

Franchising in Poland

June 2011

Franchise Regulation

There are no franchise-specific laws in Poland. Franchises are subject to the Polish civil and commercial law, like other types of businesses. There are no pre-contractual disclosure requirements in Poland, i.e., the franchisors are not required to provide their prospective franchisees with any formal documentation relating to their business. Furthermore, franchisors are not required to register their franchise agreements or any other franchise specific documents with the government.

Franchise Agreement

The franchise agreement and exhibits can be written in a foreign language, but any documents to be filed with the government must be translated into Polish. Royalties and other payments to be made to a foreign franchisor pursuant to a franchise agreement may be made in a foreign currency. The parties to a franchise agreement are free to choose the fee or royalty payment structure, subject to the applicable tax treatment. Under Polish law, a franchisor may restrict the franchisee's ability to transfer or assign its rights under the franchise agreement.

IP Protection

Franchisors in Poland benefit from intellectual law protections offered by the domestic and the European Union regulations. In order to ensure the broadest protections, franchisors often register their trademarks at the EU level. Trademarks may also be registered with the Polish Patent Office, whose records are available on-line. Once registered, a trademark is valid for ten years, unless renewed and maintained before expiration. Registration in Poland only protects the trademarks in Poland, while registration at the European Union level protects trademarks in Poland and all member states.

Antitrust

The anti-competition issues relevant to franchises in Poland are governed by the Polish Unfair Competition Act and the EC Treaty (Article 81). The EC Treaty applies to trade between members of the EU, while the Polish Unfair Competition Act applies domestically. Both sets of legal provisions have detailed rules and exemptions aimed at preventing monopolization within defined geographical areas. On April 20, 2010, the European Commission adopted a new Regulation (No 330/2010) listing the conditions under which vertical agreements (which can include franchise agreements) are exempt from the prohibition on anti-competitive agreements. The new rules went into effect as of June 2010 and replaced previous regulations and guidelines, and are to remain in force until May 2022. The new Regulation affects franchise arrangements in several ways, including restrictions on price fixing, territorial and customer limitations, Internet sales, supply restrictions, and rules regarding covenants not to compete.

Other

Other legal regulations in Poland and EU may have a direct impact on franchising in Poland, which may be unfamiliar to non-European franchisors. One such regulation is the EU Data Protection Directive (95/46/EC) and the corresponding Polish Personal Data Protection Act of 1997. This law specifically controls and limits what kind of personal information may be collected about individuals, and how that information may be stored electronically and used on information systems. Any franchisor processing personal information is required to comply with eight principles of proper information handling.

Continued

Contact us if you'd like assistance with your international franchising initiatives. We can discuss the challenges, identify the obstacles, and lead you to solutions for expanding your franchise internationally.

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