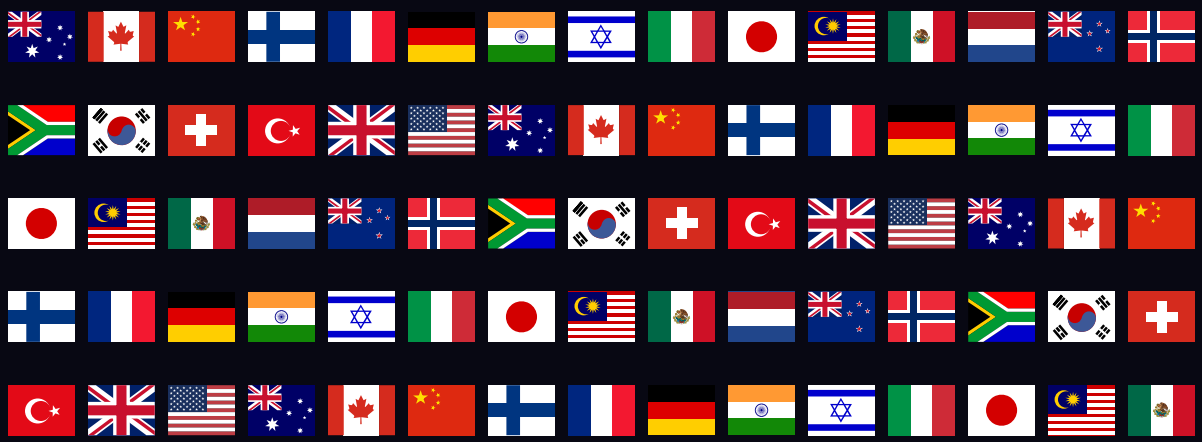
FRANCHISE

Norway



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Getting The Deal Through

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Quick reference guide enabling side-by-side comparison of local insights, including franchise market overview; key considerations when forming and operating a franchise; offer and sale of franchises; franchise contracts and the franchisor/franchisee relationship; and recent trends.

Generated 21 July 2022

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MARKET OVERVIEW

Franchising in the market

How widespread is franchising in your jurisdiction? In which sectors is franchising common? Are there any economic or regulatory issues in the market that are more or less hospitable to franchising or make it economically viable in your jurisdiction?

Franchising is a common way of organising chains within certain sectors in Norway. The sectors with the highest use of franchising are the retail and food industry, more specifically:

- the food sector including cafés, restaurants and similar establishments;
- specialist trade, such as construction materials, paint and furnishing;
- services, such as healthcare, accounting and safety products;
- textiles and shoes; and
- grocery stores, convenience stores and fuel stations.

Other sectors that use franchising are hotels, opticians, jewellers, gyms, health and wellbeing centres, hairdressers, beauty salons, and car accessories and tyres.

There are no specific economic or regulatory issues in the market for franchising as opposed to other ways of organising chains.

Law stated - 14 May 2021

Associations

Are there any national or local franchise associations? What is their role in franchising, including any impact on laws or regulations? Are there any rules of conduct or membership requirements?

There are no national or local franchise associations in Norway.

Law stated - 14 May 2021

BUSINESS OVERVIEW

Types of vehicle

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

There are several relevant forms of business entities, from partnerships or entities with personal liability to public or private entities with limited liability. The most common are private or public limited liability companies, due to the limitations of the potential liability assumed as a shareholder. The private form has less extensive compliance requirements than the public form and is widely chosen in Norway.

Law stated - 14 May 2021

Regulation of business formation

What laws and agencies govern the formation of business entities?

The establishment of a private limited liability company is governed by the Private Limited Liability Companies Act , while the establishment of a public limited liability company is governed by the Public Limited Liability Companies Act . Both acts set out similar rules and procedures for establishing a company, with requirements for the memorandum of association and minimum share capital.

Law stated - 14 May 2021

Requirements for forming a business

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

The incorporation of a new company can be done within a short time frame and is done by executing a memorandum of association, which includes but is not limited to the company's articles of association and an opening balance of the company. The opening balance must at least correspond with the minimum requirement for share capital. For a private limited company, the limit is currently 30,000 Norwegian kroner. For a public limited company, the minimum share capital requirement is 1 million Norwegian kroner. For both forms of entity, the share capital may be freely used by the new company once paid up (eg, to pay the costs of incorporation).

The articles of association may be very simple and the minimum requirements for both forms of entity are:

- the name of the new company;
- the municipality of the new company's registered office;
- the new company's business;
- the amount of share capital; and
- the nominal value of the shares.

For public companies, the following must also be included:

- the number of shares;
- the exact number or the minimum and maximum number of directors;
- whether the company is a public limited liability company;
- provisions regarding general managers; and
- the matters to be dealt with by the ordinary general meeting.

The new company must be registered with the Norwegian Register of Business Enterprises within three months from the date of incorporation, notably when the memorandum of associations is executed. There is no requirement of attestation by a public notary. Before the new company can be registered, payment for the subscribed shares of the company must be made in full to a designated bank account in the name of the company.

Registration of a new company generally takes up to two weeks. This is, however, affected by the fact that all non-Norwegian directors need a D-number, which is the equivalent of a Norwegian social security number for foreigners. The D-number application process generally takes two to three weeks and must be made in conjunction with the application for registration of the new company. Together with a signed application form, each applicant must enclose a copy of valid proof of identity certified by accepted authorities, such as a Norwegian public authority, a Norwegian lawyer, a certified accountant, a state-authorised auditor or a foreign entity with notary powers.

Prior to registration, a private or public limited company can, as a starting point, only take on rights or obligations towards third parties to the extent that such rights or obligations are specified in the memorandum of association or follow from applicable law. However, the new company may enter into agreements and assume rights and obligations from incorporation (ie, prior to registration) without personal liability for the person acting for it, if this is agreed with the counterparty.

Both forms of entity must hold an ordinary general meeting within six months from the end of each financial year to approve the annual financial statement and the annual report of the company, among other matters.

Law stated - 14 May 2021

Restrictions on foreign investors

What restrictions apply to foreign business entities and foreign investment?

Foreign business entities are not subject to specific restrictions and may establish a business in Norway pursuant to the generally applicable laws and regulations. Foreign investments, either to be made by a foreign business entity or a foreign person, are not subject to specific restrictions.

Law stated - 14 May 2021

Taxation

What aspects of the tax system are relevant to franchisors? How are foreign businesses and individuals taxed?

Companies and individuals who are tax-resident in Norway are taxed on their worldwide income. Partnerships are transparent for Norwegian tax purposes.

Companies and individuals who are not tax-resident in Norway but derive income from sources in Norway may have limited tax liability to Norway on this income. This mainly applies to income from business activities conducted in Norway, dividends from companies residing in Norway, income from real or movable property situated in Norway and income from employment undertaken in Norway.

Income from business activities

With respect to income from business activities in Norway, it follows from most tax treaties that the business activities must be conducted through a permanent establishment in order to be taxable in Norway.

A non-resident company with business activities in Norway is liable for Norwegian tax on all net income attributable to the business activities and is taxed at the same rate as companies resident in Norway (the normal corporate tax rate for 2021 is 22 per cent). A non-resident individual with business activities in Norway is taxed as self-employed for income attributable to business activities by progressive tax rates of up to 49.6 per cent, including the national insurance contribution. A non-resident company or individual participating in business activities through a partnership is taxed at a maximum of 46.7 per cent for its part of the net income.

Income from resident companies

Dividends from resident companies to non-resident shareholders are subject to a 25 per cent withholding tax unless a lower rate is set in the applicable tax treaty. Exemptions may also follow from the Norwegian participation exemption

model, which to a large degree exempts companies residing within the European Economic Area or European Union from paying tax on dividends from companies residing in Norway.

With respect to capital gain on shares, Norwegian legislation does not impose limited tax liability on non-residents. Norway does, however, have limitations on deductions for intra-group interests. From 1 July 2021, Norway will also introduce withholding tax on interests and royalties to related parties in low-tax countries.

Income from property

Net income and gain from real or movable property situated in Norway are taxed as capital income at a rate of 22 per cent when the property is not part of or itself constitutes a business. Real property in Norway is also largely subject to municipal property tax and stamp duty.

Income from employment

When it comes to income from employment exercised in Norway, non-resident individuals may be taxable to Norway on this income if the remuneration is paid by, or on behalf of, an employer who is liable to tax in Norway (either by tax residency or limited tax liability). Most tax treaties additionally require that the employee's presence in Norway exceeds 183 days in a 12-month period (which, according to Norwegian domestic legislation, would qualify the employee as a Norwegian tax resident). In the case of hire-out labour, however, the source of the payment or the length of the stay is of no importance. In this case, it is sufficient for Norwegian taxability that the employee is at the disposal of others within Norway. Income from employment is taxed at a progressive tax rate of up to 46.4 per cent, including the national insurance contribution.

Value added tax

Norway has a value added tax (VAT) system similar to other European countries. Foreign companies and individuals with business activities in Norway need to register for VAT when the sum of supplies and withdrawals covered by the Norwegian VAT Act exceeds 50,000 Norwegian kroner during a 12-month period. The general VAT rate is 25 per cent.

Law stated - 14 May 2021

Labour and employment

Are there any relevant labour and employment considerations for typical franchisors?

A franchisor cannot impose terms in the franchise agreement that are contrary to or in breach of the mandatory provisions of the Working Environment Act or the Holiday Act (eg, in relation to opening and working hours).

Generally, the franchisor exercises power and influence over the franchisee without being considered the employer of the franchisee or employees of a franchisee. However, if the franchisor singularly controls, instructs and supervises the terms of the franchisee's business – for example, the extent and timing of orders of goods, opening hours and terms of the employees of the franchisee – or the franchisee has no responsibility for the financial risk, there is a risk that the franchisor may be deemed an employer of the franchisee or the employees of a franchisee. By including regulations in the franchise agreement that limit the control, instruction and supervision rights of the franchisee's business, the franchisor mitigates the risk of the franchisee or employees of the franchisee being deemed employed by the franchisor.

Law stated - 14 May 2021

Intellectual property

How are trademarks and other intellectual property and know-how protected?

Trademarks

Pursuant to the Norwegian Trademark Act, a trademark can be obtained either by registration with the Norwegian Industrial Property Office (NIPO) or through such continuous use of a particular mark in the course of trade that the target group perceives the mark as a trademark.

An application can be filed with either NIPO for a Norwegian trademark or with the European Union Intellectual Property Office for an EU-wide trademark, which will have effect in Norway and all EU member states.

A registered trademark remains protected for 10 years from the date of application, with the possibility of renewal in perpetuity. However, this presupposes that the owner of the trademark without reasonable cause has ceased to use the mark for a continuous period of five years. A trademark right obtained through use remains in force until the owner seizes the use of the trademark as described above and thus it is no longer is perceived as a trademark by the target group. A trademark right obtained through use or registration entails that the owner holds an exclusive right to use the trademark or similar trademarks for the goods and services set forth in the registration or for which the trademark is used, as well as similar goods and services.

Ownership of copyrighted material is not registerable and comes into existence at the time of creation. Design rights may be registered for designs that are new and have individual character, and may be in force for up to 25 years.

Know-how

The term ‘know-how’ is not explicitly defined in Norwegian law. Nevertheless, it may constitute a trade secret pursuant to the newly adopted Trade Secrets Act. The Trade Secrets Act implements the Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure. Previously, trade secrets were regulated by the Marketing Practices Act and the Criminal Act.

Following the adoption of the Trade Secrets Act, which came into force on 1 January 2021, trade secrets are legally defined in accordance with the directive. The directive by and large conforms with the previous definition in Norwegian case law. To qualify as a trade secret, know-how must be secret in the sense that it must not be generally known or easily accessible, it must have commercial value because it is secret and the owner must have taken reasonable steps to keep it secret.

The Trade Secrets Act further introduced more detailed and strengthened regulations on how to enforce one's rights in the event of infringement, including a legal definition of infringement.

Law stated - 14 May 2021

Real estate

What are the relevant aspects of the real estate market and real estate law? What is the practice of real estate ownership versus leasing?

Domestic and foreign franchisors are not treated differently in the Norwegian real estate market pursuant to the relevant laws and regulations.

Most commonly, the franchisor leases the premises and sublets the premises to the franchisee pursuant to a sublease agreement. The Tenancy Act applies to commercial leases, but the parties are to a large extent free to deviate from

the Tenancy Act. In Norway, there are unofficial templates for commercial lease agreements that are generally accepted as market practice and the basis for further negotiations. However, owing to the nature of franchising, the franchisor should make sure to adjust the templates to meet the needs of a franchisor either in the position as a lessee or a sub-lessor. For example, if the franchisor is the lessee, the franchisor should include a clause in the franchise agreement stating that said agreement terminates if the lease agreement terminates, no matter the cause of such termination. If the franchisee leases the premises directly from the lessor, the franchisor should include a clause in the franchise agreement granting the franchisor a right to take over the lease in the event of the termination of the franchise agreement or a material breach of the lease agreement by the lessee. Correspondingly, the franchisor should make sure to ensure the inclusion of this right in the lease agreement between the lessor and the franchisee as lessee to have an enforceable right to the transfer.

The direct purchase of real estate in Norway is regulated by the Sale of Real Estate Act . If none of the parties is a consumer, as is generally the case in sales of commercial real estate, the parties are free to deviate from the provisions of the Sale of Real Estate Act. Unofficial templates for the direct sale of commercial real estate are commonly accepted as market practice and are widely used in the Norwegian commercial real estate market. To obtain the legal protection of the acquisition and to be registered as the title holder of a property in the official entries recorded in the Register of Land and Land Charges, a signed deed must be submitted to and registered with the Land Registry. Stamp duty of 2.5 per cent of the property's market value applies to the transfer of title.

Law stated - 14 May 2021

Competition law

What aspects of competition law are relevant to the typical franchisor in your jurisdiction? How is competition law enforced in the franchising sector?

Agreements, including franchising agreements, are regulated by the Competition Act . Norway is a part of the European Economic Area (EEA) through its membership in the European Free Trade Agreement. The regulations in the EEA, which mirror those of the European Union, have been implemented into Norwegian legislation through special acts and regulations. Consequently, the Competition Act is partly harmonised with EU competition rules and, in practice, the material rules are identical to the rules in the European Union.

The European Commission's Block Exemption Regulation on Vertical Agreements (the Block Exemption Regulation) is incorporated into the Norwegian Regulation on the Application of the Competition Act (section 10(3)) on vertical agreements and concerted practices. This is particularly relevant to franchise agreements. If the franchise agreement falls under the Block Exemption Regulation, the application of competition law is precluded. The applicability of the Block Exemption Regulation presupposes that the market share held by the supplier does not exceed 30 per cent of the relevant market in which the supplier sells its goods or services and the market share held by the buyer does not exceed 30 per cent of the relevant market in which the buyer purchases those goods or services.

Article 5 of the Block Exemption Regulation sets out that a non-compete obligation can only be legally enforced for up to five years. If certain conditions are met, however, it can be enforced for the entire term of the contract and for another year after termination of the agreement. In order for the extended time period to apply, the obligation must concern competing goods or services, be limited to the geographic area from which the buyer has operated during the contract term and be indispensable to protect know-how transferred by the supplier to the buyer.

Nevertheless, the European Commission generally considers exclusivity clauses in franchising agreements justified if the franchise entails a significant transfer of know-how from the franchisor to the franchisee and the non-compete obligation is necessary to protect this transfer of know-how.

Enforcement of competition law in Norway

Competition law cases are heard by the ordinary courts. However, in the case of a potentially anticompetitive merger or acquisition, the Norwegian Competition Authority (NCA) enforces competition rules based on notifications from the entities in question. Notification is mandatory if the transaction entails a permanent change of control, and the involved undertakings exceed the turnover thresholds in the Competition Act.

The competition rules in Norway do not materially differ from the European Union Merger Regulation (Council Regulation (EC) No. 139/2004) (EUMR). However, there is a special provision in the Competition Act that allows the NCA to impose notification on and forbid a minority acquisition that significantly restricts competition. Consequently, the NCA may intervene in relation to transactions that do not fall within the scope of the EUMR.

Law stated - 14 May 2021

OFFER AND SALE OF FRANCHISES

Legal definition

What is the legal definition of a franchise?

There is no statutory definition of a franchise in Norwegian law. Traditionally and unofficially the definition of a franchise is, according to Cappa in 2012:

Law stated - 14 May 2021

Laws and agencies

What laws and government agencies regulate the offer and sale of franchises?

There are no laws or government agencies specifically regulating the offer and sale of franchises. Relevant Norwegian laws to be taken into consideration are, among others:

- the Contracts Act;
- the Sale of Goods Act;
- the Competition Act;
- the Working Environment Act;
- the Holiday Act;
- the Personal Data Act;
- the Marketing Control Act;
- the Tenancy Act; and
- the Act Relating to Product Liability.

There are no exclusions from these laws that are applicable only to the offer and sale of franchises.

Law stated - 14 May 2021

Principal requirements

What are the principal requirements governing the offer and sale of franchises under the relevant laws?

Since there are no laws or government agencies specifically regulating the offer and sale of franchises, the parties enjoy contractual freedom but must comply with statutory principles and the rules tjat govern the limits of contractual freedom. Both the Contracts Act and non-statutory contractual principles give a relevant legal basis for considering whether, and determining the consequence of, a contract being partially or wholly invalid. For example, failure to comply with non-statutory principles (eg, by not disclosing material information to the counterparty, or giving misleading information material to a franchisee considering to enter into a franchise relationship with the franchisor) may lead to the contract being considered partially or wholly invalid by the courts, with a subsequent potential entitlement to compensation or price reduction for the franchisee.

Regarding the transfer of business undertakings, the provisions in the Working Environment Act entails that the rights and obligations of the former employer issuing from the contract of employment in force at the date of transfer must be transferred to the new employer. Further, the new employer is bound by any collective pay agreements the former employer was bound by unless the new employer (within three weeks from the date of transfer) declares otherwise. Irrespective of such an announcement, transferred employees have the right to retain their individual working conditions that follow from the relevant collective pay agreement. The employees may object to the transfer of their employment relationship to the new employer, but the transfer of an undertaking to another employer is not in itself grounds for dismissal with notice or summary dismissal for the employer. However, if the transfer leads to redundancy of employees, the employer may dismiss employees in accordance with the rules of downsizing in the Working Environment Act.

Law stated - 14 May 2021

Franchisor eligibility

Must franchisors satisfy any eligibility requirements in order to offer franchises? Are there any related practical issues or guidelines that franchisors should consider before offering franchises?

There are no such eligibility requirements or guidelines applicable to the offer of franchises.

Law stated - 14 May 2021

Franchisee and supplier selection

Are there any legal restrictions or requirements relating to the manner in which a franchisor recruits franchisees or selects its or its franchisees' suppliers? What practical considerations are relevant when selecting franchisees and suppliers?

There are no such legal restrictions or requirements.

Law stated - 14 May 2021

Pre-contractual disclosure – procedures and formalities

What procedures and formalities for pre-contractual disclosure are required or advised in your jurisdiction? How often must the disclosures be updated?

There is no specific legislative compliance procedure for pre-contractual disclosure in Norway, and it is up to the parties to agree on a due diligence process and the terms for such due diligence.

However, the parties are bound by general contractual principles that require each party to provide the counterparty with relevant and necessary information before entering into a contractual relationship. Further, these general principles are continuous by nature, hence the parties are obligated to make further disclosure when relevant throughout the franchise relationship. Although there is no obligation for a cooling-off period under Norwegian law prior to when a binding agreement is entered into between a franchisor and a franchisee, we often recommend the franchisor to use such a cooling-off period for complex franchise agreements in order to secure that the franchisee has had sufficient time to review the franchise agreement. The aim of this is to limit the risk of potential claims from the franchisee related to clauses in the franchise agreement that the franchisee has not fully understood.

Law stated - 14 May 2021

Pre-contractual disclosure – content

What information is the disclosure document required or advised to contain?

There is no explicit or exhaustive list of information required to be disclosed under general contractual principles, but information that is considered to be of major importance to the counterparty should be disclosed, including but not limited to financial risks, profitability, pending litigation or the current status of trademark registrations.

Law stated - 14 May 2021

Pre-sale disclosure to sub-franchisees

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?

The sub-franchisor is responsible for pre-sale disclosure and is bound by the same principles as the franchisor.

There is no specific legislative compliance procedure for pre-contractual disclosure in Norway, and it is up to the parties to agree on a due diligence process and the terms for such due diligence.

However, the parties are bound by general contractual principles that require each party to provide the counterparty with relevant and necessary information before entering into a contractual relationship. Further, these general principles are continuous by nature and the parties are obligated to make further disclosure when relevant throughout the franchise relationship.

Law stated - 14 May 2021

Due diligence

What due diligence should both the franchisor and the franchisee undertake before entering a franchise relationship?

It varies from one franchise relationship to another, but there are some common recommendations. From the franchisor's perspective, it is recommended to carry out at least a limited due diligence procedure of the prospective franchisee, depending on whether the entity in question is an established business within franchising or similar. As a

minimum, it is customary to carry out limited financial due diligence of annual accounts, order books and customer base, limited legal due diligence of the terms of the current chain agreement (if relevant) and the most important agreements of the entity. This is especially important when an entity changes from one chain to another as there may be regulation regarding this situation (ie, liability, termination and non-compete clauses that may affect whether and when the entity may start in the new chain). It is also recommended to undertake thorough interviews with the owner of the prospective entity and its management (if relevant) to confirm competence and personal fit with the chain.

From the franchisee's perspective, it is most important to undertake a thorough legal and financial review of the terms of the chain agreement, especially the financial terms and obligations for the franchisee, termination clauses and non-compete restrictions, as well as estimates and budgets (if available) for the franchisee's business going forward. The entity considering a contractual relationship with a chain as a franchisee should also consider requesting the opportunity to talk with the franchise manager of the chain, other owners of franchisee entities already established in the same chain and possibly the chain board (if relevant) to get a sense of the culture and relations within the chain.

Law stated - 14 May 2021

Failure to disclose – enforcement and remedies

What actions may franchisees or any relevant government agencies take in response to a franchisor's failure to make required disclosures? What legal remedies are available? What penalties may apply?

No government agency enforces the disclosure requirements and it is up to the parties involved to ensure that their right to disclosure is met by the other party. If not otherwise resolved amicably between the party, the franchisee must initiate legal proceedings to obtain relief, specifying the basis for the claim and a calculation of the economic loss incurred due to the franchisor's breach of the principles. Depending on the requirements in the franchise agreement, the legal proceedings may be subject to the process of the ordinary courts or arbitration.

Liability is based on each party's breach of its disclosure obligations and three basic conditions must be fulfilled to impose liability. There must be a liability for damages, an economic loss, and a causal link between a concrete act or omission and the actual claim. Liability may be based on negligent, intentional or fraudulent behaviour.

Employees of the franchisor are generally not held personally liable as their actions or omissions are usually covered by the employer's liability for its employees pursuant to the Damages Compensation Act .

Both the Private Limited Liability Companies Act and the Public Limited Liability Companies Act set out the legal basis for personal liability for officers or directors of the company acting with negligence or intent. The general manager and members of the board of directors may be held liable for any damage they, in their respective capacities, have intentionally or negligently caused to the company, a shareholder or others.

Law stated - 14 May 2021

Failure to disclose – apportionment of liability

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?

Liability for disclosure violations is not different for franchising and sub-franchising. The same principles apply and a potential division of liability between a franchisor and a sub-franchisor must be assessed on a case-by-case basis. The same applies to whether employees, officers and directors may be held liable.

Law stated - 14 May 2021

General legal principles and codes of conduct

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

In addition to legislative requirements, general contractual principles are widely accepted in case law and apply in contractual relations. The most important principles are the non-statutory principles of culpa in contrahendo , the duty of loyalty and a duty of good faith, as well as the general principle of good business practice set out in the Marketing Practices Act.

Law stated - 14 May 2021

Fraudulent sale

What actions may franchisees take if a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises?

If a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises, the franchisee may make claims of compensation and initiate legal proceedings based on the Contract Law or general contractual principles, or both. The fraudulent party may be held liable for the other party's losses and contractual limitations of liability will not apply. Hence, the counterparty is, to a greater extent, entitled to claim indirect losses. Further, the contract may be deemed wholly or partially invalid, which may be an alternative ground for compensation or price reduction for the franchisee.

Fraud is a criminal offence under Chapter 30 of the Penal Code and a franchisee may report criminal offences to the police, who will decide if there is a basis to initiate a criminal investigation.

Law stated - 14 May 2021

FRANCHISE CONTRACTS AND THE FRANCHISOR/FRANCHISEE RELATIONSHIP

Franchise relationship laws

What laws regulate the ongoing relationship between franchisor and franchisee after the franchise contract comes into effect?

There is no legislation specific to franchises in Norway. Depending on each franchise relationship, there may be a number of relevant laws, regulations and guidelines. Relevant Norwegian laws to be taken into consideration are, among others:

- the Contracts Act;
- the Sale of Goods Act;
- the Competition Act;
- the Working Environment Act;
- the Holiday Act;
- the Personal Data Act;
- the Marketing Control Act;

- the Tenancy Act; and
- the Act Relating to Product Liability.

Law stated - 14 May 2021

Operational compliance

What mechanisms are commonly incorporated in agreements to ensure operational consistency and adherence to brand standards?

It is common to include both inspection and audit rights for the franchisor.

Law stated - 14 May 2021

Amendment of operational terms

May the franchisor unilaterally change operational terms and standards during the franchise relationship?

It depends on the contract and whether the parties have agreed that the franchisor will have this right. Note, however, that the duty of loyalty and good faith as well as the Contracts Act set limitations on new terms that are deemed unreasonable.

Law stated - 14 May 2021

Policy affecting franchise relations

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

No.

Law stated - 14 May 2021

Termination by franchisor

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?

The terms for the franchisor's right to terminate with or without cause are usually stated specifically in the franchise agreement, alongside a specification as to whether either basis for termination gives the right to immediate termination or the termination is subject to a notice period, which is usually between six and 12 months.

If the franchise agreement does not include a clause regarding termination rights, the franchisor may still terminate the agreement with immediate effect upon a material breach of the contract by the franchisee.

Law stated - 14 May 2021

Termination by franchisee

In what circumstances may a franchisee terminate a franchise relationship?

The terms for the franchisee's right to terminate with or without cause are usually stated specifically in the franchise agreement, alongside a specification as to whether either basis for termination gives the right to immediate termination or the termination is subject to a notice period, which is usually between six and 12 months.

If the franchise agreement does not include a clause regarding termination rights, the franchisee may still terminate the agreement with immediate effect upon a material breach of the contract by the franchisor.

Law stated - 14 May 2021

Renewal

How are renewals of franchise agreements usually effected? Do formal or substantive requirements apply?

It varies from chain to chain, but automatic renewal is not customary. It is customary that the renewal is conditional on the franchisee having fulfilled certain formal requirements – such as no breach of the agreement – that the lease agreement for the premises is valid for the renewal period and that the franchisee signs the then applicable chain agreement. Both formal and substantive requirements usually apply.

Law stated - 14 May 2021

Refusal to renew

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

There is no legislation or regulation limiting the franchisor’s right to refuse the franchisee renewal of the franchise agreement. The fundamental principle of Norwegian contract law is contractual freedom, hence the franchise agreement sets out any limitations. For example, the franchisee may have an option to renew for a certain number of years or periods of years. If there are no such provisions in the franchise agreement, the franchisor may decide to deny or offer the franchisee a renewal at its sole discretion.

Law stated - 14 May 2021

Transfer restrictions

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

It is common to include a clause in the franchise agreement granting a right for the franchisor to freely approve or veto a transfer of the franchise to a new franchisee. Similarly, change-of-control clauses are common in franchise agreements, usually requiring the consent of the franchisor or granting the franchisor the right to terminate the franchise agreement upon transfer of the voting power in the franchisee.

Law stated - 14 May 2021

Fees

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

No, the parties enjoy full contractual freedom in this regard. Note, however, that the duty of loyalty and good faith – as well as the regulations in the Contract Acts regarding revision or invalidity of contracts owing to unreasonable terms or fraud – may affect the terms and amounts of the fees and payment obligations.

Law stated - 14 May 2021

Usury

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

There are no legislative restrictions on the amount of interest that can be agreed on overdue payments between professionals. However, the parties must agree on the rate and the principles for calculating the interest rate if they want to use a higher percentage or a calculation principle deviating from the prescribed interest level in the Act Relating to Interest on Overdue Payments, which is at 8 per cent as at June 2021. If the agreed interest is unreasonably high or the basis for calculating the interest is very unfavourable to one party, the court may deem the rate invalid and edit the agreement accordingly. The court very rarely deems an agreement as wholly invalid owing to one clause being found unreasonable and void.

Law stated - 14 May 2021

Foreign exchange controls

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

The parties are free to agree on other currencies than the local one, but unless the parties have made such an agreement and the payments are carried out in Norway, the creditor is entitled to demand payment in the Norwegian kroner.

Law stated - 14 May 2021

Confidentiality covenant enforceability

Are confidentiality covenants in franchise agreements enforceable?

Generally, yes. Note, however, that in the event of civil proceedings, a contractual confidentiality clause in a franchise agreement is in itself not sufficient to exempt the franchise agreement as evidence unless the documents may be exempted pursuant to legal authority. Hence, the parties will have to submit any relevant documents that they have available and offer witnesses to the court to fulfil their duty of disclosure pursuant to the Dispute Act, irrespective of confidentiality clauses. Regarding confidentiality and trade secrets, the parties may request the courts to not make reference to trade secrets, such as the franchise fee, in the public judgment.

Law stated - 14 May 2021

Good-faith obligation

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

Yes, the general principle of good faith and loyalty applies to all contractual relationships in Norway, including franchise relationships. The principle applies during negotiations and during the whole period of the franchise agreement.

Law stated - 14 May 2021

Franchisees as consumers

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

Franchisees are not considered consumers pursuant to Norwegian law. If a relevant act distinguishes between consumers and professionals, a franchisee is considered a professional. Further, there is generally a presumption that the franchisee is a professional and has the capacity to take on the responsibility of a professional party.

Law stated - 14 May 2021

Language of the agreement

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

It is preferable to conduct franchise agreements in Norwegian, but it is not a legislative requirement and, pursuant to the principle of contractual freedom, the parties may agree to use English as their contractual language. Franchise agreements in English are usually supplemented by a presentation of the terms or an unofficial translation of the document in Norwegian stating that the English version takes precedence.

Any disclosure documents to the public authorities should be in Norwegian (eg, corporate documents to be registered in the Register of Business Enterprises), but an additional office translation to English is usually accepted.

Acquisitions, mergers and joint ventures may be notifiable to the Norwegian Competition Authorities. Concentrations that are unlikely to affect competition in the affected market may be submitted through a 'simplified notification', in which case the notification can be written in English. If the conditions for the simplified procedure are not met, the notification must be written in Norwegian.

Law stated - 14 May 2021

Restrictions on franchisees

What types of restrictions are commonly placed on the franchisees in franchise contracts?

The fundamental principle of Norwegian contract law is contractual freedom. Consequently, there are no notable restrictions on specific provisions in relation to franchise contracts. However, competition law holds anticompetitive provisions invalid. We often experience that older franchise agreements include restrictions that are not in compliance with the Competition Law, such as exclusivity clauses, retail price maintenance, restrictions on active sale, the level of purchase obligations of the franchisees and non-compete restrictions after the expiry of the franchise agreement.

Further, the Working Environment Act sets out a specific prohibition against an employer entering into an agreement

with other entities, including a non-solicitation of employees clause. However, a non-solicitation of employees clause may nevertheless be entered into in connection with negotiations on the transfer of entities and invoked during the negotiations and for up to six months after such negotiations are terminated. A non-solicitation of employees clause may also be entered into from the date of transfer of the undertakings and invoked for up to six months if the employer has informed all of the affected employees in writing.

Law stated - 14 May 2021

Courts and dispute resolution

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

The judiciary in Norway is hierarchical, with district courts at the first instance, courts of appeal at the second instance and the Supreme Court as the ultimate court of appeal. The local conciliation boards hear certain types of civil cases based on the value of the dispute and whether both parties have engaged legal counsel. These ordinary courts hear all cases relevant to franchising unless the parties have agreed otherwise or a special authority is competent, such as the Norwegian Competition Authority. As a general rule, all court decisions on civil matters, including commercial matters, are publicly available.

The ordinary courts (except the Supreme Court) offer and advocate either out-of-court or judicial mediation. However, mediation is not compulsory for matters relevant to franchising. If the parties agree to mediation, it is solely up to the parties to reach a solution and the mediator holds no authority to settle the dispute.

Further, the parties may agree to solve potential disputes by arbitration, which may be chosen for commercial disputes as the parties can agree that the solution will be subject to confidentiality.

Law stated - 14 May 2021

Governing law

Are there any restrictions on designating a foreign governing law in franchise contracts in your jurisdiction? How does the governing law affect the contract's enforceability?

The Norwegian rules on choice of law are mainly developed through case law and are not laid down in legislation. This makes them somewhat inaccessible. Case law has lately moved towards a more objective and clearer criterion for choosing the governing law for contracts based mainly on the EU rules in the Rome I and Rome II Regulations, which are given great importance in Norwegian case law. For franchise agreements, the Rome I Regulation usually provides a sound starting point when assessing choice of law questions under Norwegian law.

The parties in franchise contracts are free to agree that the contract is governed by foreign law. They are also free to agree that only parts of the contract are governed by foreign law. Any such choice of law clause must preferably be expressly written into the contract, although the courts in certain cases can find a basis for interpreting a choice of law clause by considering the circumstances as a whole. This is in line with article 3 of the Rome I Regulation.

There are certain limitations on this freedom, partly deriving from Norwegian private international law and partly from other rules.

If both the parties to the franchise contract are Norwegian, a choice of law clause designating foreign governing law is construed as incorporating the foreign law into the contract as a part of the clauses in the contract. In such cases, Norwegian mandatory rules apply to the contract, including rules on interpretation and validity.

If one of the parties to the contract is not Norwegian, a choice of law clause designating foreign governing law places

the contract in its entirety, including questions regarding interpretation and validity, under the designated governing law. If a dispute arises out of such a franchise contract and the dispute is brought before Norwegian courts, the courts apply the designated foreign governing law. However, it usually falls on the parties to provide objective and adequate legal sources on the foreign governing law, including depositions from legal experts if needed.

Norwegian international private law acknowledges the public policy doctrine. If the choice of law clause designates a foreign governing law that will produce results in direct conflict with the general Norwegian sense of justice, the public policy doctrine gives Norwegian courts the authority to decide the question, or sometimes the case as a whole, based on Norwegian law.

If the courts conclude that the parties have agreed on the choice of law clause and that the result following from the designated foreign governing law is not in conflict with the public policy doctrine, the courts render their judgment on this basis. The judgment can be enforced by the Norwegian authorities in the same way that other judgments are enforced.

Many franchise agreements contain both a choice of law clause and a clause on arbitration. If the contract contains an arbitration clause, Norwegian courts reject hearing the case. In such cases, the choice of law clause is binding for the arbitration tribunal in line with the above considerations.

If the parties have not agreed on a designated foreign governing law, it follows from article 4 No. 1(e) of the Rome I Regulation that the franchise contract is governed by the law of the state in which the franchisee has his or her habitual residence. This would also be the result according to Norwegian international private law.

Law stated - 14 May 2021

Arbitration – advantages for franchisors

What are the principal advantages and disadvantages of arbitration for foreign franchisors considering doing business in your jurisdiction? Are any other alternative dispute resolution (ADR) procedures particularly favoured or disfavoured in your jurisdiction?

The advantages of arbitration are in general the same for foreign and domestic franchisors, that is, the possibility of agreeing on privacy and confidentiality, flexibility for the parties involved, influence on the appointment of an arbitrator, and the efficiency of the process. Furthermore, when the parties agree to settle a dispute through arbitration, they avoid ordinary court proceedings, although the arbitration decision still has effect as a legally enforceable judgment that can be enforced by means of the general legal enforcement procedure in Norway.

The Arbitration Act of 2004 sets out the applicable provisions for Norwegian arbitration and has a special provision stating that foreign arbitration awards can be recognised and enforced in Norway. In many aspects, it is based on the United Nations Commission on International Trade Law's 1985 Model Law on International Commercial Arbitration.

Norway is a party to the United Nations Convention of 10 June 1958 on the recognition and enforcement of foreign arbitration decisions (the New York Convention). The convention is acceded to by about 125 countries, including the countries with which Norway has the most trade. This implies that foreign arbitration decisions can be enforced in Norway without instituting special legal proceedings in the Norwegian courts.

There are no disadvantages specific to foreign franchisors compared with domestic ones. As for arbitration in general, the cost is considerably higher than legal proceedings in the ordinary courts, but most important are the restrictions on appealing against the judgment. An arbitration award may only be brought before the ordinary courts based on annulment actions.

Law stated - 14 May 2021

National treatment

In what respects, if at all, are foreign franchisors treated differently (legally, or as a practical matter) from domestic franchisors?

Pursuant to Norwegian law, there is no legal distinction of whether a franchisor is domestic or foreign.

Law stated - 14 May 2021

UPDATE AND TRENDS

Legal and other current developments

Are there any proposals for new legislation or regulation, or to revise existing legislation and regulation? Are there other current developments or trends to note?

The Trade Secrets Act, incorporating Directive (EU) 2016/943, entered into force on 1 January 2021. The Trade Secrets Act applies to any kind of secret information of commercial value in a business and is relevant for a franchisee who is considering terminating a franchise contract to engage with a different franchisor or starting a business of its own. According to the Trade Secrets Act, achieving, utilising or spreading a trade secret is prohibited. Note, however, that general knowledge and know-how are not considered to be trade secrets.

The information contained in this chapter is accurate as at 14 May 2021.

Law stated - 14 May 2021

Jurisdictions

Australia	Norton Rose Fulbright
Canada	Lapointe Rosenstein Marchand Melançon LLP
China	Jones & Co
Finland	ADVOCARE Law Office
France	Bersay
Germany	Taylor Wessing
India	G&W Legal
Israel	Gilat Bareket & Co, Reinhold Cohn Group
Italy	Rödl & Partner
Japan	Anderson Mōri & Tomotsune
Malaysia	Wong Jin Nee & Teo
Mexico	Gonzalez Calvillo SC
Netherlands	Parker Advocaten
New Zealand	Stewart Germann Law Office
Norway	CLP
South Africa	Spoor & Fisher
South Korea	Lee & Ko
Switzerland	Kellerhals Carrard
Turkey	Özdağıstanli Ekici Attorney Partnership
United Kingdom	Ashtons Legal
USA	Lathrop GPM