

MEXICO ADOPTS MAJOR REVISIONS TO FRANCHISE LAW EFFECTIVE TODAY

An amendment to the Mexican Franchise Law mandating requirements for franchise agreements, and providing new standards for pre-sale franchise disclosure, became effective January 26, 2006. The new law is an amended version of legislation that had been pending in the Mexican Congress since 2005. Franchisors will find that, although many of their concerns were alleviated in the final version of the legislation, significant questions about the interpretation of the law remain. The amendment also provides an expanded definition of "franchise."

Disclosure Standards

With the adoption of the new law, franchisors are now required to provide a pre-sale disclosure document at least 30 days before a franchise agreement may be executed. No pre-sale disclosure timetable was included in the pre-existing law. Franchisees who receive disclosures which are inaccurate may sue their franchisor for damages within one year after they sign the franchise agreement, and they also may void their franchise agreements before or after the right to obtain damages expires. The law authorizes the Mexican Institute of Industrial Property ("IMPI") to take administrative action against franchisors who violate the law.

Franchise Agreement Requirements

Most of the new law is devoted to issues which must be addressed in franchise agreements. Because of the unique nature of these standards, most franchisors will need to change their existing forms of Mexican franchise agreements. Franchise agreements must be written, and must contain information about:

1. The geographical zone within which the franchisee may operate;
2. The location, minimum size and investment characteristics relating to the infrastructure and franchisee premises which the franchisor requires under the franchise agreement;
3. The franchisor's policies relating to inventory, marketing, advertising which are related to products which may be purchased and suppliers which may be used by the franchisee;
4. The franchisor's policies and procedures relating to reimbursement of monies paid by the franchisee, financing and other economic terms of the relationship;
5. The criteria and methods applicable to determining a franchisee's profit and/or commission margins;
6. Characteristics of the technical and operational training required of the franchisee's personnel, and a description of how the franchisor will provide technical assistance to franchisees;
7. A description of the criteria, methods and procedures which will be employed to supervise and evaluate the quality of services that are to be provided by the franchisee and the franchisor;

8. A statement of whether the franchisee may subfranchise and, if so, the terms and conditions of those rights;
9. Causes for termination of the franchise agreement; and
10. Circumstances under which the parties may mutually agree to modify the franchise agreement.

Prohibited Practices

New restrictions on franchisors' conduct include:

A prohibition on forcing a franchisee to sell its assets to the franchisor or its designee upon the termination of the franchise agreement, or to make the franchisor a partner of the franchisee unless the franchise agreement gives the franchisor those rights; and

A prohibition on franchisors being involved in the organization and operation of their franchisees, except to the extent that such involvement is strictly necessary to guarantee compliance with image standards of the franchise.

Franchisees are prohibited from disclosing the franchisor's confidential information during and after the term of the franchise agreement.

Neither a franchisor nor a franchisee may unilaterally terminate or rescind a franchise agreement in the absence of an indefinite term for the agreement, or in the absence of a just cause. Failure to follow the franchise agreement's standards for termination is a violation of the law.

How will the law be interpreted?

Besides ambiguous requirements for franchise agreements, the legislation contains a troubling stated purpose: "To establish legal certainty and conditions among the parties in the operation of franchises, as well as to **guarantee non-discriminatory treatment for all franchisees of the same franchisor.**" We expect that an explanation of some of these ambiguities, as well as an expanded list of mandatory pre-sale disclosures will be addressed in regulations which IMPI will be drafting. Until the final regulations are issued, lawyers from our franchise practice group and Mexico City office will be in contact with IMPI to obtain whatever guidance is available.

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