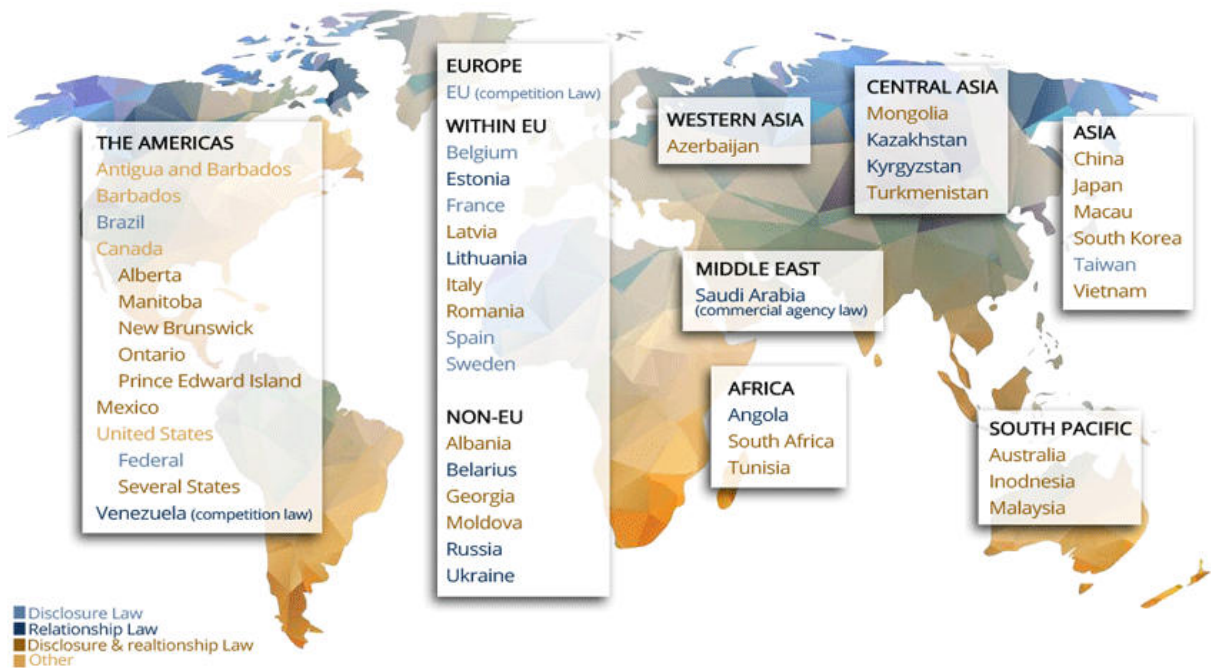




INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



TURKEY



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

There is no specific legislation or any regulation governing franchise agreements in Turkish law. The concept of franchise and the content of franchise agreements are considered mainly in case law, which includes the decisions of the Competition Board and the Supreme Court.

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

There is no such law or regulation; however, any practice that is not in line with the above-mentioned definition of the Supreme Court would result in not being considered as a franchise agreement or a relation.

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

There is no such requirement by law.

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 is no such law or regulation or government policy on franchising that restricts the manner of recruiting franchisees or selecting suppliers. These kinds of restrictions or requirements may be freely determined under the franchising contract in accordance with the principle of contractual freedom, unless the goods or services which are subject to the franchising require the implementation of a specific regulation.

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 is no pre-contractual disclosure requirement for franchising agreements under Turkish law. In that sense, the disclosure obligation of the franchisor and the sub-franchisor shall be determined in accordance with the franchise contract and the contractual requirements.

Is there any obligation for continuing disclosure?

In line with the principles mentioned in the Turkish Code of Obligations, one party shall keep the other party informed regarding any information that would have an effect on the performance of the other party. This principle would play an even more important role taking into consideration an ongoing and continuous relationship such as a franchise contract.



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How do the relevant government agencies enforce the disclosure requirements?

Turkish companies that have foreigners as shareholders must continue submitting the FDI Operations Data Form to the Undersecretariat of the Treasury, Foreign Investment Directorate. This form includes a subsection where details of the 'licences, know-how, technical assistance, franchise agreements and transfers' of the company are requested. This form shall be submitted to the Undersecretariat of the Treasury, Foreign Investment Directorate before the end of May every year. As stated above, the aim and scope of the regulation is monitoring foreign investment activities, rather than an intention to govern the disclosure requirement of franchise agreements.

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?

The above-mentioned rules are the general principles of law that affect the offer and sale of franchises. These principles, which would affect the offer and sale of franchises, derive mainly from the Turkish Code of Obligations, the Turkish Commercial Code and the laws regarding intellectual property rights.

Do other laws affect the franchise relationship?

In this regard, the content of the Block Exemption Communiqué on Vertical Agreements are taken into consideration. The contractual impositions on the franchisee that are not in compliance with the communiqué, the outcome of non-compliance, the exceptional cases and the duration of the non-compete obligation during and after the term of the contract have all been regulated within the said communiqué.

Depending on the case, the rules contained in the Turkish Commercial Code regarding business agents might be applicable to franchising contracts. The franchisee has not been mentioned as one of the prototype business agents by the Code; Nevertheless, depending on the nature of the franchising relation and the clauses in the franchise contract, the rules regarding agency, commissioners (or other matters regulated by law) might be applicable to the franchising relationship.

Furthermore, the general provisions regarding representation regulated in the Turkish Code of Obligations might be applicable to a franchising relationship and would be taken into consideration. The notion of 'abuse of economic dependence' has been invoked by the Supreme Court several times in disputes involving supplier-agency, employee-employer and leaser-lessee relations. In this regard, it might be likely that the said notion would be invoked by the court in a dispute concerning a franchising contract. All the same, there is at present no case law involving such an assessment.