

MEXICO

A country that has included provisions regulating franchising in its law on industrial property is Mexico.¹ Pre-sale disclosure of information to prospective franchisees is required (Article 142, second paragraph), as is the filing of information about the franchisor and registration of the transmission of trademark rights to the franchisee. Such transmission of rights is to be registered at the Ministry of Commerce and Industrial Development (Article 143). The provisions of the Chapter on *Licenses and the Transfer of Rights*² apply to the registration of franchises (Article 142, third paragraph). The long-awaited regulations implementing these provisions were adopted in November 1994.³ A list of the information that a franchisor must provide a franchisee with is provided in Article 65 of the Regulations.

On 25 January 2006 a Decree was adopted adding provisions on franchising to the Law on Intellectual Property (Articles 142bis – Article 142bis 3).⁴

Article 142bis specifies that the franchise contract shall be in writing and shall include at least the information specified in the requirements, which include the policy relating to inventories, marketing research and publicity, as well as provisions relating to the supply of products and contracting with suppliers, the criteria and methods applicable to determine the margins of utility and/or commissions to be paid to franchisees, the characteristics of the technical and operative training of the franchisee's personnel and the method or form in which the franchisor will give technical assistance, the conditions and terms for sub-franchising and the causes for termination of the franchise agreement.

Article 142bis 1 sets limits to the possibility of the franchisor to interfere in the operation of the franchisee, i.e. the necessity to guarantee administrative standards and the image of the franchise. It however specifies that it is not an interference on the part of the franchisor if the franchisee has changed nature as a result of fusion, fission, transformation, modifications of the statute or the like.

Article 142bis 2 provides for the confidentiality of the information the franchisee has received during the life of the contract as well as after its end. No time-limit is given for the post-term confidentiality.

¹ Ley de la Propiedad Industrial, in *Diario Oficial*, 27 June 1991, effective as of 28 June 1991. The relevant sections of this law are reproduced in the CCH, *Business Franchise Guide*, at ¶ 7205, in an English translation by CCH staff and the Monterey Office of the law firm of Brownstein Zeidman and Schomer, Washington, D.C.

² Chapter VI of the Law.

³ Reglamento de la Ley de la Propiedad Industrial, in *Diario Oficial*, 23 November 1994. These Regulations came into effect on 8 December 1994. For an English translation, see CCH, *Business Franchise Guide*, at ¶ 7210.

⁴ Diario Oficial of 25 January 2006, amending the Ley de la Propiedad Industrial, in *Diario Oficial*, 27 June 1991, effective as of 28 June 1991, and Reglamento de la Ley de la Propiedad Industrial.

Article 142bis 3 prohibits the unilateral termination or rescission of the contract unless the contract is of indefinite duration and unless there is a just cause for termination. The provision states that when there is mutual agreement between the franchisor and the franchisee to terminate the contract before its end, they must observe the proceedings agreed in the contract. If the parties do not observe these requirements, the anticipated termination will give rise to the penalties agreed in the contract or to compensation for damages.