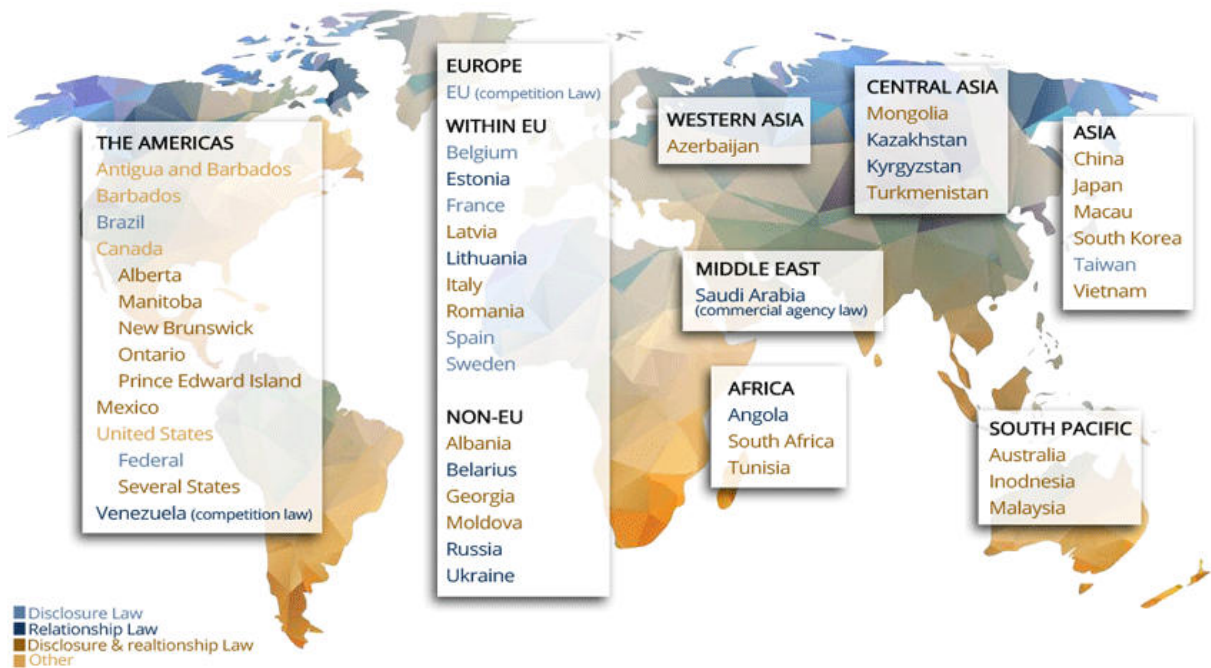




INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



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

The offer and sale of franchises are governed by the Commercial Law, Decree 35/2006/ND-CP, and Circular 09/2006/TT-BTM, which provides details for implementation of the Commercial Law on franchising activities. The Ministry of Industry and Trade (MOIT) shall register franchising activities from overseas into Vietnam. There is no requirement for registration of domestic franchising activities.

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

There are no exemptions and exclusions from any of these laws and regulations on franchise activities. Accordingly, any franchise activities must follow these laws and regulations.

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

Several requirements must be met before a franchisor may franchise in Vietnam. Namely, a prospective franchisee must be registered to engage in a line of business that is suitable with the goods or services contemplated by the franchise agreement.

A foreign franchisor must also have been in operation for at least one year prior to franchising in Vietnam. Similarly, a Vietnamese franchisee must operate a franchise for at least one year in Vietnam before it may sub-franchise. Moreover, the goods or services to be franchised must not be banned from trade under Vietnamese 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?

No.

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?

The sub-franchisor will have to make pre-sale disclosures to subfranchisees in a sub-franchising structure.

Further to the franchisor's obligation to provide certain information to the franchisees, a subfranchisor must also provide a sub-franchisee with written information, including: information about the franchisor; contents of the master franchise agreement between the franchisor and the subfranchisor; and options for dealing with the franchise agreement between the sub-franchisor and the sub-franchisee in case the master franchise agreement is terminated.



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Is there any obligation for continuing disclosure?

A franchisor is obligated to provide continuing disclosure to all franchisees upon any important change to the franchise system which affects the franchise business of a franchisee, and this notification shall be provided immediately.

Moreover, a franchisor is obligated to notify the MOIT of any changes of certain registered information either annually or ad hoc, depending on which information changes.

How do the relevant government agencies enforce the disclosure requirements?

This requirement is enforced through the prerequisite requirement of registration of the disclosure document with the MOIT. Without the registration of franchise activity which includes a registration of the disclosure document in a statutory form, a franchisor is not permitted to conduct franchising in Vietnam.

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 Civil Code of Vietnam provides principles for the establishment of a civil relationship, covering franchise relationships. These principles include, among others, the principle of free and voluntary undertaking and agreement, the principle of equality, the principle of goodwill and honesty, and the principle of respect for good morals and traditions. In addition, a breach of legal prohibitions or contravention of social morals, falsification, misunderstandings, deception, or threats will lead to the invalidation of the transaction under the civil laws of Vietnam.

Do other laws affect the franchise relationship?

Other laws generally do not affect the franchise relationship.

However, where the franchise agreement refers to other areas of the law, then such laws may affect the franchise relationship. Some areas which often appear in a franchise agreement include but are not limited to the following:

Intellectual property law

The franchisor is obligated to ensure the intellectual property rights for the franchised goods or services. A failure of the franchisor to do so can be a legal basis for the franchisee to unilaterally terminate the franchise agreement.

Commercial law

Under Vietnam's WTO commitments, there are currently some limitations for foreign franchisors on distribution services, including wholesale trade services and retailing services. These limitations may



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impact the franchise agreement where it refers to the acquisition by the franchisor of the franchised business, including retail shops.

Laws on real estate

Due to certain limitations on a foreign franchisor directly purchasing assets such as buildings for the sole purpose of buying, selling, or leasing assets on the land, the relevant terms and conditions between the franchisor and the Vietnamese franchisee may be affected.