

GETTING THE
DEAL THROUGH 

Franchise 2016

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Overview

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

The franchisor will probably choose business entities that allow it to limit its liability. These include a corporation that in Finland is simply a limited liability company (whether private or public); a partnership, subject to it being owned by a limited liability company; and a foundation. The typical franchisor is likely to choose the private limited liability company (the limited company) because of the simplicity of incorporation, low capital requirements and well-regulated administration as well as the fact that shares are easily transferable. With this in mind, this work focuses on the limited company.

2 What laws and agencies govern the formation of business entities?

The formation of a limited company is governed by the Companies Act 2006. The Trade Register Act and the respective decrees also apply. The company acquires legal capacity once registered with the Companies Register.

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

For forming a business entity

A memorandum of association, incorporating by reference the articles of association (by-laws), must be drawn up. The by-laws need not contain more than the trade name, the municipality in Finland where the company is to have its registered office and the industry. The memorandum outlines the board members (namely, the directors), the auditor and the subscription of shares. If no directors are resident in Finland, another individual must be resident to receive service of process. At least one director has to be resident within the European Economic Area unless an exemption is granted. This also applies to the managing director. The auditor should be a resident authorised or approved public accountant.

Forwarding the subscription price, whether in cash or kind, is a prerequisite for registration. This shall 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 serves the purpose of notifying the tax authorities of the existence of the new taxpayer. Processing for registration with the Companies Register does not generally take long, provided the name and business proposed is distinguishable from and not found to be confusingly similar to names already registered.

For maintaining

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

In addition, for the purposes of VAT, the tax authorities shall expect the company to submit monthly tax return filings and make tax account payments as well as filing annual tax returns. Employers also have to 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. However, if the employer wishes to employ staff, it is a requirement to take out policies for the purposes of old age pensions, unemployment, injury and sickness insurance. Payment of dividends must also be notified.

4 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. The facilities and incentives available to local enterprises are available to foreign entrepreneurs on equal terms. There are no restrictions on ownership unless an acquisition is perceived to put at risk an important national security interest, in which case formal approval must be given, pursuant to the Monitoring Act.

5 Briefly describe the aspects of the tax system relevant to franchisors. How are foreign businesses and individuals taxed?

From the viewpoint of the foreign franchisor electing to use a limited liability company as his or her vehicle, it is notable that Finland is a party to the Convention 1988 on mutual administrative assistance in tax matters and the Convention of 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises. In addition, she has concluded 115 double tax treaties for avoidance of double taxation and tax evasion, some of which are multilateral and which take prevalence over national tax law. The most frequent method for eliminating double taxation is the ordinary credit method. Where there is no double tax treaty with the domicile state of the foreign taxpayer, the country's tax rights will be 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 Parents-Subsidiary Directive is applicable, no withholding tax is levied on profit distribution, such as dividends, to a parent company holding, directly, at least 10 per cent of equity of the profit distributing company. But where the EU Parents-Subsidiary Directive is not applicable, the withholding tax at source on dividends is 15 per cent. However, 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 physical 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 Parents-Subsidiary Directive subject to the 10 per cent minimum shareholding requirement, or tax exempt to a quarter subject to double tax treaty between Finland and

the country from which the dividends are distributed. The corporate tax rate is 20 per cent. Since there are currently no thin-capitalisation restrictions, a business can be financed from abroad, however, subject to some rather intricate rules on the deductibility of interests paid in excess of €500,000.

Foreign businesses

According to the main rule, foreign businesses are taxed only on income sourced in Finland. 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 main rule, interests, 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 will 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 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, alien employees will be liable for 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 will collect 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 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, but 32 per cent above €40,000.

VAT

In general, goods and services supplied in Finland in the course of business are subject to VAT. The general rate of VAT is currently 24 per cent, although the rate for food and 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.

6 Are there any relevant labour and employment considerations for typical franchisors? What is the risk that a franchisee or employees of a franchisee could be deemed employees of the franchisor? What can be done to reduce this risk?

Any contract, understanding or practice to the effect that the franchisee would be barred from closing his outlet for one day every week, is deemed null and void. This also is true regarding any outlets in shopping malls, whether leased or subleased by the franchisor, where frequently the franchisees are supposed to keep their outlets open during the opening hours of the mall.

As to the risk of being deemed an employee, the crucial question is twofold: whether the franchisee is put under the direction and supervision of the franchisor and whether they lack responsibility for financial risk. If the answers are affirmative, the franchisee is considered more an employee of the franchisor than an entrepreneur. On the other hand, depending on the industry, the franchisor may find it justified to dictate far-reaching requirements regarding matters such as recruitment, education, conduct and continuing training of employees. But equilibrium must be maintained so as not to deprive the franchisee of the independence that is a prerequisite for an entrepreneur.

7 How are trademarks and know-how protected?

Trademarks can be protected by active surveillance and immediate decisive action against infringements. In order to be capable of enforcing trademark rights, the first step is to ensure that the trademark is registered, rather than relying on the mere establishment of the mark, symbol or brand. It is risky attempting 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.

8 What are the relevant aspects of the real estate market and real estate law?

Since freeholds generally require significant capital investment, transferable and, most often, renewable tenancies are exploited by franchisors with a need for space (whether foreign or domestic), such as restaurants, hotels, retail stores, vehicle rental businesses, and gas 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 they are subject to real estate tax of 0.6 to 1.35 per cent of the taxable value of property, depending on the municipality.

Franchisors who 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. Rents are expressed on a monthly basis calculated per utilised square metre, which is frequently pegged to some 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, have to 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 it is entitled either to take over the lease itself 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.

Laws and agencies that regulate the offer and sale of franchises

9 What is the legal definition of a franchise?

There is no statutory definition for a franchise. The Finnish Franchising Association (FFA) defines a franchise arrangement as a right conveyed by one undertaking to another. While, generally, product distribution and trade name franchise arrangements are not regarded as franchising, on the one hand the main feature of the business format franchise is the licence extended to the franchisee by means of a written standard contract against the payment of an upfront fee or running royalties or both, submission to continuing supervision and reporting and undertaking not to transfer the franchise to any third person to use, within a certain exclusive territory, the franchisor's business format (this being characterised by the trademark, brands, commercial signs, business features of the network and the know-how contained in the manual of the franchisor) and on the other hand, initial and continuing training as well as the technical and commercial back-up services of the franchisor. From the viewpoint of the method of franchising, whether international or domestic, the general notion encompasses the master franchise agreement, the unit franchise agreement and the (master) development agreement.

10 Which laws and government agencies regulate the offer and sale of franchises?

There is no special legislation in this field, but there are a number of 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 Restrictions Act.

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

11 Describe the relevant requirements of these laws and agencies.

From the Contracts Act it may be inferred that there is a legal doctrine imposing on contractual parties a mutual duty of loyalty. This is widely acknowledged in case law. Accordingly, there is a kind of 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. 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 depends 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 him or her to obtain (through his or her own initiative) information available to him or her, such as information on general market conditions and their impact on the business being contemplated.

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 are apt to either affect the demand for or supply of a product or to cause harm to somebody else's business. The Trademarks Act covers the national trademark law and the Competition Restrictions Act sets boundaries regarding actions considered to restrict competition.

12 What are the exemptions and exclusions from any franchise laws and regulations?

See question 10.

13 Does any law or regulation create a requirement that must be met before a franchisor may offer franchises?

No, there is no law or regulation on this matter. Nevertheless, pursuant to the FFA's Code of Ethics, before setting up a franchise network the franchisor should have used the business concept successfully and for a reasonable time and in at least one unit.

14 Are there any laws, regulations or government policies that restrict the manner in which a franchisor recruits franchisees or selects its or its franchisees' suppliers?

In respect of recruitment of franchisees, apart from the deterrent effect of what qualifies as fraud as well as a number of other delinquencies pursuant to the Penal Code, there are none save for the general rule under the Unfair Business Practice Act referred to in question 11. And, of course, the general rule admitting the competent court to adjust the contract. In other words, should the court deem a contract term unfair or should the application of such term lead to an unfair result (eg, because of changed circumstances) the term may be adjusted or set aside. In respect of the manner in which a franchisor selects its or its franchisees' suppliers, there are no requirements.

15 What is the compliance procedure for making pre-contractual disclosure in your country? How often must the disclosures be updated?

Further to question 11, 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 the above principle is continuous by nature, disclosures need to be updated whenever circumstances change. This notwithstanding, in Finland, there is no such statutory prescribed pre-sale due diligence process containing, for instance, some formal franchise disclosure document to be given to those interested in buying a franchise as there is in many countries, such as in neighbouring Sweden with which otherwise we share so much.

16 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. See question 11 regarding the contents.

17 What information must the disclosure document contain?

Although there is no prescribed formal franchise disclosure document to be given to those interested in buying a franchise, the sale of a franchise requires full and accurate written disclosure of all information material, including the draft franchise agreement. Despite the lack of any express statutory duties regarding the agreement's essential minimum terms, it should contain the terms and conditions set forth in section 5.4 of the Code of Ethics of the European Franchise Federation (EFF; see www.eff-franchise.com/IMG/article_PDF/article_a13.pdf). In particular, it is important to refrain from quoting any inaccurate profit estimates and to disclose data on any unprofitable experience of franchising.

18 Is there any obligation for continuing disclosure?

Since the principle of good faith and fair dealing is continuous by nature, disclosures need to be updated whenever circumstances change.

19 How do the relevant government agencies enforce the disclosure requirements?

No government agency enforces disclosure requirements. In practice, it is up to the franchisee to ensure that his or her rights will not be encroached upon. See question 10.

20 What actions can franchisees take to obtain relief for violations of disclosure requirements? What are the legal remedies for such violations? How are damages calculated? If the franchisee can cancel or rescind the franchise contract, is the franchisee also entitled to reimbursement or damages?

An action due to violation of the requirements to provide true and sufficient information may be brought before the Market Court 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 by means of a conditional fine. Any claim for damages – whether contractual, such as based on breach of contract, or in tort, such as infringement of the disclosure requirements – has to be instituted by an action before the competent ordinary court. Cease-and-desist orders, sequestration and a variety of precautionary remedies are also available. At the extreme, pursuant to the Penal Code there is qualified fraud as well as a number of other delinquencies apt to deter from bringing forth anything untrue. 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 case of tort the main rule is negligence; in case of contracts the liability is strict and is vicarious in respect of lack of care of employees, agents and subcontractors. The starting point is the principle of full compensation: namely, the franchisee has to be put in the position in which they would have been, had the franchisor fulfilled their duties. In the event of the franchisee being entitled to rescind the franchise contract, it is likely that the not-yet-amortised expenditure will be recoverable on the one hand, as well as the estimated loss of future profits from the unit on the other. But where termination would have been permitted, the damages are likely to be restricted to the loss of profits merely for the length of the period of notice.

21 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. As far as acting within the powers of the entity, individual officers, directors and employees are not exposed to liability, except where a director can be held liable for negligence on company legal grounds.

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

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. Accordingly, the principle of culpa in contrahendo (obligations in negotiation) is emphasised. Further to question 11, 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 EFF and, accordingly, deals to a considerable extent with matters relating to the offer and sale of franchises. The member networks have undertaken to 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.

23 Other than franchise-specific rules on what disclosures a franchisor should make to a potential franchisee or a franchisee should make to a sub-franchisee regarding predecessors, litigation, trademarks, fees etc, are there any general rules on pre-sale disclosure that might apply to such transactions?

See questions 11 and 22.

24 What actions may franchisees take if a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises? How does this protection differ from the protection provided under franchise sales disclosure laws?

The franchisee may request a pretrial investigation as to whether the franchisor has committed fraudulent practices, 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.

Legal restrictions on the terms of franchise contracts and the relationship between parties in a franchise relationship

25 Are there specific laws regulating 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 as applicable to services – and the statutes mentioned in question 10.

26 Do other laws affect the franchise relationship?

Yes – whether directly or indirectly, a number of other statutes affect the franchise relationship. These include the Consumer Protection Act, the Employment Contracts Act, the Damages Act, the Product Liability Act and, should parties seeking settlement of a dispute have elected for arbitration in lieu of ordinary court procedures, the Arbitration Act.

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

There are currently no government initiatives that significantly affect franchising relationships, except for plans to, within a few years, 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 FFA's board of ethics as an authority capable of formulating good franchising practice in the future is expected to grow.

28 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 ought to 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 will depend 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 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 will also be 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, in order 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.

29 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 of supply of commodities 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.

30 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.

31 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 of restrictions of transfers of ownership interests in the franchisee's entity. However, an overly strict or long-lasting prohibition may be considered unreasonable.

32 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 in order to avoid tax consequences, the arm's-length principle and documentation regime must be complied with.

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

The transfer pricing standards referred to in questions 5 and 32 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.

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

No. With regard to money exchange and exchange rates, see the Bank of Finland's webpage: www.bof.fi/en/suomen_pankki/faq/valuutanvaihto.htm.

35 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 need be so as to prove unreasonable.

36 Is there a general legal obligation on parties to deal with each other in good faith? If so, how does it affect franchise relationships?

Yes, dealing in good faith has a central position in law, though not necessarily in practice. See questions 11, 15, 18 and 22.

37 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.

38 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 EFF Code of Ethics: in this case the documents may be in either Finnish or Swedish, both of which are official domestic languages.

39 What restrictions are there on provisions 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 a competition law viewpoint, the franchisor is free to impose on its franchisee an obligation to purchase the contracted products exclusively from the franchisor or from other entrepreneurs designated by the franchisor, provided that such obligation 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.

Non-competition restrictions

According to the main rule, provisions that are essential in order 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 EC Treaty. A non-compete obligation on products purchased by the franchisee falls outside the scope of the prohibition where the obligation is necessary in order to maintain the

common identity and reputation of the franchised network. In such cases, the duration of the non-compete obligation is irrelevant, as long as 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 both a duration of not more than one year 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 to be 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 with the exception of jurisdictions covered by the Brussels and Lugano Conventions and EU Regulation 44/2001 (on 10 January 2015, to be replaced with EU Regulation 1215/2012), the recognition and enforcement of foreign judgments does meet obstacles. Therefore, commercial arbitration is much in favour. See question 42.

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 Regulating Contracts Terms between Entrepreneurs, the Market Court may adjudicate a prohibition and a conditional fine should a franchise contract be deemed unfair to the franchisee.

40 Describe the aspects of competition law in your country that are relevant to the typical franchisor. How are they enforced?

Competition rules on vertical restraints and in particular on selective distribution may be of some concern to the typical franchisor. The National Competition Restrictions Act prohibits and exempts agreements, decisions or practices by means of similar wording to the Treaty on the Functioning of the European Union. The guidelines of the European Commission are applied in respect of the interpretation of vertical restraints, whether challenged on the basis of the national statute or the basis of the EU block exemption regulation. Where competition restrictions affect trade between the EU member states, EU antitrust law is directly applied. The agency responsible for enforcement is the Finnish Competition Authority (FCA; www.kilpailuvirasto.fi). Abuse of the antitrust rules may, unless deemed minor or unjustified with regard to safeguarding competition, lead to the Market Court (on proposal by the FCA) imposing a competition infringement. In addition, the abuser may be liable for damages, whether through tort or contract.

41 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 (namely, the district and circuit courts), the courts of appeal and – as a last resort – the Supreme Court. Leave to the Supreme Court is granted only rarely. Consequently, the number of cases actually 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

ombudsman 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.

42 Describe the principal advantages and disadvantages of arbitration for foreign franchisors considering doing business in your jurisdiction.

The main advantages are the finality and enforcement of the award, whether Finnish or foreign (subject to the provisions of the New York Convention, 1958); and if the parties so agree, confidentiality, in contrast to the publicity involved in court procedures, flexibility as to the procedures, and the fact that arbitrators deal in terms of ‘market economy’: namely, they have to work at their highest level in order to ensure they gain future cases. All the same, such elaborate rules on procedural matters in connection with litigation could be perceived as a disadvantage: the lengthy hearings, difficulty in appointing the right individuals for the tribunal, the fact that the outcome cannot be appealed against and, finally, the cost. The

Update and trends

There is great confidence in the expressed intentions of the newly formed centrist-right wing cabinet that it will to some degree relax the overly stringent labour laws and encourage enterprise.

arbitrators’ expenses must be covered by the interested parties and not by the taxpayer, as is generally the case in litigation.

43 In what respects, if at all, are foreign franchisors treated differently from domestic franchisors?

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

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