
THE FRANCHISE LAW REVIEW

SECOND EDITION

EDITOR
MARK ABELL

LAW BUSINESS RESEARCH

THE FRANCHISE LAW REVIEW

The Franchise Law Review
Reproduced with permission from Law Business Research Ltd.

This article was first published in The Franchise Law Review - Edition 2
(published in January 2015 – editor Mark Abell).

For further information please email
Nick.Barette@lbresearch.com

THE FRANCHISE LAW REVIEW

Second Edition

Editor
MARK ABELL

LAW BUSINESS RESEARCH LTD

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE AVIATION LAW REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

THE INTERNATIONAL INSOLVENCY REVIEW

THE OIL AND GAS LAW REVIEW

THE FRANCHISE LAW REVIEW

THE PRODUCT REGULATION AND LIABILITY REVIEW

THE SHIPPING LAW REVIEW

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW

PUBLISHER
Gideon Robertson

BUSINESS DEVELOPMENT MANAGER
Nick Barette

SENIOR ACCOUNT MANAGERS
Katherine Jablonowska, Thomas Lee

ACCOUNT MANAGER
Felicity Bown

PUBLISHING COORDINATOR
Lucy Brewer

MARKETING ASSISTANT
Dominique Destrée

EDITORIAL ASSISTANT
Shani Bans

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITORS
Robbie Kelly, Joanne Morley

SUBEDITOR
Jonathan Allen

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2015 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients.

Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of February 2015, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-909830-32-5

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADVOCARE LAW OFFICE

ADVOKATFIRMAN NOVA

ARAMIS

BAKER & MCKENZIE

BEAUCHAMPS SOLICITORS

BIRD & BIRD

DANNEMANN SIEMSEN ADVOGADOS

THE DWYER GROUP

GÓMEZ-ACEBO & POMBO ABOGADOS SLP

GONZALEZ CALVILLO SC

GOWLING LAFLEUR HENDERSON LLP

GREENBERG TRAURIG LLP

HOGAN LOVELLS (SOUTH AFRICA)

K&K ADVOCATES

LADM LIESEGANG AYMANS DECKER MITTELSTAEDT & PARTNER

MST LAWYERS

NIXON PEABODY LLP

NOBLES

PLESNER LAW FIRM

PORZIO, RÍOS & ASOCIADOS

SARAH CHARLES – PRACTICAL STRATEGY

SMITH & HENDERSON

STEWART GERMANN LAW OFFICE

STRELIA

SUBIDO PAGENTE CERTEZA MENDOZA & BINAY (SPCMB) LAW FIRM

TAY & PARTNERS

CONTENTS

Editor's Prefacevii
<i>Mark Abell</i>	
Chapter 1	WHAT IS FRANCHISING?.....1
<i>Mark Abell</i>	
Chapter 2	FRANCHISING AS PART OF AN INTERNATIONAL MULTICHANNEL STRATEGY.....3
<i>Mark Abell</i>	
Chapter 3	THE REGULATION OF FRANCHISING AROUND THE WORLD.....8
<i>Mark Abell</i>	
Chapter 4	COMMERCIAL PLANNING.....29
<i>Sarah Charles</i>	
Chapter 5	SUSTAINING RELATIONSHIPS.....37
<i>Steven Frost and Mark Abell</i>	
Chapter 6	INTELLECTUAL PROPERTY.....45
<i>Allan Poulter and Robert Williams</i>	
Chapter 7	DATA PROTECTION52
<i>Ruth Boardman, Francis Aldhouse and Elizabeth Upton</i>	
Chapter 8	TAX CONSIDERATIONS.....60
<i>Mathew Oliver</i>	
Chapter 9	TITLE TRADE SECRETS AND FRANCHISING.....110
<i>Warren Wayne and Mark Abell</i>	
Chapter 10	RESOLVING INTERNATIONAL FRANCHISE DISPUTES119
<i>Victoria Hobbs</i>	

Chapter 11	E-COMMERCE AND FRANCHISING	133
	<i>Ben Hughes</i>	
Chapter 12	THE COMPETITION LAW OF THE EUROPEAN UNION	139
	<i>Mark Abell</i>	
Chapter 13	EDITOR'S GLOBAL OVERVIEW	141
	<i>Mark Abell</i>	
Chapter 14	GCC OVERVIEW	148
	<i>Melissa Murray</i>	
Chapter 15	AUSTRALIA.....	159
	<i>Philip Colman</i>	
Chapter 16	AUSTRIA	180
	<i>Eckhard Flobr</i>	
Chapter 17	BELGIUM.....	195
	<i>Olivier Clevenbergh, Jean-Pierre Fierens, Noémie Verborgh and Eric-Gérald Lang</i>	
Chapter 18	BRAZIL	208
	<i>Cândida Ribeiro Caffé, Rafael Atab de Araujo, Mariana Reis Abenza, Fernanda Souto Pacheco and Juliana Bussade Monteiro de Barros</i>	
Chapter 19	CANADA	227
	<i>Peter Snell</i>	
Chapter 20	CHILE.....	236
	<i>Cristóbal Porzio</i>	
Chapter 21	CHINA.....	250
	<i>Sven-Michael Werner</i>	
Chapter 22	CZECH REPUBLIC.....	262
	<i>Vojtěch Chloupek</i>	
Chapter 23	DENMARK.....	273
	<i>Jacob Ørskov Rasmussen</i>	

Chapter 24	FINLAND286 <i>Patrick Lindgren</i>
Chapter 25	FRANCE298 <i>Raphaël Mellerio</i>
Chapter 26	GERMANY309 <i>Stefan Engels and Bahne Sievers</i>
Chapter 27	HONG KONG315 <i>Michelle Chan and Alex Wong</i>
Chapter 28	HUNGARY324 <i>Péter Rippel-Szabó and Bettina Kövecses</i>
Chapter 29	INDIA338 <i>Nipun Gupta, Divya Sharma and Mumuksha Singh</i>
Chapter 30	INDONESIA.....352 <i>Risti Wulansari</i>
Chapter 31	IRELAND.....364 <i>Imelda Reynolds</i>
Chapter 32	ITALY382 <i>Claudia Ricciardi</i>
Chapter 33	MALAYSIA396 <i>Lin Li Lee</i>
Chapter 34	MEXICO417 <i>Jorge Mondragón</i>
Chapter 35	NETHERLANDS433 <i>Hans E Urlus</i>
Chapter 36	NEW ZEALAND451 <i>Stewart Germann</i>
Chapter 37	PHILIPPINES463 <i>Claro F Certeza</i>

Chapter 38	POLAND	484
	<i>Maciej Gawroński</i>	
Chapter 39	RUSSIA.....	495
	<i>Margarita Divina</i>	
Chapter 40	SINGAPORE	512
	<i>Sheena Jacob, Angelique Chan and Just Wang</i>	
Chapter 41	SOUTH AFRICA.....	524
	<i>Ian Jacobsberg, Charles van Staden, Janine Reddi, Phillip Lourens and Cara Shahim</i>	
Chapter 42	SPAIN	538
	<i>Mónica Esteve Sanz, Remedios García Gómez de Zamora and Bárbara Sainz de Vicuña Lapetra</i>	
Chapter 43	SWEDEN	552
	<i>Anders Fernlund</i>	
Chapter 44	UKRAINE	561
	<i>Volodymyr Yakubovskyy and Graeme Payne</i>	
Chapter 45	UNITED KINGDOM.....	571
	<i>Graeme Payne</i>	
Chapter 46	UNITED STATES	592
	<i>Steven Feirman, Sara Farber, Gina McCreddie, Keri McWilliams, Vincent Napoleon, Kendal Tyre and Diana Vilmenay</i>	
Chapter 47	CASE STUDY – THE DWYER GROUP	614
	<i>Duke Johnston</i>	
Chapter 48	DISPUTE RESOLUTION APPENDIX	618
	<i>Fidel Porcuna</i>	
Appendix 1	ABOUT THE AUTHORS.....	621
Appendix 2	CONTRIBUTING LAW FIRMS’ CONTACT DETAILS.....	647

EDITOR'S PREFACE

Since the publication of the first edition of *The Franchise Law Review*, there have been some significant economic and geopolitical developments that have had a significant impact on world trade. The apparently inexorable march towards the globalisation of commerce, however, has again continued unabated despite, or perhaps even because of, these changes.

Despite the slow emergence of a few economic bright spots, the economy of what was once called the 'developed' world continues on the most part to struggle, while even Brazil – one of the much-vaunted BRICS nations – has fallen into recession. As a consequence, businesses are often presented with little choice but to look to more vibrant markets in Asia, the Middle East and Africa for their future growth.

At the same time South–South trade is on the increase, perhaps at the expense of its North–South counterpart. All of this, coupled with the unstable wider geopolitical landscape, presents business with only one near certainty: there will be continued deleveraging of businesses in the coming years and, thus, growing barriers to international growth for many of them. All but the most substantial and well-structured of such businesses may find themselves facing not only significant difficulties due to their reduced access to funding to invest in their foreign ventures, but also challenges arising from their lack of managerial experience and bandwidth.

Franchising, in its various forms, continues to present businesses with one way of achieving profitable and successful international growth without the need for either substantial capital investment or a broad managerial infrastructure. In sectors as diverse as food and beverages, retail, hospitality, education, health care and financial services, it continues to be a popular catalyst for international commerce and makes a strong and effective contribution to world trade. We are even seeing governments turning to it as an effective strategy for the future of the welfare state as social franchising gains still more traction as a way of achieving key social objectives.

Given the positive role that franchising can make in the world economy it is important that legal practitioners have an appropriate understanding of how it is

regulated around the globe. This book provides an introduction to the basic elements of international franchising and an overview of the way that it is regulated in 32 jurisdictions.

As will be apparent from the chapters of this book, there continues to be no homogenous approach to the regulation of franchising around the world. Some countries specifically regulate particular aspects of the franchising relationship. Of these, a number try to ensure an appropriate level of pre-contractual hygiene, while others focus instead on imposing mandatory terms upon the franchise relationship. Some do both. In certain countries there is a requirement to register certain documents in a public register. Others restrict the manner in which third parties can be involved in helping franchisors to meet potential franchisees. No two countries regulate franchising in the same way. Even those countries that have a well-developed regulatory environment seem unable to resist the temptation to continually develop and change their approaches to regulation – as is well illustrated by the new changes in the Australian regulations.

Many countries do not have franchise-specific regulation, but nevertheless strictly regulate certain aspects of the franchise relationship through the complex interplay of more general legal concepts such as antitrust law, intellectual property rights and the doctrine of good faith. This heterogeneous approach to the regulation of franchising presents yet another barrier to its use as a catalyst for international growth.

This book certainly does not present readers with a full answer to all the questions they may have about franchising in all the countries covered – that would require far more pages than it is possible to include in this one volume. It does, however, try to provide the reader with a high-level understanding of the challenges involved in international franchising in the first section and then, in the second section, explain how these basic themes are reflected in the regulatory environment within each of the countries covered.

I should extend my thanks to all of those who have helped with the preparation of this book, in particular Graeme Payne, Victoria Hobbs, Caroline Flambard and Melissa Murray, who have invested a great deal of time and effort in making it a work of which all those involved can be proud.

It is hoped that this publication will prove to be a useful and often-consulted guide to all those involved in international franchising, but needless to say it is not a substitute for taking expert advice from practitioners qualified in the relevant jurisdiction.

Mark Abell

Bird & Bird LLP

London

February 2015

Chapter 34

MEXICO

*Jorge Mondragón*¹

I INTRODUCTION

Franchising has been a successful business model that has substantially increased its development in Mexico in a relatively short period of time, and has an important presence in a variety of commercial activities. In the period 2007–2012, about 811 new systems were introduced in the market, creating more than 2,300 points of sale and 12,400 direct employment positions, with an investment of 941 billion pesos.

Pursuant to the information made available to the public by the Ministry of Economy² there are about 1,200 franchise systems and brands in Mexico, from which about 70 per cent are of Mexican origin, while the remaining 30 per cent are of an international nature, with more than 65,000 points of sale along the Mexican territory. More than 90 per cent of the franchises in Mexico register survival rates longer than five years, which makes franchising an extremely successful business model.

The Mexican Franchise Association (AMF) is a private entity the main purpose of which is to promote and develop franchising in Mexico. It is composed of franchisors and franchisees, but the most relevant participants, both domestic and international, are not members of the AMF. There is no legal obligation for a franchise system to be affiliated with the AMF.

Pursuant to information published by the AMF, the franchising sector generates sales of approximately 85 billion pesos every year, and employs more than 500,000 persons in Mexico. The sustained growth of this industry in Mexico is close to 13 per cent per annum. It is expected that this year the industry will generate close to 75,000 new employments derived from the opening of 6,000 business units. The food and beverage sector represents about 31 per cent of the franchising market, followed by personal care

1 Jorge Mondragón is a partner at Gonzalez Calvillo SC.

2 www.economia.gob.mx.

and other activities related to retail businesses. Information on statistics on franchising may be found at the AMF's website.³

II MARKET ENTRY

i Restrictions

The vision of the Mexican government has been, for several years, to allow foreign investment in general without restriction – Mexico's economy is considered to be an open one. Foreign investment in Mexico is regulated mainly by the Constitution and the Foreign Investment Law and its Regulations, which exclusively reserve certain activities to Mexican entities without foreign investment, while some other activities are reserved to Mexican entities with a limit or maximum percentage of foreign investment or participation. In general, the activities in which franchise systems participate in Mexico (such as the restaurant, fast-food, hospitality, automotive and health-care services) are considered as non-regulated activities and, therefore, foreign investors may participate in these activities without any limitation or restriction.

Foreign entities are entitled to grant any type of franchising rights, including master franchises, development rights, individual unit franchises and any other similar or related rights. Foreign entities can freely submit trademark applications to protect their industrial property rights in Mexico.

Notwithstanding the foregoing, under the Foreign Investment Law and its Regulations, any Mexican entity with foreign investment in its capital must be recorded with the National Registry of Foreign Investments and such recording must be renewed on an annual basis by submitting a report of economic information.

ii Foreign exchange and tax

Parties to a franchise agreement can agree in the corresponding contract or agreement to make payments in any currency. If, however, according to the corresponding contract or agreement the payment is to be made within the territory of Mexico, then, pursuant to the provisions of the Monetary Law, the party obligated to make the corresponding payment may freely elect to make such payment either in the foreign currency agreed in the contract or agreement 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 it is agreed that payments are to be made abroad, then the party obliged to make such payment cannot elect to make it in Mexican currency based on the provisions of the Monetary Law.

Foreign franchisors not having a permanent establishment in Mexico for tax purposes, but obtaining an income from a source located within the Mexican territory⁴ are normally taxed on income, which is a tax of a federal nature, and is paid in Mexico

3 <http://franquiasdemexico.org/>.

4 Such as through the granting of franchising rights to be exploited in Mexico against the consequent payment of royalties or other considerations.

by the foreign franchisor through the retention or withholding that must be made by the franchisee.

III INTELLECTUAL PROPERTY

i Brand search

Online searches for word marks can be conducted in the Mexican Institute of industrial Property's (IMPI) database and the results are obtained immediately. In general, the search results are reliable, but due to the limitations of the database, the search request will only find identical marks to the proposed one or a portion of the proposed mark. Thus, there may be other marks in the database that are not identical to the proposed mark that could be considered sufficiently similar to prevent use or registration.

Design searches are also available, but they are conducted manually by the IMPI's examiner and it takes about four weeks to obtain the search results. The search results will reveal whether there is a trademark registration or application similar to the intended one, or whether the intended mark is already registered to a third party; so through the search results the franchisor can determine whether the corresponding mark and the franchise may face a conflict in Mexico's jurisdiction.

The IMPI does not provide patent protection for business processes, but it does include protection for trade (industrial) secrets, which are often an essential part of franchise systems. Trade secrets are defined as any information with an industrial or commercial application that is kept confidential by a person or entity, by which this person or entity has a competitive or economic advantage with regards to third parties and regarding which this person or entity has adopted sufficient means to keep the confidentiality and restricted access to it. Given their nature, trade secrets are not registered and, therefore, their protection relies in the ability of their holder to put in place the necessary measures that will secure confidentiality.

ii Brand protection

In Mexico it is not possible to file multi-class applications but rather individual applications per mark per class should be filed.

The applicant may claim priority when filing a Mexican trademark application if it has filed a trademark application for the same mark in another jurisdiction and the Mexican trademark is filed within six months after the foreign application is filed.

Regarding prior use, it is important to mention that trademark protection is granted on a first-to-file basis; if, however, the mark has been used in the Mexican territory prior to the filing date, the date of first use can be declared as long as the applicant has means to prove such prior use.

The time frame for registering a trademark in Mexico is approximately four to six months, assuming there are no objections.

If during the prosecution of the intended mark the IMPI examiner issues an office action requesting additional information such as clarification of the goods and services or citing an identical or confusingly similar trademark for having prior rights, the time frame for obtaining the registration of the mark would be from six to 12 months.

According to the applicable law, a trademark must be used by its owner or by the recorded licensee or franchisee, otherwise the mark will be vulnerable to a non-use cancellation action. In this respect, franchise agreements and licence agreements involving Mexican trademark applications or registrations must be recorded with the IMPI.

iii Enforcement

Regarding the enforcement of franchise-related intellectual property rights, it is important to make the following distinction. On the one hand, the Industrial Property Law sets out the penalties for the non-authorized use of intellectual property rights. Trademark infringement shall be penalised with fines equal to 20,000 times the current minimum wage approved in the Federal District, additional fines equal to 500 days of the current minimum wage approved in the Federal District for each day the infringement persists, the temporary closing down of the premises for up to 90 days, the permanent closing down of the premises, or administrative arrest up to 36 hours, depending on the infringement. The IMPI will investigate the infringement and impose the fines. More severe cases of infringement may be considered criminal offences, such as recidivism or the unauthorised disclosure or use of trade secrets.

The infringement action will be filed with the IMPI and the law provides that the plaintiff may request an inspection visit in order to verify the existence of the infringement. The law also provides for provisional seizure of the infringing products or services.

On the other hand, the failure to comply with obligations derived from a franchise agreement may carry civil liabilities, in which case the governing law of the agreement must determine which legislation should be applied.

iv Data protection, cybercrime, social media and e-commerce

Data protection – import and export of data

In terms of personal data protection, franchising operations must consider the applicable provisions of the Federal Law for the Protection of Personal Data Possessed by Private Persons (the Data Protection Law), as well as its Regulations, which provide the obligations that data controllers (DCs) and data processors (DPs) must comply with for the collection, processing, remission and transfer of personal data.

A franchise operation requires, in most cases, that the franchisee undertake the role of a DC, since such entity normally decides about the use of collected personal data from customers in Mexico, and also in connection with personal data provided by their employees. Franchisors usually receive personal data from franchisees by virtue of remissions in order to provide franchisees administrative services or operational support, in which case they act as DP by processing personal data on behalf of the franchisees, or by virtue of data transfers for processing data for their own purposes (i.e., marketing, analysis and similar activities).

Under the Regulations of the Data Protection Law, the data processing carried out by a DP, regardless of its location, on behalf of a DC established in Mexico is governed by the provisions of said Regulations. Likewise, the data processing carried out by a DC located abroad, but subject to the Mexican legislation due to a contract or in terms

of international law or by a DC that is not located in Mexico, but that uses means (equipment or staff) located in the Mexican territory – unless such means are solely used for transit purposes – is also governed by the Regulations of the Data Protection Law.

The most relevant obligations for franchisees as DCs include the following:

- a* processing personal data fairly and lawfully;
- b* issuing the corresponding privacy notices;
- c* obtaining consent from the data subject to process his or her personal data in terms of its privacy notice;
- d* providing information to the data subject regarding its personal data processing and data transfers by means of its privacy notice;
- e* ensuring the quality of the data;
- f* limiting the use of the data to the identified purposes expressed in the privacy notice;
- g* maintaining proportionality in the data processing;
- h* preserving personal data;
- i* limiting the retention of personal data;
- j* responding to the data subject's requests for the access, rectification, cancellation and opposition to the personal data processing;
- k* appointing a chief privacy officer or a data protection department;
- l* being accountable for the data processing;
- m* establishing and maintaining administrative, technical and physical security measures to protect personal data; and
- n* notifying the data subjects of a breach of security.

The main obligations for franchisors as DPs include the following:

- a* processing the personal data in accordance with the DC's instructions and its privacy notice;
- b* refraining from processing personal data for purposes other than those instructed by the DC;
- c* implementing security measures in terms of the Data Protection Law, its Regulations and other applicable provisions;
- d* preserving the confidentiality of the processed personal data;
- e* deleting personal data processed upon completion of the legal relationship with the DC or due to the instructions of the DC, as long as there is no legal provision requiring the retention of the personal data; and
- f* refraining from transferring personal data unless the DC decides to do so, or the communication derives from a subcontracting process, or when it is required by a competent authority. The instructions of the DC must be included in a contractual instrument.

Remittances of personal data can be carried out without the consent of the data subjects and it is not necessary to include them in the privacy notice issued by the DC. Transfers must be informed to the data subjects in order to collect their consent (either their implied consent or their expressed authorisation in the event of sensitive and financial data) and must be included within the DC's privacy notice.

Cybercrime legislation

The Data Protection Law establishes two criminal offences for the abusive processing of personal data. Pursuant to the provisions of this legal statute, anyone who is authorised to process personal data who, for the purpose of obtaining a profit, causes a security breach of the databases under his or her custody may be punished with imprisonment of three months to three years. Likewise, imprisonment of between six months and five years may be imposed on anyone who, for the purpose of obtaining a profit, processes personal data by deception, or by taking advantage of the error of the data subject or the authorised person in order to transmit the data. The foregoing penalties will be doubled if the violation pertains to sensitive personal data.

In addition, the Federal Criminal Code provides mechanisms that indirectly protect personal data by regulating them as confidential information. It provides sanctions of between 30 and 200 days of community service for the illicit disclosure of any secret or confidential communication known or received by virtue of employment, occupation or position. The sanction may vary from one to five years of imprisonment, fines of between 50 and 500 pesos and suspension of the professional licence if the illicit disclosure is committed by a person who renders professional or technical services, or is a government employee or public official, or if the secret disclosed or published may be of industrial character.

The Federal Criminal Code also imposes sanctions that range from six to 12 years of imprisonment and fines equivalent to between 300 and 600 days of their salary for the person who reveals, discloses, or unduly uses to the detriment of others, information or images obtained during the interception of a private communication. In addition, a penalty of six months to two years of imprisonment and a fine equivalent to between 100 and 300 days of their salary may be imposed on any person who, with or without authorisation, illegally accesses, modifies, destroys or provokes the loss of information in computer systems protected by a security mechanism. If the computer systems belong to the state, the penalty may increase to one to four years of imprisonment and a fine equivalent to between 200 and 600 days of salary.

A penalty of six months to four years of imprisonment may be imposed, together with a fine equivalent to between 100 and 600 days of salary, to the person who, with or without authorisation, illegally accesses, modifies, destroys or provokes the loss of information in financial sector computer systems protected by a security mechanism.

Codes of conduct on cybercrime, social media and e-commerce

There are no express provisions in Mexican law that directly address codes of conduct on cybercrime and social media; however, the Data Protection Law and its Regulations allow individuals and companies that are subject to the Data Protection Law to agree among themselves or with civil and governmental organisations, national or foreign, to the use of binding self-regulation schemes for the protection of personal data in order to complement the provisions of the law. Self-regulation schemes may result in good codes of ethics or codes for professional practice, trust seals or other mechanisms, and should contain rules and specific standards to harmonise data processing performed by the adherents and to facilitate the exercise of the rights of the data subjects. Such schemes should be notified simultaneously to the relevant sector authorities and to the Federal Institute of Access to Public Information and Personal Data (IFAI).

In addition, the Consumer Protection Federal Law also recognises the use of Codes of Conduct as mechanisms to promote best practices towards the adequate protection of consumers.

IV FRANCHISE LAW

i Legislation

Franchises in Mexico are governed and regulated by the Industrial Property Law (IPL) and its Regulations and by the general rules of contracts contained in the Commerce Code and the Federal Civil Code. Commercial activities and contracts in Mexico, such as franchise agreements, are regulated by the general principle of contractual liberty, which applies to all provisions and aspects of a franchise agreement not specifically regulated by the IPL. The governmental agency in charge of applying the IPL is the IMPI. In addition, there are other laws that may have an application to franchises depending on the type of activity to be performed in Mexico, such as the Consumer Protection Federal Law, the Economic Competition Federal Law (the Antitrust Law), the General Law of Business Organisations and the Data Protection Law.

Any franchise agreement effective within the territory of Mexico must comply with and observe the applicable provisions of the IPL, regardless of the nationality or place of residence of the entities or individuals involved in or participating in the franchise.

According to Article 142 of the IPL, 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 licensee 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, reputation and image of the products or services distinguished by the trademark.

ii Pre-contractual disclosure

The IPL requires that, prior to granting a franchise, certain franchisor's information (disclosure document) must be provided to the prospective franchisee at least 30 business days before the date of execution of the franchise agreement. In terms of the IPL and its Regulations, this is the only requirement that must be met before a franchisor may offer a franchise in Mexico.

The IPL does not provide for any obligation to update the information contained in the disclosure document, which must be accurate at the time it is delivered to the prospective franchisee.

In accordance with the provisions of the Regulations of the IPL, the following technical, economic and financial information must be provided through the submission of the disclosure document:

- a* name, corporate name or business name, domicile and nationality of the franchisor;
- b* description of the franchise;

- c* seniority of the original main franchisor and, if applicable, of the master franchisee of the business subject matter of the franchise;
- d* intellectual property rights involved in the franchise;
- e* amounts and concepts of payments that the franchisee must make to the franchisor;
- f* types of technical assistance and services that the franchisor must provide to the franchisee;
- g* definition of the geographical area in which the business exploiting the franchise operates;
- h* rights or restrictions to grant sub-franchises to third parties and, if applicable, the requisites the franchisee must fulfil to grant sub-franchises;
- i* obligations of the franchisee with respect to the confidential information provided by the franchisor; and
- j* in general, the obligations and rights of the franchisee arising from the execution of the franchise agreement.

Once the disclosure document is delivered and the obligation contained in the applicable provisions of the IPL is fulfilled, no ongoing disclosure obligation exists. Although not addressed by the IPL, disclosure should be provided to both a renewing franchisee and to a transferee franchisee in those cases where a new franchise agreement is executed, but this does not imply the creation of a continuing disclosure obligation.

The disclosure obligation may be enforced by the IMPI through an administrative infringement procedure. Failure by a franchisor to provide the disclosure document at least 30 business days prior to the date of execution of a franchise agreement may result in the imposition of an administrative sanction by the IMPI (i.e., economic fine, closure of premises or administrative arrest). This will only occur, however, if the franchisor fails to provide such information after a written request for the same has been made by the prospective franchisee to the franchisor.

In the event of lack of veracity of the information disclosed to the prospective franchisee (misrepresentation by the franchisor), the franchisee will be entitled to claim, before the judicial courts, the nullity of the franchise agreement and to award payment of corresponding actual (direct) damages and losses, as long as it can infeasibly prove that such damages and losses are a direct consequence of the lack of accuracy of the information contained in the disclosure document provide by the franchisor.

Under Mexican law, there are only damages (as a general figure) and losses; our laws do not contemplate the specific figure of other damages such as consequential and punitive damages. According to the provisions of the Federal Civil Code, damages are defined as the decrease or reduction of the patrimony derived from the breach of an obligation, and losses are defined as the privation of a licit gain that would have been obtained as a consequence of the compliance of an obligation. A competent court with jurisdiction over the matter would have to calculate the corresponding damages and losses based on the evidence offered by the affected party. The right to claim for the payment of damages and losses may be exercised within a period of one year from the date of execution of the franchise agreement, while the action to claim for the nullity of the franchise agreement is subject to the general statute of limitation of 10 years provided in the Commerce Code.

iii Registration

Pursuant to Mexican law, there is no legal obligation for franchisors or franchisees to register a franchise agreement with the IMPI. However, trademarks in Mexico are protected through their registration in the IMPI, provided that any holder of a trademark registration must prove the use of the same; otherwise, a cancellation action may be exercised by any third party claiming lack of use by the holder. In such respect, the IPL allows for proving the use of a trademark through a licence or franchise, provided that the corresponding licence or franchise is recorded with the IMPI. As a consequence of the foregoing, franchisors, in order to protect their trademarks, should record their licence or franchise agreements with the IMPI for the purpose of being able to prove the use of their trademarks and to enhance the protection of their industrial property rights against third parties.

There is no legal obligation for franchisors to register their disclosure document or to obtain any governmental authorisation of said document.

iv Mandatory clauses

Pursuant to the applicable provisions of the IPL, franchise agreements must be in writing and contain the following minimum mandatory provisions:

- a* the geographical zone in which the franchisee shall mainly perform the activities that are the subject matter of the agreement;
- b* the location, minimum size and investment characteristics of the infrastructure, relating to the premises in which the franchisee shall carry out the activities deriving from the agreement;
- c* if applicable, the policies of inventories, marketing and advertising, as well as the provisions relating to the merchandise supply and the engagement with suppliers;
- d* the policies, procedures and terms for any reimbursement, financing and other considerations in charge of the parties;
- e* the criteria and methods applicable to determining the franchisee's commissions and profit margins;
- f* 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;
- g* 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;
- h* the terms and conditions of any sub-franchise, in the event it is agreed by the parties;
- i* termination causes under the franchise agreement;
- j* events under which the parties may review and, if this happens, mutually agree to amend the terms or conditions of the franchise agreement;
- k* 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
- l* 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.

v Guarantees and protection

The normal practice in Mexico has been for a franchisor to obtain a personal guarantee from the principal owners of the company of the franchisee to guarantee the performance and timely compliance of the franchisee with its obligations. Said guarantee is normally granted in the form of a 'joint obligation' assumed by said principals, or by acting the same as personal guarantors of the franchisee. Joint obligations and personal guarantees are governed by the Federal Civil Code; enforceability of such guarantees depends on the content of the relevant agreement or contract regulating the same, which must be subject to Mexican laws.

In some other cases, especially when the franchisee assumes the obligation to acquire certain volume of products or other materials from the franchisor, it may be advisable to request that the franchisee obtain an irrevocable standby letter of credit from a bank approved by the franchisor, in order to guarantee the timely payment of the purchase price of said products or materials.

V TAX

i Franchisor tax liabilities

Federal, state and local taxes are imposed in Mexico. Federal taxes are collected by the Administration Revenue Service, while state and local taxes are collected by the treasuries of the state and municipal governments.

In accordance with the provision of the Income Tax Law, individuals and entities are bound to pay income tax in Mexico on the following income:

- a* Mexican residents, with respect to all their income, without regard to the location of its source;
- b* non-residents with a permanent establishment in Mexico, but only with respect to the income attributable to such a permanent establishment; and
- c* 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.

The Income Tax Law provides that if a foreign resident performs activities within Mexico through an individual or entity (which is different from an independent agent), the resident would be considered as having a permanent establishment in Mexico with respect to the activities performed by said individual or entity on behalf of the foreign resident if such an individual or entity exercises powers of attorney to execute agreements in the name of or on behalf of the foreign resident. Likewise, a foreign resident is considered to have a permanent establishment in Mexico when the foreign resident performs activities in Mexico through an independent agent and this agent carries out said acts outside its normal activities or course of business.

By virtue of the foregoing, foreign franchisors have the obligation to pay income tax in Mexico in their capacity as non-residents, but only in connection with any income derived from the franchise agreements they may enter into with the purpose of being effective in Mexico, as a source located within Mexico, provided that franchisors do

not have a permanent establishment within Mexico or when, having a permanent establishment, the income is not attributable to such an establishment but only to the relevant franchise agreements. Said payment of income tax by the franchisor must be made through the corresponding retention or withholding to be made by the franchisee.

ii Franchisee tax liabilities

Among other applicable taxes due to their own activities, franchisees are obliged to pay income tax on any income they obtain, either as a consequence of the exploitation of a franchise or derived from any other activity they perform.

As previously explained, franchisees have the obligation to make the corresponding retention or withholding of income tax on payments that they make to franchisors. Even though the tax is imposed on the franchisor, the franchisee has a withholding obligation and, as such, if the franchisee breaches said obligation, then it could be jointly liable for the omitted tax.

iii Tax-efficient structures

Mexico's Income Tax Law establishes that the benefits of international tax conventions shall be applicable when the taxpayer evidences residency in the corresponding foreign country. Mexico's Supreme Court of Justice has determined that the application of tax conventions holds precedence over the federal tax laws (such as the Income Tax Law). This means that a foreign franchisor, as a resident for tax purposes of its country of origin, has the right to be submitted to taxation under the terms of the corresponding tax treaty or convention, if any, instead of being submitted to the provisions of the Income Tax Law. Normally, the applicable withholding tax rates included in international tax conventions to which Mexico is a party are lower than the income tax rate provided for in the Income Tax Law. Upon any withholding of income tax made by the franchisee to the franchisor, the franchisee must deliver to the franchisor a copy of the relevant withholding certificate, in order for the franchisor to be able to evidence the same to the tax authorities of its country of origin, which will allow the franchisor to obtain the corresponding tax credit.

VI IMPACT OF GENERAL LAW

i Good faith and guarantees

In accordance with the provisions of the Federal Civil Code, the consent of a party to an agreement will not be valid if said party was in 'error' when granting its consent. The legal or factual error invalidates (nullifies) the agreement in the event that such an error exists with respect to the reason that was foreseen in error by the party as the main motive for entering into the franchise agreement. In this regard, the Federal Civil Code describes 'bad faith' as the concealment of an error by a party to an agreement that was known by said party. As a consequence, and interpreting the above-mentioned provisions of law in a contrary sense, the parties to an agreement such as a franchise agreement must deal with each other in good faith.

ii Agency distributor model

According to the provisions of the IPL, if the agreement between two parties contain the elements that compose the definition of a franchise (a trademark licence together with the transfer of technology or the providing of technical assistance), then said agreement will be subject to the provisions of the IPL and, as any other agreement of a mercantile nature, will also be subject to the general rules on contracts contained in the Commerce Code and the Federal Civil Code. There is no specific distribution or agency law that would apply to a franchising relationship.

iii Employment law

None of the applicable Mexican laws contains provisions relating to the possibility of considering the existence of labour relations between a franchisee and a franchisor or between the employees of the franchisee and the franchisor. Nevertheless, when entering into a franchise agreement with a franchisee, the franchisor should bear in mind that under Mexican law contracts are governed by their contents and not by how they are named. Therefore, if the franchisor incorporates or accepts the inclusion of provisions within the franchise agreement in error, that may be interpreted as constituting or creating labour relations and the Mexican labour courts would have sufficient authority to determine the labour obligations of the franchisor and find in favour of the individual franchisee or the franchisee's employees due to the nature of the agreement, regardless of its name. The courts could then penalise the franchisor for non-compliance with such labour obligations.

The most important element that could be used by a franchisee in order to consider the existence of labour relations would be the subordination between the franchisee and the franchisor, which means that all 'recommendations or guidance' provided by the franchisor are in fact considered 'imperative instructions' for the franchisee to comply with. Even though it seems difficult for a franchisor to be considered an employer of its franchisee, certain additional elements must be present, such as:

- a* periodic payments being made by the franchisor to the franchisee (which generally are not present in a franchise relation);
- b* material evidence of the 'instructions' being periodically provided by the franchisor to its franchisee;
- c* the franchisee being a natural person and not an entity; and
- d* the franchisee needing to have material evidence of its subordinated relationship with the franchisor and its being part of the same company as the franchisor, such as credentials, memoranda, etc.

To reduce the risk of a franchisor being considered an employer of its franchisee under Mexican law, it is suggested that the franchisor should require its prospective franchisee to create a Mexican company to enter into the franchise agreement, which in no way limits the right of the franchisor to request the individual with whom it has been dealing to also sign a franchise agreement as personal guarantor or joint obligor.

Likewise, the franchise agreement must contain a provision called 'absence of labour relations and non-representation', in which both parties state that they enter into the franchise agreement in their capacity as independent contractors and establish

the distinction and independence between franchisor, franchisee and the franchisee's employees, among other stipulations.

iv Consumer protection

The governmental body in charge of applying the Consumer Protection Federal Law is the Federal Consumer Protection Agency. The main objective of this law is to protect consumers and to regulate the activities of providers selling goods and rendering services to consumers. Its provisions include protection for consumers and restrictions regarding use of information pertaining to the consumers, information provided and advertisements, promotions and offers, services, credit transactions, real estate transactions, warranties and adhesion contracts, among others.

Pursuant to the provisions of the Consumer Protection Federal Law a 'consumer' is considered to be the natural person or entity that acquires or enjoys goods, products or services as the final beneficiary of the same and 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 these. Based on the foregoing, according to Mexican legislation, the general rule can be interpreted to state that a franchisee is normally considered to be a supplier and not a consumer.

v Competition law

The governmental body in charge of applying the Federal Economic Competition Law is the Federal Competition Commission. In accordance with the provisions of this law, there are some restrictions on the general principles of contractual freedom, such as when, through agreements, arrangements or a combination of acts between economic agents, the production, processes, distribution or commercialisation of goods and services is diminished, harmed or impeded, in which case the situations are considered monopolistic practices. Infringements to the provisions of the Federal Economic Competition Law may result in the nullity of the acts and agreements in violation of the law and the imposition of administrative fines or the payment of damages and losses to third parties.

If agreements, arrangements or a combination of acts between economic agents diminish, harm or impede the production, processes, distribution or commercialisation of goods and services, pursuant to such law, this would be deemed monopolistic practice.

As explained above, infringements to the provisions of the Competition Law may result in the nullity of the acts and agreements in violation of the law, the imposition of administrative fines and the payment of damages and losses to third parties. For example, the obligation imposed on a franchisee by a franchisor to sell its products at predetermined prices could be considered a monopolistic practice and, therefore, it is advisable to include in franchise agreements that the franchisor will provide the franchisee with a list of suggested retail prices, but which will not constitute an obligation on the franchisee, merely a recommendation.

vi Restrictive covenants

Although post-termination and non-compete obligations may be enforceable, it is important to take into account that enforceability before a court may take time and

may be complicated, especially in connection with the enforceability of non-compete obligations, with the uncertainty of how the courts will finally resolve the matter in question. Therefore, it is suggested to include certain conventional penalties that may be triggered in the event of specific breaches of post-termination or non-compete obligations by a franchisee.

The common problem when trying to enforce a non-compete obligation in charge of a natural person is that it may be considered against the freedom of activity protected and contemplated by the Constitution; therefore, the suggestion is to limit the relevant non-compete arrangement to a limited period of time, a specific activity and to a delimited geographical zone, which may provide for certain elements to try to increase the possibility of enforcing said obligation.

vii Termination

Post-termination obligations may be subject to enforceability, an exception made for those cases related to non-compete arrangements, which may face certain difficulties, as explained above. Notwithstanding the foregoing, it is important to include the necessary language in the franchise agreement to stipulate that even though the agreement may terminate, certain specific provisions will continue in force and effect and, if possible, a conventional penalty must be imposed on the party violating the relevant post-termination obligation. The obligation of any guarantor or joint obligor of the franchisee under a franchise agreement must also include and cover post-termination obligations.

It is not recommended to stipulate in a franchise agreement that the franchisor will have the ability to enter the premises or take over the franchisee's business without the consent of the franchisee; any of these acts may be considered trespass under Mexican criminal law. An alternative may be to include in the agreement the right of the franchisor to acquire the business of the franchisee under certain specific circumstances.

It has been a practice to include in franchise agreements the obligation of the franchisee to cause its landlord to include certain provisions in the relevant lease agreement. It is important to bear in mind that such kinds of provisions are not necessarily accepted by lessors in Mexico, especially when it comes to the obligation for the landlord to accept the assignment of the lease by the lessee (franchisee) to a third party (franchisor) unknown to the lessor. Even if such provisions are accepted by a landlord, the possibility always exists for the lessor and the lessee to amend the lease agreement and delete such stipulation. Finally, it is important to also take into consideration that the lease by a foreign entity of certain assets and goods in Mexico may expose the foreign company to be considered as having a permanent establishment for tax purposes; therefore, a careful legal and tax analysis must be made before a foreign entity decides on directly leasing property in Mexico.

viii Anti-corruption and anti-terrorism regulation

Mexico's Federal Criminal Code makes it a criminal offence for any person to offer, promise or give, directly or through an intermediary, money or any other kind of gift, whether goods or services, to any individual (including governmental officers and employees) in order to require or propose to that individual to process or resolve, or accept a promise, or refrain from doing so, any matter related to the functions inherent

to the latter's employment, office or post, for the purposes of obtaining or retaining advantages in the development or conduction of international commercial transactions.

Published on 11 June 2012, Mexico's Anti-Corruption Law in Public Contracting Procedures provides for the liabilities and sanctions applicable to private parties (even entities or individuals), derived or related to the participation of said private parties in a federal public contracting procedure (public tender or bid) that carry out activities or offer or promise money or other bribe for purposes to obtain advantages or benefits, or alter the award derived from the relevant tender or bid. The scope of liability derived from corruption acts related with said contracting procedures is expressly extended not only to Mexican or foreign entities or individuals who participate as bidders or contractors in said tenders or bids or agreements derived therefrom, but to their shareholders, partners, associates, representatives, attorneys-in-fact, principals, subcontractors, employees, commissioners, agents, or any other who intervene in federal public tenders or bids in the name, on behalf or in the interest of such bidders or contractors.

The recently enacted Anti-Money Laundering Law has as its main objective the establishment of rules and procedures to prevent and detect transactions or activities involving illegal proceedings or terrorism financing; therefore, this new legislation sets out rules to identify and notify certain transactions or activities defined as 'vulnerable', since the same could be used by organised crime groups for money laundering or terrorism financing, including limits on the use of cash in certain forbidden transactions. The law sets forth the obligation to notify the authorities (Ministry of Finance and Public Credit) of those transactions involving vulnerable activities that surpass a certain amount of money. In addition, the law establishes the obligation for those entities or individuals involved in vulnerable activities to (1) identify clients and users (know-your-customer policy); (2) collect and retain the information of those individuals or entities involved in the vulnerable activity for a five-year period as of the date when the vulnerable activity was carried out; (3) file corresponding notices to the governmental authorities; and (4) appoint an individual who will be responsible for the surveillance and compliance of the obligations sets out in accordance with said law. In the event of a lack of designation, the board of directors or the sole administrator of the corresponding entity, as the case may be, will be responsible for such obligations, and in the event of individuals performing vulnerable activities, such individual will be personally liable.

ix Dispute resolution

If a dispute arises under a franchise agreement that is considered as a commercial or mercantile agreement, and if the parties to it decide to submit themselves to the applicable laws and competent courts, an ordinary commercial or mercantile procedure may be initiated. The final resolution issued by the corresponding local judge in the first instance may be appealed before the local court of appeals (a higher-level court also known as second instance). The final resolution issued by the court of appeals in the second instance may be challenged before a federal court through a constitutional procedure, also known as *amparo*, but only if during the process specific constitutional rights were violated or if the final resolution is issued against the principles of Mexico's General Constitution. The resolution issued by the court in the *amparo* procedure would be final and definitive.

An alternative and common dispute resolution mechanism is arbitration, which may be subject to Mexican or foreign law. Awards that are issued under the law of a country that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards will be recognised and enforced in Mexico as long as such awards are not contrary to Mexico's public order laws. Foreign judgments and arbitration awards that do not contravene public order laws are enforced in Mexico through a recognition and enforcement procedure before a judge, by means of a homologation process, given that Mexico is a party to the United Nations Convention.

The dispute resolution alternatives (jurisdictional and arbitration) are in addition to and independent from any administrative infringement action that may be initiated by a franchisor against any person violating the provisions of the IPL, in which case the IMPI is authorised to impose provisional or precautionary measures that include the seizure of merchandise and the closure of premises. Injunctions are not available under Mexican law, but only the above-indicated administrative measures, as well as certain judicial measures that may be issued by the courts in few specific cases.

In general, arbitration may have more advantages than disadvantages, especially when the foreign franchisor does not have a local subsidiary and operations in Mexico. Arbitration has proved to be time-efficient and if Mexican law is governing the franchise agreement and the resolution of the dispute, it should be possible to enforce an arbitral award. Arbitration in the franchise industry also carries the advantage of allowing the resolution of a problem to be carried out by one or more arbitrators with the necessary expertise and knowledge in franchising, which is a subject not necessarily known or explored by the courts. The most important possible disadvantage is that in certain cases the related costs and fees could be higher than those applicable in a jurisdictional procedure, depending on the agency administering the arbitration, its rules and the profile of the arbitrators.

Mediation in Mexico is not mandatory for the parties; it is a voluntary procedure in which the parties involved in a controversy may submit their differences to a mediator and, if the parties are able to reach an agreement on the relevant discrepancy, the mediation would conclude through the execution of a settlement agreement. Formal mediation procedures are offered by the Superior Court of Justice of the Federal District, which is part of the government's Judicial Branch and by the Mexican Institute of Mediation, which is a private organisation composed by the most recognised law firms in Mexico, whose members are certified mediators.

Appendix 1

ABOUT THE AUTHORS

JORGE MONDRAGÓN

Gonzalez Calvillo SC

Jorge Mondragón has been a partner in the Mexico City-based law firm of Gonzalez Calvillo SC since 1998. He received his law degree with honours from the Universidad Nacional Autonoma de Mexico in 1993 and a postgraduate degree in corporate law from the Instituto Tecnológico Autonomo de Mexico in 1996.

Since 1993 he has been providing legal and business advice to multinational and Mexican companies in all types of franchising, distribution and licensing transactions, joint ventures, mergers, acquisitions, corporate controversies, foreign investments, antitrust regulation and labour consulting.

Mr Mondragón heads the firm's franchising/distribution practice group and has served as senior vice chair of the International Franchising Committee of the International Bar Association (IBA). He is also an active member of the International Franchise Association (IFA); the American Bar Association's (ABA) Forum on Franchising; and the Mexican Bar Association (MBA). He has given presentations on Mexico's franchise and commercial law at seminars, symposiums and conferences organised by the IBA, the IFA, the ABA and the MBA.

He has published several articles and materials, including *Mexico Considers Amendments to the Industrial Property Law on Franchising Matters, Franchise Lawyer* (ABA, 2005); the Mexican chapter of *International Franchise Sales Laws*, published by the ABA's forum on franchising in 2006; the Mexican chapter of *Privilege and Confidentiality: An International Handbook*, published by the International Bar Association in 2006; and *Getting the Deal Through – Franchise* annually, published by Law Business Research.

GONZALEZ CALVILLO SC

Montes Urales 632, Piso 3

Lomas de Chapultepec

11000 Mexico City

Mexico

Tel: +52 55 5202 7622

Fax: +52 55 5520 7671

jmondragon@gcsc.com.mx

www.gcsc.com.mx