

Franchising in the UK

June 2011

Franchise Regulation

There are no franchise-specific laws in the United Kingdom. Instead franchises are subject to the general principles of contract law, much like other types of businesses. However, the British Franchise Association (BFA), a self-regulatory and voluntary organization, has developed a code of business practice (Code of Ethics), which is followed by its members. The Code of Ethics includes, without limitations, regulations relating to franchisor's experience, fair dealing between the franchisor and its franchisees, and restrictions on advertising and recruitment of new franchisees. There are no pre-disclosure requirements in the UK. However, franchisors who are members of BFA are obligated to provide their prospective franchisees with a copy of the Code of Ethics. By joining the BFA, franchisors also agree to comply with the terms of its disciplinary procedure, complaints procedure, and appeals procedure.

IP Protection

Franchisors in the UK benefit from intellectual law protections offered by UK law and 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 Register of Trade Marks in England, whose records are available on-line. Once registered, a trademark is valid for ten years, unless renewed and maintained before expiration. Registration with the Register of Trade Marks only protects the trademarks in the UK, while registration at the European Union level protects trademarks in the UK and in all member states.

Antitrust

The anti-competition issues relevant to franchises in the UK are governed by the UK Competition Law and the EC Treaty (Article 81). The EC Treaty applies to trade between members of the EU, while the UK Competition Law 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 Regulations affect 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

Another significant legal development impacting franchises doing business in the UK is the new UK Bribery Act 2010 (UK Bribery Act). The key feature of the UK Bribery Act is a new corporate offence for failing to prevent bribery. Franchisors might be liable for an act of bribery committed by any person performing services on their behalf. An offence is committed regardless of its geographical location in the world, as long as the entity charged with such offence has a business presence in the United Kingdom. In order to defend against a charge, a franchisor will have to demonstrate existence of adequate procedures designed at preventing bribery. The UK Bribery Act was scheduled to come into effect in April 2011, but the UK Ministry of Justice has recently decided to delay its implementation to provide more time for companies to establish necessary policies to comply with the new law.

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Other legal regulations in the UK and EU may have a direct impact on franchising in the UK, which may be unfamiliar to the non-European franchisors. One such regulation is the EU Data Protection Directive (95/46/EC) and the corresponding UK Data Protection Act 1998. 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.

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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