



ICLG

The International Comparative Legal Guide to:

Franchise 2015

1st Edition

A practical cross-border insight into franchise law

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Finland

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1 Relevant Legislation and Rules Governing Franchise Transactions

1.1 What is the legal definition of a franchise?

Finnish legislation does not include any definition of a franchise. The Finnish Franchising Association (FFA) defines franchising as a long-term co-operation based on an agreement between two legally and financially independent companies, where a franchisor transfers to a franchisee, against compensation, the right to use its business concept under the franchisor's instructions.

1.2 What laws regulate the offer and sale of franchises?

Finnish legislation does not contain franchise-specific legislation or any other provisions concerning franchising. However, the general rules regarding, e.g., contractual obligations, sale of goods and intellectual property rights apply to franchise operations. Such rules include, e.g., the Finnish Contracts Act (228/1929), Finnish Sale of Goods Act (355/1987) and Finnish Trademarks Act (7/1964).

A potential franchisee is protected against the franchisor who provides misleading or insufficient information in connection with the recruitment process, under the general provisions on unfair competition of the Finnish Unfair Business Practices Act (1061/1978).

Furthermore, franchise agreements are subject to the general provisions of Finnish competition law prohibiting, among others, price-fixing, abuse of a dominant market position and other anti-competitive practices.

The Finnish Franchising Association (FFA) has issued a Code of Ethics which the members of the Association are required to comply with. The code is almost identical to the European Franchise Federation's (EFF) Code of Ethics. Finnish courts have referred to the Code of Ethics in their jurisprudence even if the parties to a dispute have not directly referred to it as part of the agreement.

1.3 Are there any registration requirements relating to the franchise system?

There are no mandatory registration requirements relating to franchising under Finnish law. Finnish legislation does, however, contain some industry-specific registration requirements for certain fields of trade. Such requirements relate to, e.g., the food industry and health care services. In addition, title to real estate shall always

be registered pursuant to Chapter 10, Section 1 of the Finnish Code of Real Estate (540/1995).

1.4 Are there mandatory pre-sale disclosure obligations?

There are no mandatory pre-sale disclosure obligations in Finnish legislation. The Code of Ethics contains, however, provisions on recruitment and related advertisement, and information disclosure obligations regulating, among others, the type of information that shall be disclosed before entering a possible pre-contract and final franchise agreement, and the related timing.

The general provision concerning the use of false and misleading expressions contained in the Finnish Unfair Business Practices Act is further binding upon the parties. The said provision prohibits the use of false and misleading expressions concerning one's own business operations or those of another party which are of a character tending to affect the supply of, or demand for, a commodity. This provision is applicable to franchise agreement negotiations, meaning that the franchisor must provide an accurate description of its operations. If the franchisor does not comply with this requirement and gives a prospective franchisee a false or too favourable impression of the operation of the franchise business, the support thereunder or future opportunities, such practice may be prohibited under the Unfair Business Practices Act and may further constitute grounds for rescinding or terminating the agreement (see question 5.1).

1.5 Do pre-sale disclosure obligations apply to sales to sub-franchisees? Who is required to make the necessary disclosures?

As mentioned in the previous section, there are no pre-sale disclosure obligations concerning franchising or sub-franchisees in Finnish legislation, but the general provision concerning the use of false and misleading expressions contained in the Finnish Unfair Business Practices Act shall be complied with, and the provisions in the Code of Ethics may be of relevance when assessing a possible dispute. The provisions and principles in the Unfair Business Practices Act apply between the sub-franchisee and the recruiting party. If the practice by a franchisee in connection with the recruitment of sub-franchisees in accordance with the instructions from the franchisor, is contrary to the Unfair Business Practices Act, both the franchisee and the franchisor could be considered as having acted against the prohibition of the use of false and misleading expressions, which is contained in the Finnish Unfair Business Practices Act.

1.6 Is the format of disclosures prescribed by law or other regulation, and how often must disclosures be updated? Is there an obligation to make continuing disclosure to existing franchisees?

Finnish law does not contain any specific requirements concerning disclosures.

1.7 Are there any other requirements that must be met before a franchise may be offered or sold?

There are no other specific franchise-related requirements.

1.8 Is membership of any national franchise association mandatory or commercially advisable?

Membership in a franchise association is not mandatory. Depending on the type and extent of franchise operations, it might be commercially advisable to join the Finnish Franchising Association (FFA). FFA membership may be helpful, for example, when recruiting new franchisees.

1.9 Does membership of a national franchise association impose any additional obligations on franchisors?

Yes, the members of the FFA are required to comply with the Code of Ethics issued by it.

The Code can be found on the FFA's web page in Finnish (http://www.franchising.fi/useruploads/files/eettiset_saannot.pdf). The code corresponds essentially to the EFF's (European Franchise Federation) Code of Ethics.

Furthermore, the FFA has an Ethical Board which issues non-binding opinions based on the Ethical Rules.

1.10 Is there a requirement for franchise documents or disclosure documents to be translated into the local language?

No, there is no such requirement in Finland.

2 Business Organisations Through Which a Franchised Business can be Carried On

2.1 Are there any foreign investment laws that impose restrictions on non-nationals in respect of the ownership or control of a business in Finland?

The Act on the Monitoring of Foreigners' Corporate Acquisitions 172/2012 restricts the change of control in certain enterprises, critical in terms of securing functions fundamental to society, in favour of foreigner actors. Only acquisitions in the defence and dual-use goods sectors are without exception subject to confirmation by the public authorities in advance. Other acquisitions are subject to a declaration which must be filed with the public authorities. Concerning acquisitions outside the defence and dual-use goods sector, the act is applicable to (including but not limited to) natural persons and entities having their domicile in non-Member States of the European Union (EU) or the European Free Trade Association (EFTA), as well as entities having their domicile in Member States of the EU or the EFTA, but controlled to 10% by a natural person or an entity not having its domicile in an EU or EFTA Member State.

2.2 What forms of business entity are typically used by franchisors?

In Finland, both franchisors and franchisees are usually legally and financially independent limited liability companies. However, franchising may also be organised under, among others, a limited partnership or a general partnership. Franchising is usually based on long-term contractual co-operation between two independent business entities.

2.3 Are there any registration requirements or other formalities applicable to a new business entity as a precondition to being able to trade in Finland?

Yes. Every limited liability company is obliged to file a start-up notification with the Finnish Trade Register. Finnish limited liability companies are founded through registration.

A limited liability company must be reported for registration within three months from the signing of the memorandum of association. The same notification requirements also apply to a company from a country within the European Union.

A company from a country outside the European Union or the European Economic Area shall, in addition to the start-up notification, also apply for a permit to establish a branch in Finland.

3 Competition Law

3.1 Provide an overview of the competition laws that apply to the offer and sale of franchises.

From a competition law point of view, franchising agreements in Finland are evaluated based on Article 101 of the Treaty on the Functioning of the European Union (TFEU) and the national Competition Act (i.e. the Finnish Competition Act 948/2011). In addition to Art. 101 TFEU and the Finnish Competition Act, the Vertical Agreements Block Exemption (33/2010, "block exemption") and the Commission Notice on Guidelines on Vertical Restraints (SEC 2010, "the guidelines") are applicable. For the block exemption to apply, the market shares of both the franchisor and the franchisee must be under 30% in the relevant product and geographical market, and no hard-core competition restrictions shall be included in the franchise agreements. To be in the scope of the block exemption, a franchise agreement shall primarily concern the sale and/or purchase of goods or retailing. The block exemption applies to the transfer of intellectual property rights (IPR) only if the preconditions set out in Section 31 of the guidelines are fulfilled. As a general principle, the Finnish competition authorities follow the practice developed by the European Commission, Court of Justice and General Court when assessing arrangements under the Finnish Competition Act.

3.2 Is there a maximum permitted term for a franchise agreement?

Neither Article 101 of the TFEU nor the Finnish Competition Act stipulate on the length of a franchise agreement or other contractual arrangements. Therefore, a suitable length for a franchise agreement should be established on a case-by-case basis. In general, franchise agreements can be made valid for a reasonable and necessary period.

3.3 Is there a maximum permitted term for any related product supply agreement?

The question of the maximum term of any related product supply agreement should be analysed from the EU competition law perspective, as there are no specific regulations in the Finnish Competition Act on this issue. The franchisor may impose obligations to purchase related products to improve and maintain brand identity. An obligation to purchase related products may have impacts similar to imposing single branding. Single branding means that purchasing other brands than those which are imposed in the contract is prohibited, which equals adoption of a non-competition clause. The block exemption stipulates that a non-competition clause shall not exceed a period of five years. However, it is stated in the guidelines that a non-competition clause can be valid as long as the franchise agreement is in force if the related product supply agreement is essential to preserving the brand and reputation of the franchise network. Therefore, as a main rule, the term of any related product supply agreement can be valid either for five years or as long as the franchise agreement is in force.

3.4 Are there restrictions on the ability of the franchisor to impose minimum resale prices?

Imposing minimum resale prices is regarded as a hard-core competition restriction in the block exemption regardless of the market shares of the contracting parties. Finnish legislation does not contain any specific provisions on minimum resale prices. Fixed pricing in franchise agreements does not infringe Art. 101(1) TFEU if these are set for a relatively short time period, for instance, for the period of a rebate campaign lasting between two and six weeks. It is acceptable to give minimum price recommendations if this does not lead to fixed pricing. Price recommendations are compatible with the internal market if deviation from the price recommendation is possible and undertakings are not forced to strictly obey the price recommendations set in contracts.

3.5 Encroachment - are there any minimum obligations that a franchisor must observe when offering franchises in adjoining areas or streets?

The Finnish Competition Act has no specific regulations on this issue. From a franchise agreement's perspective, contractual clauses relating to exclusive supply protect effectively the franchisee's right to do business in a specific territory. If the franchisor transfers know-how, it is reasonable to limit the franchisee's business operations to the extent acceptable under EU competition law.

It is in line with EU competition law to provide a franchisee with a unique operating area. However, obligations that restrict other parties' passive sales in that exclusive area are not allowed, as prohibition of passive sales belongs to hard-core competition restrictions in the block exemption.

3.6 Are in-term and post-term non-compete and non-solicitation of customers covenants enforceable?

Under the block exemption and guidelines, the franchisor can impose in-term and post-term non-compete obligations in franchising agreements.

As the main rule, non-compete covenants shall not exceed a period of five years. The length of an in-term non-compete covenant may be longer than five years and last the whole franchise agreement's

contract term if such restriction is objectively necessary in order to retain a coherent identity and reputation.

Non-compete covenants may be in force for a maximum of one year after the contract has been terminated if it is crucial for the protection of the franchisor's know-how. Other preconditions for post-term non-compete covenants are that these shall only be limited to goods and services that compete with the goods and services of the franchisor, and their geographical scope shall only concern the business premises where the franchisee has operated during the effectivity of the franchise agreement. Other in- and post-term non-compete covenants are not covered by the block exemption and are, as a starting point, not in line with EU competition law and principles.

4 Protecting the Brand and other Intellectual Property

4.1 How are trade marks protected?

Trade marks may be registered within the Finnish Patent and Registration Office. Under the Finnish Trademarks Act (7/1964), any kind of mark that can be represented graphically, and by means of which goods marketed in business can be distinguished from those of others, is considered a trade mark. A trade mark may in particular consist of words, including personal names, figures, letters, numerals or the shape of goods or of their packaging.

In addition, exclusive rights in a trade mark may be acquired, even without registration, after the mark has become established. Establishing a trade mark requires that the mark has become generally known in the appropriate business or consumer circles in Finland as a symbol specific to its proprietor's goods. Establishing a trade mark usually requires extensive use of the trade mark.

4.2 Are know-how, trade secrets and other business-critical confidential information (e.g. the Operations Manual) protected by local law?

The protection of know-how and trade secrets in Finland is mainly based on the Finnish Unfair Business Practices Act (1061/1978) and the Finnish Criminal Code (39/1889). It is provided in Section 4 of the Unfair Business Practices Act that no one may unjustifiably obtain or seek to obtain information regarding a business secret or use or reveal information obtained in such a manner. Whoever receives information regarding a business secret while performing a function on behalf of an entrepreneur, or who has been entrusted with a technical model or technical instructions so that he or she can carry out work or a function or otherwise for business purposes, may not unjustifiably use or reveal this.

An entrepreneur who in violation of the abovementioned Section 4 has used the business secret, technical model or technical instructions of another or revealed any of these, may be prohibited from continuing or repeating such practice. The prohibition shall be reinforced through a conditional fine, unless this is unnecessary for a specific reason.

Furthermore, the violation (Chapter 30, Section 5) and misuse (Chapter 30, Section 6) of trade secrets are criminalised under the Finnish Criminal Code. A business secret is defined in the Criminal Code as "a business or professional secret or other corresponding business information that an entrepreneur keeps secret and the revelation of which would be conducive to causing financial loss to him or her or to another entrepreneur who has entrusted him or her with the information".

4.3 Is copyright (in the Operations Manual or in proprietary software developed by the franchisor and licensed to the franchisee under the franchise agreement) protected by local law?

Pursuant to Section 1 of the Finnish Copyright Act (404/1961), copyright may subsist in a literary or artistic work. Under the Copyright Act, copyright subsists in a fictional or descriptive representation in writing or speech, a musical or dramatic work, a cinematographic work, a photographic work or other work of fine art, a product of architecture, artistic handicraft, industrial art, or a work expressed in some other manner. Computer programs are also considered literary works. It shall be assessed on a case-by-case basis whether an operations manual may be considered independent and original enough to be eligible for copyright protection.

The copyright holder has an exclusive right to control a work by reproducing it and by making it available to the public, in its original form or in an altered form, in translation or in adaptation, in any other literary or artistic form, or by any other technique.

In principle, any act involving the reproduction of the work or making the work available to the public without the right-holder's consent, constitutes a copyright offence or a copyright violation if none of the copyright limitations or defences becomes applicable to such conduct.

In addition, interim injunctions are available to the right-owner in case of an infringement. Under general Finnish procedural law, if the applicant can demonstrate that it is probable that he or she has an enforceable right against the opposing party and that there is a risk that the opposing party, for example, substantially decreases its value, the court may order a precautionary measure (e.g. prohibitions or orders). The measures described above may only be ordered if they do not result in undue inconvenience to the opposing party in comparison to the rights to be secured by the measure.

Further, under the Finnish Copyright Act, the court may, for example, order the service provider (e.g. ISP) acting as an intermediary to discontinue the availability of the infringing copyright-protected content, under the penalty of a fine.

5 Liability

5.1 What are the remedies that can be enforced against a franchisor for failure to comply with mandatory disclosure obligations? Is a franchisee entitled to rescind the franchise agreement and/or claim damages?

As mentioned in section 1 above, there are no mandatory disclosure obligations. However, the general provision in the Finnish Unfair Business Practices Act shall be taken into account. The said provision prohibits the use of false and misleading expressions concerning one's own business operations or those of another party which are of a character tending to affect the supply of, or demand for, a commodity.

Under Section 6 of the Finnish Unfair Business Practices Act, an entrepreneur may be prohibited from continuing or repeating practices that violate the provision described above. Such prohibition may be reinforced through a conditional fine. If the franchisor does not comply with this requirement and gives a prospective franchisee an untrue or too favourable impression, this may in addition constitute grounds for rescinding or terminating the agreement or adjusting provisions therein.

5.2 In the case of sub-franchising, how is liability for disclosure non-compliance or for misrepresentation in terms of data disclosed being incomplete, inaccurate or misleading allocated between franchisor and franchisee? If the franchisor takes an indemnity from the master franchisee in the Master Franchise Agreement, are there any limitations on such an indemnity being enforceable against the master franchisee?

The franchisor and franchisee, in a case initiated against both parties, would likely be jointly and severally liable for the damage caused to a sub-franchisee as a consequence of non-compliance or for misrepresentation in terms of data disclosed being incomplete, inaccurate or misleading. Should the franchisor take an indemnity from the master franchisee in the Master Franchise Agreement, there are limitations, directly based upon law, on such an indemnity being enforceable against the master franchisee. Should such an indemnity clause, however, be considered unfair or lead to an unfair result for the franchisee, it could, on the request of the master franchisee, be adjusted or set aside under Section 36 in the Finnish Contracts Act. For a more detailed description on the application of the said provision, see question 14.1 below. Further, such an indemnity or limitation of liability clause would, based upon general contractual principles, likely be considered invalid in case of wilful misconduct or gross negligence.

5.3 Can a franchisor successfully avoid liability for pre-contractual misrepresentation by including disclaimer clauses in the franchise agreement?

Finnish contract law is based on a strong principle of freedom of contract. In addition, there are no mandatory disclosure obligations regarding franchising. Therefore, carefully drafted disclaimer clauses may limit the risk in this respect.

It should be noted that Section 36 of the Finnish Contracts Act affords a court of law the right to adjust or completely set aside a contract term that is unfair or the application of which would lead to an unfair result. For a more detailed description on the application of the said provision, see question 14.1 below. Further, such a limitation of liability clause would, based upon general contractual principles, likely be considered invalid in case of wilful misconduct or gross negligence.

5.4 Does the law permit class actions to be brought by a number of allegedly aggrieved claimants and, if so, are class action waiver clauses enforceable despite the expense and inconvenience of individual arbitrations?

Class actions are only permitted in matters between consumers and entrepreneurs and within the limits of the Consumer Ombudsman's competence.

6 Governing Law

6.1 Is there a requirement for franchise documents to be governed by local law? If not, is there any generally accepted norm relating to choice of governing law, if it is not local law?

No, Finnish legislation does not provide any mandatory requirements concerning choice of law. There are no generally accepted norms

relating to the choice of law. Consequently, the parties may – with some restrictions that particularly relate to consumer contracts – freely decide on the law governing a franchise contract.

6.2 Do the local courts provide a remedy, or will they enforce orders granted by other countries' courts, for interlocutory relief (injunction) against a rogue franchisee to prevent damage to the brand or misuse of business-critical confidential information?

The main rule is that an order granted by another country's courts can only be enforced if the enforcement is based on an international agreement, such as the Lugano General Agreement (44/93), or a separate provision of law. Under the Council regulation (EC) No 44/2001, a judgment given in another EU Member State is to be recognised without special proceedings, unless the recognition is contested. This provision also applies to an order granted by another country's court for interlocutory relief (injunction).

7 Real Estate

7.1 Generally speaking, is there a typical length of term for a commercial property lease?

The length of the lease depends on the details of the specific subject and agreement. Generally speaking, leases concerning commercial property are usually fixed-term agreements which are in force for several years. For example, a lease period of three to five years is quite normal.

7.2 Is the concept of an option/conditional lease assignment over the lease (under which a franchisor has the right to step into the franchisee/tenant's shoes under the lease, or direct that a third party (often a replacement franchisee) may do so upon the failure of the original tenant or the termination of the franchise agreement) understood and enforceable?

Optional/conditional lease assignments can be agreed. However, in practice the transfer of a lease agreement is possible only by obtaining the consent of the lessor. It is not customary to agree that a tenant may transfer a lease to a third party.

The franchisor certainly has a better chance than an external third party of negotiating such a right to be added to the lease agreement, but it is not an automatic right. Usually the franchisor leases the property in its own name, with a right to sub-lease such property or a part of it in the frame of the franchise business.

7.3 Are there any restrictions on non-national entities holding any interest in real estate, or being able to sub-lease property?

No, there are no such restrictions under Finnish law.

7.4 Give a general overview of the commercial real estate market. Specifically, can a tenant reasonably expect to secure an initial rent free period when entering into a new lease (and if so, for how long, generally), or are landlords demanding "key money" (a premium for a lease of a particular location)?

The real estate markets are fairly established in larger cities. There is generally no rent-free period and so-called "key money" is not

normally required. The obligation to pay a rental guarantee, which usually consists of three months' capital rent, is fairly common.

It is quite normal practice for the tenant to pay a monthly capital rent for the office space and an additional maintenance rent, which is a fixed fee comprising instalments relating to the maintenance of the property.

The commercial real estate market is not booming right now, and a lot of newly constructed properties containing office space are about to be completed in the near future. Consequently, it is likely that the tenant's negotiating power will continue to increase.

8 Online Trading

8.1 If an online order for products or request for services is received from a potential customer located outside the franchisee's exclusive territory, can the franchise agreement impose a binding requirement for the request to be re-directed to the franchisee for the territory from which the sales request originated?

It is not possible to impose binding requirements on a franchisee to re-direct a potential customer to the territory from which the sales request has originated, even if a franchisee is granted an exclusive selling territory. Under EU competition law, hosting a website is also regarded as passive selling.

8.2 Are there any limitations on a franchisor being able to require a former franchisee to assign local domain names to the franchisor on the termination or expiry of the franchise agreement?

The local domain name (.fi) is transferable provided that parties have agreed on the transfer of the domain name. Further, as a starting point and on the basis of law, the franchisor has a right to claim termination of use and transfer of the domain name's registration, if it is identical or similar to the franchisor's trade mark or trade name upon the termination of the franchise agreement between the parties.

9 Termination

9.1 Are there any mandatory local laws that might override the termination rights that one might typically expect to see in a franchise agreement?

Due to the principle of freedom of contract, the parties may freely decide on the termination of a franchise agreement. Only in exceptional circumstances may the courts adjust or even completely set aside a fixed-term contract by virtue of Section 36 of the Contracts Act, if the term is unfair or if its application would lead to an unfair result. Under case law (and some provisions in special Acts) a contract may also be terminated if its fulfilment has become purposeless due to exceptional changes in the relevant circumstances. One general principle is that the length of a franchise contract should be at least such that the franchisee can reasonably earn back the investments made into the franchise business.

As a general rule, a contracting party is free to terminate a contract which is concluded for an unspecified period of time whenever he or she wishes, i.e. the contract is valid until further notice. In principle, the counterparty should be given the benefit of a reasonable period of notice, depending on the purpose of the contract and the parties to the contract.

Usually, fixed-term contracts cannot be terminated prior to their expiry without the consent of the other contracting party. Usually the parties to a contract will agree on a number of actions which trigger the ability of the other party to the contract to call for termination. Typical triggers include non-payment, non-delivery, insolvency, and material breach.

Both fixed-term and non-fixed term contracts may be terminated with immediate effect where the counterparty commits a material breach of contract; also in the absence of express contractual termination provisions. If the breach is sufficiently severe to cause a party to lose faith in the competence and reliability of the party in breach, the contract may even be cancelled. A cancellation causes the parties to restore all performances carried out under the contract to that date.

10 Labour Laws

10.1 Is there a risk that a franchisee or a franchisee's employees might be treated as the employees of the franchisor, so that the franchisor has vicarious liability for their acts and omissions? If so, can anything be done to mitigate this risk?

There is a small risk that a franchisee is treated as a franchisor's employee, although it is quite unlikely. If the franchisee employs its own personnel, the risk of being treated as a franchisor's employee will decrease.

The misclassification risk can be mitigated by formulating the franchise agreement unambiguously so that the franchisor may not or shall not intervene in the franchisee's internal operations by means of instruction/supervision. In other words a franchisee should be able to operate independently without external influence outside the scope of the franchise business model and possible supply of goods thereunder.

11 Currency Controls and Taxation

11.1 Are there any restrictions (for example exchange control restrictions) on the repatriation of royalties to an overseas franchisor?

Companies are not generally subject to any payment control restrictions in Finland.

11.2 Are there any mandatory withholding tax requirements applicable to the payment of royalties under a trade mark licence or in respect of the transfer of technology? Can any withholding tax be avoided by structuring payments due from the franchisee to the franchisor as a management services fee rather than a royalty for the use of a trade mark or technology?

Finnish-source royalties of a non-resident are subject to a 20% withholding tax for corporate entities and 30% for individuals or when the entity receiving the royalty is not identified. However, in case a double tax treaty or Council Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States applies, a lower withholding tax rate may be applicable. The tax authorities focus on the true form of the payment rather than the form according to which the payment is structured, and may reclassify the characterisation chosen by the taxpayer.

11.3 Are there any requirements for financial transactions, including the payment of franchise fees and royalties, to be conducted in local currency?

Transactions can be made in any currency.

12 Commercial Agency

12.1 Is there a risk that a franchisee might be treated as the franchisor's commercial agent? If so, is there anything that can be done to help mitigate this risk?

There is no risk that a franchisee as such would be considered as a franchisor's commercial agent, or that the Finnish Act on Commercial Representatives and Salesmen (417/1992) would be applied to a franchisee, unless the franchisee acts as a commercial representative for the franchisor.

Under the Finnish Act on Commercial Representatives and Salesmen, a commercial representative means an entrepreneur who promotes the sale or purchase of goods on behalf of the principal by obtaining offers for the principal or by concluding sales or purchase contracts in the name of the principal.

The risk may be mitigated by drafting the franchise agreement carefully and emphasising in the agreement that the franchise co-operation is conducted between two legally and financially independent entities that act in their own name, and that the franchisee does not act as a sales representative of the franchisor.

13 Good Faith and Fair Dealings

13.1 Is there any overriding requirement for a franchisor to deal with a franchisee in good faith and to act fairly according to some objective test of fairness and reasonableness?

Finnish legislation does not contain any specific requirements relating to fairness and reasonableness. However, the provisions of the Finnish Unfair Business Practices Act as well as the Finnish Contracts Act should be taken into account.

Section 1 of the Finnish Unfair Business Practices Act states that good business practice may not be violated and nor may practices that are otherwise unfair to other entrepreneurs be used in business. Section 2 of the same Act provides a prohibition on the use of false and misleading expressions, as already discussed above.

Pursuant to Section 33 of the Finnish Contracts Act (228/1929), a transaction that would otherwise be binding shall not be enforceable if it was entered into under circumstances that would make it incompatible with honour and good faith for anyone knowing those circumstances to invoke the transaction, and the person to whom the transaction was directed must be presumed to have known of the circumstances.

Furthermore, the so-called principle of loyalty applies to contractual relationships in Finland. This principle has evolved in case law and legal literature and there is no direct provision concerning this principle in Finnish legislation. The key content of the principle of loyalty is that the contracting parties shall be loyal towards each other and take the other party's legitimate interests into account to a certain extent. The scope of application of this principle is, however, considered fairly narrow.

14 Ongoing Relationship Issues

14.1 Are there any specific laws regulating the relationship between franchisor and franchisee once the franchise agreement has been entered into?

As mentioned above, Finnish legislation does not contain any franchise-specific provisions. The general rules regarding e.g. contractual obligations, sale of goods and intellectual property rights can be applied to the relationship between the franchisor and the franchisee. For example, the Finnish Trademarks Act may impose certain limitations on the use of the franchisor's signs and brands and the Finnish Sale of Goods Act can be applied to distribution of goods from the franchisor to the franchisee.

In addition, Section 36 of the Finnish Contracts Act affords a court of law the right to adjust or completely set aside a contract term that is unfair or the application of which would lead to an unfair result. In determining what is unfair, attention should be paid to the overall contents of the contract, the positions of the parties, the circumstances prevailing at and after the conclusion of the contract, and other relevant factors.

15 Franchise Renewal

15.1 What disclosure obligations apply in relation to a renewal of an existing franchise at the end of the franchise agreement term?

Finnish law does not contain any mandatory disclosure obligations. Consequently, there are no specific disclosure obligations relating to the renewal of an existing franchise at the end of the franchise agreement's term.

15.2 Is there any overriding right for a franchisee to be automatically entitled to a renewal or extension of the franchise agreement at the end of the initial term irrespective of the wishes of the franchisor not to renew or extend?

No, Finnish law does not contain any such rights.

15.3 Is a franchisee that is refused a renewal or extension of its franchise agreement entitled to any compensation or damages as a result of the non-renewal or refusal to extend?

Damages are awarded on the basis of the agreement and/or general tort law. As there is no obligation under any laws to renew or extend a franchise agreement, damages based on a refusal to renew the agreement are unlikely unless the initial term is considered clearly to be unreasonably short with regard to the investments expected and made by the franchisee under the contract.

16 Franchise Migration

16.1 Is a franchisor entitled to impose restrictions on a franchisee's freedom to sell, transfer, assign or otherwise dispose of the franchised business?

Due to the principle of freedom of contract, the parties may quite freely agree on restrictions to sell, transfer, assign or otherwise dispose of the franchised business. The general provision (Section 36) of the Finnish Contracts Act concerning adjusting contract terms should be taken into account in this regard as well (see previous sections).

16.2 If a franchisee is in breach and the franchise agreement is terminated by the franchisor, will a "step-in" right in the franchise agreement (whereby the franchisor may take over the ownership and management of the former franchisee's franchised business) be recognised by local law, and are there any registration requirements or other formalities that must be complied with to ensure that such a right will be enforceable?

Yes, a "step-in" right in the franchise agreement (whereby the franchisor may take over the ownership and management of the former franchisee's franchised business) is generally recognised and valid under general Finnish contractual principles and the freedom of contract. There are no specific registration requirements. Should such "takeover" mean a change of contract party in relation to third party contracts, such third party may, however, in good faith and unless otherwise stipulated in the relevant third party contract, claim that it is not bound by such a clause (there is no valid assignment of contract).

16.3 If the franchise agreement contains a power of attorney in favour of the franchisor under which it may complete all the necessary formalities required to complete a franchise migration under pre-emption or "step-in" rights, will such a power of attorney be recognised by the courts in the country and be treated as valid? Are there any registration or other formalities that must be complied with to ensure that such a power of attorney will be valid and effective?

If the franchise agreement contains a power of attorney in favour of the franchisor under which it may complete all the necessary formalities required to complete a franchise migration under pre-emption or "step-in" rights, such a power of attorney shall as a starting point be recognised by the courts in the country and be treated as valid. There are no specific registration requirements.

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Borenium and its experts are among the best-known franchise and contract law professionals in Finland, and contribute regularly to domestic and international projects and publications in the fields of franchising and commercial contracts. Among our franchise clients are major international chains. We advise our clients on both non-contentious (contracts) and contentious (litigation) related questions.

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