

Mexico: Franchising in Mexico

The legal framework existing in Mexico prior to year 1991 obstructed the development of franchises. However, as of the promulgation of the Law on Industrial Property in 1991, in which a brief and special treatment is given to the franchises, franchise operations in Mexico have increased in a considerable manner and continue to do so now.

The franchise business survived the economic crisis of Mexico in December 1994 and was able to overcome a slowdown resulting from different factors, mainly related to the lack of inversions during the mid 1990s. Nowadays, Mexico is considered within the 10 largest franchise systems in the world with over 500 franchises operating in Mexico, 40% of them foreign and 60% Mexican, and an estimate of 19,000 franchise outlets generating sales of approximately \$4 billion dollars per year. In addition to scores of strong US franchises such as McDonald's, Pizza Hut, Dunkin Donuts, Kentucky Fried Chicken, Blockbuster and Holiday Inn, the competition now includes important firms and companies from Canada, Europe and Latin America.

The current legal framework of the franchise system in Mexico is limited to article 142 of the Industrial Property Law (IPL) and articles 64 and 65 of the Regulations of the Industrial Property Law (RIPL). The regime of formalities for franchises is practically the same as licence agreements, except for article 65 of the RIPL which establishes 10 specific obligations for the franchisor with respect to relevant technical, economic and financial information that must be provided to the franchisees prior to the execution of the franchise agreements.

The existence of only three articles in Mexican laws for regulating the complex world of franchises has caused different impacts on the economic and commercial sectors, as the franchise system has to deal with a considerable number of laws and regulations in addition to those regulating commercial contracts or intellectual property rights. On one hand, part of these sectors are of the opinion that three articles for regulating the franchise system are uncertain and not enough for the needs of the franchises; meanwhile, others believe that it is better to have few and clear-enough provisions and avoid dealing with dozens of articles that may become cumbersome.

Among other organizations concerned in the lack of provisions in Mexican laws with respect to franchises, there is the Mexican Franchise Association (MFA) which has voted for the need to have a law with more precise terms and rules for the operation of the franchises and the regulation of the relationship between the franchisor and the franchisee. In the efforts for having a new legislation, the MFA has submitted a proposed bill to the Mexican Congress in order to implement to the existing legal framework a better and more certain treatment for the franchise figure. Basically, the

proposals attempt to define more clearly the responsibilities and rights of the franchisor and, likewise, they pretend to have a more defined scheme for the contents of franchise agreements.

On the other hand, there are those who think that the "Legislation and Regulations Relevant to Franchising" of the International Institute for the Unification of Private Law (UNIDROIT), of which Mexico is member, can be applied to all formalities of the franchise agreements; and, with respect to the merits of the agreements, the local and specific laws or regulations must be applied.

Both opinions might be correct, however, further to the concern on formalities of franchise agreements, it would be more important to pay special attention to the need of a regulation related to the "operation" of the franchises in Mexico, wherein all other aspects, such as the commercial, economic and financial, are considered.

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