



INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



UNITED KINGDOM



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

There is no specific agency that regulates the offer and sale of a franchise. It is the buyer's responsibility to undertake sufficient inquiry and due diligence on the transaction they are entering into on the 'buyer beware' principle. The BFA will direct parties to experienced accountants and lawyers who can provide advice on entering into a franchise arrangement.

Other laws that affect franchising agreements include the Fair Trading Act 1973 and the Trading Schemes Act 1996, which relate to 'pyramid selling' schemes, but which apply to many franchise arrangements.

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

The Trading Schemes Regulations do not apply (by virtue of the Trading Schemes (Exclusion) Regulations 1997) where either the franchise operates as a single-tier trading scheme (franchisor and one level of franchisees below it) or all the franchisees are VAT registered at all times. Appropriate provisions must be included in the franchise agreement to ensure that the exemptions apply to protect the network.

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

No, there are no such legal requirements. However, the BFA's Code of Ethics imposes some requirements on its franchisor members: to have operated at least one pilot business on an arm's-length basis before starting to franchise; to be the owner or have the legal rights to the branding of the business; and to provide franchisees with initial and ongoing training and assistance.

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 such laws, regulations or government policies in the UK.

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?

There are no legal disclosure requirements in relation to franchising in the UK. Nevertheless, it is considered to be good practice and the BFA Code of Ethics requires prospective franchisees to be provided with full and accurate written disclosure of all information material to the franchise arrangement, and also with a copy of the Code.

Is there any obligation for continuing disclosure?

No.



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How do the relevant government agencies enforce the disclosure requirements?

Where franchisors are members of the BFA, they are required by their terms of membership to comply with the Code of Ethics. The Code is expressly stated not to form part of a BFA member's franchise agreement with its franchisees.

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 offer and sale of a franchise business is not subject to any specific laws, but will be subject to more general principles of contract and tort (civil wrongs) laws. Generally the principle of 'caveat emptor' or 'buyer beware' applies. Nevertheless, both parties should be aware of the laws relating to misrepresentation.

Do other laws affect the franchise relationship?

The general laws which govern commercial relationships would apply. For example, certain provisions of the franchise agreement will be subject to a requirement that they are reasonable under the Unfair Contract Terms Act 1997. Exclusion, 'non-reliance', and entire agreement clauses which seek to exclude a franchisor's liability for pre-contractual statements and misrepresentations can be considered unreasonable and unenforceable.

Courts have recently shown a tendency to support franchisees who have been victims of misrepresentation in the franchise sales process by seeking to avoid such clauses on the grounds of the weak negotiating position of the franchisee, the 'standard form', non-negotiable contract, and the reliance the franchisee has placed on the franchisor's representations of the prospects of success. The courts have considered such clauses unreasonable, and so unenforceable, in a number of cases. It is also increasingly important for both franchisors and franchisees to comply with their obligations under the Data Protection Act 1998. The UK Information Commissioner has powers to impose swingeing fines for breaches of these privacy and information protection laws. The Data Protection Act governs the protection of personal information. In the franchise context this is most likely to be customer information. Responsibility falls upon the 'data controller', who ultimately determines how the data is processed, and is most commonly the franchisor. It is therefore important that the franchise agreement stipulates very clearly both the franchisor's and the franchisee's obligations in relation to data and information protection.