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Overview

1 What forms of business entities are relevant to the typical franchisor?

The franchisor can choose between many different types of business entities when establishing a franchise business in Denmark. These include sole tradership, partnership, branch, private limited company (ApS) or public limited company (A/S). Typically, the franchisor chooses between a private or public limited company because of the limited liability.

2 What laws and agencies govern the formation of business entities?

The formation of a public or private limited company is governed by the Danish Companies Act 2010. The Danish Business Authority is the authority responsible for the administration of this Act and both public and private limited companies must be registered with the Danish Business Authority.

3 Provide an overview of the requirements for forming and maintaining a business entity.

Forming a business entity

The initiative to form a limited company is taken by one or more founders. The share capital for a private limited company must be a minimum of 80,000 Danish kroner or a minimum of 500,000 Danish kroner for a public limited company. Registration is contingent on 25 per cent of the contributed capital, subject to a minimum of 80,000 Danish kroner, being subscribed with binding effect and paid up. However, where all or part of the share capital is paid up by way of non-cash contributions, the entire share capital must be paid up.

In order to form a private or public limited company, the founders are obliged to sign a memorandum of association including articles of association.

The articles of association must contain provisions on the object of the company, the amount of share capital, the company's management structure and the shareholders' voting rights. Besides these requirements, the formal requirements in relation to the articles of association of a private limited company are few, and the shareholders in a private limited company can more or less freely decide how to organise the company's affairs. For a public limited company, the formal requirements are more detailed and the organisation of the company's affairs by the shareholders is more regulated than for a private limited company.

All individual persons and business entities with the necessary legal capacity can be founders of a private or public limited company regardless of the founder's nationality or place of residence. The following information is required if the founders are foreign individuals: their names, residential addresses and copies of passports; or if the founder is a foreign company: the name, address, registration number and documentation of the company's existence (eg, a transcript from the relevant company register).

A limited company will not become a legal entity until it has been registered with the Danish Business Authority, and until it is registered, the persons acting on behalf of the company are personally liable for all obligations undertaken by the unregistered company. Upon registration, the limited liability company acquires the rights and obligations conferred on the company after the signing of the memorandum of association.

Management

A limited liability company may choose from two different types of management structures:

- a management structure where the company is managed by a board of directors responsible for the overall and strategic management and an executive board responsible for the day-to-day management consisting of one or more persons appointed by the board of directors. In public limited companies the board's chairman and vice chairman, as well as the majority of the board members, may not be members of the executive board; or
- a management structure where the company is managed solely by an executive board appointed by a supervisory board. The supervisory board oversees the executive board, and thus the supervisory board has no responsibility for the overall and strategic management. No member of the executive board may also be a member of the supervisory board.

The board of directors or the supervisory board of a public limited company must have at least three members.

Private limited liability companies may choose among the two mentioned management structures, however, a private limited liability company has the further option to be managed solely by an executive board.

Maintaining a business entity

When the public or private limited company has been registered, any changes, for example in the company's management, amendments to the articles of association or similar, must be registered with the Danish Business Authority.

A private or public limited company must prepare an annual report for each financial year. The company's auditor or auditors must be registered with the Danish Business Authority and at least one auditor is required to be a state-authorised public accountant or a registered public accountant. A limited company must submit the annual report to the Danish Business Authority no later than five months following the expiry of the company's financial year.

4 What restrictions apply to foreign business entities and foreign investment?

As a member of the EU, Denmark is committed to observe the principle of free movement of capital, goods, services, labour and non-discrimination against entities and persons from other member states. There are no restrictions as to the nationality or place of residence of the members of the board of directors, supervisory board or the management board of a Danish limited company. The same applies to entities and persons from countries outside the EU.

5 Briefly describe the aspects of the tax system relevant to franchisors. How are foreign businesses and individuals taxed?

The Danish tax system has no specific regulations applicable to franchising. It distinguishes between individuals and companies considered resident in Denmark, and individuals and companies considered non-resident in Denmark.

Individuals and companies resident in Denmark are subject to unlimited tax liability (ie, they are tax liable in Denmark on all income, whether it derives from Denmark or abroad).

Individuals and companies non-resident in Denmark are subject to limited tax liability (ie, they are only liable to pay tax on income from Danish sources).

Foreign individuals and companies are often subject to tax liability in another jurisdiction as well, which means that income earned in Denmark is also subject to taxation in the foreign jurisdiction.

In order to avoid double taxation, Denmark has entered into double taxation treaties with various countries around the world.

Corporate tax

A company is considered resident in Denmark, and thereby subject to unlimited tax liability in Denmark, if the company is registered with the Danish Commerce and Companies Agency or if the management of the company has its place in Denmark.

The corporate income tax rate is 25 per cent (2013). Corporate income tax is imposed on the company's profit, which consists of all forms of income. In general, all expenses incurred when obtaining, ensuring or maintaining the taxable income of the company are deductible in the taxable income (though with limitations, eg, regarding thin capitalisation).

Companies are also allowed to depreciate their assets.

Finally, Denmark imposes withholding taxation on royalties and interest (both 25 per cent in 2013) as well as dividend (27 per cent in 2013) payments to non-resident companies.

Individuals

An individual is considered resident for Danish tax purposes if the individual is domiciled in Denmark or the individual has been staying in Denmark for a continuous period of at least six months (including short stays abroad as a vacation etc).

For individuals, the taxable income consists of personal income (business income, employment income etc), capital income (eg, interest income) and share income (dividends and gains or losses on shares) less certain deductions, for example deductions on employee contributions to approved Danish – and in some cases EU – pension schemes, travel between home and work and interest expenses for mortgages and Danish debt.

Individuals are subject to tax on personal income at progressive income rates up to a maximum of approximately 51.7 per cent (2013). The maximum capital income rate is 43.5 per cent (2013) and tax rates for share income are progressive at 27 per cent or 42 per cent (2013).

Individuals are entitled to an annual personal allowance of 42,000 Danish kroner (ie, the first 42,000 Danish kroner of taxable income (after payment of 8 per cent AM tax) is tax-free). Unused personal allowance is transferable between spouses.

With respect to royalty payments from franchises in Denmark, a final withholding tax of 25 per cent (2013) applies as a main rule for royalty payments to non-resident individuals or companies. Similarly, a 27 per cent withholding tax is imposed on dividend payments to non-resident individuals.

Property tax

Property tax is levied on properties in Denmark and with respect to foreign properties owned by Danish residents.

The property value tax is one per cent of the publicly assessed value for Danish properties up to 3,040,000 Danish kroner and 3 per cent of the exceeding amount.

Profit from the sale of property is taxable. However, if the property has been used as private residence, taxation may be avoided.

6 Are there any relevant labour and employment considerations for typical franchisors? What is the risk that a franchisee or employees of a franchisee could be deemed employees of the franchisor? What can be done to reduce this risk?

There are no relevant labour or employment considerations for a typical franchisor. However, the franchisor may not give instructions to the franchisee regarding recruitment of employees which can be classified as discriminations, such as to gender, ethnicity, age or religion.

Regarding the risk of the franchisee to be deemed an employee of the franchisor, it is important that it is specified in the franchise agreement that the franchisee is an independent contractor acting in the franchisee's own name and at the franchisee's own expense and risk with respect to establishing and operating the business and when employing a suitable workforce.

7 How are trademarks and know-how protected?

Trademarks can be protected in accordance with the Danish 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 Danish Marketing 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.

8 What are the relevant aspects of the real estate market and real estate law?

Establishing the franchise business at the proper location is of great importance for the success of the franchised business.

There are different options on how a franchise business may be established in the right location. The franchisor or the franchisee may establish the premises in a real property owned by one of the parties. This option may be a significant investment for the party that owns the premises. Another option is that the franchisor enters into a lease agreement with a third party and subsequently sublets the premises to the franchisee. A third option is that the franchisee enters into a lease agreement with a third party with a right for the franchisor to subrogate into the agreement if the franchise relationship ceases to exist. The franchisor or the parties may decide which option is suitable for the specific type of franchise business.

Real property

In Denmark, the right to acquire real property is unlimited. Although if the buyer (both individual persons and business entities) is not a resident of Denmark or if the buyer has not previously been a resident of Denmark for a total period of five years, permission from the Danish Ministry of Justice is required. Citizens of and companies domiciled in the EU and in the European Economic Area (EEA) may acquire real property in Denmark without permission from the Ministry of Justice, apart from holiday homes. This follows from Denmark's obligations under the EC Treaty.

All information regarding the real property, including mortgage rights, ownership and other rights and obligations can be registered in the Danish Land Register. The rules on registration are contained in the Danish Registration of Property Act.

Leasehold

If the franchisor or the franchisee chooses to establish the franchise business from leased premises, a lease agreement may be concluded. The lessor and the lessee have as a main principle the freedom of contract to conclude any lease agreement. The lease relationship, however, is regulated by the Danish Commercial Leasing Act, which provides certain mandatory rules that cannot be deviated from to the detriment of the lessee. For example, regardless of what is agreed, the lessor may only terminate a lease agreement in certain cases, and only if notice for a specific period has been given.

The Commercial Leasing Act also regulates the lessor's and the lessee's rights and obligations regarding rent increase, notice of terminations, defects, etc.

Under the Commercial Leasing Act the lessee also has a right to assign or sublet the lease to another lessee under certain conditions.

Laws and agencies that regulate the offer and sale of franchises

9 What is the legal definition of a franchise?

There is no official or statutory definition of a franchise. However, the Danish Franchise Association defines franchise in its Code of Ethics for Franchising as:

> *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.*

The definition is a translation of the definition of franchising made in the European Code of Ethics for Franchising.

10 Which laws and government agencies regulate the offer and sale of franchises?

No government agencies regulate the offer and sale of franchises, and there is no specific legislation regulating this area.

The overall principle in Danish contract law is the principle of freedom of contract. However, the drafting of a franchise agreement may be restricted by various mandatory rules. In particular, the rules in certain statutory regulations such as the Competition Act, the Marketing Practices Act, the Commercial Leasing Act and others may restrict the terms of a franchise agreement.

Furthermore, the Danish Franchise Association provides certain ethical standards in its Code of Ethics for Franchising, which are binding for its members.

11 Describe the relevant requirements of these laws and agencies.

The Danish Act on Contracts provides provisions within some of the main areas of drafting, such as the formation and invalidity of agreements.

The Act specifies certain elements which may invalidate the whole agreement or certain clauses, if for example fraud or coercion has been used during the formation of the agreement. Furthermore, clauses in an agreement can be invalid if the clauses are found to be contrary to good faith or honest conduct. The content and scope of the legal standards are set out by the Danish courts.

As a general principle, the franchisor has a duty to disclose any and all information and matters that may have importance or may affect the potential franchisee's decision to accept entering into the franchise agreement. The scope of this duty depends on the circumstances as well as the franchisor's and franchisee's knowledge and experience at that specific time.

For the requirements in the Competition Act, see question 40.

12 What are the exemptions and exclusions from any franchise laws and regulations?

See question 10.

13 Does any law or regulation create a requirement that must be met before a franchisor may offer franchises?

There are no laws or regulations on this matter. The Danish Franchise Association has set out some ethical standards in its Code of Ethics for Franchising, which only bind its members. According to these standards the franchisor shall have operated a business concept with success for a reasonable time and at least one unit before establishing a franchise system. Furthermore, it is required that the franchisor is the legal owner of its trademarks.

See also question 11 regarding the franchisor's contractual duty to inform the franchisee before entering into an agreement.

14 Are there any laws, regulations or government policies that restrict the manner in which a franchisor recruits franchisees or selects its or its franchisees' suppliers?

There are no Danish laws, regulations or government policies that restrict the number of franchises or franchisees, or on what basis the franchisor selects its franchisees or the franchisees suppliers. However, Danish competition law, which is similar to EU competition law in all material aspects, may regulate franchise agreements.

15 In the case of a sub-franchising structure, who must make pre-sale disclosures to sub-franchisees? If the sub-franchisor must provide disclosure, what must be disclosed concerning the franchisor and the contractual or other relationship between the franchisor and the sub-franchisor?

There is no legislation regarding disclosure prior to entering into a franchise or sub-franchise agreement in Denmark. However, it is possible that the outcome of a dispute between a franchisee and a franchisor (or a sub-franchisor and a sub-franchisee) regarding interpretation of the franchise agreement will be affected by which party had access to the relevant information before the agreement was entered into.

If it is found that the franchisor (or the sub-franchisor) has not supplied the franchisee (or the sub-franchisee) with relevant and adequate information before entering into the agreement, this will probably have a negative impact on the outcome of the dispute for the franchisor.

16 What is the compliance procedure for making pre-contractual disclosure in your country? How often must the disclosures be updated?

See questions 13 and 15.

17 What information must the disclosure document contain?

See questions 13 and 15.

The information to be disclosed before entering into a franchise agreement depends on what is found adequate and relevant in the specific situation according to the principles of good faith or honest conduct.

18 Is there any obligation for continuing disclosure?

See questions 13 and 15.

19 How do the relevant government agencies enforce the disclosure requirements?

See questions 13 and 15.

20 What actions can franchisees take to obtain relief for violations of disclosure requirements? What are the legal remedies for such violations? How are damages calculated? If the franchisee can cancel or rescind the franchise contract, is the franchisee also entitled to reimbursement or damages?

See questions 13 and 15.

If the franchisor has failed to perform his contractual obligation to inform the franchisee prior to entering into the franchise agreement, the franchisee is entitled to various remedies, in particular a right to demand performance, terminate the agreement or claim damages. The parties may agree what remedies are available, but if the parties have not agreed, the franchisee can bring the dispute to the relevant court or arbitration tribunal.

It is not possible for a franchisee to withdraw from its obligations under a franchisee agreement unless the franchisor's breach is material. If the franchisor's breach is found to be material, the franchisee is entitled both to terminate the agreement and to claim damages.

The franchisee can only recover damages from the franchisor if the franchisee has suffered a loss and such loss may be attributed to the franchisor's breach.

21 In the case of sub-franchising, how is liability for disclosure violations shared between franchisor and sub-franchisor? Are individual officers, directors and employees of the franchisor or the sub-franchisor exposed to liability? If so, what liability?

See questions 13 and 15.

The sub-franchisor is obligated to provide his sub-franchisees with relevant and adequate information in case of sub-franchising. If the franchisor has provided the sub-franchisor with misleading or false information which leads to consequences for the sub-franchisor in the relationship with his franchisees, the sub-franchisor may have recourse to the franchisor in regard to any claims of damages.

The individual officers, directors and employees of the franchisor or sub-franchisor are not exposed to liability, as the franchisor/sub-franchisor according to the principle of vicarious liability is liable for damages for the negligent acts or omissions committed by his employees in the course of their employment, unless they have acted with gross negligent or intentional behaviour.

22 In addition to any laws or government agencies that specifically regulate offering and selling franchises, what are the general principles of law that affect the offer and sale of franchises? What other regulations or government agencies or industry codes of conduct may affect the offer and sale of franchises?

The parties are free to decide the contents of their agreement but also which contracts they will make and who they choose as contract partners. There are no specific laws or governmental agencies in this matter. See also question 10.

The Danish Franchise Association has set out some ethical standards in its Code of Ethics for Franchising that are binding only for its members.

23 Other than franchise-specific rules on what disclosures a franchisor should make to a potential franchisee or a franchisee should make to a sub franchisee regarding predecessors, litigation, trademarks, fees etc, are there any general rules on pre-sale disclosure that might apply to such transactions?

See questions 11, 13 and 15.

24 What actions may franchisees take if a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises? How does this protection differ from the protection provided under the franchise sales disclosure laws?

See questions 13 and 15.

If the franchisor has engaged in fraudulent or deceptive practices, the franchisee may contact the criminal authorities who may start an investigation of the franchisor. This investigation may lead to the franchisor being convicted of a felony, which may result in fines or imprisonment. Both in criminal and civil proceedings the franchisee can claim damages due to such fraudulent or deceptive practices from the franchisor.

Legal restrictions on the terms of franchise contracts and the relationship between parties in a franchise relationship

25 Are there specific laws regulating the ongoing relationship between franchisor and franchisee after the franchise contract comes into effect?

There are no specific laws regulating the relationship between franchisor and franchisee after the franchise agreement comes into effect. However, the general principles of Danish contract law will apply.

Often the parties have only addressed material issues in the agreement, and have not taken all matters into consideration. Most statutory rules relating to agreements are non-mandatory, which means that the parties are free to determine the content of their agreement themselves. When a court or arbitration tribunal is presented with a situation in which the wording of the agreement gives no clue as to how a dispute is to be solved, they will decide how the agreement is to be interpreted and/or how its gaps must be filled.

If attempts are made to interpret the agreement, this is sought via application of the agreement's individual elements to determine the intended content of the particular agreement. The most important sources for interpretation include the wording of the agreement, the negotiations preceding the making of the agreement, or a potential common understanding of the agreement between the parties. An important principle for interpretation is the so-called ambiguity rule upon which an ambiguity is interpreted against the party who has drafted the agreement.

Only when no more progress can be made by interpretation will gap-filling be resorted to – which means that the agreement is supplemented by the rules of law, customs or principles applying to agreements of the particular type.

26 Do other laws affect the franchise relationship?

Various laws affect directly or indirectly the relationship between the franchisor and the franchisee. Laws such as the Commercial Lease Act, the Competition Act, the Marketing Practices Act, the Product Liability Act, the Personal Data Act and the Taxation Acts shall all be continuously adhered to by the parties.

27 Do other government or trade association policies affect the franchise relationship?

Trade organisations such as the International Chamber of Commerce (ICC) manifest certain international customs of relevance or usages between contract parties also in Denmark. Furthermore, the Danish

Franchise Association sets out certain ethical standards for its members. Denmark has completed the process to become a party to part II of the United Nations Convention on Contracts for the International Sale of Goods (CISG). This took effect on 1 February 2013. CISG part II may affect the parties' formation of contracts, though CISG part II will not apply in situations where the contracting parties have their places of business in two of the five Nordic States (Denmark, Iceland, Finland, Norway and Sweden).

28 In what circumstances may a franchisor terminate a franchise relationship? What are the specific legal restrictions on a franchisor's ability to terminate a franchise relationship?

When an agreement is validly entered into, the parties are bound by its terms. Often, the agreement contains a provision on termination with an agreed notice period. If no notice period has been agreed, the agreement can be terminated with a reasonable notice period, depending on how long the agreement has been in force and on the particular agreement in question. If a party is in breach of any of its obligations under the agreement, the agreement can be terminated by the other party without any notice period, if the breach is found to be material.

Due to the principle of freedom of contract, the parties may agree which circumstances may lead to the franchisor's termination of the agreement. It may be agreed that the franchisor can terminate the agreement if the franchisee is not loyal to the franchise network or has acted in a way which violates the franchisor's interests.

The franchisee's insolvency, reconstruction, bankruptcy or the franchisee's non-payment of any amount due under the agreement may also be agreed to allow the franchisor to terminate the agreement. However, according to Danish mandatory rules, the franchisee's reconstruction or bankruptcy does not automatically gives a right to terminate the agreement, even if it is allowed under the agreement.

29 In what circumstances may a franchisee terminate a franchise relationship?

The same contractual principles as specified in question 28 will apply to the franchisee.

30 May a franchisor refuse to renew the franchise agreement with a franchisee? If yes, in what circumstances may a franchisor refuse to renew?

There are no legal obligations for the franchisor to renew the franchise agreement. As the principle of freedom of contract applies, it is up to the parties to agree under what circumstances the franchisee may require that the agreement is renewed.

The ethical standards in the Code of Ethics for Franchising issued by the Danish Franchise Association only state that it shall be clear in the franchise agreement which terms and conditions the franchisee shall fulfil to be given the right to renew the agreement.

31 May a franchisor restrict a franchisee's ability to transfer its franchise or restrict transfers of ownership interests in a franchisee entity?

The principle of freedom of contract applies, so it is possible for the franchisor to restrict the franchisee's ability to transfer the franchisee or the ownership interests in a franchisee entity in the franchise agreement.

32 Are there laws or regulations affecting the nature, amount or payment of fees?

There are no laws or regulations that affect the nature, amount or payment of franchise fees or royalties. However, if the contractual terms relating to the franchise fees or royalties are found to be too unreasonable, they may be set aside or adjusted by the Danish courts. See also question 33 regarding the time allowed for payment of fees.

33 Are there restrictions on the amount of interest that can be charged on overdue payments?

With effect from 1 March 2013, the Danish Act on Interest was amended to implement Directive 2011/7/EU of the European Parliament and of the Council on combating late payment in commercial transactions.

The implementation caused an increase in the annual rate of interest from an interest equivalent to the fixed reference rate plus seven per cent to a rate equivalent to the fixed reference rate plus eight per cent on payments due on or after 1 March 2013.

Furthermore, the creditor in disputes between professional traders may claim financial compensation as a lump sum of €40 to cover administrative expenses from collection of debt from the debtor. This amount is exempt from VAT and does not exclude the creditor's right to other charges or fees following from overdue payments. The compensation is due immediately upon the debtor's delay in payment and may be charged on all claims due after 1 March 2013.

The right to interest and financial compensation may not be derivated through an agreement between the parties.

A declaratory rule on the time allowed for payment is set to 30 days from the date on which creditor has sent or otherwise put forward a request for payment. An extension beyond this must be explicitly agreed. If extended beyond 60 days, it must also be specifically reasoned by the parties and expressly approved by the creditor. An agreement on the time allowed for payment between a professional trader and a public authority may not exceed 30 days unless rules providing for each extension have been issued by the minister of justice after negotiations with the minister of business and growth.

34 Are there laws or regulations restricting a franchisee's ability to make payments to a foreign franchisor in the franchisor's domestic currency?

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

35 Are confidentiality covenants in franchise agreements enforceable?

Confidentiality covenants in franchise agreements are enforceable in Denmark. However, the enforceability depends on how the covenants in the agreement are drafted. If the covenants are found to be too extensive, they may be set aside or adjusted by the Danish courts. Penalty clauses in case of breach of the covenants are recommended.

36 Is there a general legal obligation on parties to deal with each other in good faith? If so, how does it affect franchise relationships?

In the context of general Danish contract law, it is a principle that the parties to an agreement shall deal with each other in good faith and with honest conduct. The ethical standards of the Danish Franchise Association also obligate its members to exercise fairness in the dealings with a franchisee or franchisor. How good faith is defined in the specific relationship depends on the circumstances and the actual relationship between the parties.

37 Does any law treat franchisees as consumers for the purposes of consumer protection or other legislation?

When entering into a franchise relationship the franchisee is considered to act in the course of trade, and the franchisee is therefore not protected by any of the Danish laws concerning protection of consumers.

38 Must disclosure documents and franchise agreements be in the language of your country?

See questions 13 and 15.

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 recommended that the parties agree on the language that shall take precedence in case of a conflict.

39 What restrictions are there on provisions in franchise contracts?

As stated in question 10, the overall principle in Danish contract law is the principle of freedom of contract. The parties may agree upon what rights and obligations they shall have according to the agreement.

However, certain provisions of an agreement may be set aside or modified in whole or in part if it would be unreasonable or at variance with the principles of good faith to enforce it. This follows from the general clause in the Danish Acts on Contracts section 36. This section will sanction invalidation of a promise on account of circumstances at its making, on account of its terms, or on account of special factors concerning the promisor's person. Section 36 also provides the Danish courts with a statutory provision to set aside a promise wholly or partly with reference to a change in circumstances after its making, and therefore gives access to the possibility of taking subsequent events into account.

With regard to restrictions that follow from competition law, see question 40.

40 Describe the aspects of competition law in your country that are relevant to the typical franchisor. How are they enforced?

The Danish Competition Act applies to competition law matters in Denmark. The Danish Competition Act is similar to EU competition law in all material aspects. Furthermore, as Denmark is a member of the EU, EU legislation is also directly applicable in Denmark.

Franchise agreements may fall within the Danish Competition Act if they are found to have an appreciable detrimental effect on competition in Denmark. There are no de minimis rules defining 'appreciability' similar to the Commission's de minimis notice.

Insofar as the agreement is capable of having an appreciable effect, the agreement may nonetheless be exempted and thus allowed insofar as the following thresholds are not exceeded:

- the parties to the agreement achieve an aggregate annual turnover of less than 1 billion Danish kroner and an aggregate market share of less than 10 per cent of the product or service market concerned, or
- the parties to the agreement achieve an aggregate annual turnover of less than 150 million Danish kroner.

However, this does not apply if the agreement contains 'hard-core' restrictions.

Block exemptions

Pursuant to EU competition law, block exemptions have been adopted, which provide for a general exemption of a certain type of agreement, such as the EC Block Exemption Regulation for Vertical Agreements, which is also incorporated into Danish law. The Block Exemption provides a safe harbour for certain agreements even though they may contain vertical restraints.

Provided that the market share held by the supplier does not exceed 30 per cent of the relevant market on which it sells the contract goods or services, and the market share held by the buyer does not exceed 30 per cent of the relevant market on which it purchases the contracted goods or services, vertical agreements fall within the scope of the Block Exemption and are thus allowed unless the agreement contains hard-core restrictions.

The Block Exemption does not regulate the permitted duration of a franchise agreement, but non-compete obligations that are indefinite or exceed five years (at a time) are not exempted by the Block Exemption. However, as franchise agreements, due to their particular nature, differ from other distribution agreements, the Commission has in its case law developed the principle that non-compete obligations on goods or services purchased by the franchisee for the duration of the franchise agreement will fall outside the scope of EU competition law, insofar as the obligation is necessary to maintain the common identity and the reputation of the franchise network.

The Danish Competition Council may also grant an individual exemption of the agreement from the prohibitions in the Danish Competition Act.

41 Describe the court system. What types of dispute resolution procedures are available relevant to franchising?

It is recommended that the parties to a franchise agreement agree on a venue clause in the agreement, either arbitration or stating that a dispute shall be referred to a specific court.

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Denmark www.plesner.com

The Danish courts are composed of the Supreme Court, two High Courts, the Maritime and Commercial Court and 24 district courts. Almost all legal proceedings must initially be filed at the district courts. However, if the dispute concerns a principal matter, the district court may choose to refer the dispute to the High Court.

The Danish Maritime and Commercial Court settles disputes concerning international commercial disputes, intellectual property disputes, competition law disputes, disputes where the Danish Consumer Ombudsman is a party relating to the Danish Marketing Practices Act or the Payment Services Act, as well as disputes concerning EU trademarks and EU designs.

42 Describe the principal advantages and disadvantages of arbitration for foreign franchisors considering doing business in your jurisdiction.

The main advantage of arbitration in Denmark is that the arbitration will follow the normal rules, standards and procedures for arbitration in other similar Western countries. Denmark has acceded to a number of international conventions including the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards and the Geneva Convention of 21 April 1961 on international commercial arbitration. Therefore, arbitration in Denmark will not be unfamiliar for most foreign franchisors. In comparison to the Danish courts, arbitration is not public and the arbitral decision may be made in secrecy if the parties so choose.

The main disadvantage of arbitration is that it will include a high cost as the parties must pay the costs for the arbitration tribunal. However, the costs are not high compared to international arbitration under the ICC arbitration rules and similar.

43 In what respects, if at all, are foreign franchisors treated differently from domestic franchisors?

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

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