



INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



SWEDEN



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

Apart from the Swedish disclosure regulation there are no laws or agencies that specifically regulate the offer and sale of franchises.

Competition law may have an impact on franchises, for example, by way of prohibiting certain restrictive terms of franchise agreements. The Swedish Competition Authority monitors the Swedish Competition Act. The SFA provides ethical standards that apply to members only (www.franchiseforeningen.se).

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

There are no exemptions or exclusions, but it has been argued that the entire disclosure obligation may be set aside by not including a control system in the franchise agreement.

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

No such requirement exists by way of law. The ethical standards of the SFA require that the franchise system must have a track record and at least one franchisee before introduction of the system. The standards are only binding on members of the SFA.

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 subfranchisor?

The disclosure regulation does not distinguish between different types of franchisors. Therefore, it is the sub-franchisor that shall provide the franchisee with the required information. As a further consequence, in a sub-franchising structure the master franchisor shall provide the sub-franchisor with the required information in ample time before conclusion of the agreement.

In a sub-franchising structure the sub-franchisor need not disclose information concerning the franchisor or the contractual or other relationship between the franchisor and the sub-franchisor if it is not necessary in order to correctly describe the franchise activities (minimum requirement number one); the total number of franchisees within the system, how big they are, where they are located and the contact details of those closest (minimum requirement two); the IP rights involved (minimum requirement four); or any sourcing requirements (minimum requirement five).

Is there any obligation for continuing disclosure?

There is no requirement to update a disclosure made pursuant to the Swedish disclosure regulation. Material changes to a franchise may however trigger an obligation to re-disclose if the franchise agreement can, in reality, be regarded as a new agreement.



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How do the relevant government agencies enforce the disclosure requirements?

The Swedish Market Court is the enforcing body and proceedings may be brought before the court by a franchisee or an association having a justified interest in representing business people or entrepreneurs.

In the case of violation of the disclosure obligations, the Market Court may order the franchisor to disclose, in the specific case or for future offerings, the missing information. An administrative fine can be appended to the order.

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 offering and selling of franchises is subject to Swedish contract law and general contractual principles. The SFA requires its members to comply with its ethical standards, which are substantially based on the European Code of Ethics for Franchising. Membership is voluntary and therefore franchisors who are not members do not have to comply with these standards.

The standards require franchisors to have undertaken a trial operation of the business before launching the franchise, to prove ownership of all intellectual property associated with the franchise and to provide initial and ongoing training to the franchisee.

Do other laws affect the franchise relationship?

Laws such as the Sale of Goods Act and the International Sale of Goods Act (CISG) may apply, and principles such as the UNIDROIT Principles of International Commercial Contracts, the Principles of European Contract law (PECL and PELSC) and the Draft Common Frame of Reference (DCFR) may imply certain terms into contracts between the franchisor and the franchisee. The said principles may be applied when the contract or the law is silent or needs filling out or interpretation. This is clearly demonstrated by a recent precedent (NJA 2009, page 672) in which the Supreme Court filled out the termination provision of a distributor agreement by stipulating a reasonable notice period of three months. The ethical standards of the SFA may also affect the relationship, but only in relation to members of the SFA.

The Swedish Personal Data Act may affect the relationship insofar as where the personal integrity of customers and personnel of the franchise system is concerned. Implemented pursuant to the European Data Protection Directive, the act applies to controllers of personal data who are established in Sweden, or cases in which the controller of personal data is established in a third country (a state not included in the EU or EEA, for instance the US) but uses equipment situated in Sweden for the processing of personal data. It applies to all such processing of personal data that is wholly or partly automated. Personal data – for instance, information pertaining to customers, suppliers or employees – may be processed only if the registered person has given his or her consent to the processing or if the



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processing is necessary to fulfil certain purposes: for instance, to enable the performance of a contract or a purpose that concerns a legitimate interest of the controller of personal data if the interest is of greater weight than the interest of the registered person in protection against violation of personal integrity. If data about a person is collected, the controller of the data shall in conjunction voluntarily provide the registered person with information about the processing of the data.

In the main, it is prohibited to transfer personal data to a third country that is undergoing processing. This also applies to the transfer of personal data for processing in a third country unless the third country has an adequate level of protection for personal data. But if consent by the registered persons is not a viable route to take, contractual solutions (implementation of the standard contractual clauses adopted by the EU commission) or the Safe Harbor Principles (applicable to US entities only) may be used to comply with the Act and transfer personal data to entities in, for example, the US. Furthermore, binding corporate rules (BCR) may be adopted.

BCR are internal rules that establish consistent and compliant requirements for the use of personal data within a multinational company. BCR makes it possible for the local data protection agencies to authorise the transfer of personal data to third countries within the meaning of the act or directive. This is a flexible and efficient way of complying with the rules in the act or directive and transferring personal data to entities in third countries. For the company to adopt and use BCR, it must be able to guarantee adequate protection of personal data with regard to its transfer to a third country. The BCR must apply generally and throughout the corporate group, irrespective of the place of establishment of the members or the nationality of the data subjects whose personal data are being processed. BCR provides a uniform minimum standard for every entity within the group. If applicable local law provides a higher level of protection than that established by the standard, the requirements of local law will apply. The internal rules of a corporate group cannot replace the data protection obligations by which the members of the corporate group are bound by law but it forms a practicable tool for large multinationals who would otherwise perhaps need to incorporate a vast network of bilateral intragroup agreements in order to provide for international transfers of personal data within the group.

DLA Nordic has successfully acted for a multinational group seeking exemption from the prohibition based on adopted BCR (the first application ever in the Nordic countries). As to the relationship between a franchisee and its customers, various general laws (private and public) such as the Contracts Act, the Sale of Goods Act, the Consumer Sale of Goods Act, the Personal Data Act, various other consumer protection regulations, the Marketing Practices Act, the Competition Act and sector-specific related regulations, to name a few, will apply to the franchise activities in the same way that they apply to any other local business activity.



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