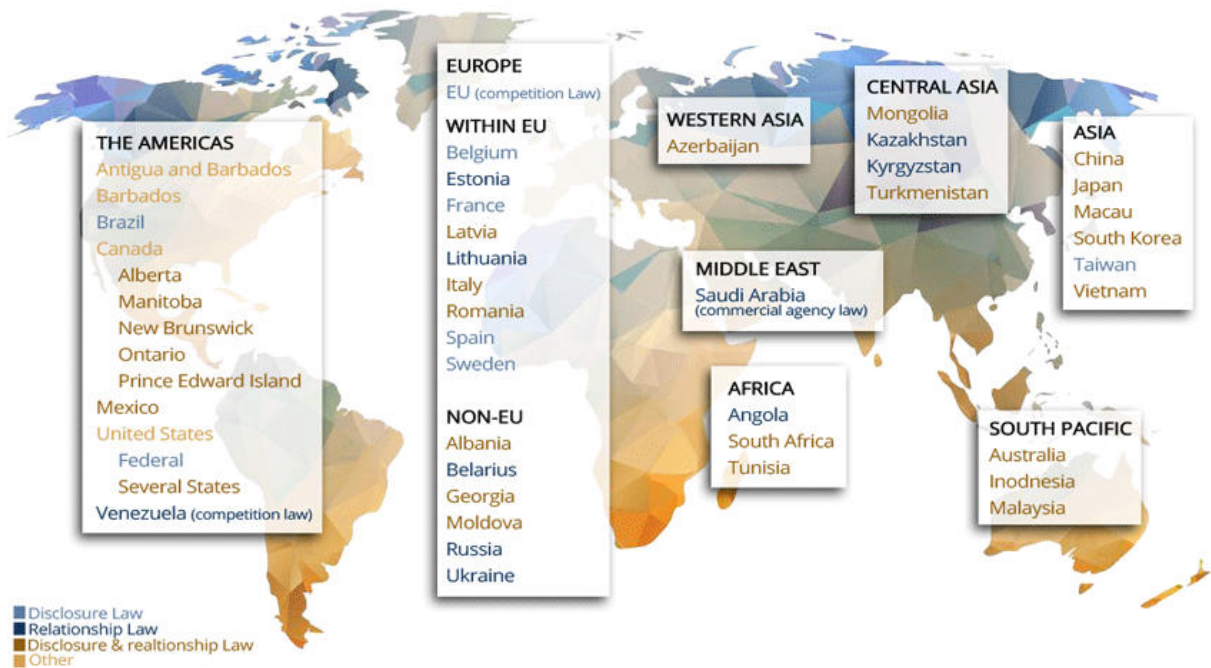




INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



UKRAINE



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

The Civil Code and Commercial Code are major laws that regulate the sale of franchises, but still to a very limited extent. Ukrainian law does not specifically regulate the offer and acceptance of franchises and, therefore, the general rules and regulations envisaged by in contractual obligations apply here. In terms of state oversight, there is no special governmental agency that regulates the offer and sale of franchises in Ukraine. For this reason, some self-regulated non-governmental associations try to fill this void.

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

In practice, direct franchise agreements under foreign law and with dispute resolutions outside Ukraine are concluded with foreign franchisors to avoid franchise laws and regulations in Ukraine. In case of dispute, however, the above-mentioned issue of registration may still be raised during the enforcement of a respective arbitration award in a Ukrainian court. It is still not clear whether the registration requirement is an imperative provision of Ukrainian law, and whether it should then be applicable to the franchise agreements with Ukrainian franchisees concluded under foreign law as well.

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

A potential franchisor is not obliged to comply with any special requirements before offering a franchise for sale. Theoretically, any business is entitled to offer its franchise if this business has certain defined intellectual property rights, such as title to a trademark, know-how, etc.

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 restrictions under Ukrainian law.

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?

Ukrainian law does not regulate pre-sale disclosures in cases of subfranchising. The relevant provisions may be regulated in the master franchise agreement.

Is there any obligation for continuing disclosure?

Ukrainian law obliges the franchisor to inform the franchisee on issues related to the rights transferred under the franchise agreement. The law does not define the scope of information to be presented; however, in practice this would mean the information which allows the franchisee to comprehensively use the transferred rights in their business activities.



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How do the relevant government agencies enforce the disclosure requirements?

There is no such government agency in Ukraine.

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 general principles of civil and commercial law apply to franchise agreements, unless there is a specific rule.

In terms of the offer, the key civil law requirement for the offer for franchise is that it must contain all the essential binding terms of the franchise agreement. The offer may be revoked only before or on receipt. Commercial laws envisage some additional procedures for concluding a written agreement between the business entities. In practice, those are not strictly followed but must be taken into account.

In the absence of government agencies that regulate the franchising industry, Ukraine has established several non-governmental organisations that try to fill the void on a self-regulatory and voluntary basis. Many franchises in Ukraine are sold via such nongovernmental organisations. They require their members (franchisors and franchisees) to comply with certain requirements in the offer and sale of franchises, thus ensuring the reliability of their members.

The Federation for Development of Franchising, Hospitality and Infrastructure (FDFHI) and the Ukrainian Franchising Association are the most active and influential of such organisations. FDFHI has developed the Code of Ethics of Franchising, which establishes detailed requirements for disclosure of information, franchise advertising and sale of franchise. However, this Code of Ethics does not constitute part of Ukrainian legislation and is therefore not mandatory for franchisors. The Ukrainian Franchising Association recommends the Model Franchise Disclosure Law as guidance with regard to information to be disclosed. Although Ukraine has not adopted this model law, it can be still referred to in the court as business customs.

Do other laws affect the franchise relationship?

Competition law has to be taken into consideration and may substantially affect the franchise relationship.

Specifically, Ukrainian competition law prohibits concerted actions which impose prices, or other hard-core restrictions such as limitation of production or technical development, territorial markets and supplier allocation, tying, etc. The franchise agreement requires careful consideration in this regard, and further relations between the franchisor and franchisee must be constantly controlled for compliance. When providing payments to a foreign franchisor in foreign currency, currency control laws must be under constant consideration.