

# FRANCHISE

## Finland



# Franchise

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Quick reference guide enabling side-by-side comparison of local insights, including franchise market overview; key considerations when forming and operating a franchise; offer and sale of franchises; franchise contracts and the franchisor/franchisee relationship; and recent trends.

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## MARKET OVERVIEW

### Franchising in the market

How widespread is franchising in your jurisdiction? In which sectors is franchising common? Are there any economic or regulatory issues in the market that are more or less hospitable to franchising or make it economically viable in your jurisdiction?

In Finland, franchising is on the rise although it is not as widespread as in most other European Union countries. Despite several success stories and a fairly rapid two-digit growth of 98.67 per cent between 2001 and 2021, franchising is still a poorly recognised business method. The penetration of franchising in the Finnish market is below the European average and Finnish franchising culture has long been considered rather behind. Still, the business and investment climate is favourable, particularly in the aftermath of and recovery from the pandemic. The networks seem very confident of expansion, the financing of which is founded on cash flow in about 50 per cent of all networks.

As at June 2021, the franchising sector in Finland consists of a total of more than 250 networks, 5,000 franchisee entrepreneurs, and about 7,000 outlets that directly employ about 50,000 people and indirectly employ more than 100,000 people. In 2021, the average turnover per outlet was €670,000. The annual turnover of the franchising sector is €6 billion, accounting for approximately 2.56 per cent of the gross domestic product, but franchising (in particular, business-format franchising) is used less than in neighbouring countries such as Sweden, Norway and Estonia. The reason behind this may be the 'loyal servant' sentiment – that is, the apparent preference for being an employee rather than an employer in Finland – that was shaped by ironworks and engineering industry bureaucracy, which still lingers due to strict monthly reporting requirements to the tax authorities. Another possible reason is a latent reluctance to be kept on the franchisor's tight leash.

Like elsewhere within the European Union, in Finland, generally only business-format franchising is recognised. Given this narrow definition, only about 1.6 per cent of all operating enterprises are franchised. The current franchising market can be split into four broad sectors, each of which comprises a variety of businesses:

- consumer services, which accounts for approximately 43 per cent of franchised enterprises;
- business-to-business services, which accounts for approximately 12 per cent of franchised enterprises;
- the retail sector, which accounts for approximately 22 per cent of franchised enterprises; and
- the café, restaurant and fast food sector, which accounts for approximately 23 per cent of franchised enterprises.

Approximately one-third of all franchisees are women, being both younger and having attained a higher degree of education than their male counterparts.

About three-quarters of all franchises originate domestically, with the consumer services sector steadily growing. International franchises are mainly from other European countries, with the majority originating from Scandinavia and Western Europe. Less than one-third of international franchises come from North America.

It is generally recognised in Finland that franchising is suited to serving geographically dispersed local markets where a known trademark and a consistent product or service offering provides assurance to both consumers and franchisees, contributing to balanced regional development and additional entrepreneurial career opportunities for underrepresented groups.

*Law stated - 15 May 2022*

## Associations

Are there any national or local franchise associations? What is their role in franchising, including any impact on laws or regulations? Are there any rules of conduct or membership requirements?

Out of approximately 250 franchisors, 78 are members of, and 26 associated to, the Finnish Franchise Association (FFA), membership of which is voluntary. The FFA annually publishes a number of reports, the most important of which is the yearbook containing statistics and other data of its member franchisors. The FFA is a member of, among others, the European Franchise Federation and the World Franchise Council. In its capacity as a member of Finland's Entrepreneurs Association or alone, the FFA responds to requests for resolutions or opinions on legislative initiatives and bills, and it is poised to imminently increase its lobbying activity.

To the author's knowledge, franchisees do not have a local or national franchise association.

The FFA has adopted the European Franchising Federation's Code of Ethics in its own FFA Code. Members of the FFA must comply with the FFA Code. This is, however, not a statutory duty. Unless expressly incorporated into a franchise agreement, a franchisee is only permitted to invoke the FFA Code against a franchisor who is an FFA member. Although the FFA Code intends to reflect fair franchise practice, there is no precedent for the FFA Code being regarded as generally setting out such practice.

*Law stated - 15 May 2022*

## BUSINESS OVERVIEW

### Types of vehicle

What forms of business entities are relevant to the typical franchisor?

The franchisor is likely to choose a business entity that allows it to limit its liability. These entities include a private corporation (a limited liability company) or a partnership, subject to it being owned by a limited liability company. The typical franchisor is likely to choose the private limited company because of its simplicity of incorporation, no formal capital requirements and well-regulated administration as well as the fact that its shares are easily transferable. Alternatively, the foreign franchisor may elect to acquire an existing company, whether a shelf company or not.

*Law stated - 15 May 2022*

### Regulation of business formation

What laws and agencies govern the formation of business entities?

The formation of a limited company is governed by the Limited Liability Companies Act and the formation of a partnership is governed by the Partnerships Act . The Act on Trade Names and the Trade Register Act, and their respective decrees, also apply. The company acquires legal capacity once it has been registered with the Companies Register, which is administered by the Finnish Patent and Registration Office (the PRH).

*Law stated - 15 May 2022*

### Requirements for forming a business

## Provide an overview of the requirements for forming and maintaining a business entity.

These requirements include filing for entry into and registration with the commercial register held by the PRH, filing for the payment of company tax and value added tax (VAT), accounting for withholding tax on payrolls, regularly effecting employer contributions, and complying with the requirements concerning statutory pension schemes.

### Forming a business entity

The memorandum of association must be drawn up, incorporating by reference the articles of association (by-laws). The by-laws must contain the trade name, the municipality in Finland where the office is to be registered and the industry. The memorandum provides the details of the board members (the directors), the auditor and the subscription of shares.

Forwarding the subscription price, whether in cash or kind, is a prerequisite for registration. This should be documented by means of receipt and certificate issued by both the directors and the auditor.

The completion, execution and filing of the start-up notice also serve the purpose of notifying the tax authorities of the existence of the new taxpayer. The registration process with the Companies Register does not generally take long, provided that the name and business proposed is distinguishable from and not found to be confusingly similar to names already registered.

Unless an exemption is granted, at least one director must be a resident of the European Economic Area (EEA). This also applies to the managing director. Whatever entity is being used, if there is no director resident in Finland, another individual must be a Finnish resident to receive service of process. This individual can be a lawyer or consultant hired for this purpose. The auditor should be a Finnish-resident authorised or approved public accountant. There is no need for a foreign entity to provide any local participating capital.

### Maintaining a business entity

Whether a company is doing business or is dormant, the directors are responsible for duties such as the maintenance of accounting records in accordance with the Limited Liability Companies Act and the Accounting Act, keeping a register of all shareholders and shares issued, and filing the annual report and auditor's report with the Companies Register, which is subject to public scrutiny.

In addition, for the purposes of value added tax, the tax authorities expect the company to submit monthly and annual tax returns, and make tax account payments. Employers must also pay payroll taxes.

A business entity does not require the owner's physical presence. The incorporation in itself constitutes a permanent establishment for the purpose of any tax treaty. If, however, the employer wishes to employ staff, it must take out policies dealing with pensions, unemployment, injury and sickness insurance. Payment of dividends must also be notified.

*Law stated - 15 May 2022*

## Restrictions on foreign investors

### What restrictions apply to foreign business entities and foreign investment?

Finland is committed to non-discrimination and subscribes to the principle of free movement of capital, goods, services and labour. Generally, there are no restrictions on ownership unless an acquisition is perceived to put an important

national security interest at risk, in which case formal approval must be acquired. Accordingly, there are no distinct specific restrictions preventing foreign franchisors from entering the local market, nor are any specific approvals required. Thus, foreign franchisors face largely the same regulations as domestic franchisors commencing business in the same field. As such, they must comply with a number of registration and statutory requirements applicable to companies and entrepreneurs. Should the foreign company have the option to acquire the title to a franchise, there is no need to register such option. The same applies to development agreements and any agency relationship.

Although most direct obstacles to foreign investment have been abolished, Finland, like most other EU member states, has retained some restrictions that mainly relate to investment from outside the European Union or the Organisation for Economic Co-operation and Development (OECD). The most important national laws restricting or prescribing conditions for foreign investment are the Monitoring Act, the Act on Monitoring of Foreigners' Corporate Acquisitions and the Act on Freedom of Trade.

Apart from certain exceptions, shares and assets can be acquired by foreigners, whether natural or legal persons, without the need for approval by the authorities. Any exceptions are limited to those imposed pursuant to the OECD Code of Liberalisation of Capital Movements, such as any investments that may jeopardise public order, public health, morals, safety or the essential security interests of the country.

In addition, certain types of trade, whether carried out by Finnish residents or foreigners, are subject to monitoring, permissions or licences, which most often entail ensuring that those engaged in the trade are competent, sufficiently committed and able to respond to any liabilities connected to the business.

In general, there are no restrictions should a foreign franchisor wish to acquire real property by means of purchase or to take real property on a leasehold basis. This also applies to the acquisition of business premises and to letting (or sub-letting) premises to the franchisee. This does not pertain to certain areas close to the eastern border that are important for national defence.

*Law stated - 15 May 2022*

## **Taxation**

What aspects of the tax system are relevant to franchisors? How are foreign businesses and individuals taxed?

From the viewpoint of the foreign franchisor, it is worth noting that Finland is a party to the Convention of 1988 on mutual administrative assistance in tax matters and to the Convention of 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises. In addition, there are approximately 100 double tax treaties for the avoidance of double taxation and tax evasion in force, some of which are multilateral and take precedence over national tax law. The most frequent method for eliminating double taxation is the credit method. Where there is no double tax treaty with the country of residence of the foreign taxpayer, the country's tax rights are determined by national tax laws.

### **Withholding tax at source**

Generally, the tax treaties provide for tax on dividends and royalties varying between 5 and 15 per cent to be withheld at source. However, where the EU Parent-Subsidiary Directive is applicable, no withholding tax is levied on profit distribution, such as dividends, to a parent company that directly holds at least 10 per cent of the equity of the profit-distributing company. Where this directive is not applicable, the withholding tax at source on dividends is 15 per cent. For other non-resident corporate bodies, generally the rate of withholding is 20 per cent on profit distribution, interest (where not completely tax exempt) and royalties. For natural persons, the rate is 35 per cent on income from employment, pensions and distributions by employee investment funds, unless otherwise agreed in the tax treaty

concluded with the recipient's country of residence. Most other income of non-residents derived from Finland is taxed on an assessment basis.

## **Corporate income tax**

This tax is assessed on the worldwide income attributable to the business, bearing in mind the arm's-length principle. Thus, service fees, interest, royalties and capital gains are included but costs, expenses and losses attributable to the business are deductible. Dividends are generally totally tax exempt both domestically and under either the EU Parent-Subsidiary Directive (subject to the 10 per cent minimum shareholding requirement), or tax-exempt to 25 per cent subject to a double tax treaty between Finland and the country from which the dividends are distributed. The corporate tax rate is 20 per cent. As there are currently no thin capitalisation restrictions, a business can be financed from abroad, but is subject to some rather complicated rules on the deductibility of interest paid in excess of €500,000.

## **Foreign businesses**

According to the general rule, foreign businesses are taxed only on income sourced in Finland. This means that corporate entities are taxed at the abovementioned flat rate of 20 per cent while business partnerships, the variety of which is manifold, are not taxed as such but the net profit calculated and for the purpose of assessment distributed among the partners. Real estate tax is assessed on the taxable value of the property, whether land or buildings. However, should the foreign business have a permanent establishment (PE) in Finland, it will be liable to tax on all income attributable to the PE. Thus, as a general rule, interest, royalties and capital gains are included but costs and expenses attributable to the business are deducted. If a PE's business operation results in loss, such a loss will be deductible during the subsequent 10 tax years, applying the same loss carry-forward rules that are applied in respect of Finnish business entities. However, these rules do not apply should more than half the ownership of the foreign company change hands.

## **Foreign individuals**

Non-Finnish residents are taxed in Finland on income sourced in the country, subject to any applicable treaties for the avoidance of double taxation. Under certain conditions and subject to the approval of an application, salary earners with special expertise may – for a maximum period of four years – be entitled to participate in a regime permitting the employer to withhold, in lieu of income and municipality tax, 35 per cent of salary earned. Otherwise, foreign employees are liable for a progressive tax on their salary or wages should they stay in Finland for longer than six months, regardless of citizenship. At the same time, when their stay lasts no longer than six months, the Finnish employer collects a 35 per cent tax at source on the pay, as well as withholding social security payments unless the pay is effectuated by and encumbers a foreign company. Royalties paid to the holders of intellectual property rights who are not Finnish residents are subject to a 28 per cent tax at source. The tax rate is 30 per cent for capital income and 34 per cent above €30,000.

## **VAT**

In general, goods and services supplied in Finland during business are subject to VAT. The general rate of VAT is currently 24 per cent, although the rate for food, restaurant and catering services is 14 per cent and the rate for categories such as books, subscribed newspapers, cultural events, medicines, fitness services, passenger transport and accommodation is 10 per cent.

## Transfer tax

Transfer of title to shares of a private limited liability company is generally subject to a transfer tax of 1.6 per cent of the price agreed. On real estate, the tax rate is 4 per cent.

*Law stated - 15 May 2022*

## Labour and employment

Are there any relevant labour and employment considerations for typical franchisors?

The crucial question is twofold: whether the franchisee is put under the direction and supervision of the franchisor and whether he or she lacks responsibility for financial risk. If yes, the franchisee is considered an employee of the franchisor rather than an entrepreneur. Low income alone may constitute a factor that puts the franchisee in a position equal to that of an employee or a consumer. The franchisee may be considered a consumer if the franchisee is submitted to work under the direction of the franchisor where the franchisee's in-person involvement is required, or where the franchisor is entitled to issue new instructions to the franchisee, who is required to adhere to such instructions with the franchisor allowed to monitor his or her actions. The franchisee may also be considered a consumer if the franchisor is permitted to amend, at his or her sole discretion, the franchising concept.

Further, where the commercial benefits of the arrangement are or can easily be transferred to the franchisor (eg, by means of the franchisor being in command of the clients or customers of the franchisee, with the franchisee acting solely in service of the franchisor). It is important to consider the conscious intent of the parties. However, depending on the industry, the franchisor may be justified in dictating far-reaching requirements regarding matters such as the recruitment, education, conduct and continuous training of employees; however, equilibrium must be maintained so as not to deprive the franchisee of the independence that is a prerequisite for being regarded as an entrepreneur.

With respect to the franchisee's employees, vicarious liability may arise in certain cases where the franchisee is to be regarded as either an employee, an agent or a partner of the franchisor. Despite some statements included in the franchise contract to the effect that the franchisee is not the agent of the franchisor, an agency relationship can still arise, although this is rare in practice. A partnership is formed by the agreement of the partners to carry on business for the achievement of mutual economic gain. Unless liability is restricted, the partners are jointly and severally liable for all liabilities of their partnership.

*Law stated - 15 May 2022*

## Intellectual property

How are trademarks and other intellectual property and know-how protected?

To protect trademarks and other intellectual property rights, active surveillance and immediate decisive action against infringements are recommended. For trademarks, to enforce one's rights, one must ensure that the trademark is registered rather than relying on the mere establishment of the mark, symbol or brand. It is risky to attempt to make it evident that the mark is generally well known in the appropriate Finnish business or consumer circles and requires a lot of effort. While this effort is being undertaken, a competitor could be exploiting the trademark.

There are many statutes on intellectual property, such as the Trademarks Act, the Patents Act, the Act on Utility Model Rights, the Copyright Act, the Registered Designs Act and the Act on Trade Names.

The concepts of trade secrets and know-how are fairly well defined. Apart from the consequences of divulging a trade secret as regulated by the Penal Code and the Employment Contracts Act, the latter regarding the duty of an employee not to divulge any business or professional secrets of his employer, there is the Trade Secrets Act. As for know-how,

there is no other statutory legal definition than the one contained in article 1(i) of Regulation (EU) No. 316/2014 on block exemptions for technology transfer agreements. As know-how is frequently part of trade secrets, it generally enjoys the same legal protections.

*Law stated - 15 May 2022*

## Real estate

What are the relevant aspects of the real estate market and real estate law? What is the practice of real estate ownership versus leasing?

As freeholds generally require significant capital investment, transferable and often renewable tenancies are exploited by franchisors with a need for space, such as restaurants, hotels, retail stores, vehicle rental businesses and petrol stations. Offered mainly by municipalities for periods varying between 30 and 100 years, in many ways tenancies resemble freeholds: the tenant is expected to erect and maintain the buildings and is subject to real estate tax of 0.6 to 1.35 per cent of the taxable value of the property, depending on the municipality.

Franchisors that do not require an entire building generally lease the business premises, for example a flat or the entire ground floor of a building, thereby assuming the financial and commercial risks. The most common lease term is five to six years, with options of renewal for periods of about three years each. Rent rates are expressed on a monthly basis calculated per utilised square metre, which is frequently pegged to an index or – as in the case of many shopping malls – divided into the capital rent (percentage rent), the maintenance rent and the marketing fee. All utilities, such as gas, water and electricity, however, must be paid as an extra cost. Landlords frequently require a guarantee, which is generally the equivalent of three months' rent and is a bank-held security or collateral.

Where the franchisee is the lessee and it is worthwhile to ensure that a competitor cannot take over the location should the franchise agreement cease, the franchisor may wish to ensure that he or she is entitled either to take over the lease or to replace the franchisee. This may entail a conditional lease assignment between the landlord and the franchisee, or some similar arrangement.

While the relationship between the landlord and the lessee or assignee is regulated by the Act on Lease of Business Premises and the mandatory rules of that act must be complied with, case law suggests that where the premises are sublet as part of a franchise agreement that is considered to be mingled and complex, the Act on Lease of Business Premises cannot be applied.

*Law stated - 15 May 2022*

## Competition law

What aspects of competition law are relevant to the typical franchisor in your jurisdiction? How is competition law enforced in the franchising sector?

Competition rules on vertical restraints and on selective distribution may be of some concern to the typical franchisor. The Competition Act prohibits and exempts agreements, decisions or practices in a similar way to the Treaty on the Functioning of the European Union. The guidelines of the European Commission are applied when interpreting vertical restraints, whether challenged based on the national statute or the basis of the EU Vertical Block Exemption Regulation (VBER). Where competition restrictions affect trade between EU member states, EU antitrust law is directly applied. The agency responsible for enforcement is the Finnish Competition and Consumer Authority (FCCA). Abuse of antitrust rules may, unless deemed minor or unjustified with regard to safeguarding competition, lead to the Market Court (on a proposal by the FCCA) imposing a competition infringement. In addition, the abuser may be liable for damages, whether through tort or contract.

**OFFER AND SALE OF FRANCHISES****Legal definition**

What is the legal definition of a franchise?

Given the fact that there is no statutory definition, the prevalent definition is equal to that contained in the European Franchising Federation's Code of Ethics:

Franchising is a relationship which involves a contractual and long-term collaboration between two independent firms, a franchisor and a franchisee, in which the franchisor grants for payment a right to the franchisee to make use of the franchisor's business format in a pre-described and controlled manner at a certain location of area for a certain period of time

Law stated - 15 May 2022

**Laws and agencies**

What laws and government agencies regulate the offer and sale of franchises?

There is no special legislation in this field, but there are several statutory regulations that must be heeded. The most important of these are the Contracts Act, the Unfair Business Practices Act, the Trademarks Act and the Competition Act.

No government agency regulates the offer or sale of franchises, nor is there any regime for registering or recording franchise contracts. It is advisable to have a trademark licence recorded.

Law stated - 15 May 2022

**Principal requirements**

What are the principal requirements governing the offer and sale of franchises under the relevant laws?

It may be inferred from the Contracts Act that there is a legal doctrine that imposes a mutual duty of loyalty on contractual parties. This is widely acknowledged in case law. Accordingly, there is a general contractual good faith and fair dealing requirement to avoid misrepresentations inducing the opposite party to enter into a contract. In some circumstances, silence may amount to a misrepresentation. The franchisor should, as a general rule, endeavour to disclose any and all matters that may affect the potential franchisee's decision to accept the franchise. The content and scope of this duty depend on the merits of the case, bearing in mind the potential franchisee's knowledge and experience. On the other hand, the franchisee is also generally under a duty of care, prompting it to obtain (through its own initiative) available information, such as information on general market conditions and their impact on the business.

The Unfair Business Practices Act prohibits any conduct violating fair business practice. In particular, it prohibits the use of untrue or misleading representations regarding a business, whether one's own or that of another, that are may either affect the demand for or supply of a product, or cause harm to somebody else's business. The Trademarks Act

covers the national trademark law and the Competition Act sets boundaries regarding actions considered to restrict competition.

*Law stated - 15 May 2022*

### **Franchisor eligibility**

Must franchisors satisfy any eligibility requirements in order to offer franchises? Are there any related practical issues or guidelines that franchisors should consider before offering franchises?

There is no specific legislation or regulation concerning this matter. Nevertheless, where the franchisor is a member of the Finnish Franchise Association (FFA) he or she must adhere to the FFA Code of Ethics, which stipulates that, before setting up a franchise network, the franchisor should have operated the business concept successfully for a reasonable time in at least one unit.

*Law stated - 15 May 2022*

### **Franchisee and supplier selection**

Are there any legal restrictions or requirements relating to the manner in which a franchisor recruits franchisees or selects its or its franchisees' suppliers? What practical considerations are relevant when selecting franchisees and suppliers?

There are no statutory restrictions or requirements relating to the manner in which a franchisor recruits franchisees, such as restrictions on or requirements as to the number of franchises or franchisees, their characteristics, the locations of the franchised outlets or the distances between outlets. However, only when the franchisor is a member of the FFA is he or she obligated to comply with the recruitment rules contained in the FFA's Code of Ethics, and thus to those on the recruitment and the selection of franchisees, including their characteristics. This means that a franchisor should select and accept as individual franchisees only those who, upon reasonable investigation, appear to possess the basic skills, education, personal qualities and financial resources sufficient to carry on the franchised business. Moreover, it is noteworthy that there are no 'franchisee anti-poaching rules' to draw on save for one derivable from the Employment Contracts Act on the duty of an entrepreneur to compensate the damage he or she has caused another employer by hiring another employer's employee knowingly for competing work. Thus, franchisee anti-poaching, non-solicitation, non-interference provisions, no-hire clauses and similar restrictive agreements are to be regarded as permitted unless specified under antitrust rules.

Save for general antitrust rules, where applicable, there are no requirements (statutory or otherwise) regarding the manner in which a franchisor may select its or its franchisees' suppliers, such as restrictions on or requirements as to local content of goods and services purchased by franchisor or franchisees. There are also no requirements on the effect of the entry of a franchised network upon local companies or on the yearly growth of the franchised network by some specified percentage.

*Law stated - 15 May 2022*

### **Pre-contractual disclosure – procedures and formalities**

What procedures and formalities for pre-contractual disclosure are required or advised in your jurisdiction? How often must the disclosures be updated?

Unless abrogated from by some choice of law provision to the contrary, statutorily, the compliance procedure founded

on the principle of good faith and fair dealing requires full and accurate written disclosure of all information material relating to the franchise relationship within a reasonable time period prior to the execution of those documents. As this principle is continuous by nature, disclosures must be updated whenever circumstances change. This notwithstanding, in Finland, there is no explicitly prescribed statutory pre-sale due diligence process containing, for instance, a formal franchise disclosure document to be given to those interested in buying a franchise as there is in many other countries. Nevertheless, where the franchisor happens to be a member of the FFA, he or she must adhere to the disclosure rules contained in the FFA's Code of Ethics.

*Law stated - 15 May 2022*

### **Pre-contractual disclosure – content**

**What information is the disclosure document required or advised to contain?**

Statutorily, the compliance procedure founded on the principle of good faith and fair dealing requires full and accurate written disclosure of all information material relating to the franchise relationship within a reasonable time period prior to the execution of those documents. Unless abrogated from by some choice of law provision to the contrary, this principle is unambiguously founded on the sales law applicable to the sale of a franchise, as it is generally recognised as being applicable to the sale of intellectual property rights. This notwithstanding, where the franchisor is a member of the FFA, he or she is, under the disclosure rules contained in the FFA's Code of Ethics, required to comply with at least the following:

- any recruitment, advertising and publicity material, containing direct or indirect references to future possible results, figures or earnings to be expected by individual franchisees, shall be objective and shall not be misleading; and
- no later than a reasonable time prior to the execution of the franchise agreement, the prospective franchisor is to give, apart from the FFA Code of Ethics, full and accurate written disclosure of 'all information material to the franchise relationship', including the proposed franchise agreement.

*Law stated - 15 May 2022*

### **Pre-sale disclosure to sub-franchisees**

**In the case of a sub-franchising structure, who must make pre-sale disclosures to sub-franchisees? If the sub-franchisor must provide disclosure, what must be disclosed concerning the franchisor and the contractual or other relationship between the franchisor and the sub-franchisor?**

The sub-franchisor (the master franchisee) is responsible for making disclosures to its sub-franchisees. It may be inferred from both the Contracts Act and the sales law that there is a legal doctrine that imposes a mutual duty of loyalty on contractual parties. This is widely acknowledged in case law. Accordingly, there is a general contractual good faith and fair dealing requirement to avoid misrepresentations that induce the opposite party to enter into a contract. In some circumstances, silence may amount to a misrepresentation. Accordingly, the franchisor should, as a general rule, endeavour to disclose any and all matters that may affect the potential franchisee's decision to accept the franchise. The content and scope of this duty depend on the case, bearing in mind the potential franchisee's knowledge and experience. The franchisee is also generally under a duty of care, prompting it to obtain (through its own initiative) any available information, such as information on general market conditions and their impact on the business.

*Law stated - 15 May 2022*

## Due diligence

What due diligence should both the franchisor and the franchisee undertake before entering a franchise relationship?

Adequate due diligence in respect of certain business considerations, legal matters and the potential local partner provide clues as to the likely success of the franchise. The business and legal considerations include whether the local costs – such as for labour, lay-offs, environmental regulatory compliance, rent, leases and commuting – may prove to be too high for recouping the investment within a reasonable time period. The same is true as to the costs of accountants, audits and business administration, not to mention legal services and the cost of dispute resolution.

For franchises that rely heavily on local supply chains, the question is whether affordable suppliers are available. This is an important factor to consider in light of the notorious Finnish duopoly market for groceries and daily consumer goods. Other questions concern, for example whether, in particular in the metropolitan area of Helsinki, the traffic policy that results in harmful and unforeseeable traffic jams is likely to impact the franchisee, and whether the composition of the product (eg, both the legality and the legal restrictions on products such as tobacco, alcohol and opiates) or the offering of services (eg, healthcare, elderly care, education, kindergarten, etc, licensed or at least strictly supervised) is likely to prove suitable or profitable. How have competing brands performed? Is there an adequate logistical infrastructure to support the franchisor's business operations? What attitude will the local zoning and building supervising authorities (who, from time to time, have exhibited corruptive, niggling and outright mean tendencies) take towards the design of the outlets, necessary parking spots, etc?

Among the legal matters, apart from vetting the legal environment in respect of the industry both present and future, it is important to ensure that the principal trademark – including brands, trade dresses and signs – are adequately protected by intellectual property rights. In respect of the local partner, be it a potential master franchisee, franchisee, area representative or area developer, a background check of him or her as well as any officer is a critical aspect of the franchisor's due diligence. In general, this check includes a trade history search, bankruptcy records, review of criminal and civil records (including pending lawsuits and general business reputation), assets and credit reports. Moreover, one may wish to ensure there are no third-party arrangements or liabilities that may pose a hazard and that the financial status of the potential partner will remain satisfactory.

*Law stated - 15 May 2022*

## Failure to disclose – enforcement and remedies

What actions may franchisees or any relevant government agencies take in response to a franchisor's failure to make required disclosures? What legal remedies are available? What penalties may apply?

It is up to the franchisee to ensure that his or her rights will not be encroached upon. An action may be brought before the Market Court due to a violation of the requirements to provide true and sufficient information if it is founded on a charge of unfair business practice. This court may, however, merely prohibit the franchisor's action and reinforce its judgment with a conditional fine. Any claim for damages – whether contractual, such as those based on breach of contract, or in tort, such as infringement of the disclosure requirements – must be instituted by an action before the competent ordinary court.

Cease and desist orders, sequestration and a variety of precautionary remedies are also available. In extreme situations, the Penal Code describes fraud as well as a number of other offences for the purpose of deterring the production of any false information. Court practice shows cases of criminal charge and conviction for fraud and other

felonies, such as quoting untrue profit estimates and non-disclosure of unprofitable experience of franchising. In cases of tort, the main fault is negligence. In the case of contracts, the liability is strict and vicarious regarding the lack of care of employees, agents and subcontractors. The starting point is the principle of full compensation: the franchisee must be restored to the position in which he or she would have been in had the franchisor fulfilled his or her duties. In the event of the franchisee being entitled to rescind the franchise contract, it is likely that the not-yet-amortised expenditure would be recoverable, as well as the estimated loss of future profits from the unit. However, where termination would have been permitted, damages are likely to be restricted to the loss of profits merely for the length of the notice period.

No government agency enforces disclosure requirements.

*Law stated - 15 May 2022*

### **Failure to disclose – apportionment of liability**

In the case of sub-franchising, how is liability for disclosure violations shared between franchisor and sub-franchisor? Are individual officers, directors and employees of the franchisor or the sub-franchisor exposed to liability? If so, what liability?

Although the sub-franchisor is responsible for disclosure with respect to his or her franchisees, the sub-franchisor may have recourse to the franchisor for untrue or misleading information furnished by the franchisor. When they are acting within the powers of the business entity, individual officers, directors and employees are not exposed to liability except where directors can be held liable for negligence on company legal grounds.

*Law stated - 15 May 2022*

### **General legal principles and codes of conduct**

In addition to any laws or government agencies that specifically regulate offering and selling franchises, what general principles of law affect the offer and sale of franchises? What industry codes of conduct may affect the offer and sale of franchises?

Finnish contract law contains, although implicitly, important principles such as freedom of contract, freedom of form, and the principle that a contract based on the consent of the parties is binding and must be negotiated and executed in good faith. Accordingly, the principle of culpa in contrahendo is emphasised. The guiding force is loyalty between the parties: each party ought to deal loyally with the other, paying attention to the other party's advantage as well.

The franchise networks that are members of the FFA have established a certain self-regulation by their commitment to comply with the FFA Code of Ethics, which constitutes a set of standards similar to those of the European Franchise Federation (EFF) and, accordingly, deals to a considerable extent with matters relating to the offer and sale of franchises. The member networks furnish the potential franchisee, well in advance of the signature of a binding agreement, with 'any written information capable of being furnished on the franchising relationship between the parties'. The standards on recruitment and advertising are similar to those of the EFF. The same is true when a franchisor imposes a pre-contract on a potential franchisee.

*Law stated - 15 May 2022*

### **Fraudulent sale**

What actions may franchisees take if a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises?

The franchisee may apply for a pre-trial investigation as to whether the franchisor has committed fraudulent practices, be that merely a marketing offence or an unfair competition offence. A conviction may result in a fine or imprisonment. Damages, including reimbursement for expenditure, may be recovered at criminal or civil proceedings.

*Law stated - 15 May 2022*

## FRANCHISE CONTRACTS AND THE FRANCHISOR/FRANCHISEE RELATIONSHIP

### Franchise relationship laws

What laws regulate the ongoing relationship between franchisor and franchisee after the franchise contract comes into effect?

There is no franchise-specific law, but there is court practice and related specific legislation that must be heeded during the length of the relationship. These include the Sale of Goods Act on the supply of commodities and rights – which is analogously considered to be applicable to services – and, amongst others, the Contracts Act, the Unfair Business Practices Act, the Trademarks Act and the Competition Act. In addition, indirectly, a number of other statutes affect the franchise relationship. These include the Consumer Protection Act, the Employment Contracts Act, the Tort Liability Act, the Product Liability Act and, should parties seeking to settle a dispute have elected for arbitration in lieu of ordinary court procedures, the Arbitration Act. In addition, relative to the covid-19 pandemic, presently there is a host of legislative initiatives chiefly aiming at supporting businesses monetarily, with restaurants, bars and cafeterias among those hit hardest by the closures. However, these have a marginal effect.

*Law stated - 15 May 2022*

### Operational compliance

What mechanisms are commonly incorporated in agreements to ensure operational consistency and adherence to brand standards?

The mechanisms for making sure that operational compliance and standards are adhered to cover, generally, detailed reporting requirements imposed on the franchisee, monitoring of franchisee's business and audit of finances, payment of royalties, etc. Field surveys, ad hoc quality control inspections and financial audits are either carried out by visiting the network or simply remotely. Visiting the network is typically performed by either the franchisor's staff, a proxy, an independent third party specialising in network conformity assessment services or independent auditors furnished with mobile tools, solutions and applications for reporting according to predesigned and agreed programmes. These programmes include checklists, paperless records and video or photographic proof. Digital operation manuals with integrated reporting and monitoring solutions seem to be appearing within many industries.

*Law stated - 15 May 2022*

### Amendment of operational terms

May the franchisor unilaterally change operational terms and standards during the franchise relationship?

During the franchise relationship, the franchisor must not unilaterally change operational terms or standards except where such change is entirely necessary: that is, compelled by circumstances beyond the control of the franchisor, such as a scarcity of raw materials or components, where the change is founded on legislative factors or where the parties have so agreed. Accordingly, it is a top priority to ascertain that the degree to which the franchisor is permitted to unilaterally change operational terms and standards is thoroughly detailed in the franchise agreement.

*Law stated - 15 May 2022*

### **Policy affecting franchise relations**

#### **Do other government or trade association policies affect the franchise relationship?**

Currently, there are no government or trade association initiatives that significantly affect franchising relationships, except for certain plans to streamline corporate taxation, lower the corporate income tax rate and increase the tax on dividends where they are not tax-exempt.

Regarding trade association policies, the importance of the Finnish Franchise Association's (FFA) board of ethics as an authority capable of formulating good franchising practice is expected to grow. A conspicuous feature is the fact that, out of the government initiatives relative to the covid-19 pandemic, so far there is not a single one aiming at alleviating the pressure franchisees experience because of loss of customers, while only rarely do franchisors grant cuts on royalties and franchise fees and nor do lessors and landlords grant discounts on rent.

*Law stated - 15 May 2022*

### **Termination by franchisor**

#### **In what circumstances may a franchisor terminate a franchise relationship? What are the specific legal restrictions on a franchisor's ability to terminate a franchise relationship?**

Where the franchise agreement is for a fixed period, there should be very good cause for the franchisor to terminate the agreement and, in particular, to terminate it without notice. Whether or not the agreement is for a fixed period, much depends on the contents of the contract and the justified expectations of both parties. If the franchisee proves not to be loyal to the network, this is a good cause for termination. This would also be the case if the franchisee, at the conclusion of the agreement, has deceived the franchisor regarding any essential issue – such as regarding their skills, education, personal qualities or financial resources – has breached material contract provisions constantly or repeatedly, or has severely violated the interests of the franchisor resulting in a justified loss of trust. If the franchisee either becomes unable to perform the expected duties or is seriously hampered in performing them due to any other specified circumstance, this is also seen as a good cause.

Franchise agreements frequently contain elaborate grounds for termination, such as non-payment of licence fees, royalties and other monies due to the franchisor, to enable the franchisor to rescind the agreement if need be. It is, however, important to note the franchisee's right to challenge the fairness of the provisions, even late in the day. If the franchisee becomes bankrupt, the general rule is that the principle of continuation of agreements precludes discontinuation of the contract.

*Law stated - 15 May 2022*

### **Termination by franchisee**

## In what circumstances may a franchisee terminate a franchise relationship?

Unless there is a good cause, the termination without notice will not be deemed justified. The threshold for terminating an agreement for a fixed period is much higher. This said, termination with notice is likely to be regarded as justified if the franchisor has neglected core duties such as guidance, training, the duty to supply commodities that the franchisee may be bound to acquire for his or her business, the duty of updating the operating manual or similar instructions, or is favouring or siding with fellow franchisees at the terminating franchisee's expense. Termination without notice is normally seen as justified if the franchisor:

- at the conclusion of the agreement has deceived the franchisee regarding any essential issue, such as the alleged success of any pilot unit or their capabilities for guidance or training;
- has breached material contract provisions constantly or repeatedly; or
- has severely violated the interests of the franchisee, resulting in a justified loss of trust.

It is conceivable that certain consequences of the covid-19 pandemic may be regarded as events that may release a party from his or her contractual duties. This is, however, always subject to such party giving notice, without delay, of the impediment and its effect on his or her ability to perform, and proves that his or her failure of performance is due to a clearly definable external impediment beyond his or her control and that he or she cannot reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract, or to have avoided or overcome it or its consequences.

In Finland, the rule of liability founded on the ambit of control of the party invoking the impediment – in contrast to liability founded on negligence – has been implemented in a number of enactments, chiefly featuring the sale of goods or services. However, in business-to-business relationships, frequently sales contracts (whether general or not) contain some sort of facilities management clause meticulously defining several events that may constitute an impediment entitling the franchisee to invoke a release of contractual obligations. As sales law is optional, unless by way of exception deemed null or void on basis of some legally clearly regulated reason, such contract clauses prevail over law. Last but not least, the rule of section 36 of the Contracts Act that admits the competent court to adjust an unfair contractual term or a term the application of which would lead to an unfair result may be invoked where the circumstances have changed after the conclusion of the contract.

*Law stated - 15 May 2022*

## Renewal

How are renewals of franchise agreements usually effected? Do formal or substantive requirements apply?

Renewals of franchise agreements are subject to agreed procedure, if any, otherwise they are effected without formalities.

*Law stated - 15 May 2022*

## Refusal to renew

May a franchisor refuse to renew the franchise agreement with a franchisee? If yes, in what circumstances may a franchisor refuse to renew?

The franchisor can refuse to renew the agreement if it was made for a fixed term and there is no provision to the effect that the franchisee has an option to renew it. Where there is an option clause, it is frequently contingent on the franchisee meeting certain conditions; if these are not met, the franchisor may refuse to renew the agreement.

*Law stated - 15 May 2022*

### **Transfer restrictions**

**May a franchisor restrict a franchisee's ability to transfer its franchise or restrict transfers of ownership interests in a franchisee entity?**

It is acceptable to contractually restrict a franchisee's ability to transfer its franchise and such a restriction is, in general, enforceable. The same is true regarding restrictions of transfers of ownership interests in the franchisee's entity. However, an overly strict or long-lasting prohibition may be considered unreasonable and subject to adjustment by the competent court or dispute resolution body permitted to adjudicate, by application of section 26 of the Contracts Act.

*Law stated - 15 May 2022*

### **Fees**

**Are there laws or regulations affecting the nature, amount or payment of fees?**

Should a franchisee (or sub-franchisor), exceptionally, be deemed an associated enterprise in the sense of the transfer pricing regime to avoid tax consequences, the arm's-length principle and documentation regime must be complied with.

*Law stated - 15 May 2022*

### **Usury**

**Are there restrictions on the amount of interest that can be charged on overdue payments?**

Transfer pricing standards also apply to interest. There is no restriction on the amount of interest that may be charged unless it is deemed to be unreasonable or to amount to usury.

Nevertheless, any provision related to the amount of interest is deemed a term of the contract and, therefore, the rules of the Contracts Act regarding adjustment may be applicable.

*Law stated - 15 May 2022*

### **Foreign exchange controls**

**Are there laws or regulations restricting a franchisee's ability to make payments to a foreign franchisor in the franchisor's domestic currency?**

No. The Bank of Finland provides details concerning money exchange and exchange rates, which is useful for foreign franchisors.

*Law stated - 15 May 2022*

## Confidentiality covenant enforceability

### Are confidentiality covenants in franchise agreements enforceable?

Yes, they are enforceable, though the risk of court-ordered adjustment or setting-aside exists, such as if the covenant is made more extensive than necessary so as to prove unreasonable.

*Law stated - 15 May 2022*

## Good-faith obligation

### Is there a general legal obligation on parties to deal with each other in good faith during the term of the franchise agreement? If so, how does it affect franchise relationships?

Yes, dealing in good faith has a central position in law, though not necessarily in practice. Finnish contract law contains important principles such as freedom of contract, freedom of form and the principle that a contract based on the consent of the parties is binding and must be negotiated and executed in good faith. One may infer from the Contracts Act that there is a legal doctrine imposing a mutual duty of loyalty on contracting parties. Each party ought to deal loyally with the other, paying attention to the other party's advantage as well. There is a general contractual good faith and fair dealing requirement to avoid misrepresentations inducing the opposite party to enter into a contract. This is widely acknowledged in case law. In some circumstances, silence may amount to a misrepresentation. The principle of culpa in contrahendo is emphasised. Accordingly, the franchisor should, as a general rule, endeavour to disclose any and all matters that may affect the potential franchisee's decision to accept the franchise. The content and scope of this duty depend on the case, bearing in mind the potential franchisee's knowledge and experience. The franchisee is also generally under a duty of care, prompting it to obtain (through its own initiative) available information, such as information on general market conditions and their impact on the business.

The compliance procedure founded on the principle of good faith and fair dealing requires full and accurate written disclosure of all information material relating to the franchise relationship within a reasonable time prior to the execution of those documents. As this principle is continuous by nature, disclosures must be updated whenever circumstances change. However, in Finland, there is no statutory prescribed pre-sale due diligence process containing, for instance, a formal franchise disclosure document to be given to those interested in buying a franchise as there is in many other countries.

The Unfair Business Practices Act prohibits any conduct violating good business practice. In particular, it prohibits the use of untrue or misleading representations regarding a business, whether one's own or another, that may either affect the demand for or supply of a product or cause harm to somebody else's business. The Trademarks Act covers the national trademark law and the Competition Act sets boundaries regarding actions considered to restrict competition.

Franchise networks that are members of the FFA have established a certain self-regulation by their commitment to comply with the FFA Code of Ethics, which constitutes a set of standards similar to those of the European Franchise Federation (EFF) and, accordingly, deals to a considerable extent with matters relating to the offer and sale of franchises. The member networks furnish the potential franchisee, well in advance of the signature of a binding agreement, with 'any written information capable of being furnished on the franchising relationship between the parties'. The standards on recruitment and advertising are similar to those of the EFF. The same is true where a franchisor imposes a pre-contract on a potential franchisee.

*Law stated - 15 May 2022*

### **Franchisees as consumers**

Does any law treat franchisees as consumers for the purposes of consumer protection or other legislation?

No. Consumer protection protects consumers only where goods or services are acquired primarily for a purpose other than business or trade.

*Law stated - 15 May 2022*

### **Language of the agreement**

Must disclosure documents and franchise agreements be in the language of your country?

No, they can be in any language understood by the parties, unless the network is bound by the European Franchise Federation Code of Ethics. In this case, the documents may be in either Finnish or Swedish, both of which are official national languages. However, if a party is sued at court, generally, any evidentiary documents must be translated into either of the national languages.

*Law stated - 15 May 2022*

### **Restrictions on franchisees**

What types of restrictions are commonly placed on the franchisees in franchise contracts?

#### **Duration**

In practice, there are no restrictions.

#### **Exclusive territories**

Exclusivity can be provided by means of restricting active – but not passive – sales outside the contract territory.

#### **Restrictions on sources from whom a franchisee may purchase or lease products**

From an antitrust law viewpoint, the franchisor is free to impose on the franchisee an obligation to purchase the contracted products exclusively from the franchisor or from other entrepreneurs designated by the franchisor, provided that the obligation is not indefinite or does not exceed five years in length.

#### **Restrictions on customers the franchisee may serve**

Generally, the franchisor is free to impose on the franchisee an obligation not to sell contract products to resellers outside the network, subject to the condition that the franchisee is free to effectuate cross-supplies to or from other members of the network at any level and the franchisee is not prohibited from active sales to end-users wherever they are located.

#### **Prices franchisees charge their customers**

Antitrust law prohibits price-fixing, whether direct or indirect. All horizontal agreements on prices and on other trading conditions are prohibited.

### **Prohibitions on franchisees soliciting other franchisees' employees**

There is no express statutory law on non-poaching agreements restricting another, such as a franchisee, from soliciting the employees of another franchisee. However, it is advisable to take heed of the fact the franchisee so restricted may invoke the power of any court to adjust contract terms. Given the fact that in this field there is very little case law, there is a measurable risk that the court may deem such restriction unreasonable or, at worst, that the franchisee so restricted fits into the direction and supervision of the franchisor, which would jeopardise the independence of the franchisee as an entrepreneur and, accordingly, increase the risk that he or she may be regarded as an employee of the franchisor.

### **Non-competition restrictions**

According to the general rule, provisions that are essential to protect the franchisor do not constitute restrictions of competition. The more important the transfer of know-how, the more likely it is that the restraints create efficiencies or are indispensable to protect the know-how, and that the vertical restraints fulfil the conditions of the European Commission Treaty. A non-compete obligation on products purchased by the franchisee falls outside the scope of the prohibition where the obligation is necessary to maintain the common identity and reputation of the franchised network. In such cases, the duration of the non-compete obligation is irrelevant, provided that it does not exceed the duration of the franchise agreement itself. All the same, to be effective after the expiration of the contract, the non-compete obligation must be related to the contract products and must not only be indispensable to protect know-how transferred by the franchisor, but must also be limited to more than for a reasonable period after the expiry of the franchisor agreement and to the premises or land from which the franchisee has operated during the contract period. In any case, in order not to forfeit the benefit of the block exemption, the 30 per cent market share threshold must not be exceeded. Nevertheless, under the Contracts Act, a non-compete clause may be considered either too restrictive or to unreasonably limit the freedom of the franchisee and, therefore, be regarded as non-binding. Accordingly, there is good reason to give much thought to whether a non-compete clause is required and, if so, to its scope and duration.

### **Governing law**

Generally, a franchise agreement can be subject, in part or in whole, to the law of a foreign country. Nevertheless, the choice of foreign law – whether or not it is accompanied by the choice of a foreign tribunal – does not necessarily prejudice the application of domestic mandatory rules from which no derogation can be made.

### **Dispute resolution**

Finnish law acknowledges contracts on jurisdiction unless there is exclusive jurisdiction. By means of a jurisdiction clause, parties may elect to have any, all, or just certain disputes resolved, whether exclusively or not, in some other jurisdiction or by a certain court, whether in Finland or abroad. Nevertheless, one should bear in mind the fact that, apart from jurisdictions covered by the Brussels and Lugano Conventions and Regulation (EU) No. 1215/2012, the recognition and enforcement of foreign judgments does meet obstacles. Therefore, commercial arbitration is much in favour.

### **The court's power to adjust contract terms**

The overarching stipulation that any contract term that is held to be unfair, or the application of which is deemed to lead to an unfair result, may be adjusted or set aside. Further, pursuant to the Act on Regulation of Contract Terms between Businesses, the Market Court may adjudicate a prohibition and a conditional fine should a franchise contract be deemed unfair to the franchisee.

*Law stated - 15 May 2022*

### **Courts and dispute resolution**

Describe the court system. What types of dispute resolution procedures are available relevant to franchising?

The competent courts in civil and commercial matters are, ordinarily, the civil courts that are the courts of first instance (the district and circuit courts), the courts of appeal and – as a last resort – the Supreme Court. Leave to the Supreme Court is only rarely granted. Consequently, the number of cases handled by the Supreme Court is low and the number of Supreme Court precedents containing the word ‘franchise’ can be counted on the fingers of one hand.

However, the Market Court – being a special court assigned competence regarding, for example, disputes on restrictions of competition, unfair competition, public procurement, disputes brought forward by the ombudsperson for consumers and certain disputes between traders – plays an increasingly important role. Alternatively, franchisors and franchisees can agree to submit all or certain disputes to arbitration.

*Law stated - 15 May 2022*

### **Governing law**

Are there any restrictions on designating a foreign governing law in franchise contracts in your jurisdiction? How does the governing law affect the contract’s enforceability?

No, there are no restrictions. However, franchise contracts are always subject to the public policy doctrine and the fact that the choice of a foreign law does not prejudice the application of domestic mandatory rules. During litigation, the languages used are the national languages of Finnish or Swedish pursuant to the language legislation.

*Law stated - 15 May 2022*

### **Arbitration – advantages for franchisors**

What are the principal advantages and disadvantages of arbitration for foreign franchisors considering doing business in your jurisdiction? Are any other alternative dispute resolution (ADR) procedures particularly favoured or disfavoured in your jurisdiction?

The finality and enforcement of the award, whether Finnish or foreign (subject to the provisions of the New York Convention 1958), are generally regarded as main advantages. If the parties so agree, confidentiality may be ensured, in contrast to the publicity involved in court procedures. Another important advantage is the flexibility of the procedures and the fact that arbitrators deal in terms of ‘market economy’: they must work at their highest level in order to ensure their reputation and gain future cases. The main disadvantages may be comprised of three, although debatable, factors: the difficulty at appointing the right individuals for the tribunal, the fact that the outcome cannot be appealed against and, finally, the cost. The arbitrators’ expenses must be covered by the interested parties and not by the taxpayer, as is generally the case in litigation.

**National treatment**

In what respects, if at all, are foreign franchisors treated differently (legally, or as a practical matter) from domestic franchisors?

Legally, there is no difference. In practice, foreign franchisors are probably treated better, not least because of the respect gained in Finland by a concept that has been successful in foreign markets.

Law stated - 15 May 2022

**UPDATE AND TRENDS****Legal and other current developments**

Are there any proposals for new legislation or regulation, or to revise existing legislation and regulation? Are there other current developments or trends to note?

The frequently invoked and ambiguous concept of good faith and fair dealing has turned out not always to be enough. Nevertheless, thus far, no lobby has come up with a franchise law containing clear and detailed provisions on disclosure, so as to decrease the risk of the potential franchisee being furnished with insufficient, misleading or faulty information prior to entering into the franchise agreement. As a consequence, many franchisors assume that the franchisee has, prior to entering into the contract, an understanding of how to look after his or her interests thoroughly and that any contract holds unless the other party can prove any of the very strictly delimited grounds for nullity. Accordingly, in Finland, there is not as much understanding as in, for example, the United States and many other Western countries concerning sustaining the franchise relationship and active franchisor-initiated guidance, support, and assistance.

There are two very persistent trends, although little development. One trend is the endeavour of many domestic franchise networks to go abroad. Recently, this trend has increased. According to a 2021 investigation, around 8 per cent of the domestically owned networks already had operations abroad, in a total of 36 foreign countries. Some have succeeded and some have met with difficulties, such as those operating in Russia and Belarus. Another trend is the one in which the clear insight into, and grasp of, franchise agreements are kept outside case law. This is a result of the stringency of the courts in upholding almost all clauses referring to dispute resolution by arbitration.

Law stated - 15 May 2022

## Jurisdictions

	<b>Australia</b>	Norton Rose Fulbright
	<b>Canada</b>	Lapointe Rosenstein Marchand Melançon LLP
	<b>China</b>	Jones & Co
	<b>Finland</b>	ADVOCARE Law Office
	<b>France</b>	Bersay
	<b>Germany</b>	Taylor Wessing
	<b>India</b>	G&W Legal
	<b>Israel</b>	Gilat Bareket & Co, Reinhold Cohn Group
	<b>Italy</b>	Rödl & Partner
	<b>Japan</b>	Anderson Mōri & Tomotsune
	<b>Malaysia</b>	Wong Jin Nee & Teo
	<b>Mexico</b>	Gonzalez Calvillo SC
	<b>Netherlands</b>	Parker Advocaten
	<b>New Zealand</b>	Stewart Germann Law Office
	<b>Norway</b>	CLP
	<b>South Africa</b>	Spoor & Fisher
	<b>South Korea</b>	Lee & Ko
	<b>Switzerland</b>	Kellerhals Carrard
	<b>Turkey</b>	Özdağıştanlı Ekici Attorney Partnership
	<b>United Kingdom</b>	Ashtons Legal
	<b>USA</b>	Lathrop GPM