



Franchise Agreements

Introduction

The current economic climate has led many to explore new ways of establishing and expanding business and Franchises have proven to be an attractive method of achieving this. For those wishing to set up their own business, the backing of an established name and business model provides support whereas those looking to expand their business have the advantage of increasing the goodwill and share of the market place without making a personal capital outlay.

For many wanting to enter into a Franchise Agreement, the documentation and legal considerations can be overwhelming. This bulletin seeks to highlight the elements of a Franchise Agreement and the elements that need to be considered.

The Documents

Franchise Agreements consist of two parts:

1. The Agreement
2. The Side Letter

The Agreement is unchangeable and therefore the use of Side Letters or ancillary agreements confirming and altering facts relating to the Agreement has become important.

What the Agreement should deal with?

Any franchising Agreement should deal with the following points;

1. The Terms of the Agreement

- The parties
- Term of the Franchise
- Terms of payment
- Rights granted to the Franchisee
- Rights retained by the Franchisor
- Duties and obligations
- Territory
- Any exclusivity
- Training

2. The Franchisors Intellectual Property Rights

This includes the Trademarks, Goodwill and Confidentiality of trade secrets and Copyright.

The Franchisor will want to ensure that their brand is protected and that they retain the rights to their intellectual property whilst the Franchisee will want the right to use the Franchisors intellectual property for the term of the Franchise whilst protecting the goodwill associated with it from third parties.

3. Rules and procedures

It is important to ensure that the Agreement deals with both the day to day rules and procedure of the Franchise such as when payments should be made to the Franchisor but also with the worst-case scenario. Any Rights to renew and the procedure to follow should be clearly laid out as well as any rights to terminate the Agreement. The Agreement will deal with the basic foundations of the Franchise. For instance the Franchisee's obligations to the Franchisor will refer to a side letter that states specific targets that are to be met.

The Agreement will not be altered. Instead, any matters that might require changing or updating should be contained within the side letter.



What will The Side Letter deal with?

The side letter is often known as a manual or as an ancillary agreement and may include:

- The exact sums to be paid to the Franchisor
- Targets and agreed service levels
- Modifications, layouts and alterations for any premises that form part of the Franchise
- Advertising
- Guarantees
- Bonds
- A Definition Agreement

Whilst the Franchise agreement itself cannot be varied, the side letters or ancillary agreement can be. The formality of these agreements will depend upon the Franchise itself. For instance, Government Franchises tend to be more formal than those granted by a small company to a sole trader.

The side letters often deal with the details of the Franchise's operation and whilst they do not include the legal framework for the Franchise they are integral to the running of the business. These will be the specifics agreed between the parties and will often involve elements that maybe liable for change such as the Franchise's uniform policy.

Law Governing the Agreement

There is no specific English legislation that governs Franchises and their Agreements. Therefore it is important that both parties understand and are in agreement over the Terms of the Franchise. Under the Law of England and Wales, Franchise Agreements will fall within the general law of Contract and therefore the Principle of "Buyer beware" applies.

The European Federation of Franchises has issued a Code of Ethical Conduct providing guidance as to the minimum requirements for a Franchise Agreement and all Franchises that are members of the British Franchise Association are required to adhere to the Code.

It is particularly important when the Franchisor is a foreign national or company that any issues concerning jurisdiction and the law governing the contract are resolved and formalised in the Agreement.

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Disclaimer

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