

# Legal 500

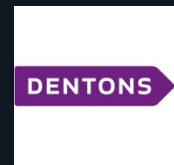
## Country Comparative Guides 2025

Germany

Franchise & Licensing

Contributor

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

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## Germany: Franchise & Licensing

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

In Germany, a franchise is not explicitly defined by law. The franchise agreement is understood as a mixed-type contract ("typengemischter Vertrag") meaning it combines elements from various contract types, such as purchase, license, lease, and service agreements. In some cases, the provisions of commercial agency law or the principles for authorized dealers apply by analogy (see Question 21).

### 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.

German law mandates a duty of pre-contractual principal of good faith under § 242 German Civil Code (BGB). In the context of franchise law, this principle manifests itself in the form of pre-contractual disclosure obligations for both parties. The exact scope of such disclosure duties has been shaped by court decisions over the years and continues to evolve. Further details on the pre-contractual disclosure are laid down under Question 4.

### 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.

Germany does not have a national franchise register or a requirement to register a franchise agreement.

### 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)?

Both the franchisor and the franchisee (as well as sub-franchisors and sub-franchisees) are subject to pre-contractual disclosure obligations:

- The **franchisee** is obliged to disclose its professional qualifications, personal characteristics, and financial capabilities truthfully and fully, insofar as these are relevant for the conclusion of the franchise agreement.
- The **franchisor's pre-contractual disclosure duties** are considerably broader and more important: Before signing a franchise agreement, the franchisor must provide the franchisee with all material information necessary to make an informed decision. The scope of disclosure obligations depends on the specific franchise system as well as on the business experience of the prospective franchisee. Consequently, unlike in jurisdictions with codified disclosure requirements, the assessment in German law must always be made on a case-by-case basis. The franchisor is obliged – without being asked – to disclose any risks or information relevant to the franchise agreement if such information could influence the franchisee's decision or if the franchisee has misunderstood key aspects. The franchisor must also correct any misunderstandings or misconceptions he becomes aware of.

In the event of an active misinformation or a failure to provide adequate disclosure, the legal consequences may include not only the other party's right to claim damages under § 280 BGB, but also a potential right to rescind the contract.

Disclosure should be made at least two weeks before signing the franchise agreement. While no formal requirements exist for the format, it is advisable for franchisors to document disclosures. Typically, information is provided in German, though English may be used if both parties agree and understand the implications.

Although German law does not explicitly require ongoing disclosure updates, franchisors are expected to inform

prospective franchisees of any material changes – such as adjustments to fees, financial performance, business structure, or intellectual property – prior to the conclusion or renewal of the franchise agreement.

### 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?

Disclosure to the parent company is not sufficient. In Germany, the principle of corporate independence applies. Disclosure must be made to the actual contracting party as an independent legal entity.

### 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?

In the event of mis-selling by the franchisor, the franchisee has several legal remedies under German law. The franchisee may;

- **Claim damages** pursuant to § 280 BGB
- **Terminate** the franchise agreement for good cause according to § 314 BGB in case of fundamental mis-selling
- **Rescind** the contract with retroactive effect (§§ 119, 123 BGB) in cases of fraudulent misrepresentation.

Disclaimers may limit the actions of the franchisee, provided they meet statutory requirements and comply with applicable laws on general terms and conditions, especially regarding fairness and transparency.

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

**"Take-it-or-leave-it" offers are permissible** under German law. It is in fact common practice that franchisors draft the franchise agreement in advance for a wide range of cases and insist on it.

It must be noted that under German law such template agreements are **generally qualified as standard terms and conditions ("AGB")**. AGB are deemed to exist whenever a contract is prepared for repeated use and is presented by

such a party on a "take it or leave it" basis. **Stricter requirements apply to such AGB** pursuant to §§ 307 et seq. BGB: Clauses are subject to a comprehensive review for transparency and unfair disadvantage.

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

**Trademarks** are protected under the German Trademark Act and EU Trademark Regulation. They should be registered with the German Patent and Trademark Office (DPMA) as German trademark or with the European Union Intellectual Property Office (EUIPO) as EU trademarks to receive full protection.

**Know-how**, although not formally registered, is protected through confidentiality agreements and contract law. It often includes business methods, manuals, or operational systems. In franchising, access to know-how is a key benefit for the franchisee, and franchise agreements usually include strict non-disclosure clauses.

**Trade secrets** are protected under the German Trade Secrets Act, aligned with EU law. To qualify, the information must be secret, valuable, and protected by reasonable measures. Franchisors must actively safeguard trade secrets through internal policies and clear contractual obligations, which usually extend beyond the end of the franchise relationship.

**Copyright** protects original works such as training materials, software, and advertising content. It arises automatically upon creation under the German Copyright Act. In a franchise system, the franchisor licenses its use to the franchisee, usually under clearly defined terms within the franchise agreement.

### 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.

Germany does not have franchise-specific legislation, but the ongoing franchise relationship is shaped by general civil and commercial law, court decisions, and principles such as good faith, fair dealing, and full disclosure. Furthermore, Franchise agreements must comply with German and EU competition laws, especially regarding non-compete clauses, territorial exclusivity, and pricing restrictions.

## 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.

Several aspects of German and EU competition law apply to franchise transactions. Compliance with EU Regulation 2022/720 (VBER); the German Act Against Restraints of Competition (GWB) and Article 101 TFEU (Treaty on the Functioning of the European Union) is required.

- **Online Sales:** It is not permissible under VBER to prohibit online sales entirely. However, it may be permissible to impose certain criteria for online sales, e.g. criteria for web shop appearance. Restrictions on online distribution via platforms may be permissible under certain conditions.
- **Exclusive Supply:** A franchisor may insist on exclusive supply (i.e. requiring franchisees to purchase goods or services only from designated suppliers), provided this does not restrict competition excessively and the market share of the franchisor remains below 30% (VBER threshold). Usually, competition law requires timely restriction, however this does not apply strictly to franchise agreement (*Judgment of the European Court of Justice of 28 January 1986 – Pronuptia de Paris GmbH v Pronuptia de Paris Irmgard Schillgallis*).
- **Retail Price Fixing:** Fixing minimum or fixed resale prices is prohibited under § Art. 101 TFEU, Art. 4 VBER. However, the franchisor may recommend non-binding retail prices or set maximum prices.

## 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?

Both non-compete and non-solicitation clauses are enforceable under German law if they comply with legal requirements:

- **In-term non-compete clauses** are permitted but may require limitations with respect to geographic scope, time and subject matter.
- **Post-term non-compete clauses** are permitted but must be:
  - Limited to one year after contract termination,
  - Restricted to the former contractual territory and to the same products/services, and
  - Accompanied by reasonable compensation according to an analogy of § 90a HGB, if

franchisee is organizationally integrated into the franchise system to such an extent that his position economically resembles that of a commercial agent.

- **Non-solicitation clauses** are generally permitted but must also be proportionate in scope and duration to be enforceable.

## 12. Is there an obligation (express or implied) to deal in good faith in franchise relationships? If so, what practical effects does this have on the relationship between franchisor and franchisee?

Under German law, there is an **obligation to deal in good faith**, set out in § 242 BGB. This provision requires both franchisor and franchisee to act fairly, consider each other's legitimate interests, and uphold the spirit and purpose of the contract.

Any violation against the principle of good faith may lead to claims for damages or contract adjustments.

## 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?

Employment and labour law considerations are relevant in the context of a franchise relationship in Germany. A key legal question that can arise is whether the **franchisee could be classified as an employee** (*Arbeitnehmer*) of the franchisor if the franchisee is both dependent on instructions (*weisungsabhängig*) and economically dependent (*wirtschaftlich abhängig*) on the franchisor.

To mitigate this risk, it is essential to **structure the franchise relationship in a way that preserves the franchisee's independence**. This includes granting the franchisee a meaningful degree of entrepreneurial freedom, particularly in areas such as:

- Setting its own working hours,
- Deciding when to take vacation, and
- Especially, the ability to hire and manage its own employees independently.

## 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?

Under German law, franchisees are generally not classified as commercial agents. A commercial agent acts on behalf of another by negotiating or concluding contracts in the name of the principal. In contrast, a franchisee typically operates in its own name and for its own account.

To minimize the risk of reclassification as a commercial agent, the franchise agreement should make clear the franchisee operates independently, in its own name and for its own account, without authority to conclude contracts for the franchisor. Avoiding excessive operational control by franchisor further mitigates the risk. However, there is the risk that the indemnity claim of the commercial agent might apply analogously (see Question 21).

### 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?

Royalty and interest payments to a foreign franchisor are generally permissible under German law, but tax rules must be observed. Royalties may be subject to withholding tax if they relate to rights used in Germany (§ 49 EStG), although tax treaties may reduce or eliminate such withholding. Transfer pricing rules apply to royalty and interest payments between related parties, requiring that such payments reflect market conditions. There is no general cap on interest rates, but interest must not be usurious (§ 138 BGB).

Payments under a franchise agreement can be made in any agreed currency; German law does not require payment in euros.

### 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?

**Contractual penalties** can be imposed on franchisees in Germany for breaches of contractual obligation (§ 339 BGB). Typical are penalties for breaches of intellectual property, non-compete or confidentiality obligations.

When including a contractual penalty clause, certain requirements must be observed. Where a party unilaterally stipulates such a provision across multiple contracts – thus qualifying it as “terms and conditions” under German law – it will only be enforceable if it is proportionate, transparent, and does not unreasonably disadvantage the other party (§ 307 BGB). Excessive penalties are void, with the consequence that no penalty may be claimed at all. By contrast, in the case of individually negotiated clauses, courts may reduce penalties under § 242 BGB if they are deemed grossly disproportionate. Furthermore, penalties must be credited against actual damages in order to prevent double recovery.

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

- **Value-Added Tax (VAT):** Franchise fees, including initial fees and ongoing royalties, are generally subject to value-added tax (Umsatzsteuer) at the standard **rate of 19%**. The franchisor is responsible for charging VAT on the invoice, and the franchisee may be entitled to **input tax deduction** if registered for VAT and using the franchise in the course of taxable business activities.
- **Income Tax and Corporate Tax:** The taxation of income from franchising depends on the legal form of the franchisor and franchisee:  
Natural persons: Income is subject to **personal income tax** (Einkommensteuer) at progressive rates.  
Legal entities (partnerships or corporations): Income is subject to **corporate income tax** (Körperschaftsteuer) at a flat rate of 15%, plus a **solidarity surcharge** (Solidaritätszuschlag) of 5.5% on the corporate tax.
- **Trade Tax (Gewerbesteuer):** Franchise income may also be subject to trade tax, the rate of which varies depending on the **municipality**. There is a tax allowance for sole proprietors and partnerships, but corporations are fully subject to trade tax.
- **Withholding Tax on Royalties:** If the franchisee in Germany pays royalties to a **foreign franchisor**, these payments are generally classified as royalty income and subject to withholding tax at a rate of 15% plus solidarity surcharge unless reduced or exempted by a **double taxation agreement** (DTA). To benefit from treaty relief, the foreign franchisor must apply for exemption or refund through the German Federal Central Tax Office (BZSt).
- **Licensees should observe the license limitation rule (“Lizenzschranke”):** Germany has implemented

license limitation rules since 2018 under Section 4j of the Income Tax Act (EStG) which apply for intra-group license agreements. The license limitation rules limit the deductibility of royalty expenses incurred by German businesses if the direct or (in the case of a back-to-back licensing structure) indirect licensor is a related party whose income is subject to a "low taxation" in the sense of the license limitation rules, unless such preferential tax regime complies with the Modified OECD Nexus Approach. The threshold for "low taxation" is 25% for royalty expenses that accrued until 31 December 2023 and 15% thereafter.

### 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?

E-commerce in Germany is regulated by a combination of EU and national laws focusing on consumer protection. There is no specific implication on the franchise relationship.

However, there are some limitation on the franchisor's right to restrict franchisee's use of e-commerce under EU competition law (see Question 10).

### 19. What are the applicable data protection laws and do they have any specific implications for the franchisor/franchisee relationship?

In Germany, data protection is governed by the EU General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG). These laws require both franchisors and franchisees to handle personal data lawfully, transparently, and securely. The franchisor may process franchisee customer data for legitimate business reasons, such as auditing, provided it is done proportionally and with respect for the franchisee's interests. If franchisees use third parties for data processing, they must ensure compliance with GDPR requirements, especially when data is processed outside the EU.

### 20. 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?

Under German law, franchisors can generally restrict the transfer of a franchisee's rights and obligations under a franchise agreement. However, restrictions on the transfer of monetary claims are usually not enforceable. The same principle applies to transferring ownership interests, though to be valid, such restrictions need to bind the franchisee's shareholders directly. Franchise agreements therefore usually grant the franchisor information and termination rights in cases of changes in control.

### 21. 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 is **not obliged to renew** the franchise agreement upon expiration and is entitled to refuse a request for renewal by the franchisee, unless such extension right has been expressly agreed between the parties.

Whether a franchisee is entitled to **compensation after termination** of the franchise agreement **remains disputed**. A post contractual compensation claim according to §89b HGB in analogy requires that (i) the franchisee, with the franchisor's knowledge and consent, has contributed to the franchise system and built up a customer base that benefits the franchisor and (ii) that the franchisee is integrated into the franchisor's sales organization and is legally obliged to transfer the customer base upon termination. However, a post contractual compensation claim is not justified where the franchise model essentially involves anonymous mass transactions, and the continuity of the customer base is merely factual rather than contractual.

### 22. 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?

Under mandatory German law, both franchisor and franchisee may terminate a contract for good cause (§ 314 BGB).

German law does not stipulate a minimum notice period. However, the notice period must take into account the

term and investments of the franchisee. Any termination for good cause will have immediate effect, though a prior warning is necessary unless impossible to remedy.

### 23. 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.

Generally, intangible assets like brand goodwill and marketing materials remain the property of the franchisor, and franchise agreements typically require franchisees to return or stop using these assets upon termination. While franchisees may develop local goodwill or customer relationships, legal ownership usually stays with the franchisor, including customer data, which must often be handed over at the end of the franchise relationship. The specific allocation of such assets will depend on the terms of the franchise agreement.

### 24. 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?

Germany has a national franchising association, the **German Franchise Association** (Deutscher Franchiseverband, DFV). A membership is voluntary and offers several advantages, such as increased credibility, access to expert legal and business advice, participation in networking events, and the opportunity to be certified according to the DFV quality standards. A DFV certificate signals trust and professionalism to potential franchisees.

In addition to representing the interests of its members, the German Franchise Association (DFV) provides **dispute resolution services** and **offers training and education**. DFV promotes fair pre-contractual disclosure standards and imposes a Code of Conduct on its members.

### 25. 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 generally treated **the same as**

**domestic franchisors** under German law. There are no specific restrictions or additional regulatory burdens placed on foreign franchisors solely due to their non-German origin. They are free to operate directly through cross-border franchise agreements or by establishing a local presence via a subsidiary or branch. Regardless of origin, all franchisors must comply with German legal requirements, including competition law, consumer protection, and tax regulations.

Since 2008, Germany applies the so-called **interest limitation rule** ("Zinsschranke") under Section 4h of the Income Tax Act (EStG). This rule restricts the deductibility of net interest expenses to 30% of the taxable earnings before interest, taxes, regular depreciation, and amortization, regardless of the company's debt-to-equity ratio or whether the lender is a related party. The rule applies equally to companies with foreign or domestic shareholders. Certain exceptions apply, such as when annual net interest expenses are below 3 € million or for stand-alone entities not part of a corporate group.

### 26. Must the franchise agreement be governed by local law?

A franchise agreement **does not have to be governed by German law**. Under the EU's Rome I Regulation, the parties are generally free to choose the applicable law for their contract. However, even if foreign law is chosen, certain overriding mandatory provisions of German law – such as competition rules or specific commercial regulations – may still apply if the franchise is operated in Germany, Art. 9 Rome I Regulation. Additionally, German courts **may refuse to apply a foreign law** if it conflicts with fundamental principles of German public policy, Art. 21 Rome I Regulation. In practice, many franchise agreements involving German franchisees choose German law to avoid legal uncertainty and ensure enforceability.

### 27. 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?

In Germany, franchisors and franchisees can resolve disputes via courts, arbitration, or mediation. Litigation is generally cost-effective for domestic parties, while arbitration is preferable in international cases for its privacy and enforceability. Mediation offers a non-binding, amicable solution. The chosen dispute resolution

has to be regulated in the franchise agreement.

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

There is **no legal requirement** for franchise agreements and disclosure documents to be in German. It is typical for cross-border franchise agreements to be drafted in English language.

However, if the franchisee is based in Germany and has not enough knowledge of the English language, it is strongly recommended for the documents to be in German language or bilingual in German and English to ensure understanding.

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

In Germany, franchise agreements can generally be signed using an electronic signature. Usually, franchise agreements are not subject to any form requirements such as wet ink or notarization. The parties should

however check the German Law for **any specific form requirements**, nonetheless.

For legal certainty, especially in high-value contracts, it is recommended and common practice to use a Qualified Electronic Signature such as DocuSign, which is legally equivalent to a wet ink signature and usually fulfills all formal written form requirements under German law.

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

Over the coming year, the German franchise relationships may be shaped especially by three developments. First, the growing use of AI in marketing, operations, and customer service raises issues of data protection, transparency, and liability, requiring contract adjustments. Second, the EU Corporate Sustainability Due Diligence Directive (CSDDD) will extend compliance duties across franchise networks. Finally, rising corporate insolvencies increase risks for franchisees and partners, making financial monitoring, contractual safeguards, and restructuring strategies essential.

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