



GETTING THE  
DEAL THROUGH 

# Franchise 2016

*Contributing editor*  
**Philip F Zeidman**  
DLA Piper LLP (US)

Publisher  
Gideon Robertson  
gideon.roberton@lbresearch.com

Subscriptions  
Sophie Pallier  
subscriptions@gettingthedealthrough.com

Business development managers  
Alan Lee  
alan.lee@lbresearch.com

Adam Sargent  
adam.sargent@lbresearch.com

Dan White  
dan.white@lbresearch.com

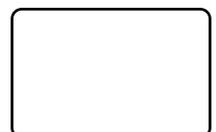


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# United Kingdom

David Bond, Chris Wormald and Vicky Reinhardt

Fieldfisher

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## Overview

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

The vast majority of franchisors are limited companies. This is owing, in part, to the protection afforded by limited liability. Another model is the limited liability partnership (LLP), which offers limited liability and carries some of the characteristics of a limited company and some of a partnership. It may have tax advantages for certain start-ups.

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

All companies and LLPs must register with the Registrar of Companies and will be subject to official requirements, such as the filing of annual accounts. All company structures are governed by the Companies Act 2006 and LLPs are governed by the Limited Liability Partnerships Act 2000.

The Partnership Act 1890 applies to general partnerships. There are no specific laws governing sole traders or individuals as 'operating entities'.

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

Setting up and maintaining a business as a sole trader does not require any legal formalities. Sole traders must, however, pay income tax on any profits their business generates.

Under the Companies Act, all companies must be registered with the Registrar of Companies. Companies can be registered by using the online web incorporation service on the Companies House website, using a formation agent, or by filing a short 'memorandum of association' agreeing to form a company and an INO1 form with Companies House, giving details of its directors, shareholders and registered office along with paying the required fee. Companies House will then issue a certificate of incorporation at which point the company will be formed. Once incorporated, the company will have to provide Companies House with annual accounts and update the details of its directors, share capital and registered office.

Similarly, LLPs also need to register with the Registrar of Companies. The procedure is similar to that for companies, and LLPs are also required to file annual accounts and notify Companies House of any changes to the membership or registered office of the LLP. Furthermore, the name of the LLP must end with 'LLP'.

Ordinarily, partnerships do not require registration. They exist as soon as they satisfy the definition of a partnership. Under the Partnership Act, a 'partnership is the relation which subsists between persons carrying on a business in common with a view of profit'. Other characteristics which are used to identify whether a partnership exists include joint property ownership, or a share of the gross returns. Partners are also jointly liable for the debts and obligations of the partnership, whereas LLPs limit members' liabilities.

All companies, LLPs, general partnerships and sole traders are required to display their names and, where applicable, their registration details and registered office address on their letters and order forms. Where staff are employed, employer's liability insurance is also a legal requirement.

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

Foreign ownership and investment in the United Kingdom is subject to very few regulations. The UK is generally considered to be an easy and lightly

regulated place in which to do business. The UK Trade and Investment government agency exists to assist foreign businesses to invest in and move to the UK. There are no general restrictions on foreign ownership of UK assets or companies. Immigration rules for individuals are relatively benign. Accordingly, the United Kingdom is often chosen as a base from which to conduct an international franchising business.

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

A foreign business (whether carried on by a company, partnership, LLP or individual) is generally not subject to tax on its business profits unless:

- it carries on a trade or business through a permanent establishment in the UK; or
- it receives certain UK-sourced income that is subject to UK withholding taxes (for example, certain interest or royalty payments).

The UK has entered into a large number of double taxation treaties, which may reduce or eliminate any withholding taxes on UK-sourced income.

Companies, partnerships, LLPs and sole traders that are subject to tax in the UK generally pay income or corporation tax by reference to their accounting periods. If a company returns profits to shareholders through dividends, the shareholders are taxed on the amount received. Taxpayers must generally self-assess their tax liability by completing and filing a tax return annually.

There are no tax rules specific to franchisors. It is worth noting that, where an initial fee is payable to the franchisor, part of the fee may be regarded for tax purposes as consideration for the grant of rights to the franchisee; part may be regarded for tax purposes as consideration for the goods and services provided to set up the franchisee's business. The terms of the franchise agreement should, therefore, always be carefully considered to ensure that the tax consequences of the various payments made between the parties match the parties' expectations. Where payments are made to or received from a non-UK entity, the proper tax analysis and corresponding withholding tax treatment of the payments should always be considered.

### 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?

Franchisors have to comply with UK anti-discrimination and employment legislation. Furthermore, all employees who are foreign nationals from outside the European Union will need a visa and a certificate of sponsorship from a UK-registered business. The UK uses a points-based system to assess the eligibility of migrants to work in the UK.

Recent case law has suggested that a true employment relationship can exist even where a contract is called a franchise agreement and the operator called a franchisee. Franchisors should be careful when drafting the franchise agreement, as well as in practice, to ensure the elements of an employment relationship at law – issues of control and dependence in the daily conduct of the business – are absent.

## 7 How are trademarks and know-how protected?

According to the Code of Ethics adopted by the British Franchise Association (BFA), the franchisor must either own or have the legal right to use the network's 'trade name, trademark or other distinguishing feature'. This is a self-regulatory code with which members of the BFA must comply. Nevertheless, it is always advisable to register the franchisor's trademarks as it both instils more confidence in potential franchisees and provides a relatively simple right of recourse against infringers.

Goods and services trademarks should be registered under the Trademarks Act 1994 at the UK Intellectual Property Office. It is also possible to obtain a community trademark, which would be universally applicable throughout the European Union. A community trademark registration must be filed at the Office for Harmonization in the Internal Market in Alicante, Spain, or an international registration (designating the countries in which it is desired to protect the mark) through the World Intellectual Property Organization under the Madrid Protocol.

Under the common law, a claim can be brought for the tort of 'passing-off', when someone takes advantage of another's reputation by adopting a similar name or implying a link with their products or services. In order to mount a successful claim, the claimant must be able to demonstrate strong goodwill in its brand, a false imitation by the defendant calculated to trade off the established reputation and resulting damage suffered (loss or diversion of business). Due to the cost and difficulty this presents, compared with a relatively simple trademark infringement action, franchisors invariably operate under registered trademarks.

The majority of franchisors will house most of their know-how in an operations manual. The manual may be protected by copyright (which subsists automatically as soon as the manual is created and does not require registration). Confidentiality and 'non-use' provisions in the franchise agreement also protect items of confidential know-how and information.

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

In England and Wales, land is held as either 'freehold' (the underlying ownership interest) or as 'leasehold'.

One relatively common real estate structure, at least in prime retail locations, is for the franchisor to take a head-lease and to sublet the premises to the franchisee. The landlord may require this, or alternatively, if the franchisee takes the lease directly from the landlord, the landlord may require the covenant of a strong guarantor to guarantee the franchisee's obligations under the lease. This structure allows greater control for the franchisor, but also greater risk. If the franchisor is involved in the real estate chain it is vital to exclude the provisions of the Landlord and Tenant Act 1954 from the lease to ensure the franchisee must vacate the premises on termination of the agreement, and to avoid the franchisee acquiring security of tenure. A deed of option can also be used to oblige the franchisee to grant the right to the premises to the franchisor on termination of the franchise agreement. The term of the lease to the franchisee must of course be coordinated with the term of the franchise agreement and any renewal rights.

Scotland has its own Land Register and a separate land-ownership system, which is distinct from English real estate law. In Scotland, there are few statutory leasehold provisions and the English Landlord and Tenant legislation does not apply.

## Laws and agencies that regulate the offer and sale of franchises

### 9 What is the legal definition of a franchise?

There is no legal definition or specific law governing franchising in the UK. The European Franchise Federation defines franchising as follows.

*[A] system of marketing goods and/or services and/or technology, which is based upon a close and ongoing collaboration between legally and financially separate and independent undertakings, the Franchisor and its Individual Franchisees, whereby the Franchisor grants its Individual Franchisees the right, and imposes the obligation, to conduct a business in accordance with the Franchisor's concept.*

This definition has been adopted by the BFA and might be turned to by a court. Common law would regard a franchise agreement as a complex, hybrid contract including various elements from other commercial contractual arrangements.

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

There is no specific agency that regulates the offer and sale of a franchise. It is the buyer's responsibility to undertake sufficient inquiry and due diligence on the transaction they are entering into on the 'buyer beware' principle. The BFA will direct parties to experienced accountants and lawyers who can provide advice on entering into a franchise arrangement.

See question 40 regarding competition laws. Other laws that affect franchise agreements include the Fair Trading Act 1973 and the Trading Schemes Act 1996, which relate to 'pyramid selling' schemes, but which apply to many franchise arrangements.

### 11 Describe the relevant requirements of these laws and agencies.

Franchising would be rendered effectively impossible if the Trading Schemes Regulations 1997 applied to a network's arrangements. There are onerous pre-sales advertising requirements, a cooling-off period, and the right for a member to withdraw on short notice: all designed to protect individuals from being caught in pyramid-selling schemes. It is, therefore, essential to take advantage of one of the two available statutory exemptions described in question 12.

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

The Trading Schemes Regulations do not apply (by virtue of the Trading Schemes (Exclusion) Regulations 1997) where either the franchise operates as a single-tier trading scheme (franchisor and one level of franchisees below it) or all the franchisees are VAT-registered at all times. Appropriate provisions must be included in the franchise agreement to ensure that the exemptions apply to protect the network.

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

No, there are no such legal requirements. However, the BFA's Code of Ethics imposes some requirements on its franchisor members: to have operated at least one pilot business on an arm's-length basis before starting to franchise; to be the owner or have the legal rights to the branding of the business; and to provide franchisees with initial and ongoing training and assistance.

### 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?

There are no such laws, regulations or government policies in the UK.

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

There is no specific compliance procedure as there are no legal disclosure requirements in relation to franchising in the UK. Nevertheless, pre-contractual disclosure is considered to be good practice and a franchisor who is a member of the BFA will need to comply with the pre-contractual disclosure requirements set out in the BFA's Code of Ethics.

If a franchisor decides to make pre-contractual disclosures, they should ensure that all information provided is accurate and not misleading in order to avoid the risk of falling foul of the laws governing misrepresentation.

The BFA's Code of Ethics further requires franchisors to avoid ambiguity in their advertising to prospective franchisees. Where franchisees pay a deposit prior to signing the main franchise agreement, the Code also requires that the deposit must be refundable to the franchisee, subject to the deduction of any legitimate expenses.

### 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?

There are no legal disclosure requirements in relation to franchising in the UK. If the sub-franchisor decides to make pre-contractual disclosure the prospective sub-franchisees should be provided with full and

accurate written disclosure of all information material to the franchise arrangement.

**17 What information must the disclosure document contain?**

There are no legal disclosure requirements in relation to franchising in the UK.

**18 Is there any obligation for continuing disclosure?**

No.

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

There are no legal disclosure requirements in relation to franchising in the UK. However, where franchisors are members of the BFA, they are required by their terms of membership to comply with the Code of Ethics.

**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?**

Not applicable, but see question 24.

**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?**

Not applicable, but see question 24.

**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?**

The offer and sale of a franchise business is not subject to any specific laws, but will be subject to more general principles of contract and tort laws. Generally the principle of caveat emptor applies. Nevertheless, both parties should be aware of the laws relating to misrepresentation – as to which see question 24 below. There is no principle of culpa in contrahendo under English law which would impose an active obligation to disclose certain information to a prospective franchisee.

It is important to note that Scotland has separate rules on the execution of documents and, therefore, any contracts relating to Scotland should be vetted by local lawyers to ensure enforceability.

Although there have been recent court cases considering the applicability of an implied term of good faith into commercial contracts, there has been no suggestion that an implied duty of good faith could create a duty to make pre-contractual disclosure.

**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?**

Not applicable, but see question 15.

**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?**

In such circumstances the franchisee may have a claim for misrepresentation where there has been an untrue statement of fact made by the franchisor, which induces the franchisee to enter into the franchise agreement and subsequently causes the franchisee to suffer loss. Misrepresentation can be innocent, negligent or fraudulent. Depending on the type of misrepresentation, the franchisee can claim rescission of the contract with reimbursement of fees and other amounts paid, or damages.

It is common for contracts to contain clauses which seek to limit liability for misrepresentation. The courts have recently shown a willingness to

find ways around such clauses to protect franchisees. Careful drafting is required, as well as careful and prudent sales procedures, particularly in relation to earnings claims and what is said about the prospects for the potential business. Exclusion clauses which purport to exclude liability for fraudulent misrepresentation will be unenforceable.

**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 are no such specific laws. Post-termination contract provisions are subject to restraint of trade and general contract principles. See also questions 24 and 40.

**26 Do other laws affect the franchise relationship?**

The general laws which govern commercial relationships would apply. For example, certain provisions of the franchise agreement will be subject to a requirement that they are reasonable under the Unfair Contract Terms Act 1997. Exclusion, 'non-reliance', and entire agreement clauses that seek to exclude a franchisor's liability for pre-contractual statements and misrepresentations can be considered unreasonable and unenforceable. Courts have recently shown a tendency to support franchisees who have been victims of misrepresentation in the franchise sales process by seeking to avoid such clauses on the grounds of the weak negotiating position of the franchisee, the 'standard form', non-negotiable contract, and the reliance the franchisee has placed on the franchisor's representations of the prospects of success. The courts have considered such clauses unreasonable, and so unenforceable, in a number of cases.

It is also increasingly important for both franchisors and franchisees to comply with their obligations under the Data Protection Act 1998. The UK Information Commissioner has powers to impose swingeing fines for breaches of these privacy and information protection laws. The Data Protection Act governs the protection of personal information. In the franchise context this is most likely to be customer information. Responsibility falls upon the 'data controller', who ultimately determines how the data is processed, and is most commonly the franchisor. It is, therefore, important that the franchise agreement stipulates very clearly both the franchisor's and the franchisee's obligations in relation to data and information protection.

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

Many reputable franchisors are members of the BFA. The BFA's Code provides standards of ethical behaviour which affect various aspects of the franchise relationship, in particular in relation to advertising, recruitment and the requirement to exercise fairness throughout the relationship and in dispute resolution.

**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?**

Franchise agreements commonly contain clauses that provide the franchisor with a right to terminate the franchise agreement immediately in situations such as insolvency, conviction for a criminal offence, ceasing to operate the business, or in the event of a material contractual breach by the franchisee. Note that the rules on procedures for administration and insolvency in Scotland are different from those in England and Wales. Additional clauses may be included to deal with minor but repeated breaches, or which permit cure periods during which a franchisee has the opportunity to remedy the breach. Under the BFA Code, a franchisee must be notified of any breaches they have committed and be given a reasonable time period to rectify the breach. At common law, the franchisor and the franchisee also have the right to terminate the franchise agreement in the event of the other's repudiatory breach, meaning clear evidence that the other party does not wish to be bound by the agreement.

**29 In what circumstances may a franchisee terminate a franchise relationship?**

A franchisee has a common law right to terminate a franchise relationship where the franchisor has committed a repudiatory breach of the contract.

However, it is not common for the franchisee to be provided with an express right of termination under the franchise agreement.

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

There is no obligation to state reasons for the refusal of a contractual renewal right as a matter of law or the BFA Code. The terms and conditions of any renewal right will be governed by the provisions of the renewal clause set out in the franchise agreement, and these usually prevent renewal if the franchisee has been in substantial breach. The BFA Code does not require a right of renewal, but requires that if there is one its basis is clearly set out. Restraint of trade laws have led to a general practice in the UK that the terms of many franchise agreements are five years, with the franchisee being given a right to at least one renewal, and subject to conditions set out in the renewal clause – such as to remodel the facility to current standards.

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

Franchisors commonly include clauses in the franchise agreement which restrict the transfer of the franchisee business to a third party without prior approval from the franchisor, so enabling the franchisor to exercise the careful selection criteria it applied when choosing the first franchisee. The agreement will typically set out the approval process and the criteria which need to be met for a transfer to be approved by the franchisor, such as the character and suitability of the buyer to run the business and the purchase price not being excessive. Franchisors invariably also require the right to purchase the franchisee's business themselves if the franchisee wishes to sell.

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

There are no such laws.

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

The rate of interest to be charged on overdue payments is invariably specified in the franchise agreement, but if not specified the rate is regulated by the Late Payment of Commercial Debts (Interest) Act 1998. This is currently the Bank of England base rate plus 8 per cent.

Franchisors must be careful not to stipulate in the contract very high interest rates for late payments as this could be interpreted to be a penalty clause, and therefore not be enforceable in the UK.

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

The UK is a bastion of free trade and there are no exchange controls or restrictions on foreign currency payments. The currency, rate and time of the conversion for payments, and provisions dealing with withholding taxes, should be clearly specified in the franchise agreement.

**35 Are confidentiality covenants in franchise agreements enforceable?**

Yes, but there are no statutory confidentiality obligations.

**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?**

There is no general obligation for parties to act in good faith towards each other. Recent court decisions have also made it clear that there is unlikely to be an implied duty to deal with each other in good faith under English law. In *Carewatch Care Services Limited v Focus Caring Services Limited & Ors*, the franchisee argued that there was an implied term that 'the parties would conduct themselves as franchisor and franchisee in good faith...'. Mr Justice Henderson reviewed the law relating to implied terms and confirmed that the English courts will look at the express terms of a franchise agreement first before considering if an implied term is necessary. This decision further confirmed that the English courts are unlikely

to imply obligations of good faith into a contract if by doing so the implied term will contradict the express terms of the agreement. Lastly, Mr Justice Henderson pointed out that 'acting in good faith' does not mean that a franchisor who exercises its contractual rights honestly has to subordinate its own commercial interests to those of the franchisee as the franchisor is generally 'free to have regard to its own commercial interests in deciding how to run its franchise business, provided always that it complied with the express terms of its current franchise agreement'.

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

Franchisees are unlikely to fall within the remit of consumer protection law.

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

There is no specific legislation requiring pre-contractual disclosure by franchisors (see questions 16 and 15). There is no statutory requirement that the franchise agreement be in English although, under the BFA Code, the franchise agreement must be translated into the official language of the country of the franchisee.

**39 What restrictions are there on provisions in franchise contracts?**

There are no legal restrictions on the provisions in franchise contracts. However, the BFA Code does provide guidance.

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

Article 101 of the Treaty on the Functioning of the European Union (TFEU) regulates agreements, decisions and concerted practices which may affect trade between member states of the EU.

Article 101 is also enshrined on a domestic level in the UK Competition Act 1998. The EC or UK competition law authorities may carry out investigations into anti-competitive activities. On 1 April 2014, the Competition and Markets Authority (CMA) took over all the competition functions of the Office of Fair Trading (and the Competition Commission, which ceased to exist). The CMA is the principal enforcement agency in the UK. The EC only becomes involved if the suspected infringement affected trade between member states. If a franchise agreement breaches the terms of either piece of legislation, the provisions in question are void and fines can be imposed by the regulators.

There is substantial EU jurisprudence on the effect of competition law on franchising. Franchise agreements can affect competition, particularly if they contain location restrictions and pricing obligations. However, not all franchise agreements fall under article 101 TFEU as they are not of sufficient size and scale to be deemed relevant. In addition, vertical agreements, including franchise agreements, are exempt from article 101 TFEU if they come within the terms of the 2010 Vertical Restraints Block Exemption. The block exemption is accompanied with guidance from the Commission and it expires on 31 May 2022. The key competition law issues to consider as regards a franchise agreement are listed below.

**Pricing controls**

Resale price maintenance is a 'hard-core' restriction, which means that if it is contained within a franchise agreement no other provisions in the contract will be exempt. Some price restrictions are permitted; for example, franchisors may set a maximum price or can recommend prices provided they are not compulsory. The encouragement of minimum prices within the agreement is prohibited, whether encouraged through incentivisation or threat of penalty.

**Territory**

Franchisors must consider the distinction between active and passive selling under European competition law. Active sales are ones made by franchisees who have actively sought a customer, and passive sales are made as a result of responding to enquiries from customers. Franchisors cannot prevent franchisees from undertaking passive sales outside of their prescribed territory in the franchise agreement. This is also a 'hard-core' restriction.

**Website and e-commerce**

Internet sales are considered to be 'passive' by the Commission, and, therefore, cannot be prohibited. In addition, franchisors cannot prohibit franchisees from operating their own websites, though the franchisor can impose quality standards.

**Non-compete obligations (in term)**

Under the TFEU, non-compete obligations are prohibited. As this is not a hard-core restriction, only the clause containing the restriction is void and unenforceable (not the agreement in its entirety).

A non-compete obligation is considered to be an obligation on a franchisee not to be involved in a similar business, or a requirement for a franchisee to source a minimum of 80 per cent of its purchases from the franchisor or a supplier approved by the franchisor.

The block exemption does, however, permit a non-compete obligation for five years. The five-year period can be increased to the length of the lease the franchisor grants to the franchisee if the franchisor owns the premises from which the franchisee operates.

**Non-compete (post-term)**

Post-termination non-compete covenants are prohibited, unless a franchisor's 'know-how' is dependent on them. However, this know-how is required to be classed as 'secret', which under its new definition in the block exemption is difficult for franchisors to prove.

If know-how can be characterised under the Vertical Block Exemption regulation as secret, a post-termination non-compete covenant may be included for a period of one year to restrict competition from the premises at which the franchisee operated his business. This is unhelpful, but in a recent case recognition was given to the argument that the *Pronuptia* principles might justify a broader geographical restriction if it was to prevent the franchisor's know-how being used by competitors.

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

In England and Wales, before issuing court proceedings, parties should follow the pre-action protocols detailed in the Civil Procedure Rules. Depending on the value, the claim would be held in the county court or the High Court and the claimant is required to prove their case on the balance of probabilities.

Unlike in England and Wales, there is no requirement to follow a pre-action protocol for raising court proceedings in Scotland. Depending on the value, a claim would be held either in the local sheriff court or in the Court of Session in Edinburgh. The test of proof is the same, namely, on the balance of probabilities.

Alternative dispute resolution is encouraged as an alternative to court hearings, and the BFA operates a mediation and arbitration scheme to resolve franchising disputes. Often, franchising agreements include a provision that obliges parties to consider mediation before commencing court proceedings.

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

There are no UK-specific advantages or disadvantages to arbitration.

As well as the BFA arbitration service mentioned above, the London Court of International Arbitration also offers an arbitration service covering both common and civil law disputes. The UK is a signatory to the New York Convention, and so arbitral awards can be enforced through the Convention protocols.

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

Foreign and domestic franchisors are treated in the same way.

# fieldfisher

**David Bond**  
**Chris Wormald**  
**Vicky Reinhardt**

**david.bond@fieldfisher.com**  
**chris.wormald@fieldfisher.com**  
**vicky.reinhardt@fieldfisher.com**

Riverbank House  
2 Swan Lane  
London EC4R 3TT  
United Kingdom

Tel: +44 20 7861 4000  
Fax: +44 20 7488 0084  
www.fieldfisher.com

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