

FRANCHISE

Japan



Franchise

Consulting editors

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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?

Franchising is very widespread in Japan. According to the data published by the Japan Franchise Association , for the period from April 2020 to March 2021, the number of chains operating in Japan stood at 1,308, with 254,017 stores and a total turnover of ¥25.42 trillion. Among other sectors, convenience stores are particularly common in Japan, with a total of 57,999 outlets as at 2020.

Law stated - 21 June 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?

The Japan Franchise Association (JFA) was established in 1972 for the purposes of planning and promoting the healthy development of the franchise system. It has implemented voluntary rules, such as the JFA's Code of Ethics and the Voluntary Standard Regarding Disclosure and Explanation of Information to Prospective Franchisees. In addition to maintaining these voluntary rules, it also conducts research and educational training, and provides consultations.

Law stated - 21 June 2022

BUSINESS OVERVIEW

Types of vehicle

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

Most typical franchisors are organised in the form of a joint-stock company.

Law stated - 21 June 2022

Regulation of business formation

What laws and agencies govern the formation of business entities?

The formation of joint-stock companies in Japan is governed by the Companies Act (Act No. 86, 2005) , under the supervision of the Ministry of Justice.

Law stated - 21 June 2022

Requirements for forming a business

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

The formation of a joint-stock company requires articles of incorporation and other incorporation documents to be

prepared and registered at a competent legal affairs bureau. After incorporation, it is necessary to prepare financial statements and to hold a shareholders' meeting each year.

Law stated - 21 June 2022

Restrictions on foreign investors

What restrictions apply to foreign business entities and foreign investment?

Foreign business entities must register their representatives in Japan in order to conduct business continuously in the country. Once registered, they can carry out business in the same way as domestic entities. In addition, foreign investment is regulated by the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949). Industry-specific laws may also apply, depending on the business sector of the foreign entities.

Law stated - 21 June 2022

Taxation

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

Franchisors in the form of joint-stock companies need to pay corporate tax, corporate enterprise tax, corporate inhabitant tax and consumption tax. Depending on the nature of the assets held by a franchisor, property tax and automobile tax may also be payable. Foreign businesses' and individuals' income sourced in Japan is generally subject to Japanese taxation.

Law stated - 21 June 2022

Labour and employment

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

Labour regulations generally apply to franchisors with regard to the relationship between franchisors and their respective employees. In a typical franchise arrangement, a franchisee or the employees of a franchisee are not considered to be employees of the franchisor. To avoid the risk that a franchisee could be deemed employees of the franchisor, a franchisor must structure the franchise relationship so that the franchisee is an independent entity and must clearly explain the independent nature of the franchise relationship with the franchisee. In addition, to avoid the risk that employees of a franchisee could be deemed employees of a franchisor, it is advisable that a franchisor is not involved in the hiring process of employees of a franchisee and that it is clearly explained to the candidates that the employer will be the franchisee, not the franchisor. Breach of labour regulations may result in criminal penalties including imprisonment.

Law stated - 21 June 2022

Intellectual property

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

Franchisors can register trademarks to protect such marks from infringing use. Nevertheless, there is no registration system per se for know-how. Know-how that falls within the scope of registrable types of intellectual property – such

as patents or designs – may be registered accordingly. In addition, if the know-how falls within the definition of a ‘trade secret’ under the Unfair Competition Prevention Act (Act No. 47 of 1993) , it will be protected against any acts constituting unfair competition.

Law stated - 21 June 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?

In general, a franchisee leases real estate for its operations directly from a property owner. Disputes may arise when the lessor tries to increase the rent or terminate or refuse to renew the lease agreement. In such situations, protection is available to the franchisee under the Land Lease and Building Lease Act (Act No. 90, 1991) and the doctrine of the destruction of a relationship of mutual trust, which limits a lessor’s ability to terminate a lease agreement to the case that the mutual trust relationship is destroyed because of the lessee’s violation of the agreement (Supreme Court, 28 July 1964, Minshu 18-6, p1220; 21 April 1966, Minshu 20-4, p720).

Law stated - 21 June 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?

The Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Act No. 54 of 1947) (the Antimonopoly Act) and its relevant regulations and guidelines such as Guidelines Concerning the Franchise System (the Franchise Guidelines) and Distribution Guidelines. The guidelines describe what kind of activities or restrictions are problematic under the Antimonopoly Act. In particular, the franchisor must ensure that none of its activities fall under a category of unfair trade practices specified in the Antimonopoly Act or described by the JFTC in its Designation of Unfair Trade Practices .

First, the Franchise Guidelines require franchisors to disclose sufficient and accurate information when they are soliciting prospective franchisees or their actions can be deemed to be deceptive customer inducement, which is one of categories of conducts restricted as unfair trade practice (Designation of UTP, item 8).

Second, the Franchise Guidelines regulate transactions between franchisors and franchisees. The Franchise Guidelines state that it could be an abuse of a superior bargaining position to limit parties with whom franchisees can make transactions, to compel franchisees to buy a designated amount of goods, to restrict the ability of the franchisees to offer discounts to their customers or to restrict competitive activities after the termination of a franchise agreement. It also states what kind of items should be considered in connection with tie-in sales (Designation of UTP, item 10), dealing on restrictive terms (Designation of UTP, item 12) and resale price restriction.

If a party’s activity is considered to be unfair trade practices under the Antimonopoly Act, the Fair Trade Commission may impose administrative sanctions, such as a cease and desist order which orders the breaching party to stop the illegal activities, to delete the clauses concerned from the agreement, and to take any other measures necessary to eliminate such activities. Some of the categories, such as abuse of a superior bargaining position and resale price restrictions, could be subject to surcharges under the Antimonopoly Act.

Law stated - 21 June 2022

OFFER AND SALE OF FRANCHISES

Legal definition

What is the legal definition of a franchise?

There is no uniform definition of a franchise in Japan. Nevertheless, there are three relevant definitions with regard to franchise businesses.

First, the Medium and Small Retail Commerce Promotion Act (Law No. 110 of 1973) (MSRCPA) defines a 'chain business' as a business that, pursuant to an agreement with uniform terms and conditions, continuously sells or acts as an agent for sales of products and provides guidance regarding management, and primarily targets medium and small retailers. In addition, a 'specified chain business' is defined as:

If a franchise business falls under this definition, the disclosure obligation etc. under the MSRCPA apply.

Second, the Guidelines Concerning the Franchise System (the Franchise Guidelines) under the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Act No. 54 of 1947) (the Antimonopoly Act) provides the following:

Third, the Japan Franchise Association (JFA) defines a franchise as:

Law stated - 21 June 2022

Laws and agencies

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

If the franchise business falls within the scope of a specified chain business, the disclosure obligations under the MSRCPA is applicable in relation to the offer and sale of franchises. The Ministry of Economy, Trade and Industry, as well as other ministries depending on the the franchise business, have overall responsibility in this regard.

From the perspective of competition law, the Franchise Guidelines regulate the offer and sale of franchises from the viewpoint of the Antimonopoly Act, and the Fair Trade Commission has overall responsibility in this regard.

The JFA has also implemented voluntary rules, such as the Japan Franchise Association Code of Ethics and the Voluntary Standard Regarding Disclosure and Explanation of Information to Prospective Franchisees.

Law stated - 21 June 2022

Principal requirements

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

Under the MSRCPA, franchisors whose businesses fall under the definition of a specified chain business are required to

provide a written document that describes prescribed items and to explain the contents of the written documents prior to executing a franchise agreement with prospective franchisees.

The Franchise Guidelines require franchisors to disclose sufficient and accurate information to prospective franchisees and also regulates the ongoing relationship between franchisors and franchisees.

Law stated - 21 June 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 such requirement in general, except for the disclosure requirements provided in the MSRPCA and the Franchise Guidelines. If the industry in which the franchise operates is regulated by industry-specific laws, it is necessary to check those regulations.

Law stated - 21 June 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?

In addition to the MSRPCA, which stipulates the disclosure requirements, the Franchise Guidelines regulate the manner in which a franchisor recruits franchisees or selects its or its franchisees' suppliers. It is recommended that a franchisor, when recruiting a franchisee, discloses sufficient information to the franchisee to avoid any misunderstandings about the business on the part of the franchisor. This disclosure includes but is not limited to matters relating to the terms and conditions of supply of products, such as a system for recommending suppliers, and matters relating to any restrictions applying to the franchisor or other franchisees in setting up a similar or identical outlets close to the outlet planned by the franchisee. The Franchise Guidelines also mention that if the franchisor forces the franchisee to trade only with the franchisor or companies appointed by the franchisor regarding the supply of items such as products and raw materials without proper justification, it could be considered as an abuse of a superior bargaining position.

Law stated - 21 June 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?

Under the MSRPCA, when a franchisor intends to negotiate a franchise agreement with a prospective franchisee, the franchisor must provide written documents describing the prescribed items and explain the contents of the written documents to prospective franchisees. There are no regulations regarding the frequency of updating disclosures.

Law stated - 21 June 2022

Pre-contractual disclosure – content

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

A franchisor whose business falls within the definition of a specified chain business under the MSRPCA is subject to the MSRPCA disclosure obligations.

Information about the following matters, which must include at least the items specified for each matter, must be disclosed to the franchisee:

- matters regarding the initial fee, deposit or any other money that the franchisor will collect at the time when the prospective franchisee becomes a franchisee:
 - the amount of money to be paid or the method of calculating the amount;
 - the nature of the money to be collected, such as whether it is an initial fee, deposit, equipment fee, etc;
 - the timing of payment;
 - the method of collection; and
 - whether the money will be refunded, and the conditions applicable to such refund;
- matters regarding terms and conditions of sales of products sold to franchisees:
 - the type of products that are sold or arranged to be sold to the franchisees; and
 - the method of payment for such products;
- matters regarding management instruction:
 - whether there will be training or a seminar when joining;
 - the content of a training or a seminar, if provided; and
 - the method of continuous management instruction to franchisees and how many times such instruction will be conducted;
- matters regarding the trademark, trade name and any other indication that will be permitted to be used:
 - trademark, tradename and other indication that will be permitted to be used; and
 - if there are any terms and conditions regarding the use of the indication, the content thereof;
- matters regarding the duration of the agreement and renewal and termination of the agreement:
 - the duration of the agreement;
 - the conditions and procedure to renew the agreement;
 - the requirements and procedures to terminate the agreement; and
 - the amount of compensatory damages that will accrue on termination of the agreement or the methods to calculate the amount or the content of any other obligation;
- matters regarding changes in the number of franchisees' stores during the most recent three business years:
 - the number of franchisees' stores as at the last day of each business year;
 - the number of franchisees' stores that began operations during each business year;
 - the number of franchisees' stores whose franchise agreements have been terminated during each business year; and
 - the number of franchisees' stores whose franchise agreements were renewed during each business year and the number of franchisees' stores whose franchise agreements were not renewed during each year;
- matters regarding income and expenditure of franchisees with similar local conditions – such as the population of the surrounding area and the volume of traffic, among others – during the most recent three business years:
 - the following amount of the franchisee recognised by the franchisor;
 - the sales amount;
 - the sales cost;
 - the amount of money to be paid periodically by franchisees, such as royalties for the use of the business name, consulting fees, etc;

- the employment costs;
- any service and general administration expenses;
- any other factors and figures that form the basis of the calculation of income and expenditure;
- reasons why the location conditions of the franchisees are considered similar;
- matters regarding any periodic payments:
 - the amount of money to be paid periodically or the method of calculating the amount of money to be paid periodically;
 - the nature of the payment, such as whether it is a royalty for the use of the business name, a consulting fee, etc;
 - the timing of payment; and
 - the method of collection of the payment;
- other matters:
 - the name and address of the franchisor, number of full-time employees and, if the franchisor is a company, the title and names of officers;
 - the amount of capital, names of the principal shareholders (those holding more than 10 per cent of the shares directly or indirectly) and, if the franchisor is conducting another business, the type of business;
 - the name of any entity in which the franchisor holds a majority of the voting shares;
 - the balance sheet and profit and loss statement, or other documents equivalent to these for the past three business years of the franchisor's business;
 - the date on which the franchisor began its specified chain business;
 - the number of litigation cases in which the franchisor is the plaintiff and a franchisee or ex-franchisee is the defendant with regard to the franchise agreement and vice versa during the past five business years;
 - business hours, business days and regular or irregular closing days of franchisees' units;
 - whether there is a provision stipulating whether the franchisor will engage in or allow other franchisees to engage in business operations conducting the same or similar retail business near the shops of the franchisee and the contents of the provision, if applicable;
 - whether there is a provision that prohibits or restricts the ability of franchisees to conduct businesses, such as prohibiting them from joining other specified chain businesses or from being employed with similar businesses (either during or after termination or expiration of the agreement) and the contents of the provision, if applicable;
 - whether there is a provision that prohibits or restricts disclosure of information that the franchisee may know regarding the specified chain business during or after termination or expiration of the agreement and the contents of the provision, if applicable;
 - whether the franchisees need to remit all or part of the sale proceeds periodically, and the timing and method thereof;
 - whether the franchisor lends or arranges to lend money to franchisees, the interest rate or the method of calculating the rate and any other conditions of the lending or arranging of lending;
 - whether the franchisor adds interest to all or part of the remaining amount after setting off the rights and obligations which accrue in connection with a transaction with the franchisor during a certain period, the interest rate or the method of calculating the rate and any other conditions;
 - whether the franchisor imposes on franchisees a special obligation regarding the structure, or interior or exterior of stores of franchisees, the contents of the obligation; and
 - the amount of money or the method of calculating the amount of money that accrues when the franchisor or a franchisee violates the agreement.

Law stated - 21 June 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?

In the case of a sub-franchise, the relationship between the sub-franchisor and the sub-franchisee needs to be analysed; if it falls within the definition of a specified chain business under the MSRCPA, the sub-franchisor owes a disclosure obligation. In such a case, the information relating to the sub-franchisor must be disclosed. The relationship between the franchisor and the sub-franchisor must also be analysed; if it too falls within the definition of a specified chain business, the franchisor has a disclosure obligation as well.

Law stated - 21 June 2022

Due diligence

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

It depends on the particular policy of the franchisor or the franchisee, but a general background check to ensure, among other things, that the counterparty is not an antisocial force and not associated with antisocial forces, is usually conducted.

Law stated - 21 June 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?

A franchisor or a sub-franchisor whose business falls within the definition of a specified chain business under the MSRCPA owes disclosure obligations and any party who owes such obligations is responsible for any breach thereof. Generally, individual officers, directors and employees of the franchisor or the sub-franchisor are not exposed to a personal liability with regard to the failure of disclosure by the franchisor or the sub-franchisor. Nevertheless, if there are breaches of the duty of care or fault on the part of these individuals, they may face liability accordingly. In addition, there is a risk that a franchisee will name these individuals as defendants in a suit against the franchisor or the sub-franchisor to seek recovery of damages from them.

A franchisor or a sub-franchisor who failed to disclose sufficient and accurate information as required by the Franchise Guidelines could be deemed to have conducted a deceptive customer inducement, in which case, the JFTC may investigate and impose administrative sanctions.

Law stated - 21 June 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?

A franchisor or a sub-franchisor whose business falls within the definition of a specified chain business under the MSRPCA owes disclosure obligations and any party who owes such obligations is responsible for any breach thereof. Generally, individual officers, directors and employees of the franchisor or the sub-franchisor are not exposed to a personal liability with regard to the failure of disclosure by the franchisor or the sub-franchisor. Nevertheless, if there are breaches of the duty of care or fault on the part of these individuals, they may face liability accordingly. In addition, there is a risk that a franchisee will name these individuals as defendants in a suit against the franchisor or the sub-franchisor to seek recovery of damages from them.

Law stated - 21 June 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?

Apart from the MSRPCA, the Franchise Guidelines and the JFA's voluntary rules, the general principles of the Civil Code (Act No. 89, 1896) affect the offer and sale of franchises. For example, franchisees can rescind the franchise agreement in the event of fraudulent disclosure of information or if there is a material misunderstanding about the franchise agreement. If damage has been caused by the violation of the disclosure requirement, franchisees may bring a claim for damages based on contract theory or tort theory.

Law stated - 21 June 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?

No special remedy exists for franchisees under the MSRPCA regarding violations of disclosure requirements. Therefore, in case of fraudulent or deceptive practices of franchisors, franchisees need to base any claims to cancel or rescind on the general principles of contract under the Civil Code. For example, franchisees can rescind the franchise agreement in the event of fraudulent disclosure of information or if there is a material misunderstanding about the franchise agreement. If damage has been caused by the violation of the disclosure requirement, franchisees may bring a claim for damages based on contract theory or tort theory. In addition, franchisees may claim that a franchisor is violating the Franchise Guidelines, thus violating the Antimonopoly Act.

Law stated - 21 June 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?

The Guidelines Concerning the Franchise System (the Franchise Guidelines) under the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Act No. 54 of 1947) (the Antimonopoly Act) regulate the ongoing relationship between franchisors and franchisees, such as the matters relating to restriction on suppliers, forced purchase quota, restriction on bargain sales and amendments to the franchise agreement.

Law stated - 21 June 2022

Operational compliance

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

Generally, franchise agreements obliges franchisees to comply with the Franchisor's operation manuals and other rules that sets forth its brand standards in detail. In addition, various reporting requirements, which must be satisfied on a regular basis, are provided for in the franchise agreement. Franchisors also have inspection rights (also provided for in the franchise agreement) in order to check the records, etc, of franchisees whenever franchisors deem such inspections necessary.

Law stated - 21 June 2022

Amendment of operational terms

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

It depends on to what extent the franchise agreement and other ancillary agreements give the franchisor the discretion to change operational terms and standards unilaterally. In general, the franchisor reserves the right to change the operational manual unilaterally. Even if such right is reserved, the franchisors must be carefully check if such unilateral change imposes unreasonable burden on franchisees without any justifiable reason.

Law stated - 21 June 2022

Policy affecting franchise relations

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

There are voluntary rules, such as the Code of Ethics and the Voluntary Standard Regarding Disclosure and Explanation of Information to Prospective Franchisees, prepared by the Japan Franchise Association (JFA). If a franchisor is a member of the JFA, its voluntary rules are an important consideration in the franchise relationship.

Law stated - 21 June 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?

Usually, the franchise agreement lists the circumstances in which the franchisor may terminate a franchise relationship. In addition, if the franchisor and the franchisee mutually agree, the franchisor may also terminate a franchise relationship.

If there is no clause in the franchise agreement regarding the termination, pursuant to the Civil Code (Act No. 89, 1896), the franchisor may terminate the franchise agreement prior to the expiration of the term of the agreement if the franchisee violates the franchise agreement. Nevertheless, because franchise agreements are usually continuous long-term agreements, there is a possibility that courts will be more reluctant to terminate these agreements compared to normal agreements.

On this point, it may be useful to refer to the doctrine of the destruction of a mutual trust relationship, which has been established in the area of lease agreements that are also generally considered as continuous agreements. With regard to lease agreements, a lessor's ability to terminate a lease agreement is limited to the case that the mutual trust relationship is destroyed because of the lessee's violation of the agreement (Supreme Court, 28 July 1964, Minshu 18-6, p1220; 21 April 1966, Minshu 20-4, p720). This means that a lessor may not terminate a lease agreement even if the lessee is violating it, provided that the violation is not sufficiently material to destroy the mutual trust relationship.

In the case of termination of a franchise agreement, similar consideration could be made by the court to restrict a franchisor's ability to terminate a franchise relationship, depending on the circumstances.

Law stated - 21 June 2022

Termination by franchisee

In what circumstances may a franchisee terminate a franchise relationship?

Usually, the franchise agreement regulates the circumstances in which a franchisee may terminate a franchise relationship. In addition, the franchisee may terminate a franchise relationship due to mutual agreement with the franchisor. In cases where there is no clause in the franchise agreement, the same considerations apply as those relating to termination by the franchisor. However, in general, the necessity of protecting a franchisor from termination by a franchisee is not strong, as compared to the necessity of protecting a franchisee from termination by a franchisor, and, therefore, it would be generally easier for franchisees than a franchisor to terminate the franchise agreement.

Law stated - 21 June 2022

Renewal

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

If the franchise agreement provides for an automatic renewal clause, there is no need to enter into a new agreement. If the franchise agreement requires the parties to renew the term, it is then necessary to enter into either a new agreement or an extension agreement.

Law stated - 21 June 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?

Provisions in the franchise agreement generally determine whether a franchisor may refuse to renew the franchise agreement with the franchisee. In cases where the franchise agreement states that it will not be renewed unless otherwise agreed to between the parties, the franchisor may generally refuse to enter into a new agreement. On the other hand, in cases where the franchise agreement states that it will be renewed automatically unless either party notifies otherwise, it is unclear in which circumstances the franchisor may refuse to renew, especially after being renewed for many times. On this point, there is a case in which a court required 'compelling circumstances which make it difficult to continue the agreement for a franchisor to be able to refuse to renew a continuous agreement' (Hokka Hokka Tei case, Nagoya District Court, 31 August 1998).

Law stated - 21 June 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?

As to the transfer of a franchise, it is possible to include a provision in a franchise agreement that requires the franchisor's consent for the franchisee to transfer its franchise under the agreement. Further, under the Civil Code, when a party to an agreement is going to transfer its status or obligations under the agreement, the other party's consent must be obtained. Therefore, even if there is no clause in the franchise agreement requiring consent for transfer, the franchisor's consent is still necessary.

As to the transfer of an ownership interest in a franchisee entity, the owner of an ownership interest in a franchisee entity is generally free to transfer its ownership interest. Any covenant in a franchise agreement that prohibits the owner to transfer an ownership interest in a franchisee is not enforceable against the owner unless the owner is also a party to the franchise agreement. However, the franchise agreement may indirectly restrict the transfer of an ownership interest in a franchisee entity by making it an obligation of the franchisee to obtain the franchisor's consent or by making the transfer of an ownership interest a termination event.

Law stated - 21 June 2022

Fees

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

There is no specific limitation on the amount or payment of fees. However, if fees are unreasonably high, the obligation to pay the fees may be deemed void because it may be construed to be against good public order and customs as laid out in the Civil Code. It is also possible that, depending on circumstances, imposition of high fee is considered as an abuse of superior bargaining position as laid out in the Antimonopoly Act.

Law stated - 21 June 2022

Usury

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

For interest on loans from a franchisor to a franchisee, the restriction on interest under the Interest Rate Limitation Act (Act No. 100 of 1954) applies; however, if the overdue payment is not in connection with a loan, there is no specific restriction on the amount of interest. If the interest charged is unreasonably high, however, the obligation to pay the interest may be deemed void because it is against good public order and customs as laid out in the Civil Code.

Law stated - 21 June 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?

In general, there are no restrictions on a franchisee's ability to make payments in a foreign currency. International transfer of funds exceeding certain amount is subject to a reporting requirement under the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949), and depending on the destination country and purpose of the transfer of funds, stricter restrictions could be applicable.

Law stated - 21 June 2022

Confidentiality covenant enforceability

Are confidentiality covenants in franchise agreements enforceable?

Confidentiality covenants are generally enforceable. If a franchisee breaches confidentiality covenants, a franchisor may seek compensation for the damages caused by such violation or seek a preliminary injunction to avoid any damages in advance.

Law stated - 21 June 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?

Under article 1 of the Civil Code, there is a general duty to act in good faith. In addition, if an agreement is unreasonably advantageous to one party, it can be deemed void because it is against good public policy under article 90 of the Civil Code. These clauses affect franchise relationships in various ways. One area where the duty to act in good faith plays an important role is with regard to the franchisor's obligation to disclose information. A court has construed that a franchisor has an obligation to provide prospective franchisees with accurate and adequate information so that they can make decisions (Fukuoka High Court, 31 January 2006, Shin Shin Do case, Kyoto District Court, 1 October 1991).

In addition, courts use article 90 of the Civil Code to limit liquidated damages. For example, in the Honke Kamadoya case (Kobe District Court, 20 July 1992), a court stated that liquidated damages of an amount equal to 60 months' loyalty payment were significantly out of balance with the expected amount of damages; consequently, the liquidated damages were void to the extent that they went beyond a reasonable amount of damages because such amount was against good public policy.

Franchisees as consumers

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

In principle, a franchisee would not be protected as a consumer for the purpose of consumer protection laws because the franchisee is doing business and therefore a business operator. For example, the Consumer Contract Act (Act No. 61 of 2000) defines a 'consumer' as any natural person excluding a natural person who becomes a party to a commercial contract to engage in commercial endeavours. Nevertheless, as demonstrated by the courts' inclination to protect franchisees (eg, the doctrine of the destruction of a relationship of mutual trust), depending on the case, franchisees could be protected by interpretations of the Civil Code or other laws.

Law stated - 21 June 2022

Language of the agreement

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

There is no clear requirement that disclosure documents need to be in Japanese, but since the disclosure obligation is imposed so that prospective franchisees have sufficient information and understand the franchise well, it is prudent to prepare these documents in Japanese. There is no requirement that franchise agreements should be in Japanese.

Law stated - 21 June 2022

Restrictions on franchisees

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

Clauses related to territories, payment of fees, procurement of goods or services, non-compete obligation, governing law and dispute resolution are usually included in franchise contracts. For further details, it would be useful to refer to the matters that are subject to disclosure obligation under the Medium and Small Retail Commerce Promotion Act (Act No. 110 of 1973).

Law stated - 21 June 2022

Courts and dispute resolution

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

Assuming that both parties to the dispute are doing business in Japan, unless otherwise provided in an agreement, a dispute regarding a franchise relationship may be brought to a district court that has jurisdiction over the dispute under the Code of Procedure (Act No. 109 of 1996). In every prefecture, one or more district courts exist. Decisions by district courts may be appealed to a competent High Court, and then to the Supreme Court. In addition to litigation in a courtroom, arbitration is possible if the parties so agree.

Law stated - 21 June 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?

If the parties agree, it is possible to designate a foreign governing law in franchise contracts. In these cases, the enforceability of the contract is assessed under the specified foreign law. Nonetheless, compulsory regulations such as the disclosure obligations under the Medium and Small Retail Commerce Promotion Act (Act No. 110 of 1973) and the requirements under the Antimonopoly Act must be complied with by all parties to the contract.

Law stated - 21 June 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?

Foreign franchisors' principal advantage in choosing arbitration is that the proceedings can be conducted in English or any other language as agreed in the franchise agreement. In case of litigation in Japanese courts, the language must be Japanese. In addition, arbitrators may be more familiar with franchise business than Japanese judges. The principal disadvantage of arbitration is the generally higher costs due to fees for the arbitrators and the fact that the number of arbitrators familiar with the franchise business in Japan as well as in the jurisdiction where the foreign franchisor mainly operates may be limited.

Law stated - 21 June 2022

National treatment

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

Because of certain restrictions on foreign business entities and foreign investment (eg, the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949) (FEFTA) and industry-specific laws), foreign franchisors could face different regulations. For example, certain technical licences could be subject to regulatory filing under the FEFTA, depending on the contents of the licence. In addition, if the industry of the franchise is regulated by specific laws, such laws may treat foreign franchisors differently.

Law stated - 21 June 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 Japan Fair Trade Commission conducted an industry survey about trade practices between franchisors and franchisees of convenience stores. Based on that research, the results of which were released in September 2020, its

Guidelines Concerning the Franchise System (the Franchise Guidelines) were amended. For example, regarding 24/7 operations, the amended Franchise Guidelines recommend disclosing information about shortages of manpower, rising labour costs or other information that may have adverse effects on the management of the franchisee. The Franchise Guidelines also clarify that it could constitute a breach of the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Act No. 54 of 1947) if the franchisor refuses to discuss the shortening of operational hours with the franchisee, although it is contractually permissible by mutual consent.

In addition, the amendment to the Enforcement Regulation of the Medium and Small Retail Commerce Promotion Act (Act No. 110 of 1973) came into force on 1 April 2022. This amendment requires the disclosure of income and expenditure of franchisees with similar local conditions. The Japan Franchise Association updated its guidelines about disclosure documents to give examples about information to be disclosed in relation to the additional disclosure requirements.

Law stated - 21 June 2022

Jurisdictions

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