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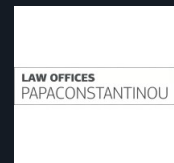
Country Comparative Guides 2024

Greece

Franchise & Licensing

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

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Greece: Franchise & Licensing

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

Greek law does not provide a definition of franchise. However, Greek courts in principle have adopted a definition along the following lines: "Franchising means an agreement of ongoing cooperation between two independent undertakings, which from an economic aspect, constitutes a method of marketing products or services whereby one undertaking (franchisor) grants to another (franchisee), for a definite or indefinite period of time and for a direct or indirect economic consideration, the right to exploit a so called franchising "package", for the sale of goods or the provision of services to end users. A franchising package means a package of industrial and intellectual property rights relating to trade marks, trade names, shop signs, utility models, designs, copyright, patents and know-how or other rights, such as rights of being supplied with products from specific producers, rights for the use or the exploitation of stores, equipment etc."

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.

Greek law does not contain any provisions regarding the requirements that must be met prior to the offer or sale of a franchise. The general provisions of articles 197 – 198 of the Greek Civil Code apply, according to which at the stage of negotiations the parties must act in good faith and in accordance with business morals. The Franchise Association of Greece has adopted a Code of Ethics which was based on the European Code of Ethics for Franchising. According to the Greek Code of Ethics, the franchisor a) must have operated a business concept with success, for a reasonable time and in at least one pilot unit before starting its franchise network and b) must be the owner of, or have legal rights to use, its network's trade name, trade mark or other distinguishing identification. Said Code however, is not legally binding. Failure to comply with its provisions may only lead to disciplinary sanctions against a member of the Association.

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.

Greek Law does not provide for any registration requirements for franchisors and/or franchisees. However, the registration may be necessary within the context of other laws such as Law 4679/2020 on trade marks or Law 1733/87 on transfer of technology, inventions and technological innovations. In the event that the registration requirements under the above laws are not complied with, the franchisee may not invoke the relevant rights against third parties before the Courts.

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 Greek Law. The general provisions of the Greek Civil Code would apply. Among others, there is an obligation to deal in good faith, both, during the course of negotiations (articles 197-198 of the Greek Civil Code) and in performing the obligations under the franchise agreement (article 288 of the Greek Civil Code – see Q. 12 below). In addition the provisions of articles 140 – 149 of the Greek Civil Code on error and fraud would be applicable, on the basis of which a party who has been in error or has been defrauded on material aspects of the agreement has the right to terminate the agreement and, in the event of fraud, claim compensation for any damage suffered.

The Code of Ethics of the Franchise Association of Greece provides for a number of pre-contractual obligations for

the franchisor. Indicatively, the franchisor must disclose various information of the franchise system, such as the corporate status of the franchisor including but not limited to the company purpose, registered address, the identity and relevant experience of the system key management personnel of the Franchisor, a general description of the business and the principal characteristics of the know-how, an estimate of the total costs associated with establishing a franchised business, information relating to all licenses required by law for the establishment and operation of a franchised business and the essential elements of the franchise agreement. As mentioned above, these obligations are binding only for the members of the Association and are not legally enforceable.

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 provisions regarding the above matter. As a general rule, provided that the franchisor makes appropriate disclosure to the SPVs' parent company, with a clause stating that the latter must make the same disclosure to all entities it controls, there is no further requirement for individual disclosure.

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?

According to the general provisions of the Greek Civil Code on error and fraud, liability in the course of negotiations and torts (articles 140-149, 197-198, 914, 919), if the franchisee has been misled on material issues of the franchise, he has the right to terminate the franchise agreement and/or claim compensation for any damage suffered. What is a material issue depends on the circumstances of the case. According to the law, an issue is material, if the franchisee would not have entered the contract had he been aware thereof.

Disclaimers may not restrict liability for fraud or gross negligence.

7. Would it be legal to issue a franchise

agreement on a non-negotiable, "take it or leave it" basis?

Freedom of contract is a fundamental principle of Greek law. On the basis thereof, it would be legal to issue a franchise agreement on a non-negotiable, "take it or leave it" basis. However, according to the general provisions of the Greek Civil Code (articles 178, 179, 281) and Law 146/1914 on unfair competition, clauses which are abusive or contrary to good faith and business morals or constitute an abusive exploitation of a situation of economic dependence will not be enforceable.

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

Trade marks, know-how, trade secrets and copyright are protected by the provisions of the following Laws:

- Law 4679/2020 on Trade Marks;
- Law 146/1914 on Unfair Competition;
- Law 1733/1987 on Transfer of Technology, Inventions, Technological Innovations and Establishment of an Atomic Energy Committee;
- Law 2121/1993 on Intellectual Property;

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.

There are no franchise specific laws in Greece governing the ongoing relationship between franchisor and franchisee, the parties enjoying wide discretion in determining their rights and obligations and setting out the terms of their relationship.

Greek laws which are relevant to franchise agreements are, indicatively, the following:

- The general provisions of the Greek Civil Code and the Greek Commercial Code.
- Presidential Decree 219/1991 on commercial agency agreements (implementing EC Council Directive 86/653)
- Law 3959/2011 on the protection of free competition and EU block exemption regulations (including in particular Commission Regulation 2022/720 on vertical restraints)
- Compulsory Law 146/1914 on unfair

competition

- Law 4679/2020 on trade marks
- Law 1733/1987 on transfer of technology, inventions, technological innovations
- Law 2121/1993 on intellectual property

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.

Franchise agreements are subject to review from a competition law viewpoint. Article 1(1) of Greek Law 3959/2011 on the protection of free competition (which is almost identical to Article 101(1) of the TFEU) prohibits all agreements between undertakings, decisions by associations of undertakings and any kind of concerted practices that have as their object or effect the prevention, restriction or distortion of competition in the Greek market. In particular, this includes those that:

- Directly or indirectly fix prices or other trading conditions.
- Limit or control production, supply, technical development or investment
- Share markets or sources of supply.
- Apply dissimilar conditions to equivalent transactions, making the operation of competition difficult (in particular, unjustifiably refusing to sell, purchase or conclude any other transaction).
- Make contracts subject to the other parties accepting supplementary obligations that by their nature or according to commercial use have no connection with the subject of the contracts.

The above prohibition applies to horizontal and vertical agreements, such as franchise agreements.

Any agreements falling under Article 1(1) of Law 3959/2011 are null and void, unless:

- they qualify for a block exemption. Law 3959/2011 specifically provides that EU block exemption regulations (therefore also Commission Regulation 2022/720 on vertical restraints) apply in Greece by analogy to agreements between undertakings, decisions by associations of undertakings and concerted practices with a purely national effect. OR
- they meet the criteria for an individual

exemption under Article 1(3) of Law 3959/2011 (which is almost identical to Article 101(3) of the TFEU).

In applying the above provisions Greek Competition Commission and Greek Courts largely follow European Commission's guidelines and precedents at an EU level. In light of the above:

- Resale price fixing is considered as a hard-core restriction. A franchisor may not impose a fixed or minimum resale price either directly or indirectly (e.g. by fixing distribution margins, fixing the maximum level of discount the franchisee can grant from a prescribed price level, making the grant of rebates or reimbursement of promotional costs by the franchisor subject to the observance of a given price level, linking the prescribed resale price to the resale prices of competitors, threats, intimidation, warnings, penalties, delay or suspension of deliveries or contract terminations in relation to observance of a given price level etc). Recommended or maximum resale prices are allowed, provided that they do not amount in practice to fixed or minimum resale prices.
- Exclusive supply obligations are allowed provided that they refer to the main object of the franchise business and they are necessary for preserving the identity and reputation of the franchise network and the quality and uniformity of the products/services provided to the customers. Restrictions of cross-supplies between members of a selective franchise network are not allowed.
- An absolute ban on online sales or other measures having similar effect would be prohibited. However, a franchisor may require quality standards for online sales provided that they are laid down uniformly, they are applied in a non-discriminatory manner, they pursue the same legitimate objectives of preserving the identity and reputation of the franchise network and the quality and uniformity of the products/services provided to the customers and they do not go beyond what is necessary in light of the objectives pursued.

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?

In-term non-compete obligations are enforceable under Greek law. Post-term non-compete obligations are block exempted under Regulation 2022/720, if they are necessary to protect know how transferred by the franchisor to the franchisee, they are limited to the premises where the franchisee operated his business during the contract term and they do not exceed one year after termination of the franchise agreement. Post-term non-compete obligations which do not satisfy the above criteria are enforceable if they can benefit of an individual exemption under article 1(3) of Law 3959/2011.

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

The obligation to deal in good faith derives from various provisions of Greek law (among others, articles 200, 281, 288 of the Greek Civil Code) and it is considered one of the fundamental principles thereof. This means that all franchisor's and franchisee's obligations must be interpreted and performed in accordance with the principles of good faith and business morals. Failure to comply with the above may give rise to a claim for performance, damages or early termination of the Franchise 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?

As a general rule there would be no risk for the franchisee's employees to be regarded as the franchisor's employees.

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 settled case law of the Greek Supreme Civil Court, the provisions of Presidential Decree 219/1991 on commercial agents (implementing EC Council Directive 86/653) may apply by analogy to other types of distribution agreements, to the extent that the latter have the same essential characteristics as a commercial agency agreement (indicatively: distributor's high degree

of integration in the principal's network, similar high degree of dependence on the principal, distributor's contribution to the extension of principal's clientele by undertaking responsibilities similar to those of a commercial agent, non-compete obligation, principal's access to distributor's clientele and customer data etc). The Supreme Civil Court has also taken the view that such application by analogy is not possible in case of non-exclusive distribution agreements, where the distributor also sells products competing with the contract products.

The risk can be mitigated by ensuring that the franchisee enjoys a sufficient degree of independence differentiating him from a commercial agent.

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?

There are no specific laws and regulations regarding the payment of royalties agreed between the parties; the general rules of the Greek Civil Code would apply. The parties are free to agree on the nature and amount of fees.

Interest can be charged on overdue payments, provided that the interest rate does not exceed the maximum interest rates set by the Bank of Greece.

The law does not impose any requirements regarding the currency in which payments under the franchise agreement must be made.

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?

According to the Greek Civil Code a contractual penalty may be imposed against a party in breach of a contractual obligation. The amount of the penalty is payable irrespective of any damage. Unless otherwise agreed, the party not in breach is not prevented from claiming compensation for any additional damage suffered. The agreed penalty may be reduced by the Court if it is found to be excessive taking into account all surrounding circumstances.

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

In the absence of any specific tax framework governing franchising, the general provisions of Greek tax law apply. Therefore if the franchisor is established in Greece he will be considered by the tax authorities as a Greek resident. On the other hand, if the franchisor has no permanent establishment in Greece, the relevant tax treaties for the avoidance of double taxation between the franchisor's country of residence and Greece, will apply. In the absence of any such treaty, a 20% of the gross amount paid by the franchisee to the franchisor will be withheld and attributed to the Greek State. Banks are prevented by law to make any payment of royalties unless this tax has been attributed to the Greek State.

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?

As a general rule a franchisee cannot be prohibited or restricted from using e-commerce in the franchise business. On line sales restrictions may be imposed to the extent that the franchisee remains free to operate his own online store and to advertise online. For example, a franchisor may impose quality standards or standards regarding the display of the contract goods or services or use of the franchise package in the franchisee's online store or ban the use of third party online marketplaces. A requirement that the franchisee operates a brick and mortar shop or achieves a minimum absolute amount of sales offline or pays a different wholesale price for online sales than for offline sales would be enforceable, provided that it does not have the object or effect of restricting effective use of the internet.

The provisions of Regulation (EU) 2018/302 regarding geo-blocking and geo-filtering are also applicable.

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 applicable data protection laws are:

- Regulation (EU) 2016/679 (GDPR)
- Law 4624/2019 implementing Directive (EU) 2016/680
- Law 3471/2006 implementing e-privacy Directive (EC) 2002/58

The capacity of the franchisor/franchisee as data controller or processor and their relevant responsibilities should be clearly determined and any data processing, including data transfer to non EU countries, must take place in compliance with the abovementioned provisions.

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 term of a franchise agreement and the conditions of renewal or extension thereof are freely agreed by the parties. Unless otherwise agreed, the franchisee does not have the right to request a renewal on expiration of the initial term.

According to art. 9 of PD 219/1991 on commercial agency agreements, which may be applicable by analogy to franchise agreements (see Q. 15), upon termination or expiration of the franchise agreement the franchisee is entitled to clientele indemnity if and to the extent that (a) during the agreement he has brought the franchisor new customers or has significantly increased the volume of business with existing customers, (b) the franchisor continues to derive substantial benefits from the business with such customers and (c) the payment of such indemnity is equitable having regard to all the circumstances. The amount of the indemnity to which the franchisee is entitled in accordance with the above may not exceed a figure equivalent to the franchisee's average annual gross profits over the preceding five years. If the contract goes back less than five years the indemnity is calculated on the average for the period in question.

Clientele indemnity is payable in all cases of expiration or termination of the franchise agreement for any reason (i.e. including expiry of the agreed term thereof, lawful

termination with prior notice of a franchise agreement of indefinite term, death of the franchisee) other than: (i) termination of the franchise agreement by the franchisor due to franchisee's fault which would justify termination at any time with immediate effect or (ii) termination of the franchise agreement by the franchisee, unless such termination is justified by circumstances attributable to the franchisor or on grounds of age, infirmity or illness of the franchisee in consequence of which he cannot reasonably be required to continue his activities, or (iii) where, with the agreement of the franchisor, the franchisee assigns his rights and duties under the franchise agreement to another person. Any waiver by the franchisee of his claim for clientele indemnity prior to the expiration/termination of the franchise agreement is null and void.

In addition to the above, the franchisee may be entitled to compensation for expenses incurred or for damage suffered (including actual damage, loss of profit and compensation for "moral prejudice") under the conditions of the general provisions of the Greek Civil Code on mandate and torts.

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?

In the event that P.D. 219/1991 on commercial agency agreements is deemed to apply by analogy to a franchise agreement of indefinite term (see Q. 15), the following minimum notice periods must be adhered to (art. 8 of P.D. 219/1991): one month for the first year of the contract, two months for the second year commenced, three months for the third year commenced, four months for the fourth year commenced, five months for the fifth year commenced and six months for the sixth year commenced and the subsequent years. The parties may not agree on shorter periods of notice. If the parties agree on longer periods of notice, the period of notice to be observed by the franchisor must not be shorter than that to be observed by the franchisee. Unless otherwise agreed by the parties, the end of the period of notice must coincide with the end of a calendar month.

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.

This depends largely on the terms of the franchise

agreement. In the event that the franchisee's degree of dependence on the principal is similar to that of a commercial agent and P.D. 219/1991 on commercial agency agreements is deemed to apply by analogy, customer data and local goodwill will be taken into account for the calculation of the clientele indemnity to which the franchisee is entitled.

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?

The Franchising Association of Greece was established in 1997. Membership is not compulsory and it currently numbers over 30 members. The members must abide by the rules of the Association, e.g. 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)?

No, foreign franchisors are not treated differently to domestic franchisors. The thin capitalisation rules set out in EU Council Directive 2016/1164 against tax avoidance practices (ATAD) have been transposed into Greek tax law.

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

As a general rule the parties are free to agree on the law governing the franchise agreement. Greek public policy provisions (such as those regarding clientele indemnity and minimum notice periods for termination of agreements of indefinite duration) will, nevertheless, still be applicable.

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?

Mediation and Arbitration are the main out of court

dispute resolution procedures.

The Greek Franchise Association encourages the use of a simple mediation procedure for dispute settlement between franchisors and franchisees, in which the mediator is appointed from a list of mediators accredited by the Greek Franchise Association.

Parties often opt for Arbitration. Arbitral awards, foreign or Greek, are recognized by the Greek Courts, provided that they meet the requirements set out in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention, 1958), in case of foreign arbitral awards, or in the Greek Code of Civil Procedure, in case of domestic arbitral awards.

The main advantage of arbitration is time efficiency. It must be noted that an arbitration clause does not preclude the parties from seeking interim measures before the Courts in cases of emergence and imminent danger.

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

There are no legal requirements to draft the franchise

agreement or the disclosure documents in Greek, as long as the language in which these documents are drafted is comprehended by both parties. However, a translation of the franchise agreement in Greek will be required if the latter is registered with a competent Greek authority (IP, tax etc.) or produced before the Greek Courts.

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

It is possible to sign the franchise agreement using an electronic signature provided that this signature has been certified by the Hellenic Telecommunication and Post Commission ("EETT"), in accordance with Regulation 910/2014/EC and Presidential Decree 150/2001.

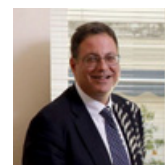
29. Do you foresee any significant commercial or legal developments that might impact on franchise relationships over the next year or so?

We do not foresee any significant developments from a legal point of view. Obviously, the increasing growth of e-commerce is expected to affect all distribution networks, including franchise.

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