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Germany

Franchise & Licensing

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This country-specific Q&A provides an overview of franchise & licensing laws and regulations applicable in Germany.

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Germany: Franchise & Licensing

Franchise law in Germany operates within the framework of general civil law, European competition law, and certain specific regulations affecting contractual and commercial relationships. While there is no standalone franchise legislation, a variety of legal principles and statutes govern the rights and obligations of franchisors and franchisees. This comprehensive analysis provides basic answers to key questions regarding franchise transactions in Germany and explores the regulatory environment governing this type of business arrangement. The aim is to provide an overview of relevant regulations and practical considerations that are important for franchisors and franchisees in Germany. Under no circumstances does this information replace a detailed examination, advice and organisation in individual cases.

1. Is there a legal definition of a franchise and, if so, what is it?

In Germany, there is no statutory definition of "franchise." However, the concept is widely recognised in practice and typically refers to a business arrangement where the franchisor grants the franchisee the right to operate a business using the franchisor's business model, brand, and know-how, typically in exchange for fees. This includes the ongoing right to use intellectual property such as trademarks and business processes, alongside the provision of ongoing support and guidance.

A franchise agreement in Germany is regarded as a mixed contract, incorporating elements from various types of contracts: **sales, lease, service, and licensing agreements**. The contractual relationship is governed by the general provisions of the **German Civil Code (BGB)**, particularly those relating to contract formation, obligations, and the general principles of good faith (**§ 242 BGB**). Franchise agreements often include aspects of both **German contract law** and **European competition law** due to the cross-border nature of many franchising arrangements, particularly in the EU single market.

2. Are there any requirements that must be met prior to the offer and/or sale of a franchise? If so, please describe and include any potential consequences for failing to comply.

Although German law does not impose explicit statutory requirements before offering or selling a franchise,

franchisors are bound by significant **pre-contractual disclosure obligations**. These obligations stem from judicial precedents and the broader principles of German contract law, notably the principle of **culpa in contrahendo** (fault in contracting), as laid out in **§ 241(2) BGB** and **§ 311 BGB**. These provisions impose a duty of care on franchisors to provide prospective franchisees with accurate, complete, and transparent information necessary for making an informed decision.

Key Elements of Pre-contractual Disclosure:

- 1. Business and Financial Information:** Franchisors must provide detailed and accurate information about the franchise system, including financial projections, investment requirements, and anticipated operating costs. Any estimates or forecasts should be based on solid, reasonable assumptions.
- 2. Market and Competition:** The franchisor must inform the franchisee about the market conditions, including relevant competition, the expected market position, and any risks associated with the venture.
- 3. Franchise System Structure:** Clear information regarding the operational aspects of the business, including the rights and responsibilities of both the franchisor and franchisee.
- 4. Support and Training:** The franchisor must explain the extent and nature of the ongoing support provided, such as training, marketing,

and operational assistance.

Failure to meet these disclosure obligations may result in the franchise agreement being voidable or give rise to damages claims under §§ 280 ff. BGB. Importantly, any **deliberate or negligent misrepresentation** could be grounds for contract rescission due to fraudulent misrepresentation (§ 123 BGB).

3. Are there any registration requirements for franchisors and/or franchisees? If so, please describe them and include any potential consequences for failing to comply. Is there an obligation to update existing registrations? If so, please describe.

There are no mandatory registration requirements for franchisors or franchisees under German law. However, many franchisors voluntarily register with the **German Franchise Association (Deutscher Franchiseverband, DFV)**, which promotes best practices and enhances credibility within the franchising sector. Membership in the DFV is not compulsory, but it provides a range of benefits, including legal advice, access to networks, and industry recognition.

Additionally, franchisors often register their **trademarks** with the **German Patent and Trademark Office (DPMA)** to secure legal protection of their brand. Trademark registration is essential for franchisors to prevent unauthorised use of their intellectual property and to maintain control over the brand's image in the marketplace.

4. Are there any disclosure requirements (franchise specific or in general)? If so, please describe them (i.e. when and how must disclosure be made, is there a prescribed format, must it be in the local language, do they apply to sales to sub-franchisees) and include any potential consequences for failing to comply. Is there an obligation to update and/or repeat disclosure (for example in the event that the parties enter into an amendment to the franchise agreement or on renewal)?

German law does not impose specific statutory disclosure requirements exclusively for franchising. However, the general principle of **pre-contractual disclosure** under § 241(2) BGB applies. This requires the franchisor to disclose all relevant information necessary

for the prospective franchisee to make an informed decision. This obligation is part of the broader duty of care that arises during contract negotiations and is enforced by the courts through case law.

Timing and Format of Disclosure:

- **Timing:** Disclosure must be made well in advance of signing the franchise agreement, typically at least **two weeks before** execution, to provide the franchisee with sufficient time to review the material and seek independent advice.
- **Format:** There is no specific prescribed format for the disclosure document, but it must be clear, understandable, and, in most cases, provided in the local language (German), unless otherwise agreed. It should cover all material aspects of the franchise, including financial information, the scope of the franchisee's obligations, and any restrictions on operations.

Failure to adequately disclose material information may give rise to claims for **damages** or the **rescission of the contract** on the grounds of misrepresentation or breach of pre-contractual obligations. The franchisor is also obliged to update the disclosure if any significant changes occur, particularly if the franchise agreement is amended or renewed.

5. If the franchisee intends to use a special purpose vehicle (SPV) to operate each franchised outlet, is it sufficient to make disclosure to the SPVs' parent company or must disclosure be made to each individual SPV franchisee?

When a franchisee uses an SPV to operate the franchise business, it is essential to provide disclosure to the **SPV itself**, not just the parent company. While disclosure to the parent company may be relevant for corporate governance reasons, each SPV is treated as a separate legal entity in Germany, and therefore, the franchisor has a duty to disclose all relevant information directly to the SPV if it is the legal party to the franchise agreement.

Franchisors must ensure that both the parent company and the SPV are adequately informed of the material terms of the franchise arrangement to avoid any misunderstandings or legal complications down the line.

6. What actions can a franchisee take in the

event of mis-selling by the franchisor? Would these still be available if there was a disclaimer in the franchise agreement, disclosure document or sales material?

In cases of mis-selling or fraudulent misrepresentation by the franchisor, the franchisee has several legal remedies under German law. These remedies are primarily based on the principles of contract law, specifically **fraudulent misrepresentation (§ 123 BGB)** and **culpa in contrahendo** (breach of precontractual obligations):

1. **Rescission of the Contract:** The franchisee can seek to rescind the franchise agreement if they can prove that the franchisor knowingly made false representations that induced them to enter the contract.
2. **Damages Claims:** If the franchisee can demonstrate that they suffered financial losses due to misrepresentation or incomplete disclosure, they may be entitled to damages under **280 BGB**. These damages can cover direct losses, such as wasted investments, and potentially lost profits.
3. **Voidance of the Agreement:** The franchisee may also seek to have the contract declared void due to **unfair terms** under the **Unfair Terms in Consumer Contracts Directive (Directive 93/13/EEC)**, which is implemented in Germany through **§ 305 ff. BGB**.

Importantly, any attempt by the franchisor to limit their liability for mis-selling through disclaimers in the franchise agreement is likely to be ineffective, especially if fraudulent misrepresentation is involved. German courts generally invalidate such disclaimers if they conflict with **public policy** or **good faith** requirements.

7. Would it be legal to issue a franchise agreement on a non-negotiable, "take it or leave it" basis?

It is legally permissible in Germany to issue franchise agreements on a non-negotiable, "take it or leave it" basis. However, such agreements must comply with the strict rules governing **standard terms of business** under **§§ 305 ff. BGB**. These provisions subject standard-form contracts to judicial scrutiny to ensure they do not contain **unfair terms** or disproportionately favour the franchisor.

For example, clauses that unreasonably restrict the

franchisee's rights, impose excessive penalties, or limit the franchisee's ability to seek legal recourse may be considered invalid under **§ 307 BGB**. German courts have the authority to modify or strike down any provisions that they deem unfair or incompatible with the principle of good faith.

8. How are trademarks, know-how, trade secrets and copyright protected in your country?

In Germany, **trademarks, know-how, trade secrets, and copyrights** enjoy robust legal protection under various legislative frameworks:

- **Trademark Protection:** The **German Trademark Act (MarkenG)** governs the protection of registered trademarks. A franchisor must register their trademark with the **German Patent and Trademark Office (DPMA)** to enforce their rights against unauthorised use. Registered trademarks provide the franchisor with the exclusive right to use the brand in commerce and prevent third parties, including franchisees, from exploiting the brand without permission.
- **Know-how and Trade Secrets:** Know-how and business secrets are protected under the **German Trade Secrets Act (GeschGehG)**, which implements the **EU Trade Secrets Directive**

(**Directive (EU) 2016/943**). This law provides legal recourse against any misappropriation of confidential information by franchisees or other third parties. Franchisors should ensure that franchise agreements include comprehensive **confidentiality clauses** to protect sensitive information.

- **Copyright:** Intellectual property, including copyrights, is protected under the **German Copyright Act (UrhG)**. While copyright law mainly applies to creative works, it can also extend to business-related materials such as manuals, training guides, and proprietary software developed by the franchisor.

Franchisors are advised to clearly outline the scope of intellectual property rights in the franchise agreement and include specific provisions governing the franchisee's use of these assets. Licensing clauses should specify the extent of the franchisee's rights to use the brand, know-how, and other proprietary elements of the franchise system.

9. Are there any franchise specific laws governing the ongoing relationship between franchisor and franchisee? If so, please describe them, including any terms that are required to be included within the franchise agreement.

There are no franchise-specific laws that govern the ongoing relationship between franchisor and franchisee in Germany. However, the **general principles of contract law** apply to these relationships. The **principle of good faith (Treu und Glauben)** under **§ 242 BGB** requires both parties to act fairly and reasonably throughout the duration of the contract. This principle governs the execution, modification, and termination of the franchise agreement.

The franchise relationship also operates under general **commercial and competition law**, including obligations related to the franchisee's use of the franchisor's trademarks, the application of pricing policies, and the allocation of territorial rights. These aspects are typically regulated by contract but must comply with overarching legal standards, such as the **prohibition of unfair competition** under **§ 1 GWB** (German Act against Restraints of Competition) and **Article 101 TFEU** (Treaty on the Functioning of the European Union).

10. Are there any aspects of competition law that apply to the franchise transaction (i.e. is it permissible to prohibit online sales, insist on exclusive supply or fix retail prices)? If applicable, provide an overview of the relevant competition laws.

Yes, franchise transactions are subject to both **German and European competition law**. The most relevant legislation includes the **Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen, GWB)** and the **EU Vertical Block Exemption Regulation (VBER, Regulation 330/2010)**, which governs vertical agreements such as franchise contracts.

Key Competition Law Concerns:

1. **Price Fixing:** Franchisors cannot impose minimum resale prices on franchisees. Under **1 GWB** and **Article 101 TFEU**, any agreement that restricts the franchisee's ability to set their own prices is prohibited. However, franchisors may suggest recommended prices, provided that these recommendations are not mandatory.

2. **Exclusive Territories:** Franchisors may grant franchisees exclusive territories, but these arrangements must comply with **competition law**. Exclusive territorial agreements are permissible under certain conditions but must not result in market foreclosure or hinder competition. Franchisors must be cautious in preventing franchisees from selling outside their allocated territories, particularly in relation to cross-border sales within the EU.
3. **Online Sales Restrictions:** The prohibition of online sales or restrictions on selling via certain platforms, such as Amazon or eBay, is subject to strict scrutiny under European competition law. Blanket bans on online sales are generally considered unlawful, but franchisors can impose qualitative criteria for online sales to protect the brand's image.

Franchisors must ensure that their franchise agreements are carefully drafted to comply with these competition law rules, particularly when setting territorial restrictions or resale price recommendations.

11. Are in-term and post-term non-compete and non-solicitation clauses enforceable and are there any limitations on the franchisor's ability to impose and enforce them?

Non-compete and non-solicitation clauses are generally enforceable under German law, provided they meet certain requirements for reasonableness and proportionality. These clauses are subject to the provisions of **§ 138 BGB** (unfair contracts) and **§ 90a HGB** (commercial agents' non-compete clauses). **Conditions for Enforceability:**

1. **Reasonable Scope:** Non-compete clauses must be limited in terms of **geographic scope, duration, and subject matter**. They cannot impose an undue restriction on the franchisee's ability to carry on a business after the termination of the franchise agreement.
2. **Time Limitation:** Post-term non-compete clauses are generally enforceable for up to **two years** after the termination of the franchise agreement, in accordance with **90a HGB**. Longer durations are considered excessive and likely unenforceable.
3. **Compensation:** In some cases, if the non-compete clause significantly restricts the franchisee's ability to operate, the franchisor may be required to pay **compensation** to the

franchisee during the post-term period.

Non-solicitation clauses, which prevent the franchisee from soliciting the franchisor's customers or employees, are also generally enforceable, provided they are not overly broad or disproportionate.

12. Is there an obligation (express or implied) to deal in good faith in franchise relationships?

Yes, there is a general obligation to act in good faith (**Treu und Glauben**) in all franchise relationships under **§ 242 BGB**. This principle requires both parties to act fairly and to respect the legitimate interests of the other party throughout the term of the contract.

Practical Implications:

- **Contract Negotiation:** During pre-contractual negotiations, the franchisor must disclose all material facts relevant to the franchisee's decision-making process.
- **Ongoing Relationship:** The duty of good faith applies to the day-to-day dealings between franchisor and franchisee. It includes obligations such as ensuring fair treatment, providing necessary support, and not imposing unreasonable contractual modifications.
- **Termination:** Even when terminating the franchise agreement, the franchisor must act in accordance with good faith. Termination rights must be exercised reasonably and not arbitrarily, particularly in cases where the franchisee has made significant investments based on the franchisor's representations.

Violations of the duty of good faith can result in claims for **damages** or other legal remedies, including the modification or invalidation of unfair contract terms.

13. Are there any employment or labour law considerations that are relevant to the franchise relationship? Is there a risk that the staff of the franchisee could be deemed to be the employees of the franchisor? What steps can be taken to mitigate this risk?

The legal status of franchisees and their employees is an important consideration in Germany, particularly in relation to **employment law**. Franchisees are generally considered independent contractors rather than employees of the franchisor. However, there is a risk of **misclassification** if the franchisee is heavily dependent

on the franchisor or operates under extensive control.

Risks and Mitigation:

- **Scheinselbstständigkeit (Sham Self-Employment):** If the franchisee is found to be in a position of economic dependence on the franchisor and lacks the ability to operate independently, they may be classified as an employee under German law. This would subject the franchisor to employment-related liabilities, including payment of social security contributions and compliance with labour protection laws.
- **Control and Autonomy:** To mitigate this risk, franchisors should ensure that franchisees have sufficient **operational independence**. The franchise agreement should clearly outline the franchisee's freedom to make business decisions, hire and manage staff, and control daily operations.
- **Vicarious Liability:** Although franchisees typically manage their own staff, franchisors should be aware of the potential risk of being held liable for the actions of the franchisee's employees if the franchisor exerts too much control over the franchisee's operations.

14. Is there a risk that a franchisee could be deemed to be the commercial agent of the franchisor? What steps can be taken to mitigate this risk?

There is a risk that a franchisee could be classified as a **commercial agent** under **§ 84 HGB** if the franchisor exercises excessive control over the franchisee's business or if the franchisee acts on behalf of the franchisor without sufficient independence. A commercial agent is someone who is entrusted with negotiating or concluding transactions on behalf of the principal and is entitled to receive **commission payments**.

Mitigating the Risk:

To avoid classification as a commercial agent, franchisors should ensure that franchisees retain sufficient independence and operate the business at their own risk. The franchisee should:

1. **Act as an Independent Contractor:** The franchisee should operate their business independently and bear the risks of the business, including financial risks.
2. **Avoid Acting on Behalf of the Franchisor:** The

franchisee should not act as the franchisor's representative when dealing with third parties. Instead, the franchisee should enter into contracts and transactions in their own name and on their own account.

3. **Remuneration Structure:** The franchisee's income should primarily come from operating the franchise business, not from commissions paid by the franchisor, as is the case with commercial agents.

By maintaining these distinctions, franchisors can avoid the legal implications and obligations associated with commercial agency relationships, including the payment of compensation upon termination of the agency agreement.

15. Are there any laws and regulations that affect the nature and payment of royalties to a foreign franchisor and/or how much interest can be charged? Are there any requirements for payments in connection with the franchise agreement to be made in the local currency?

Payments of royalties to foreign franchisors are subject to certain tax considerations under German law. Specifically, **withholding tax** may apply to royalty payments made to foreign entities, unless a **double taxation agreement (DTA)** exists between Germany and the franchisor's home country that reduces or eliminates the withholding tax.

Key Considerations:

- **Withholding Tax:** Royalty payments made to non-resident franchisors are typically subject to withholding tax in Germany, which may be deducted from the gross royalty payment before it is transferred to the franchisor. The standard withholding tax rate is **15%**, but this can vary depending on applicable DTAs.
- **Local Currency Requirements:** There are no specific legal requirements mandating that royalty payments must be made in local currency (Euros), although the franchise agreement should specify the payment currency and address potential currency exchange risks.
- **Interest Rates on Payments:** Interest on late payments or outstanding debts under the franchise agreement is generally permissible, but it must comply with German laws on **usury (138 BGB)**, which prohibits excessively high

interest rates.

Franchisors should ensure that their royalty payment arrangements comply with applicable tax treaties and that the franchise agreement addresses any potential tax liabilities arising from cross-border royalty transfers.

16. Is it possible to impose contractual penalties on franchisees for breaches of restrictive covenants etc.? If so, what requirements must be met in order for such penalties to be enforceable?

Contractual penalties (Vertragsstrafe) for breaches of restrictive covenants, such as non-compete or confidentiality clauses, are generally enforceable under **§ 339 BGB**. However, they must meet the requirements of **reasonableness** and **proportionality** to be legally valid.

Requirements for Enforceability:

1. **Proportionality:** The penalty must be proportionate to the severity of the breach. Excessive penalties may be reduced by the courts under **343 BGB** if they are deemed unfair or disproportionate to the harm caused.
2. **Clarity:** The franchise agreement must clearly specify the amount of the penalty, the nature of the breach that triggers the penalty, and the conditions under which the penalty applies.
3. **Protective Function:** The primary purpose of the penalty clause should be to encourage compliance with the restrictive covenant, not to impose an undue burden on the franchisee.

If the penalty clause is found to be excessive or vague, it may be unenforceable or subject to judicial reduction.

17. What tax considerations are relevant to franchisors and franchisees? Are franchise royalties subject to withholding tax?

Franchise businesses in Germany are subject to a range of tax considerations, including **income tax**, **value-added tax (VAT)**, and **withholding tax** on royalties. The tax treatment of franchisors and franchisees will depend on their legal structure and the nature of the payments made under the franchise agreement.

Key Tax Considerations:

1. **Franchise Fees and VAT:** Franchise fees paid by the franchisee to the franchisor are generally subject to **VAT (Umsatzsteuer)** in

Germany at the standard rate of **19%**. The franchisor must issue VAT-compliant invoices, and the franchisee may be entitled to reclaim VAT as input tax, depending on their tax status.

2. **Withholding Tax on Royalties:** As noted earlier, royalties paid to foreign franchisors may be subject to withholding tax, unless a double taxation agreement provides for an exemption or reduced rate.
3. **Corporate Income Tax:** Franchisees operating as corporations (e.g., GmbH) are subject to **corporate income tax (Körperschaftsteuer)** at a rate of **15%** plus a **solidarity surcharge** of **5%** on the tax amount.
4. **Trade Tax:** Franchisees may also be liable for **trade tax (Gewerbesteuer)**, which is levied by local municipalities at rates that vary depending on the location of the business. The effective trade tax rate typically ranges between **14% and 17%**.

It is essential for franchisors and franchisees to structure their tax arrangements carefully and ensure compliance with both domestic tax laws and international tax treaties to avoid double taxation or unexpected tax liabilities.

18. How is e-commerce regulated and does this have any specific implications on the relationship between franchisor and franchisee? For example, can franchisees be prohibited or restricted in any way from using e-commerce in their franchise businesses?

E-commerce in Germany is primarily regulated by the **Telemedia Act (Telemediengesetz, TMG)** and the **General Data Protection Regulation (GDPR)**. These laws impose various obligations on businesses engaged in online transactions, including transparency requirements, data protection standards, and consumer rights protections.

Impact on Franchisor-Franchisee Relationship:

- **Online Sales Restrictions:** Franchisors cannot impose blanket bans on online sales by franchisees, as this would likely violate **European competition law**. However, franchisors may impose **qualitative criteria** to ensure that online sales comply with brand standards and do not harm the franchisor's reputation.
- **E-commerce Platforms:** Franchisors may seek to control how franchisees use third-party

e-commerce platforms, such as Amazon or eBay, to maintain quality control. However, any such restrictions must be carefully drafted to avoid breaching competition law, particularly the **EU Vertical Block Exemption Regulation (VBER)**.

- **Data Protection:** Franchisees that collect and process customer data through online platforms must comply with the GDPR. This includes obtaining appropriate customer consent for data collection, implementing data security measures, and ensuring that customer data is not shared with unauthorised third parties. Franchisors may impose **data protection obligations** on franchisees as part of the franchise agreement, but these obligations must be GDPR compliant.

Franchisors and franchisees involved in e-commerce should regularly review their online sales policies and data protection practices to ensure compliance with both German and EU regulations.

19. What are the applicable data protection laws and do they have any specific implications for the franchisor/franchisee relationship? Does this have any specific implications in the franchising context? Is the franchisor permitted to restrict the transfer of (a) the franchisee's rights and obligations under the franchise agreement or (b) the ownership interests in the franchisee?

Data protection in Germany is governed by the **General Data Protection Regulation (GDPR)**, which applies to all businesses that collect, store, or process personal data. This includes franchisors and franchisees who handle customer data as part of their franchise operations.

Key Data Protection Obligations:

1. **Lawful Processing of Data:** Franchisees must ensure that all personal data collected from customers is processed in accordance with GDPR principles. This includes obtaining **explicit consent** from customers before processing their data, ensuring that data is only used for the purposes specified, and implementing adequate **data security measures**.
2. **Data Transfers:** If franchisees transfer customer data to the franchisor or other third parties, these transfers must comply with GDPR rules on **cross-border data transfers**.

This is particularly important if the franchisor is based outside the EU, in which case **standard contractual clauses (SCCs)** or other GDPR-compliant mechanisms must be in place.

3. **Data Subject Rights:** Franchisees must respect the rights of data subjects under GDPR, including the right to access, correct, or delete personal data, and the right to object to certain types of data processing.

Franchisors may impose data protection obligations on franchisees in the franchise agreement, but these must comply with GDPR standards. Failure to comply with data protection laws can result in substantial fines under GDPR, as well as reputational damage.

20. Does a franchisee have a right to request a renewal on expiration of the initial term? In what circumstances can a franchisor refuse to renew a franchise agreement? If the franchise agreement is not renewed or if it terminates or expires, is the franchisee entitled to compensation? If so, under what circumstances and how is the compensation payment calculated?

German law does not provide franchisees with a statutory right to request a renewal of the franchise agreement upon expiration of the initial term. The right to renew must be explicitly stated in the franchise agreement. Many franchise agreements include **renewal clauses** that outline the conditions under which the franchisee can renew the contract, such as meeting performance targets or maintaining compliance with operational standards.

Franchisor's Right to Refuse Renewal:

The franchisor generally has the right to refuse renewal if the franchisee fails to meet the contractual conditions for renewal, such as:

- Breach of contract
- Failure to meet performance benchmarks
- Non-compliance with the franchisor's operational standards

The franchisee should review the renewal provisions in the contract carefully and ensure that they comply with the requirements to maintain the right to renew.

21. Are there any mandatory termination rights

which may override any contractual termination rights? Is there a minimum notice period that the parties must adhere to?

Yes, German law provides for certain mandatory termination rights that can override contractual termination rights. Specifically, **§ 314 BGB** allows either party to terminate the contract for **good cause** without observing the agreed-upon notice periods. A good cause for termination may arise if one party breaches the contract in a way that makes it unreasonable for the other party to continue the relationship.

Examples of good cause include:

- **Material breach of contract** by the franchisee, such as failure to pay royalties or noncompliance with operational standards.
- **Fraud or misrepresentation** by the franchisor during the pre-contractual negotiations.
- **Insolvency** of either party.

Even if the franchise agreement includes specific termination rights, the parties cannot exclude or limit the right to terminate for good cause under **§ 314 BGB**. Additionally, **§ 621 BGB** and **§ 622 BGB** set out minimum notice periods for terminating certain types of contracts, which may apply depending on the nature of the franchise agreement.

22. Are there any intangible assets in the franchisee's business which the franchisee can claim ownership of on expiry or termination, e.g. customer data, local goodwill, etc.

Ownership of intangible assets, such as **customer data** and **local goodwill**, upon expiry or termination of the franchise agreement is typically governed by the terms of the franchise contract. In most cases, the franchisor retains ownership of **trademarks, know-how, and other intellectual property**, while the franchisee may claim ownership of certain locally generated assets, such as customer data or goodwill, unless otherwise specified in the contract.

Customer Data:

The franchise agreement should clearly define the ownership and use of customer data collected by the franchisee. In some cases, the franchisor may claim ownership of all customer data related to the franchise business, particularly if the franchisor provides centralised customer management systems. However, franchisees may retain ownership of locally generated

customer lists unless the contract specifies otherwise.

Goodwill:

Local goodwill generated by the franchisee's efforts may be considered part of the franchisee's business, but the franchisor often retains the right to take over the goodwill upon termination, particularly if the franchisee has been operating under the franchisor's brand.

Franchisees should carefully review the contract's provisions on the transfer of intangible assets upon termination to understand their rights and obligations.

23. Is there a national franchising association? Is membership required? If not, is membership commercially advisable? What are the additional obligations of the national franchising association?

Yes, Germany has a national franchising association, the **German Franchise Association (Deutscher Franchiseverband, DFV)**. Membership in the DFV is not legally required, but it is highly recommended for franchisors as it provides a mark of credibility and adherence to best practices in the franchising industry.

Benefits of DFV Membership:

- **Legal and regulatory advice:** The DFV provides members with access to legal advice and updates on changes in franchise law and regulation.
- **Networking opportunities:** Members benefit from networking events and workshops that allow franchisors to exchange knowledge and experiences.
- **Code of Conduct:** Members are required to adhere to the DFV's **Code of Conduct**, which promotes fairness, transparency, and ethical behaviour in franchising relationships.

While membership is voluntary, franchisors that are DFV members often enjoy increased credibility in the eyes of potential franchisees and are more likely to attract high-quality franchise partners.

24. Are foreign franchisors treated differently to domestic franchisors? Does national law/regulation impose any debt/equity restrictions? Are there any restrictions on the

capital structure of a company incorporated in your country with a foreign parent (thin capitalisation rules)?

Foreign franchisors are generally subject to the same legal and regulatory requirements as domestic franchisors in Germany. However, foreign franchisors must comply with additional **tax and legal obligations** related to cross-border operations, particularly when it comes to **royalty payments** and **withholding tax**.

Key Considerations for Foreign Franchisors:

1. **Withholding Tax:** As previously mentioned, royalties paid to foreign franchisors may be subject to withholding tax, unless a **double taxation agreement** provides for a reduction or exemption.
2. **Thin Capitalisation Rules:** Foreign franchisors establishing subsidiaries in Germany must comply with **thin capitalisation rules**, which restrict the amount of debt that can be allocated to a German subsidiary. These rules are designed to prevent companies from avoiding taxes by excessively leveraging their German operations.
3. **Compliance with German Law:** Foreign franchisors must ensure that their franchise agreements comply with **German contract law, competition law, and data protection regulations**.

There are no specific debt/equity restrictions imposed on foreign franchisors beyond the standard rules that apply to all businesses operating in Germany. However, foreign franchisors should seek legal and tax advice to ensure compliance with local regulations.

25. Must the franchise agreement be governed by local law?

There is no mandatory requirement for franchise agreements to be governed by German law. The parties are generally free to choose the **governing law** of their contract, provided that the choice does not infringe on mandatory provisions of **German public policy** or **European Union law**.

Governing Law Considerations:

- **German Law:** If the franchise business operates predominantly in Germany, it is often advisable to apply **German law** to the franchise agreement to ensure that the contract is

enforceable in German courts.

- **Foreign Law:** If the franchisor is based outside of Germany, the parties may choose the law of the franchisor's home country as the governing law. However, if the franchise operates within Germany, certain **mandatory German laws** (such as competition law and consumer protection law) will still apply, even if the contract is governed by foreign law.

Franchisors should carefully consider the implications of the choice of law in their franchise agreements, particularly when operating in multiple jurisdictions.

26. What dispute resolution procedures are available to franchisors and franchisees? Are there any advantages to out of court procedures such as arbitration, in particular if the franchise agreement is subject to a foreign governing law?

Arbitration is particularly popular in franchise agreements due to its confidentiality and flexibility.

Advantages of Arbitration:

1. **Confidentiality:** Arbitration proceedings are private, which can be beneficial for franchisors looking to protect sensitive business information.
2. **Expert Arbitrators:** The parties can choose arbitrators with specific expertise in franchise law or the relevant industry.
3. **Enforceability:** Arbitral awards are generally easier to enforce internationally than court judgments, thanks to the **New York Convention** on the Recognition and Enforcement of Foreign Arbitral Awards.

Mediation:

Mediation offers a more collaborative approach to dispute resolution, where an impartial mediator helps the parties reach a mutually acceptable solution. Mediation can be less adversarial and more cost-effective than litigation or arbitration.

Franchisors should include **dispute resolution clauses** in their franchise agreements that specify the preferred method of resolving disputes, including whether disputes will be resolved by arbitration, mediation, or litigation.

27. Must the franchise agreement and disclosure

documents be in the local language?

There is no legal requirement for franchise agreements and disclosure documents to be in **German**, but it is generally advisable to draft them in the local language, especially when the franchisee is based in Germany. Providing the agreement in **German** ensures that both parties fully understand the terms and reduces the risk of misunderstandings or legal disputes.

If the franchise agreement is drafted in a foreign language, it may be necessary to provide a **certified translation** for use in German courts, particularly if the franchisee does not have a strong command of the foreign language. This ensures that the franchisee cannot later claim they did not understand the contract's terms.

28. Is it possible to sign the franchise agreement using an electronic signature (rather than a wet ink signature)?

Yes, electronic signatures are legally recognised in Germany under the **eIDAS Regulation (Regulation (EU) No 910/2014)**, which establishes a framework for the use of electronic signatures across the European Union. Electronic signatures are valid and enforceable for franchise agreements, provided they meet the technical requirements of **qualified electronic signatures (QES)**, which offer the highest level of security and legal certainty.

Types of Electronic Signatures:

- **Simple Electronic Signature:** A basic electronic signature that may be appropriate for low-risk contracts.
- **Advanced Electronic Signature:** Offers higher security and can be used for contracts where a greater degree of certainty is required.
- **Qualified Electronic Signature (QES):** The most secure form of electronic signature, which has the same legal standing as a handwritten signature.

Franchisors should ensure that the electronic signature solution they use complies with the **eIDAS Regulation** and meets the technical standards required for the franchise agreement.

29. Do you foresee any significant commercial or legal developments that might impact on franchise relationships over the next year or so?

Several commercial and legal developments could impact franchise relationships in Germany in the coming year:

1. Digitalisation and E-commerce:

The continued growth of e-commerce and the digitalisation of business processes will significantly impact franchising. Franchisors and franchisees must adapt to evolving **e-commerce regulations**, including competition law restrictions on online sales and the use of third-party platforms. The increased focus on **omnichannel strategies** (combining online and offline sales) may lead to changes in the franchise model, requiring updated franchise agreements to reflect new revenue-sharing arrangements and online sales policies.

2. Sustainability and Environmental Regulations:

There is growing regulatory and consumer pressure for businesses to adopt more **sustainable practices**. Franchisors may need to update their franchise systems to comply with new **environmental regulations** and sustainability standards. This could involve implementing **green supply chains**, reducing carbon emissions, and using sustainable materials. Franchise agreements may need to include provisions related to compliance with sustainability targets.

3. Data Protection:

The increasing emphasis on **data protection** and

compliance with GDPR will continue to impact franchise relationships, especially for businesses involved in e-commerce or online marketing. Franchisors must ensure that franchisees are fully compliant with data protection laws and that customer data is processed in a GDPR-compliant manner. Any changes to data protection rules, particularly regarding cross-border data transfers, may require updates to franchise agreements.

4. Post-Brexit Considerations:

Franchisors operating between the UK and Germany will need to navigate the **post-Brexit legal landscape**, particularly in relation to **cross-border trade, taxation, and data protection**. Franchise agreements may need to be updated to reflect the new legal framework, including potential **customs duties** and **regulatory divergences** between the UK and the EU.

5. Franchisee Protection Initiatives:

There is an ongoing debate in some EU member states, including Germany, about increasing **franchisee protections** through legislation. Potential reforms could introduce additional disclosure requirements, stricter termination rules, and enhanced franchisee rights in cases of contract renewal or non-renewal. Franchisors should monitor these developments and be prepared to adapt their franchise systems to comply with any new regulations.

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