

Franchise Agreements

In most franchise agreements the following considerations will be relevant.

- The nature and extent of any business system to be implemented by the franchisor - information to be provided by the franchisor and the extent of secrecy obligations pertaining to this information
- The franchisor's obligations in terms of maintenance and improvement of the franchise system.
- The term of the franchise agreement and whether it is adequate for the franchisee to recoup investment.
- The details of any further term offered to the franchisee - the conditions the franchisee is to meet prior to any further term.
- Territorial rights - does the franchisee have an exclusive right to carry out the franchised business in a given territory or should the franchisee expect competition from other franchisees.
- The location and manner of selecting premises - provision for relocation.
- The provision of goods or services to the franchisee - minimum inventory requirements.
- Performance criteria.
- Training arrangements (and the costs of training).
- Advertising publicity - funding and responsibility.
- Commitment - whether the franchisee is allowed to carry on any other business for the duration of the franchise agreement and if so, whether there are restrictions on such activity.
- Competition - whether the franchisee is permitted to operate a similar business when the franchise agreement ends - if not, the nature and extent of any restraint.
- The nature and basis of up front and ongoing fees to be paid to the franchisor.
- Accounting requirements and the treatment of receipts.
- Assistance to be provided by the franchisor if required by the franchisee (and the costs of such assistance).
- Information to be provided by the franchisee in the course of the franchise agreement.
- The grant of an appropriate licence to the franchisee to use the franchisor's intellectual property in the conduct of the franchised business.
- Provision for loss or damage arising in the conduct of the franchised business - the nature and extent of any indemnity to be granted by the franchisee - insurance policies to be maintained by the franchisee.

- The basis, procedure and consequences of termination of the franchise agreement.
- The manner in which the franchise agreement can be varied.
- Financing to be offered to the franchisee.
- Leasing or licensing of the premises in which the franchise will operate, and fitout obligations and costs.
- The franchisor's requirements on the sale of the franchised business (such as a first right of refusal in favour of the franchisor).
- Dispute resolution.

Where can I get help?

There are many complicated issues related to franchising. Because of this the Franchising Code of Conduct makes it compulsory for a franchisee to get proper professional advice before signing any franchise agreement.

We can:

- draft and advise on franchise documents; and
- act in disputes regarding franchises

For further information, contact:

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