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Covering all bases

The need for a solid franchise agreement

The franchise agreement and manual are essential components for any business format franchise.

From the franchisor’s perspective, they:

- authorise the franchisee to operate the franchise business;
- license the brand, intellectual property and know-how necessary for carrying on the business;
- detail the franchisee’s obligations and objectives;
- determine the duration and renewal rights; and
- detail the franchisor’s rights.

From the franchisee’s point of view, they grant the necessary rights and licences for the franchisee to conduct the business, and set out the parameters within which the franchisee must operate the franchise. Key provisions include:

Licence of rights – The franchisor will grant the franchisee certain permissions and rights to use the franchisor’s brand name and trade mark(s) and the body of information, comprising copyright, know-how, methodologies, trade secrets and confidential information, needed to operate the franchise.

Rights and obligations - All franchisees must operate in a consistent fashion, to ensure uniformity of standards and delivery of products and services, and the franchise agreement is designed to ensure such consistency. This is why franchisors are reticent to agree modifications to their agreement.

Payments – Initial franchisee fees, recurrent or on-going royalties and training fees must be made promptly. Late payment normally entitles the franchisor to terminate the agreement.

To be viable, a franchise needs to provide sufficient returns for both franchisor and franchisee.

‘Step in’ rights – These enable the franchisor to take over an ailing franchise where the franchisee is unable to perform its obligations (e.g. through illness, breach of contract or insolvency).

Re-sale right – This allows the franchisee to resell the franchise. The franchisee usually reserves the right to buy back the franchise at the price an independent purchaser is willing to pay. If the franchisor does not exercise its option, any incoming franchisee must be approved by the franchisor. The franchisee usually bears the franchisor’s legal costs.

Term and Termination – Franchise agreements are usually granted for fixed periods with a renewal option subject to certain conditions.

They provide for termination for non-payment or other material breaches, for insolvency, change of control or for bringing the other party into disrepute.

Restrictions - usually be included to prevent the franchisee setting up a competing business and/or poaching customers and staff. These require extremely careful drafting if they are to be enforceable.

Given the importance of the franchise agreement, it should be prepared by specialist solicitors, preferably those with expertise in franchising and, ideally, by one who is a bfa (British Franchise Association) affiliate.

Banks and other lenders will require franchisees to have the franchise agreement reviewed and reported on by a specialist franchise solicitor.

The Rawlison Butler LLP franchise team can assist you with preparing and reviewing franchise agreements and franchise manuals in addition to providing more general advice on franchising.

For further information visit www.rawlisonbutler.com or email Mark at moshea@rawlisonbutler.com

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