



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Mexico: Franchise & Licensing

This country-specific Q&A provides an overview to tax laws and regulations that may occur in the Mexico.

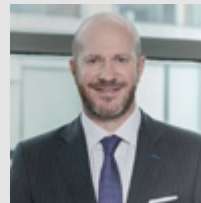
It will cover pre-offer, registration and other requirements; ongoing relationships; renewals and terminations; and general considerations.

This Q&A is part of the global guide to Franchise & Licensing. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/franchise-and-licensing/>

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The Legal 500

1. **Is there a legal definition of a franchise and, if so, what is it?**

Article 142 of the Industrial Property Law (IPL) provides a definition of a franchise stating that “a franchise exists whenever, in conjunction with a licence to use a trademark granted in writing, technical knowledge is transmitted or technical assistance is furnished in order to enable the franchisee to produce or sell goods or render services in a uniform manner and with the operating, commercial and administrative methods established by the holder of the trademark, with the goal of maintaining the quality, prestige and image of the products or services distinguished by the trademark”.

- 2. Are there any requirements that must be met prior to the offer and/or sale of a franchise? If so, please describe and include any potential consequences for failing to comply.**

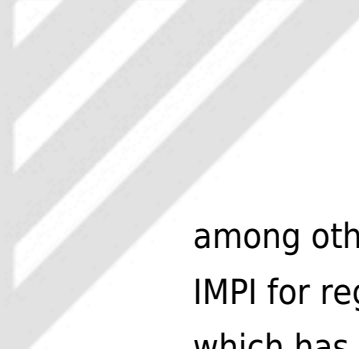
In terms of the IPL, it is required to provide the prospective franchisee with a disclosure document at least 30 business days prior to the execution of the relevant franchise agreement, which must contain the information listed in the response to question 4 below.

Failure of a franchisor to comply with this disclosure obligation on time, and after having received a written request by the prospective franchisee to receive such information, may result in the imposition of a fine by the Mexican Institute of Industrial Property, which is Mexico's Trademark Office (known as IMPI by its acronym in Spanish).

In the event that the information provided in the disclosure document lacks veracity, the franchisee may request, through a judicial process, the nullity of the franchise agreement, as well as to claim the payment for damages and losses caused for such lack of veracity.

- 3. Are there any registration requirements for franchisors and/or franchisees? If so, please describe them and include any potential consequences for failing to comply. Is there an obligation to update existing registrations? If so, please describe.**

It is required that, either the executed franchise agreement or a summarized version of it containing a list of the trademarks being licensed along with their registration information and international class,



among other relevant requisites of information, be submitted with the IMPI for registration purposes. An original counterpart of such agreement which has been translated into Spanish by a certified translator or a bilingual version in a double column format must be filed jointly with the registration application.

Certain information may be excluded from the summary of the franchise agreement to be filed before the IMPI, such as terms regarding royalties or payments, confidential information and technical information, among others.

Such filing may be carried out by either of the parties to the franchise agreement and there is no specified period of time to do so. The summary of the franchise agreement, additionally to the information stated above, must include the designation of individuals who are authorized by the parties to carry out such filing. The summary does not have to follow any specific form and the IMPI is not authorized to reject any filings.

Failure to comply with this registration obligation would result in the relevant agreement not being effective before third parties and, in consequence, a foreign franchisor being the holder of the trademark registrations, will not be able to prove the use of the same in Mexico through a registered franchisee or licensee, being therefore the trademarks exposed to a cancellation action by a third party, alleging lack of use of the same by its owner.

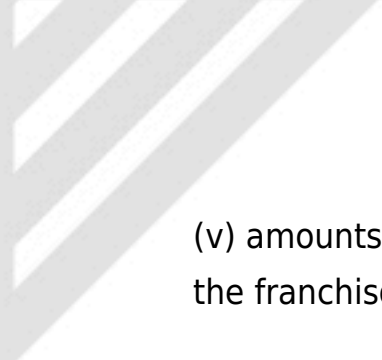
There is no legal obligation to register the disclosure document.

- 4. Are there any disclosure requirements (franchise specific or in general)? If so, please describe them (i.e. when and how must disclosure be made, is there a prescribed format, must it be in the local language, do they apply to sales to sub-franchisees) and include any potential consequences for failing to comply. Is there an obligation to update and/or repeat disclosure (for example in the event that the parties enter into an amendment to the franchise agreement or on renewal)?**

As stated above in question 2, the IPL and its Regulations establish that the franchisor must provide disclosure to the prospective franchisee at least 30 business days prior to the execution of the relevant agreement. It is not necessary, in terms of the IPL, to update the information contained in such disclosure document afterwards; it must simply be accurate and true at the time in which it is delivered to the prospective franchisee.

Article 65 of the Regulations of the IPL establishes that the disclosure document must contain certain technical, financial and economic information regarding the franchisor, such as:

- (i) name or corporate name, domicile and nationality of the franchisor;
- (ii) description of the franchise;
- (iii) seniority of the original main franchisor and, if applicable, of the master franchisee of the business subject matter of the franchise;
- (iv) intellectual property rights involved in the franchise;



(v) amounts and concepts of payments that the franchisee must make to the franchisor;

(vi) types of technical assistance and services that the franchisor must provide to the franchisee;

(vii) definition of the geographical area in which the business exploiting the franchise operates;

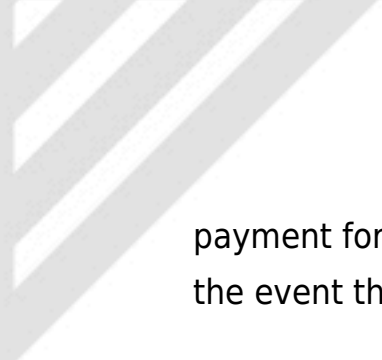
(viii) rights or restrictions to grant sub-franchises to third parties and, if applicable, the requisites the franchisee must fulfil to grant sub-franchises;

(ix) obligations of the franchisee with respect to the confidential information provided by the franchisor; and

(x) in general, the obligations and rights of the franchisee arising from the execution of the franchise agreement.

Though it is not required by the IPL or its Regulations, an original signed acknowledgement of receipt must be obtained from the prospective franchisee indicating the receipt date of the disclosure document. Once this document has been delivered, there is no obligation for ongoing disclosure in terms of the IPL.

As stated in question 1 above, failure to comply with this disclosure obligation on time could have the imposition of a fine by the IMPI as a result, as well as the nullity of the franchise agreement and an award



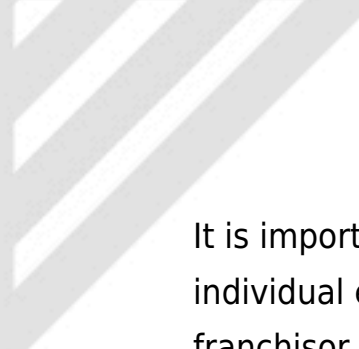
payment for damages and losses by the competent judicial authority in the event that the information lacks veracity.

The disclosure document may be prepared in Spanish language, or in any other language which is familiar to the prospective franchisee, and it is not required to follow any specific form; it must only include and reflect all the information required by law, as it has been explained above.

Furthermore, regarding a sub-franchising model, the IPL makes no distinction in its applicability to master franchises or individual or unit franchises. It is simply required for the 'grantor of a franchise' to provide disclosure to a prospective franchisee, which includes a master franchisee acting as franchisor. Even if the franchisor is a party to the sub-franchise agreement, it is the master franchisee who must provide the disclosure since it is the one granting the franchise. In such a case, the disclosure document must contain the same level of information applicable to any franchise and include a description of the relationship between the franchisor and the master franchisee.

5. If the franchisee intends to use a special purpose vehicle (SPV) to operate each franchised outlet, is it sufficient to make disclosure to the SPVs' parent company or must disclosure be made to each individual SPV franchisee?

According to article 142 of the IPL, the franchisor must provide the relevant disclosure to whomever it intends to grant the franchise. This means that disclosure shall be made to each company or individual who is willing to enter into a franchise agreement, each time a franchise agreement is entered into.



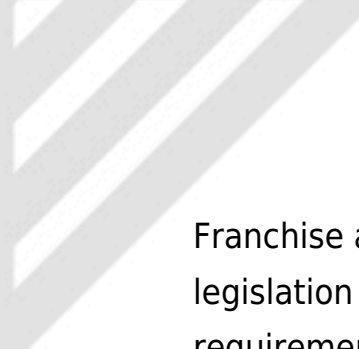
It is important to clarify that, even though the same company or individual enters into multiple franchise agreement with the same franchisor, disclosure shall be made to the franchisee for each franchise agreement which is executed. Therefore, it will not be enough to make the relevant disclosure to the parent company of the SPV.

6. **What actions can a franchisee take in the event of mis-selling by the franchisor? Would these still be available if there was a disclaimer in the franchise agreement, disclosure document or sales material?**

If there was a misrepresentation by the franchisor in the franchise agreement, it could be considered as a defect (vice) in the consent granted by the franchisee based on error (false appreciation of reality) which, when such error is the main motive influencing the franchisee's will to enter into the agreement, it may result in such agreement being void.

Therefore, it is suggested to include a disclaimer in the disclosure document establishing that the franchisor does not guarantee any results that would derive from the operation of the franchised business, and in such case, the franchisee would not have any actions available against the franchisor. Same type of disclaimer should also be incorporated into the franchise agreement.

7. **Would it be legal to issue a franchise agreement on a non-negotiable, "take it or leave it" basis?**




Franchise agreements are not regulated under consumer protection legislation as adhesive agreements, which must comply with certain requirements, formalities and approvals by the relevant authorities in order to be valid. Therefore, legally speaking, it is possible to issue a franchise agreement on a non-negotiable basis. This decision and its possible consequences are more of a business nature.

8. Are there any franchise specific laws governing the ongoing relationship between franchisor and franchisee? If so, please describe them, including any terms that are required to be included within the franchise agreement.

The relationship between the franchisor and the franchisee will mainly be governed by the provisions of the relevant franchise agreement, while franchise agreements are governed by the IPL and the general rules of contracts contained in the Commercial Code and the general principles applicable to agreements, including the contractual freedom, which are applicable to the ongoing relationship between the parties as foreseen in the Federal Civil Code.

The Federal Consumer Protection Law may also be applicable to franchise agreements in certain manner, since it protects consumers and regulates the activities of providers selling goods and rendering services to the consumers, as explained in more detail in response to question 12. Its provisions include certain restrictions regarding the use of the consumers' information, advertisements, promotions, offers, services, credit transactions, real estate transactions, warranties and adhesion contracts, among others.

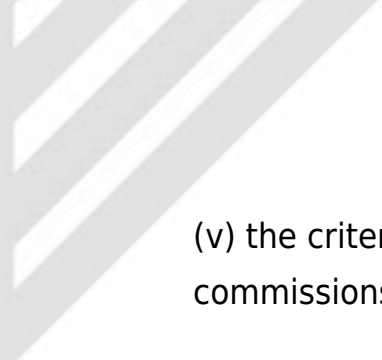


The Federal Economic Competition could also result applicable to the relationship between the franchisee and the franchisor regarding some restrictions on the general principles of contractual freedom derived from monopolistic practices under such law, as further described in response to question 10.

Finally, another applicable legal statute is the Federal Law for Personal Data Protection Possessed by Private Persons, which protects personal data held by private persons in order to regulate the treatment of such data and ensure the right to privacy, and which content is further described in response to question 31.

According to article 142 Bis of the IPL, franchise agreements must be in writing and include the following minimum provisions:

- (i) the geographical zone in which the franchisee shall mainly perform the activities that are the subject matter of the agreement;
- (ii) the location, minimum size and investment characteristics of infrastructure relating to the premises in which the franchisee shall carry out the activities deriving from the agreement;
- (iii) if applicable, the policies of inventories, marketing and advertising, as well as the provisions relating to the merchandise supply and the engagement with suppliers;
- (iv) the policies, procedures and terms for any reimbursement, financing and other considerations in charge of the parties;



(v) the criteria and methods applicable to determining the franchisee's commissions and profit margins;

(vi) the characteristics of the technical and operational training of the franchisee's personnel, as well as the method or manner in which the franchisor shall provide technical assistance to the franchisee;

(vii) the criteria, methods and procedures of supervision, information, evaluation and grading of the performance and quality of the services under the respective responsibility of the franchisor and the franchisee;

(viii) the terms and conditions of any sub-franchise, in the event it is agreed by the parties;

(ix) termination causes under the franchise agreement;

(x) events under which the parties may review and, if this happens, mutually agree to amend the terms or conditions of the franchise agreement;

(xi) if applicable, provisions regarding the franchisee's obligation to sell its assets to the franchisor or the franchisor's designated representative, upon the termination of the franchise agreement; and

(xii) if applicable, provisions regarding the franchisee's obligation to sell or transfer the shares of its company to the franchisor or to make the franchisor a partner of such company.

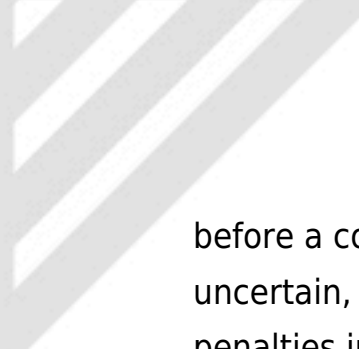
9. **Are there any aspects of competition law that apply to the franchise transaction (i.e. is it permissible to prohibit online sales, insist on exclusive supply or fix retail prices)? If applicable, provide an overview of the relevant competition laws.**

The Federal Economic Competition Law (FECL) is the law which is applicable to competition matters. According to the provisions of such law, if agreements between economic agents tend to diminish, harm or impede the production, processing, distribution or commercialization of goods and services, it would be considered as monopolistic practices. In this regard, an obligation imposed by a franchisor to a franchisee to sell products and determined prices may be considered as a monopolistic practice depending on the substantial power that the economic agents have in the relevant market; however, in order to avoid risks derived from such law, it is recommended to include a provision in the corresponding franchise agreement specifying that the franchisor will provide a list of suggested prices which will not constitute an obligation but a recommendation.

Violations of the provisions of the FECL may result in the nullity of the acts or agreements which cause such violations, as well as the imposition of fines and payments of damages and losses.

10. **Are in-term and post-term non-compete and non-solicitation clauses enforceable?**

Although it is possible for in-term and post-termination non-compete obligations to be enforceable, it must be noted that such enforceability



before a competent court may be time consuming, complicated and uncertain, which is why it is recommended to include conventional penalties in the relevant franchise agreement, which may be triggered by certain breaches of non-compete obligations by the franchisee.

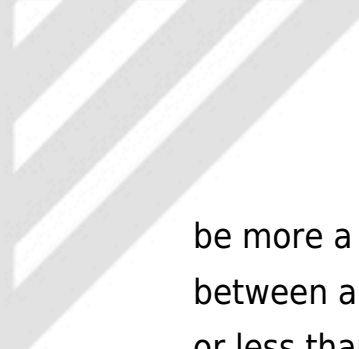
A common problem when trying to enforce a non-compete obligation in charge of an individual is that it may be considered to be against the freedom of activity as foreseen in the Political Constitution of the United Mexican States. Therefore, it is advisable to limit the non-compete obligation to a specific period of time, activity and geographical zone, in order to provide elements that could increase the possibility to enforce it.

Non-solicitation clauses are difficult to enforce, and their validity could be questionable based on the above-indicated constitutional right of freedom of activity.

11. Are there any consumer protection laws that are relevant to franchising? Are there any circumstances in which franchisees would be treated as consumers?

In terms of the Federal Consumer Protection Law (FCPL), a consumer is considered to be the “the natural person or entity that acquires or enjoys goods, products or services as the final beneficiary of the same”, while a supplier is considered to be “the natural person or entity that regularly offers, distributes, sells, leases or grants the use of goods, products, services or a combination of those”.

According to the Mexican legislation, a franchisee may be considered to



be more a supplier than a consumer, except for when a transaction between a franchisee and a third-party supplier involves a claim equal to or less than 367,119.59 pesos, in which case the franchisee would be considered to be a consumer under the FCPL, and therefore may benefit from its protection.

Additionally, if the franchisee is an entity, it may be considered to be a consumer if it is considered to be a micro-entity in terms of the Law for the Development of Competitiveness of Micro, Small and Medium Entities and the Federal Law for the Promotion of the Micro-Industry and Handicraft Activity.

12. Is there an obligation (express or implied) to deal in good faith in franchise relationships?

In terms of the Federal Civil Code (FCC), a party's consent in an agreement will not be considered valid in such party was in "error" at the time of granting the consent. When a legal or factual error exists with respect to the party's main motive for entering into an agreement, such error may nullify the agreement. The FCC defines bad faith as "the dissimulation of an error by a party to an agreement that was known by the said party".

Therefore, it is vital for both parties to deal with each other in good faith while executing the agreement and during the term thereof, in order for such agreement to be valid.


13. Are there any employment or labour law considerations that are relevant to the franchise relationship? Is there a risk that the staff of the franchisee could be deemed to be the employees of the franchisor? What steps can be taken to mitigate this risk?

There are no applicable Mexican laws which contain provisions related to the consideration of the existence of labour relationships between a franchisor and a franchisee or between the employees thereof.

Notwithstanding the above, when entering into a franchise agreement, it is important to bear in mind that, under Mexican law, agreements are not governed by how an agreement is named but rather by what its contents include, which is why if a franchisor incorporates or accepts provisions that could be interpreted as constitutive of labour relations, the Mexican labour courts would be able to determine labour obligations between the parties, being authorized to penalize the franchisor for non-compliance with such obligations.

The most significant element which may be used to consider the existence of a labour relationship is the subordination between the parties, but additional elements would also have to be present, such as (i) periodic payments to be made by the franchisor to the franchisee; (ii) material evidence of the 'instructions' periodically provided by the franchisor to its franchisee; (iii) the franchisee must be an individual and not an entity; and (iv) the franchisee needs to have material evidence of its subordinated relationship with the franchisor and its being part of the same company of the franchisor, such as credentials and memoranda.

In order to reduce the risk of the franchisor being considered an employer of the franchisee, it is recommended to require that the franchisee



creates a Mexican company to enter into the relevant franchise agreement, and to include a provision titled “absence of labour relations and non-representation” within the franchise agreement, whereby both parties state that they enter into such agreement as independent contractors and establish their independence and distinction from one another and their respective employees.

14. Is there a risk that a franchisee could be deemed to be the commercial agent of the franchisor? What steps can be taken to mitigate this risk?

In terms of the IPL, if an agreement complies with the elements which make up the definition of a franchise (as explained in the response to question 1 above), such agreement will be governed by the provisions of the IPL and by the general rules and principles applicable to agreements as contained in the Commercial Code and the FCC. There is no specific agency law that would result applicable to a franchising relationship.

15. Are there any laws and regulations that affect the nature and payment of royalties to a foreign franchisor and/or how much interest can be charged?

In principle, there are no laws or regulations which would affect the nature or payment of royalties to a foreign franchisor. However, as further explained in the response to question 18 below, according to the Mexican Monetary Law, the payment of royalties may be agreed in any currency, in the understanding that if such payment is made within Mexican territory, the debtor (franchisee) may decide to make such payment in

Mexican Pesos.

Regarding the interests that may be charged, these will be paid as a default for late payments, which interest rate will be in the amount agreed upon by the parties in accordance to the freedom principle. However, it is important to set such amount in a non-excessive market value to avoid that such amount be considered to fall into usury, which is an excessive interest which is sanctioned by nullity or equal reduction in the payments, at the affected party's choice. If no amount is agreed upon by the parties, the legal interest amount will be automatically set to 6% per annum.

16. **Is it possible to impose contractual penalties on franchisees for breaches of restrictive covenants etc.? If so, what requirements must be met in order for such penalties to be enforceable?**

If any of the parties breaches a franchise agreement or its obligations thereunder, the injured party may file a civil claim which may seek either specific performance or the rescission of the franchise agreement, being able to claim for the payment of damages and losses.

Additionally, the parties may insert a provision in the franchise agreement which establishes the availability of other remedies. It is not uncommon to include different types of contractual penalties, such as a conventional penalty in lieu of damages payable by the franchisee in case (i) it fails to cease the use of the intellectual property rights of the franchisor after the termination of the franchise agreement, (ii) it registers or attempts to register trademarks which are identical or confusingly similar to those licensed through the franchise agreement, or

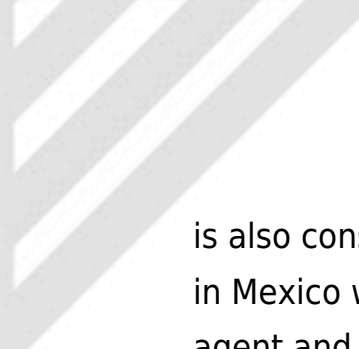
(iii) it breaches the restrictions of use of the confidential information of the franchisor, among other kinds of breaches. The conventional penalty may not be set in an amount which is greater than the value of the obligation being violated; otherwise, the judicial authority may reduce its amount proportionally or determine its nullity.

17. What tax considerations are relevant to franchisors and franchisees? Are franchise royalties subject to withholding tax?

In Mexico, there are different types of taxes which are collected. Federal taxes, which are collected by the Tax Administration Service, and state and local taxes, which are collected by the treasuries of the states and municipal governments.

In terms of article 1 of the Income Tax Law (ITL), individuals and entities must pay income tax in Mexico on the following income: (i) Mexican residents, with respect to all their income, without regard to the location of its source; (ii) non-residents with a permanent establishment in Mexico, but only with respect to the income attributable to such permanent establishment; and (iii) non-residents, with respect to income coming from a source located within Mexico, when they do not have a permanent establishment within Mexico or when, having a permanent establishment, the income is not attributable to such an establishment.

In this regard, article 2 of the ITL establishes that a foreigner who performs activities in Mexico by means of an individual or entity is to be considered as having a permanent establishment in Mexico with respect to the activities performed by such individual or entity if they were to execute agreements in the name of or on behalf of the foreign resident. It



is also considered that a foreign resident has a permanent establishment in Mexico when it carries out activities in Mexico through an independent agent and such agent performs such acts outside its normal activities.

Foreign franchisors who do not have a permanent establishment in Mexico for tax purposes, but who obtain an income from a source located in Mexico, are usually taxed on income, which is paid in Mexico through withholding made by the franchisee.

The ITL also states that the benefits of international tax conventions apply when the taxpayer proves residency in the relevant foreign country, and it has been determined that the application of such conventions govern over the federal tax laws, which means that the franchisor is entitled to be submitted to taxation under the terms of an international convention or treaty instead of the provisions of the ITL.

Usually, the withholding rates contemplated in international tax conventions to which Mexico is a party are lower than those established in the ITL, but in order for the franchisor to obtain tax credits from its local tax authorities, and to benefit from international treaties for the avoidance of double taxation, it must obtain certain documentation from the relevant franchisee, including evidence of payment by the franchisee to the Mexican tax authorities of the tax withheld from the foreign franchisor.

Usually, the international tax treaties to which Mexico is a party establish different payment concepts as royalties, technical assistance and profits with different withholding rates, which is why it is recommended to carry out a specific tax analysis of such payment concepts which may derive from a franchise agreement.

18. Does a franchisee have a right to request a renewal on expiration of the initial term? In what circumstances can a franchisor refuse to renew a franchise agreement? If the franchise agreement is not renewed or it if it terminates or expires, is the franchisee entitled to compensation? If so, under what circumstances and how is the compensation payment calculated?

In order to renew a franchise agreement, an amendment agreement to the franchise agreement is usually executed, modifying its duration and any other provisions which would need to be modified for such purposes.

A new franchise agreement may also be entered into for this effect, executed under the terms of the franchise agreement currently being used by the franchisor at such time or under different terms and conditions, if agreed by both parties. This option would result in an obligation for the franchisor to comply with the disclosure obligation again.

If the original franchise agreement does not contain any renewal provisions or rights, upon the expiration or termination thereof, the franchisor is free to refuse the renewal of such agreement.

The franchisee would not be usually entitled to compensation in the event that the agreement was not renewed once it was terminated or expires, but if the renewal right is conferred to the franchisee in terms of the relevant franchise agreement, and the franchisor denies such renewal, then the franchisee will be entitled to a compensation for damages and

losses derived from a breach of the franchise agreement.

19. **Are there any mandatory termination rights which may override any contractual termination rights? Is there a minimum notice period that the parties must adhere to?**

If the franchise agreement does not specify circumstances under which the agreement may be terminated in advance, the provisions of the FCC will result applicable.

The FCC establishes that if a party breaches its obligations under an agreement while the other party is in compliance with its own obligations, the non-defaulting party is entitled to request from the competent courts the rescission of the agreement based on the breach by the defaulting party, as well as the payment of damages and losses.

Furthermore, if due to force majeure or acts of God, the compliance with the contractual obligations is made impossible, any of the parties may request the judicial authority to declare the termination of the agreement without fault and responsibility for either party.

Finally, in case the agreement was executed for an undetermined period of time, any of the parties may terminate it by means of a notice to the other party. Even though there is no specific term established for the delivery of such notice, it is common practice in Mexico to deliver it at least 30 calendar days prior to the effective date of the termination.

20. **Are there any intangible assets in the franchisee's business which the franchisee can claim ownership of on expiry or termination, e.g. customer data, local goodwill, etc.**

In Mexico, the franchisee does not have any right to claim ownership or any rights to be indemnified for any goodwill generated by the exploitation of the trademarks or any other intangible assets used by the franchisee during the term of the franchise agreement and the operation of the franchised business, once the franchise agreement has been terminated.

21. **Is there a national franchising association? Is membership required? If not, is membership commercially advisable? What are the additional obligations of the national franchising association?**

The Mexican Franchise Association (AMF) is a private entity which main purpose is the promotion and development of franchising in Mexico. It is composed mainly by Mexican franchisors and franchisees, but the most relevant international franchise systems are not members of the AMF.

There is no legal obligation to be affiliated with the AMF and affiliation therewith does not necessarily offer any relevant benefits.

22. **Are foreign franchisors treated differently to domestic franchisors?**

Domestic and foreign franchisors are not treated differently in Mexico



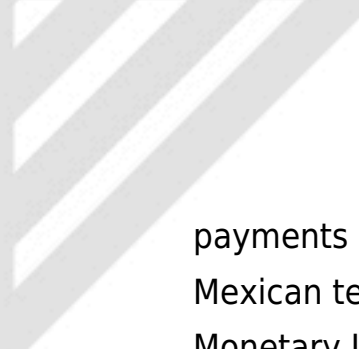
from a legal and practical point of view; they are equally protected and restricted under Mexican legislation. However, the lack of knowledge of the applicable domestic laws, as well as commercial and operational customs, or the lack of competent advice, could affect the entrance of a foreign franchisor into the Mexican market.

Certain activities are reserved for Mexican entities without foreign investment in their corporate capital, in accordance with the Political Constitution of the United Mexican States and the Foreign Investment Law and its Regulations, but in general, Mexico's economy is open and the common activities in which franchises participate (such as food and restaurant industry, general retail, hospitality services, automotive industry and health-care services) are not regulated and allow participation from foreign investors without limitation. It is important to note that under the Foreign Investment Law and its Regulations, any Mexican entity with foreign investment must be recorded with the National Registry of Foreign Investments and renew such recording annually.

Foreign entities have the right to grant any type of franchise and related rights, such as master franchises, development rights, individual unit and multi-unit franchises, among others. They are also entitled to submit trademark applications to protect their industrial property rights in Mexico.

23. **Are there any requirements for payments in connection with the franchise agreement to be made in the local currency?**

The parties to a franchise agreement may freely agree to set and make



payments in any currency, but if the payment is to be made within Mexican territory pursuant to such agreement, then in terms of the Monetary Law, the party making the corresponding payment is entitled to decide to do it in the agreed currency (e.g. US dollars) or in Mexican currency (pesos) according to the exchange rate published by Mexico's Central Bank in the Official Gazette of the Federation on the date of payment.

If the payments are to be made abroad pursuant to the relevant agreement, the party making the payment shall be obliged to do so in the agreed currency (i.e. US dollars).

24. **Must the franchise agreement be governed by local law?**

Any franchise agreement which is effective within the Mexican territory must comply with the applicable provisions of the IPL, regardless of the nationality of the parties, and it is applicable to the sale and offer of franchises to entities or individuals in Mexico.

Notwithstanding the above, the parties to a franchise agreement can agree to have Mexican or foreign laws to govern their relation under said agreement.

25. **What dispute resolution procedures are available to franchisors and franchisees? Are there any advantages to out of court procedures such as arbitration, in particular if the franchise**

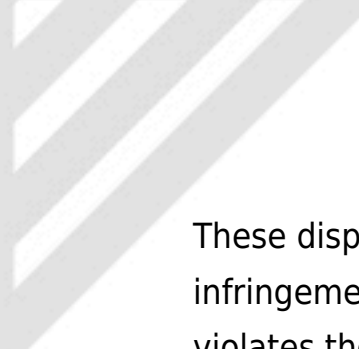
agreement is subject to a foreign governing law?

If a dispute were to arise under a franchise agreement which is considered to be commercial or mercantile, and if the parties decide to submit themselves to the applicable laws and courts in Mexico, an ordinary commercial or mercantile procedure may be initiated. In this case, the final resolution issued by the corresponding judge may be appealed before the local court of appeals, which final resolution may be challenged before a federal court through a constitutional procedure known as amparo if during the process specific constitutional rights were violated or if the resolution is against the principles contained in the Political Constitution of the United Mexican States.

An alternative mechanism for dispute resolution is arbitration, which may be subject to Mexican or foreign law. An award issued under the laws of a country which is part of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards shall be enforced in Mexico in the understanding that it is not against public order laws in Mexico, since Mexico is a party to the aforementioned convention.

Arbitration could be convenient since it allows the resolution of a problem to be carried out by one or more arbitrators with the required expertise and knowledge in franchising, this being a subject not necessarily known or by the courts.

A possible disadvantage of arbitration is that the costs and fees may be higher than those generated in a jurisdictional procedure, depending on the agency which administers the arbitration, its rules and the arbitrators themselves.



These dispute resolution options are independent from any administrative infringement action initiated by a franchisor against any person who violates the provisions of the IPL and its Regulations.

26. **Does local law allow class actions by multiple franchisees?**

No, class actions in Mexico are only applicable in certain specific cases, such as consumer protection procedures and amparo suits.

27. **Must the franchise agreement and disclosure documents be in the local language?**

Pursuant to the IPL and its Regulations, neither the disclosure document nor the franchise agreement is obliged to be in any particular language. However, it is important to mention that the summarized version of a franchise agreement to be used for registration purposes must be in Spanish language in order to be able to be recorded with the IMPI. If the franchise agreement was executed in another language, a certified translation into Spanish must be prepared by an official court-approved translator.

If the disclosure document is delivered in a language different from Spanish, it is recommended that the franchisee signs an acknowledgment that it understands such language and that it has understood the information contained in such document.

28. **Is it possible to sign the franchise agreement using an electronic signature (rather than a wet ink signature)?**

No, the franchise agreement must be signed physically.

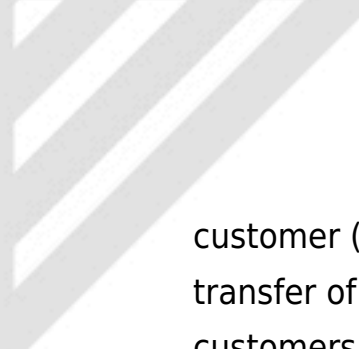
29. **Can franchise agreements be stored electronically and the paper version be destroyed?**

No, it is important to keep the original version of all executed franchise agreements and related documents.

30. **Please provide a brief overview of current legal developments in your country that are likely to have an impact on franchising in your country.**

The Federal Law for Personal Data Protection Possessed by Private Persons (“FLPDPPP”), which was issued on July 5, 2010, foresees individuals’ rights to protect their personal information, which collection, treatment or transfer must be carried out with the prior consent of its owner, with a few established exceptions. The FLPDPPP may have a direct impact in the operation and structure of companies involved in franchising that process personal data of their customers, since in most cases, franchisees collect and process personal data from their customers and then transfer such data to the franchisors for marketing, analysis and other purposes.

Therefore, it is important for franchisors to verify that their Mexican franchisees are in compliance with the FLPDPPP and its Regulations, and that they include a provision in a privacy notice to be signed by the



customer (granting his/her prior consent) which sets forth the future transfer of his/her data to the franchisor. Failure to do this may allow customers to initiate a legal action against the franchisee, which may result in the imposition of fines, potentially affecting the franchisee's operations and the goodwill of the trademark and the franchised business.

Furthermore, Mexico's Anti-Corruption Law in Public Contracting Procedures, which was published on 11 June 2012, sets forth the sanctions and liabilities applicable to private entities or individuals related to their participation in a federal public contracting procedure, who carry out activities or offer or promise money or other bribes to authorities in order to obtain advantages or benefits, or otherwise alter the relevant award derived from the tender or bid. This liability is extended to foreign entities or individuals who participate in these procedures, as well as their shareholders, partners, associates, representatives, attorneys-in-fact, principals, subcontractors, employees, commissioners, agents, or any other person who intervenes in federal public tenders or bids on behalf of such bidders or contractors. Also, the Anti-Money Laundering Law mainly foresees the establishment of rules and procedures that detect and prevent activities or transactions that involve illegal proceedings or terrorism financing.

The Anti-Corruption Law in Public Contracting Procedures and the Anti-Money Laundering Law are taking a stronger presence in Mexico, since the current administration in Mexico is very serious and thorough in making sure that these two last laws are fully complied with. Therefore, it is important to include in franchise agreements a provision contemplating the obligation to comply with these laws, which was not a usual provision in agreements until recently.

