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Denmark
Franchise & Licensing

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This country-specific Q&A provides an overview of franchise & licensing laws and regulations applicable in Denmark.

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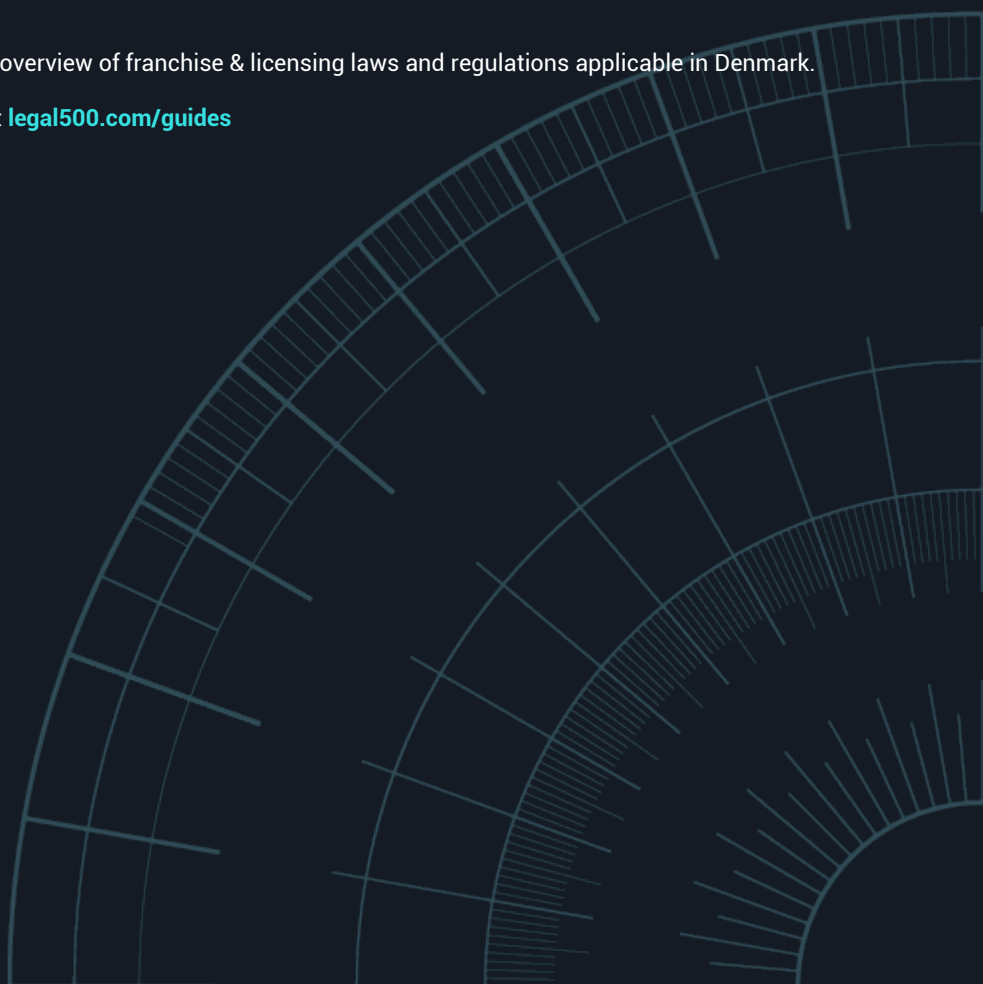

Denmark: Franchise & Licensing

1. Is there a legal definition of a franchise and, if so, what is it?

There is no official or statutory definition of a franchise. However, the Danish franchise association, "Franchise Denmark", uses the following definition in its Code of Ethics for Franchising, which is a Danish translation based upon the definition of franchising set out in the European Code of Ethics for Franchising adopted by the European Franchise Federation:

"Franchising is 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 Franchisee the right, and imposes the obligation, to conduct a business in accordance with the Franchisor's concept."

2. Are there any requirements that must be met prior to the offer and/or sale of a franchise? If so, please describe and include any potential consequences for failing to comply.

There is no specific legislation nor any governmental agencies regulating the offer and sale of a franchise.

3. Are there any registration requirements for franchisors and/or franchisees? If so, please describe them and include any potential consequences for failing to comply. Is there an obligation to update existing registrations? If so, please describe.

There are no registration requirements for franchisors and/or franchisees in Denmark.

4. Are there any disclosure requirements (franchise specific or in general)? If so, please describe them (i.e. when and how must disclosure be made, is there a prescribed format, must it be in the local language, do they apply to sales to sub-franchisees) and include any potential consequences for failing to comply. Is there an obligation to update and/or repeat disclosure (for example in the event that the parties enter into an amendment to the franchise agreement or on renewal)?

There are no specific pre-contractual disclosure requirements under Danish law. Consequently, there are no legal requirements to disclose certain information relating to the franchise prior to entering into the franchise agreement. However, as a general principle, a duty of disclosure arises when reasonable commercial standards of fair dealing require that particular circumstances should be disclosed when entering into an agreement. Franchisor's misrepresentation or mis-selling of the franchise concept prior to entering into the franchise agreement may therefore give rise to an action for breach of the agreement allowing the franchisee the ordinary remedies for breach. However, ordinary trade puff cannot constitute a breach of the agreement.

Danish courts are reluctant to award damages for pre-contractual behaviour when no agreement has been entered into. The basis of liability for contractual damages because of breach of an agreement is the concept of fault (*culpa*). In addition, liability requires that the non-breaching party has suffered a loss and that there is an adequate causal connection between the breach and the loss. Damages are computed on an expectation basis, i.e. the non-breaching party shall be put in the same position as if the agreement had been performed.

The doctrine of *culpa in contrahendo* is recognised as a general principle for pre-contractual behaviour but only as an exception. As a starting point, pre-contractual liability requires a clear breach of the law in the form of an unfair behaviour or a clear breach of the rules applicable to the contractual process.

Furthermore, the general conditions of liability in terms of loss and adequate causal connection must be fulfilled to impose a pre-contractual liability. Since no agreement has been entered into, damages will be computed based on reliance damages.

5. If the franchisee intends to use a special

purpose vehicle (SPV) to operate each franchised outlet, is it sufficient to make disclosure to the SPVs' parent company or must disclosure be made to each individual SPV franchisee?

There are no specific pre-contractual disclosure requirements under Danish law. See question 4.

6. What actions can a franchisee take in the event of mis-selling by the franchisor? Would these still be available if there was a disclaimer in the franchise agreement, disclosure document or sales material?

There are no legal requirements to disclose certain information relating to the franchise prior to entering into the franchise agreement.

Franchisor's misrepresentation or mis-selling of information other than the franchise concept may entitle franchisee to rescind the agreement based on failure of basic assumptions.

Disclaimers are generally considered legally binding under Danish law. However, the Danish courts may adjust the disclaimer or rule that it is invalid based on the following:

i. Formation of the agreement. The franchisee must have subjective knowledge of the disclaimer and its legal consequences when entering into the agreement in order for the disclaimer to be binding.
ii. Unilateral clauses are usually interpreted against the drafting party, and Danish courts typically interpret broad disclaimers restrictively.
iii. A disclaimer may in exceptional cases be deemed invalid pursuant to Section 36 of the Contract Act.

Franchisee's options for making use of the ordinary remedies for breach in a situation where the franchisor has included a disclaimer in the franchise agreement will depend on the specific wording of the disclaimer and whether the disclaimer is adjusted or ruled invalid based on the test explained above.

7. Would it be legal to issue a franchise agreement on a non-negotiable, "take it or leave it" basis?

Yes. The franchisee can decide to enter into a franchise agreement on the terms proposed by the franchisor or refuse the franchisor's offer. However, as explained above, the Danish courts may adjust onerous agreement terms, such as disclaimers. In the event of a dispute arising out of a franchise agreement, the Danish courts will take into account that the franchise agreement is drafted unilaterally by the franchisor and that there may be an imbalance between the parties where the franchisee is considered the weaker party in need of protection. Consequently, extremely onerous or unreasonable clauses of the franchise agreement may be considered non-binding on the parties, interpreted restrictively or found invalid.

8. How are trademarks, know-how, trade secrets and copyright protected in your country?

Trademarks can be protected in accordance with the Trademark Act in two different ways, either by registration of a trademark with the Danish Patent and Trademark Office, or by commencement of use of a trademark. If the trademark does not have the required distinctive character at the commencement of use, the right is established if and when a distinctive character is created by the use of the mark.

Know-how is not defined by statute but can be protected by the provisions of the Trade Secrets Act. When drafting a franchise agreement, the franchisor's know-how is usually protected by detailed provisions of confidentiality, both during the term of the agreement, and also after the agreement has expired.

It follows from the rules in the Trade Secrets Act that a contractual party, such as a franchisee may not (unless authorised) pass on or make use of the other party's trade secrets such as technical or commercial information and know-how. Only specific information is protected and the categorisation as a trade secret presupposes that the information is not generally known, represents a commercial value and has been subject to reasonable measures in order to ensure that the information concerned will be kept secret. Actions in conflict with this prohibition may incur liability to pay damages under the general rules of Danish law as well as a fine or imprisonment for a period up to one and a half years.

There is no general requirement as to form in regards to protection of copyrights under Danish law. The acquisition of a copyright commences without observation or fulfillment of any formalities, such as e.g. registration, notification, application or deposition. The

copyright comes into existence as part of the creation of the work/piece.

9. Are there any franchise specific laws governing the ongoing relationship between franchisor and franchisee? If so, please describe them, including any terms that are required to be included within the franchise agreement.

The Contracts Act and general principles of contract law apply to franchise agreements. The overall principle in Danish contract law is the principle of freedom of contract (i.e., the parties are free to decide the contents of their agreement). However, the drafting (or carrying out) of a franchise agreement may be regulated by various mandatory rules. In particular, certain statutory rules such as the Competition Act, the Marketing Practices Act, the Business Lease Act, the Product Liability Act, the Salaried Employees Act and the Act on Interest on Overdue Payments may restrict the parties' room for manoeuvre.

Among the rules to be considered in the Contracts Act when drafting (or carrying out) a franchise agreement is the general clause in Section 36. Section 36 stipulates: "An agreement may be amended or set aside, in whole or in part, if its enforcement would be unreasonable or contrary to principles of fair conduct. The same applies to other legal transactions".

Danish courts are reluctant to apply Section 36 on commercial agreements, but it may be applied where there is an evident discrepancy between the parties' bargaining positions. Where the franchise agreement is silent, the parties' relationship may be regulated by general principles applicable to commercial relationships. Such principles may be found in the Sale of Goods Act as well as in the Commission Act and the Commercial Agents Act. However, the principle regarding payment of compensation for goodwill at termination in the Commercial Agents Act will only apply by analogy in very exceptional cases.

Case law is also a relevant source of law in relation to franchising, especially where an earlier decision has been made in the superior courts. Possible precedents may be found primarily in various law reports. However, not many precedents relating to franchising have been published. This may be because many franchise agreements refer disputes to be settled by arbitration and not by the ordinary courts.

Furthermore, the Danish Franchise Association has adopted a Code of Ethics based on the European Code of Ethics for Franchising adopted by the European Franchise Federation, which is binding for its members. The Code of Ethics may be taken into account when determining the existence of general principles applying to franchise agreements.

There are no mandatory clauses required in franchise agreements according to Danish law.

10. Are there any aspects of competition law that apply to the franchise transaction (i.e. is it permissible to prohibit online sales, insist on exclusive supply or fix retail prices)? If applicable, provide an overview of the relevant competition laws.

The Danish competition rules, which are found in the Competition Act and executive orders issued on the basis of the Act, are in all relevant aspects identical to the EU competition rules. In particular, the European Commission's Block Exemption Regulation for vertical agreements has been incorporated into Danish law. This means that issues of online sales, exclusivity/exclusive supply, retail price maintenance, pricing, product ties, e-commerce and full line forcing are treated in the same way under Danish law as under EU competition law.

If there is no provision in the franchise agreement about exclusivity, the franchisor is free to appoint other franchisees in the same territory and to sell the products or services in competition with the franchisee. The franchisor must, however, observe the contractual duty of loyalty meaning that the franchisor also has to look after the franchisee's interests and may not act contrary to the prerequisite of the franchise relationship.

11. Are in-term and post-term non-compete and non-solicitation clauses enforceable and are there any limitations on the franchisor's ability to impose and enforce them?

The Danish competition rules are in all relevant aspects identical to the EU competition rules, and non-compete obligations are therefore treated in the same way under Danish law as under EU competition law.

Accordingly, a non-compete obligation relating to the products or services purchased by a franchisee is permitted for the duration of the franchise agreement and for a period of one (1) year after termination of the franchise agreement, provided that the obligation is (i) necessary to maintain the common identity and

reputation of the franchised network, (ii) limited to the premises and land from which the franchisee has operated during the agreement period and (iii) indispensable to protect knowhow transferred from the franchisor to the franchisee.

Provided that the above requirements are complied with, there should be no limitations on the franchisor's ability to impose and enforce such non-compete clauses.

Pursuant to section 3 of the Act on Restrictive Employment Covenants, a Danish employer cannot enter into a non-solicitation clause, which restricts the employment of employees comprised by Danish law.

12. Is there an obligation (express or implied) to deal in good faith in franchise relationships?

Danish contract law recognises the principle of good faith. In practise, this means that the parties to an agreement are obliged to care for each other's interests and to give each other information that is necessary to mitigate losses, as well as to avoid acting contrary to previous behaviour and to avoid an abuse of rights.

The principle of good faith has not been expressed in any statutory provision, but its existence is presupposed in some statutes, for example in Section 36 of the Contracts Act.

Unfair actions and omissions as well as actions and omissions carried out in bad faith by a contracting party may give rise to an action for breach of the agreement.

13. Are there any employment or labour law considerations that are relevant to the franchise relationship? Is there a risk that the staff of the franchisee could be deemed to be the employees of the franchisor? What steps can be taken to mitigate this risk?

According to Danish law, a franchisee is generally considered a separate and independent business partner to the franchisor. However, depending on the intensity of the parties' cooperation and provided that the franchisee is a natural person, the franchise relationship may be qualified as a camouflaged employment relationship governed by general principles of employment law, whereby the franchisee (and therefore also the staff of the franchisee) is considered similar to an employee, as the weaker party in need of protection. There is also a risk that mandatory rules such as the Salaried Employees Act will apply, as well as statutory tax law relating to employment relationships.

Whether the franchise relationship is to be considered a camouflaged employment relationship depends on an overall assessment of the circumstances of the case, including the wording of the franchise agreement and the parties' execution thereof. Among the factors to be considered is the extent to which the franchisee may manage its own hours, the extent to which the franchisee is taking on a financial risk by paying for the business premises and any employees, whether the remuneration to the franchisee is determined by the franchisee's performance or the time spent, etc.

14. Is there a risk that a franchisee could be deemed to be the commercial agent of the franchisor? What steps can be taken to mitigate this risk?

According to Danish law, franchisees are normally treated as independent distributors purchasing and selling goods in their own name and for their own account, and the franchisors are thus acting as suppliers. There are no specific Danish rules on either distribution or franchise agreements.

Under Danish law, a commercial agent does not act as an independent distributor for its own account and the main task for a commercial agent is to obtain quotations on behalf of the principal. Consequently, the risk that a franchisee could be deemed a commercial agent of the franchisor is low.

It is possible to include provisions in the franchise agreement providing for the franchisee to act as a commission agent. It would also be possible to include provisions providing for the franchisee to act as a commercial agent. This would not modify the nature of the franchise agreement as such, but it would constitute an *"agreement within the agreement"*, which would be governed by the Commission Act or the Commercial Agents Act, as the case may be. It should be emphasised that the Commercial Agents Act is based on an EU Directive that embodies a number of mandatory provisions serving to safeguard the interests of the agent by ensuring certain minimum rights.

In particular, the provisions in the Commercial Agents Act relating to goodwill at termination and minimum notice of termination may not be deviated from to the detriment of the agent through an agreement stipulating that foreign law shall apply, if the legal relationship would otherwise be governed by the Commercial Agents Act. Therefore, if the franchisee acting as an agent has its place of

business in Denmark, these provisions will apply regardless of any choice of law clause contained in the franchise agreement.

15. Are there any laws and regulations that affect the nature and payment of royalties to a foreign franchisor and/or how much interest can be charged? Are there any requirements for payments in connection with the franchise agreement to be made in the local currency?

No specific restrictions apply. However, charging of royalties pursuant to the franchise agreement must in general be fair and within the scope of Section 36 of the Contracts Act.

There are no restrictions under Danish law on the franchisee's ability to make payments to a foreign franchisor in the franchisor's local currency.

16. Is it possible to impose contractual penalties on franchisees for breaches of restrictive covenants etc.? If so, what requirements must be met in order for such penalties to be enforceable?

As mentioned above, the overall principle in Danish contract law is the principle of freedom of contract and the parties are free to decide the content of their agreement. Consequently, the franchisor may impose contractual penalties on a franchisee for breaches of restrictive covenants. However, a manifestly unfair clause imposing contractual penalties may be amended or set aside pursuant to Section 36 of the Contracts Act.

17. What tax considerations are relevant to franchisors and franchisees? Are franchise royalties subject to withholding tax?

There is no tax regulation or tax code applicable specifically to franchising structures in Denmark. Hence, the taxation of a franchise in Denmark depends on whether the franchise is subject to personal tax or corporation tax. Furthermore, the Danish tax system distinguishes between taxpayers domiciled in Denmark and taxpayers domiciled abroad with taxable activities.

Individuals and companies domiciled outside Denmark can be subject to a limited tax liability to Denmark regarding a number of specified income types. Foreign individuals and companies are, however, obviously often subject to tax liability in another jurisdiction as well. To mitigate double taxation for limited liable taxpayers, Denmark has entered into a large number of double-taxation treaties. Further, Denmark has implemented various EU directives seeking to eliminate double taxation.

Royalties

Royalties received from a Danish source are subject to limited tax liability. Thus, Denmark will withhold tax on royalty (e.g., from a Danish franchisee to a foreign franchisor). The withholding tax rate on royalties is 22 per cent (2024), which may be reduced or exempted under a double-taxation treaty. Additionally, Danish tax on royalties between group-related companies in the EU is normally waived pursuant to the EU Interest and Royalties Directive.

Corporation Tax

A company is domiciled and subject to full tax liability in Denmark if the company is registered with the Danish Business Authority or if the management of the company has its principal place of business in Denmark.

Companies are subject to 22 per cent tax (2024) on income, capital gains, interests, etc. Companies can deduct from taxable income expenses incurred when obtaining, ensuring or maintaining the taxable income, though with certain limitations. Additionally, companies can obtain a deduction from amortisation of certain assets. Finally – with some limitations – losses realised on tax relevant assets, such as debt and real estate (limited to deduction in gains realized on real estate), are deductible.

Personal Tax

An individual is subject to personal tax on employment income as well as other sources of income, which do not qualify as specific income. Furthermore, income derived from self-employment is subject to personal tax.

An individual is fully liable for tax in Denmark, if the individual is domiciled in Denmark or has been present in Denmark for a continuous period of at least six months (including short stays abroad in the form of vacations).

An individual is subject to tax on salary, profits from self-employment, capital gains, interests, dividends, pensions, etc.

For employed individuals, the expenses qualifying for a deduction in the personal income tax are limited and includes e.g. certain work-related transport and interest expenses on debt are deductible.

A personal business tax regime is applicable to self-employed individuals to allow for a harmonised taxation of personal businesses and companies. The tax rate applicable to self-employment income under this regime is 22 per cent (2024). Operating costs, such as salary, rent, travel expenses, insurance, training, etc., are deductible from self employment income (such deductions may also be obtained outside the tax regime for self-employed individuals).

When self-employment income is extracted from the franchise business by the franchisee for personal use it will be subject to ordinary personal income tax with a progressive net tax rate of up to 56.5 per cent, including labour market contribution and optional church tax (2024). The maximum marginal income tax rate is set to increase to approximately 60.5% (excluding optional church tax) as of 2026 due to the expected top-top bracket tax for total personal income above approx. DKK 2.5m. The tax already paid on the self-employment income will be credited in the personal tax for the individual.

18. How is e-commerce regulated and does this have any specific implications on the relationship between franchisor and franchisee? For example, can franchisees be prohibited or restricted in any way from using e-commerce in their franchise businesses?

There is no specific e-commerce regulation in Denmark. There are, however, some limitations on the franchisor's right to prohibit or restrict in any way franchisees from using e-commerce in their franchise businesses, which follows from the competition rules. The Danish competition rules are in all relevant aspects identical to the EU competition rules, and restrictions on the franchisee's right to online sales are therefore only lawful under Danish law to the extent permissible under the EU competition rules.

19. What are the applicable data protection laws and do they have any specific implications for the franchisor/franchisee relationship? Does this have any specific implications in the franchising context? Is the franchisor permitted to restrict the transfer of (a) the franchisee's rights and obligations under the franchise agreement or (b) the ownership interests in the franchisee?

The General Data Protection Regulation (GDPR) and the Danish Data Protection Act (the DDPA) apply to the processing of personal data, with the DDPA providing the supplements and the derogations of the GDPR. The GDPR and the DDPA entered into force on 25 May 2018 and replaced the former Danish Personal Data Act and the underlying Directive. The GDPR and the DDPA provide a framework within which the processing of personal data may take place. For example, the GDPR requires that all processing of personal data complies with the general principles for the processing of personal data, and that all processing of personal data has a legal basis for the processing.

One of the general principles of GDPR is the principle of accountability. According to this principle, the data controller (e.g., a franchisee) is responsible for, and must be able to demonstrate, compliance with the GDPR – an obligation that goes hand in hand with the franchisee's obligation, under certain requirements, to maintain a record of the processing activities carried out by the franchisee.

Due to the cooperation between (potential exchange of personal data) a franchisor and a franchisee, it is important that the parties determine their roles with regards to a potential processing of personal data, i.e. if they act as sole data controllers, data processors, or joint controllers. This would be relevant, e.g. in a situation where a franchisor offers a centralized IT-system to the franchisees.

Further, the parties must take into special consideration the regulation regarding the transfer of personal data to third countries outside the EU/EEA. By way of example, certain requirements must be met when a data controller (e.g., a franchisee) transfers personal data of customers or employees to a franchisor outside the EU or EEA. Such transfers must be carried out in accordance with GDPR Chapter V and shall be subject to appropriate safeguards.

Under Danish law, there are no mandatory rules in relation to the transfer of the parties' rights and obligations under an agreement, or the transfer of the ownership interests in the parties. Therefore, the parties are free to agree on any restrictions of the transfer of the franchisee's rights and obligations under the franchise agreement, or the transfer of the ownership interests in the franchisee.

20. Does a franchisee have a right to request a renewal on expiration of the initial term? In what circumstances can a franchisor refuse to renew a

franchise agreement? If the franchise agreement is not renewed or it if it terminates or expires, is the franchisee entitled to compensation? If so, under what circumstances and how is the compensation payment calculated?

The franchisor has no duty to renew the franchise agreement upon expiration of the initial term, unless such extension right has been expressly agreed between the parties. The franchisee may request a renewal upon expiration of the initial term, however, the franchisor is entitled to refuse such request from the franchisee.

Danish law does not recognise a compensation to the franchisee where the termination of the agreement is lawful, except possibly only in exceptional cases offering very special circumstances, which according to case law relating to distributors could be the case, if the distributor has not been duly compensated for its efforts due to the (short) duration of the agreement.

This could be the case if a distributor, despite fixing its own resale prices and otherwise being responsible for the commercial risks, has not been duly compensated for its investments, etc. at termination; for example, if the duration of the agreement was very short, and if the distributor also actively transfers the customer records, etc. to the supplier at termination, provided that the identity of the customers is not generally known. In a case before the Danish Supreme Court on 25 April 2000, a terminated dealer was, under very special circumstances, awarded compensation in the amount of 200,000 Danish kroner. In the ruling, the Supreme Court clearly stated that under normal circumstances an independent distributor will not be entitled to any compensation upon termination of the distributorship.

However, in this specific case, the Supreme Court awarded the terminated dealer the compensation mentioned with reference to the fact that the termination of the dealership had taken place with no reasonable explanation and without taking the dealer's interests into consideration (very disloyal behaviour towards the terminated dealer), and with reference to the fact that the terminating supplier in question had taken over the customer base built up by the dealer, thereby preventing the dealer from being duly compensated for its investments in marketing, etc.

21. Are there any mandatory termination rights which may override any contractual termination rights? Is there a minimum notice period that the parties must adhere to?

Danish law does not require a minimum notice period for the parties to terminate a franchise agreement and the parties are therefore free to agree the notice period. As regards franchising, there are no mandatory termination rights, which may override the contractual termination rights, however, if a short notice period has been agreed, the courts may in rare circumstances establish a reasonable notice period applying section 36 of the Contracts Act.

If the parties have not agreed a notice period, the franchise agreement may be terminated with a reasonable notice period considering all circumstances, including the duration of the franchise relationship. A notice period of six months is normally considered reasonable also in situations where the parties' relationship has lasted for several years (according to case law also if it has lasted more than 20 years).

22. Are there any intangible assets in the franchisee's business which the franchisee can claim ownership of on expiry or termination, e.g. customer data, local goodwill, etc.

In general, all intellectual property attained during the term of the franchise agreement belongs to the franchisor. Also, a franchisee is usually not entitled to compensation for building up customer date, local goodwill, etc. after expiry or lawful termination of the franchise agreement.

23. Is there a national franchising association? Is membership required? If not, is membership commercially advisable? What are the additional obligations of the national franchising association?

Yes, in Denmark the national franchising association is named *"Franchise Danmark"*, which is an interest group for Danish companies involved in franchising. Franchise Danmark has issued a code of ethics, which is based on the European Code of Ethics for Franchising adopted by the European Franchise Federation. Franchise Danmark works towards ensuring that franchising is conducted in accordance with the code of ethics in Denmark.

Membership is not required, but may be commercially advisable to franchisors, franchisees as well as consultancies providing counselling and other services to franchisors and franchisees.

Franchisors with a membership in Franchise Danmark are required to operate a franchise system, which is compliant with Danish law and the code of ethics.

24. Are foreign franchisors treated differently to domestic franchisors? Does national law/regulation impose any debt/equity restrictions? Are there any restrictions on the capital structure of a company incorporated in your country with a foreign parent (thin capitalisation rules)?

Foreign franchisors are not and may not be treated differently from domestic franchisors.

As a member of the European Union, Denmark is committed to observe the principle of free movement of goods, persons, services and capital, and the general prohibition against discrimination on grounds of nationality. Consequently, there are no market entry restrictions or other approval requirements that apply to foreign franchisors in Denmark. This also applies to foreign franchisors from outside the EU.

However, persons who are not residents of Denmark and who have not previously been resident in Denmark for a total period of five years may only acquire title to real property in Denmark after having obtained permission from the Ministry of Justice. This also applies to companies that do not have their registered office in Denmark, such as foreign franchisors.

EU or EEA nationals may acquire an all-year dwelling in Denmark without obtaining permission from the Ministry of Justice on certain conditions. The same applies to companies established in accordance with the law of an EU or EEA Member State that have established branches or agencies in Denmark or intend to do so or plan to deliver services in Denmark.

It is a requirement that the property will serve as a necessary all-year dwelling for the acquirer or that the acquisition is a precondition for engaging in self-employed activities or providing services.

It is a general requirement under Danish company law that all companies are incorporated with a share capital of a minimum of DKK 40.000 for private limited liability companies (in Danish: “Anpartsselskab” or “ApS”) or DKK 400.000 for public limited liability companies (in Danish: “Aktieselskab” or “A/S”). The capital contribution to companies can be made in the form of cash or values other than cash – so-called “contributions in kind”.

However, these requirements do not apply to the establishment of Danish branches of foreign companies, as the branch is considered to be an integral part of the foreign main company (a department of the foreign company).

The Danish Companies Act is fundamentally based on a mindset that companies must have a certain degree of freedom to arrange their capital structure. However, the management in all types of Danish businesses has a responsibility to ensure a proper organization of the business, including that the financial resources of the company are adequate at all times, and that the company has sufficient liquidity to meet its current and future liabilities as they fall due.

For Danish tax purposes, a company's right to deduct interests on debt is limited in accordance with certain rules if the company's debt/equity ratio exceeds a legislative threshold of 4:1. This includes all debt, and specific requirements to the qualification of equity applies. In addition to the thin capitalization rules, other interest limitation rules may apply and further impact the tax effectiveness of a company's capital structure.

25. Must the franchise agreement be governed by local law?

Regarding choice of law, the 1980 Rome Convention applies in Denmark (not the Rome I Regulation because of Denmark's opt-out from the EU cooperation as regards justice and home affairs).

Consequently, the parties are free to agree on the law that shall govern their agreement, whether it is the law of the country in which the franchisor is established, the country in which the franchisee is established or a third country. To the extent that no valid choice of law has been made by the parties, the starting point is that the agreement shall be governed by the law of the country in which it is *“most closely connected”*. According to the basic presumption, the closest connection is to be found in the country where the party who is to effect the performance that is *“characteristic of the agreement”* has his or her habitual residence or, in the case of a company, its central administration.

It is generally considered in relation to franchise agreements that the franchisor is to effect the performance that is characteristic of the agreement, consisting of the franchise concept, the right to use the franchisor's business names, trademarks and know-how and in some cases also patent rights, which shall be provided to the franchisee against payment of

remuneration. Nevertheless, there are many indications that the franchise agreement shall be considered to have its closest connection to the country in which the franchisee is to make use of these rights. There is, however, no relevant Danish case law dealing with these issues.

26. What dispute resolution procedures are available to franchisors and franchisees? Are there any advantages to out of court procedures such as arbitration, in particular if the franchise agreement is subject to a foreign governing law?

With regard to issues relating to jurisdiction, the 1968 Brussels Convention, the 2007 Lugano Convention and EU Regulation 1215/2012 apply in Denmark. This means that when entering into an agreement, the parties are free to agree on the choice of forum. Many franchise agreements refer disputes to be settled by arbitration and not by the ordinary courts. It is also possible to agree on mediation as a form of dispute resolution. With regard to jurisdiction outside the ambit of these rules, international jurisdiction of Danish courts is based on a number of provisions in the Administration of Justice Act and the starting point is that the defendant must have home court in Denmark.

The advantages of agreeing on arbitration include more freedom for the parties to structure the process with regard to seat, place, number of judges, qualification of judges (including knowledge about the law governing the agreement), the process is subject to confidentiality and in some cases the dispute will be settled faster.

27. Must the franchise agreement and disclosure documents be in the local language?

The parties may agree in what language the agreement shall be made, and it may be in any language that both the franchisee and franchisor understand. If the agreement is drafted in multiple languages, it is advisable to agree on which language shall take precedence in case of a conflict. As mentioned, there is no legislation regarding disclosure before entering into a franchise in Denmark.

28. Is it possible to sign the franchise agreement using an electronic signature (rather than a wet ink signature)?

Yes, a franchise agreement can be signed using an electronic signature. There is no general requirement as to form under Danish law and franchise agreements are valid without any formality required. Consequently, an electronic signature has the force of a wet ink signature.

However, the Danish courts generally require a higher standard of proof that a binding contract has been concluded in regards to contracts with a high economic value.

Under the eIDAS regulation[1], electronic signatures have been divided into three (3) categories based on the level of security: (i) electronic signatures, (ii) advanced electronic signatures and (iii) qualified electronic signatures. Pursuant to the eIDAS regulation, the Danish courts must treat a qualified electronic signature in the same manner as a handwritten/wet ink signature.

Footnote(s):

[1] eIDAS = The Regulation (EU) no. 910/2014 on electronic identification and trust services for electronic transactions in the internal market.

29. Do you foresee any significant commercial or legal developments that might impact on franchise relationships over the next year or so?

We do not foresee any significant commercial or legal developments within the field of franchising in Denmark over the next year.

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