



How to legally structure your franchise in Mexico?

Our partners **Jorge Mondragón**, **Pablo Hooper** and **Alberto Pliego** with our counsel **Lucía Fernández** and our associate **Priscila Adalid**, reflect about one of our most innovative areas: **Franchising and Licensing**.

In this brief article they talk about the area and some of its most relevant topics.

What is a Franchise under Mexican Law?

In accordance with article **245** of the **Federal Law for the Protection of the Industrial Property Law** (Ley Federal de Protección a la Propiedad Industrial) (“IPL”), a franchise agreement shall exist when: (i) a trademark owner/holder is licensing its trademark to a third party, (ii) a franchisor provides franchisee any kind of know-how or technical assistance; and (iii) a franchisee acquires the right to

sell the products produced by franchisor in a uniform manner and with the operational, commercial and administrative methods set forth by franchisor, so that **the products provided to any customer maintain the same quality, prestige and image**. If the content of an agreement contains these elements, it is considered a franchise agreement under Mexican law.

Types of Franchise

a. Single-unit franchise agreement.

In single-unit franchise agreements, the franchisor grants to the franchisee a licence over trademarks, and provides know-how and technical assistance so that the franchisee may develop and operate only one franchise unit at a specific location or within a defined zone. A single-unit franchise creates a **direct relation between the franchisor and the franchisee**, who operates the unit franchise. These franchises are normally used for service business, such as food service, lodging, real estate, home inspection and automotive services.

b. Multi-unit franchise agreement

In multi-unit franchise agreements, the franchisor grants to the franchisee a licence over trademarks, and provides know-how and technical assistance so that the franchisee may develop and operate two or more franchise units at specific locations or within a defined zone. Typically, **multi-unit franchises are used for businesses that require a single operator in a defined territory**. Radius protection may be granted to the franchisee, but usually the franchisee is not granted an exclusive right over a territory. This prevents encroachment, advertising and intra-brand competitive problems that might arise if multiple franchisees develop the same business in a single market.

(c) Master franchise agreement

In a master franchise model, the parties enter into an agreement considering a **specific area of expansion**, and the master franchisee is in charge of developing the franchised business in such delimited area, state or country. This type of agreement also prevents encroachment, advertising and intra-brand competitive problems that might arise if multiple franchisees develop the same business in a single market.

A master franchisee is usually granted the following rights: (i) the exclusive right to develop franchise units in a specific territory; (ii) the right to sub-franchise, including the right to sub-license the use of the trademarks; and (iii) the right to use the trademarks and know-how, and to receive technical assistance. Also, **it is a common practice that the parties agree to a mandatory development schedule** that sets forth the minimum number of unit franchises that the franchisee, directly or through subfranchisees, should develop.