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# FRANCHISOR'S GUIDE

**AN INFORMATION PACKAGE FOR THOSE CONSIDERING  
ESTABLISHING A FRANCHISE SYSTEM**

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PURPOSE OF THIS GUIDE

This is a guide for those considering using their business model to establish a franchise system.

It seeks to cover many of the issues that need to be considered. It is not intended to be exhaustive and prospective franchisors are recommended to obtain professional advice from advisors and experts in this area.

## 1. THE FRANCHISE BUSINESS MODEL

Franchising is not a business itself, but a way of doing business. It is essentially a means of marketing and distributing goods and services. It is also an extremely successful and rapidly growing aspect of Australia's small business sector.

### **Definition of “Franchise Agreement”**

The term “*franchise agreement*” is defined in the Franchising Code of Conduct (“the Code”). If an arrangement meets this definition, the Code applies regardless of the name the parties decide to give their arrangement. For more information about the Code, see sections 4 and 5 of this guide. The definition is set out below:

- (1) A **franchise agreement** is an agreement:
  - (a) that takes the form, in whole or part, of any of the following:
    - (i) a written agreement;
    - (ii) an oral agreement;
    - (iii) an implied agreement; and
  - (b) in which a person (**the franchisor**) grants to another person (**the franchisee**) the right to carry on the business of offering, supplying or distributing goods or services in Australia under a system or marketing plan substantially determined, controlled or suggested by the franchisor or an associate of the franchisor; and
  - (c) under which the operation of the business will be substantially or materially associated with a trade mark, advertising or a commercial symbol:
    - (i) owned, used or licensed by the franchisor or an associate of the franchisor; or
    - (ii) specified by the franchisor or an associate of the franchisor; and
  - (d) under which, before starting business or continuing the business, the franchisee must pay or agree to pay to the franchisor or an associate of the franchisor an amount including, for example:
    - (i) an initial capital investment fee; or
    - (ii) a payment for goods or services; or
    - (iii) a fee based on a percentage of gross or net income whether or not called a royalty or franchise service fee; or
    - (iv) a training fee or training school fee;
 but excluding:
    - (v) payment for goods and services at or below their usual wholesale price; or
    - (vi) repayment by the franchisee of a loan from the franchisor; or
    - (vii) payment of the usual wholesale price for goods taken on consignment; or
    - (viii) payment of market value for purchase or lease of real property, fixtures, equipment or supplies needed to start business or to continue business under the franchise agreement.
- (2) For subclause (1), each of the following is taken to be a franchise agreement:
  - (a) transfer, renewal or extension of a franchise agreement;
  - (b) a motor vehicle dealership agreement.
- (3) However, any of the following does not in itself constitute a franchise agreement:

- (a) an employer and employee relationship;
- (b) a partnership relationship;
- (c) a landlord and tenant relationship;
- (d) a mortgagor and mortgagee relationship;
- (e) a lender and borrower relationship;
- (f) the relationship between the members of a cooperative that is registered, incorporated or formed under any of the following laws:
  - (i) *Co-operatives Act 1992* of New South Wales;
  - (ii) **Co-operatives Act 1996** of Victoria;
  - (iii) *Cooperatives Act 1997* of Queensland;
  - (iv) *Co-operative and Provident Societies Act 1903* of Western Australia;
  - (v) *Co-operatives Act 1997* of South Australia;
  - (vi) *Co-operative Industrial Societies Act 1928* of Tasmania;
  - (vii) *Co-operative Societies Act 1939* of the Australian Capital Territory;
  - (viii) *Co-operatives Act 1997* of the Northern Territory;
  - (ix) the Corporations Law.



Essentially a franchise typically involves the grant by one party, (the franchisor) to another party (the franchisee) the right to carry on a business under a particular name or trade mark according to an identified system, usually within the territory or at a location and for an agreed term.

### Types of Franchises

The word "franchising" is used to describe several different business relationships.

The most well-known type of franchise is the **Business Format Franchise** where the franchisor uses a network of franchisees to market a service or product under a common name and standardised system. Examples include franchise systems like McDonalds, Boost Juice or 7-Eleven, In this type of franchise, the franchisor offers a comprehensive system for operating the business and permits the franchisee to use the full system, including the brand, manuals, procedures, marketing programs, quality assurance systems, and the franchisor provides training and support services to franchisees. Standardisation, consistency and uniformity across all aspects of the chain are hallmarks of such franchises. This business format is the main focus of this Guide.

Other types of arrangements also may fall within the definition of "franchise agreement" under the Code. These include:

-  **Licensing or Manufacturing Franchise:** This type of arrangement involves the franchisor granting a licensee the right to use certain technology or "know how" to manufacture and distribute the franchisor's product. Unlike a business format franchise, the rights only extend to the licence of technology, designs, formulations or other intellectual property, not to a business model. This is common in the information technology industry, soft drink, cosmetics and automotive industries.
-  **Dealer Relationship:** Under this arrangement franchisees may be granted the right to distribute a manufacturer's product within a specified territory or at a specific location, generally with the use of the manufacturer's identifying name or trademark, in exchange for fees or royalties. A prime example is in the motor vehicle industry, mobile phones (eg Telstra shops) and business equipment stores. These relationships are clearly caught by the Code.

- ☞ **Distributorship:** This type of arrangement involves the franchisee acting as a wholesaler of the franchisor's products within a defined territory. This is only likely to be a franchise if it carries with it the right to use a trade mark or name. This is found in instances such as petrol, food services, confectionery, computer software and building industries.
- ☞ **Agency Arrangements:** This type of arrangement can involve wholesaling or retailing, often within an identified territory. Agents provide products and services on behalf of the franchisor to the franchisor's customers. Examples include post offices, the TAB, banks and car rental companies. These arrangements may or may not fall within the definition of a Franchise Agreement under the Code.

### **The Advantages of Franchising**

Franchising is a rapidly growing aspect of the Australian small business sector because of its many advantages for Franchisors, including:

- ☞ Access to the resources of individual franchisees, thereby reducing the capital commitment of the franchisor;
- ☞ Easier, more rapid market penetration;
- ☞ Development of a stronger market;
- ☞ Ability to share risk;
- ☞ Higher return on investment;
- ☞ Engagement of other highly motivated owner-operators;
- ☞ Ability to service marginal locations through franchisees who have local industry knowledge and access;
- ☞ Reduced middle management expenses;
- ☞ Increased marketing and buying power; and
- ☞ Ability to provide ongoing product and systems development.

## **2. WHAT TO CONSIDER BEFORE FRANCHISING A BUSINESS**

### **Basic Criteria**

Ask yourself the following questions:

- ☞ Is your existing business well established (at least two to three years of successful trading)?
- ☞ Is your existing business financially secure, and can it operate profitably after realistic management strategies?
- ☞ Do you have sufficient capital resources in order to fund the expense of establishing a franchise system?
- ☞ Are you experienced in the business and business management?
- ☞ Are you an effective communicator and have the ability to motivate other individuals and owner-operators?
- ☞ Are you willing to train, assist and support franchisees?
- ☞ Are you entrepreneurial and have a vision for the business including having formulated a detailed five year business plan;
- ☞ Are you prepared to become a member of the Franchise Council of Australia which gives the minimum requisite credibility and indicates an intention to operate compliantly within the Franchise Code of Conduct?
- ☞ Do you provide quality products and services which are well known and have an identifiable public image that is difficult to imitate?
- ☞ Do you have an ability to duplicate success and create profits?
- ☞ Do you have a professional management team?
- ☞ Does the business have standardized systems operations and procedures which enable the system to be easily implemented by others, and have you developed a detailed operations manual?

If you have answered "YES" to **ALL** of the above questions, franchising may be right for your business.

If you have answered "NO", consider what changes you might be able to implement to make your business more "franchisable".

### **Why a Franchise might not succeed**

Many franchise systems fail. If a franchise system does fail, it is generally because of one of the following reasons:

- ☞ The Franchisor's products or services were of poor quality and standard;
- ☞ The Franchisor's brand was not strong enough;
- ☞ The existing business had not been sufficiently developed and systemised;
- ☞ The Franchisor sought to expand without standardised systems or procedures;
- ☞ The Franchisor was under capitalized;
- ☞ The Franchisor did not have sufficient management and resources to support the franchisees in respect to training and ongoing development;

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- ⚡ The Franchisor was not able to deal with and communicate effectively with franchisees;  
or
- ⚡ The Franchisor charged too high a franchise fee whereby the franchisee feels unnecessarily driven and little reward.

### **3. BUSINESS PLANS**

Many business plans are limited to a 3-5 year profit and loss account with possibly a cash flow statement for a year or two in advance.

Before establishing a franchise system, you should have a much more comprehensive business plan.

#### **Benefits of a Broad Business Plan**

A proper business plan will:

- ☞ Help you to define the business model;
- ☞ Assist you in creating a franchise model and assist in production of procedure manuals, compliance manuals and assist your lawyers in preparing the relevant franchise documentation in compliance with the Trade Practices Act and the Code;
- ☞ Ensure that you obtain advice on the structuring of the business before you promote the system; and
- ☞ Allow you to consider possible protection of the good will and intellectual property aspects of the business (for example, by holding those assets being held in a separate company).

#### **A Comprehensive Business Plan**

Your business plan should include the following:

- ☞ Profit and loss projections for 5 years;
- ☞ Cash flow statement for the 5 years;
- ☞ An understanding of your products and/or services, that is:
  - Who your customers are;
  - What the potential industry trends are in the future;
  - The extent of differentiation of your product and/or services; and
  - Whether you can expand your product or service range by price and flexibility and/or competitive.

#### **Understanding your Market**

You should also consider the following:

- ☞ What is the size of the market in Australia?
- ☞ What is the size of the market in New Zealand and in other countries?
- ☞ How difficult is it to enter the market?
- ☞ Is there a market niche?
- ☞ What characteristics do you see your customers having?
- ☞ What are the market trends?
- ☞ What are the distribution methods?
- ☞ Are other more cost effective distribution methods available?

### **Competitors in the Industry**

Take into account your competitors. You should:

- ☞ Focus on competitor's strengths, weaknesses, opportunities and do a threats analysis;
- ☞ Analyse competitor's price, discounting, services, promotion, technology;
- ☞ How well established are your anticipated competitors?
- ☞ What reaction will you get from competitors?

### **Methodology**

Consider the methods you propose to use to manufacture your products or provide your services:

- ☞ What technologies are required and how advanced are they?
- ☞ What product servicing problems do you anticipate?
- ☞ What are the critical factors associated with production, servicing, manufacturing?
- ☞ How important are these factors?

### **Franchise Program**

Once your business plan has been comprehensively developed and you have considered the factors listed above, you can begin to develop your franchise program.

It is the quality of the franchise program and the strategy in its implementation that makes a successful franchise.

The franchise program should be aimed at producing the best financial outcome to the franchisor while providing a fair and reasonable return to the franchised owner operator having regard to the capital and time invested by the franchisee.

A franchising program must be planned and costed from a profit and cash flow position. You need to assess the viability of the business to be operated by the franchisee.

The franchisors that are seen to be successful and attract successful franchises are where the start-up costs are not prohibitive, the franchise fee is considered reasonable having regard to how well established the franchise system is and the support and training to be supplied.

All aspects of the franchise system must be established prior to system being marketed, including store layouts, sourcing of equipment, negotiating supply of products, training of staff, research and development of products and developing the operating systems and manuals.

Careful selection of franchisees is crucial. You must involve people who share the same passion and seek people with fresh ideas and energy.

### **Should I Franchise? A Case Study**

From one store in Adelaide to more than 120 stores Australia, and stores opening in a further 12 countries around the world – all in just eight years!

Boost Juice is an example of a business that is in an active and upbeat industry promoting health, positive energy and attracting loyal clientele. It offers a fresh, natural product, in the provision of a healthy alternative to traditional high fat, multi processed fast food.

This sector has a synchronicity with franchising due to reasonable start-up costs, trainable operations, modest labour intensity and excellent growth potential.

But it wasn't easy: the founders of Boost Juice spent nine months researching and negotiating before they opened their first store. They were fully involved in the development and management of that first store, right down to scrubbing the floors. It wasn't until the founder had opened five of her own stores and carefully developed a franchise program before she began offering franchises.

ince August 2001 has opened more than 189 company owned and franchise stores across Australia and in ten other countries, with many more planned.

### **An Alternative – Develop a Pilot Program**

Fully developing a franchise program can mean an initial outlay of significant costs. Instead, you could consider developing a pilot program. This involves;

- ☞ Testing the franchise system by engaging another operator, but without formerly entering into a franchise arrangement. This can be done by an agreement to supply product to another operator although at the same time enabling that operator to purchase product from other sources;
- ☞ Supplying standard product at a cost price and non-standard products at a small profit to enable the operator to establish themselves in the market;
- ☞ Allowing the operator to trade using their own entity under their own business name;
- ☞ Allowing the operator to hire the software to run the business on the basis that if they do not enter into a franchise agreement at a later date the software can be returned;
- ☞ Having the operator pay a deposit fully refundable at any time throughout the period should they decide not to continue;
- ☞ Agreeing not to receive any royalties whilst the pilot scheme is in place;
- ☞ Agreeing to provide all necessary support to the operator as if they were a franchisee, but for no fee; and
- ☞ Allowing the operator to market and promote the business;

A pilot scheme is not for everyone, as it can be difficult to control. The key is selecting the correct operator.

However, a pilot program could enable a company to "test the water" and establish procedures and systems and a compliance program which, provided the pilot program was successful, could then be taken out to the market place as a franchise model;

Effectively you provide the "pilot operator" with concessions as they are contributing to the establishment of the franchise system.

#### **4. COMPLIANCE AND FRANCHISING**

Franchising in Australia is regulated by the Trade Practices Act and other related legislation and regulations. In addition, since 1 July 1998, a mandatory Franchising Code of Conduct applies to all franchisors (as defined by the Code – see above).

The Code is administered by the Australian Competition and Consumer Commission (ACCC).

The Code provides for a number of clauses which act to protect franchisees, perhaps in recognition of the fact that the franchisor-franchisee relationship is skewed in favour of franchisors. This includes the following protective mechanisms:

- ☞ Mandatory disclosure of information from the franchisor, including financial details, directors' interests, franchisee list, and litigation information;
- ☞ Seven-day cooling-off period after signing the contract; and
- ☞ Recourse to mediation in the event of a dispute.

A copy of the Code, including the information to be included in a Disclosure Document, is attached to this guide, Note that a copy of the Code must be provided to each franchisee with a disclosure document by a franchisor.

Disclosure Documents need to be carefully prepared by an experienced franchising lawyer in order to ensure that the Franchisor makes all relevant and material disclosures in accordance with the Code.

The most recent amendments to the Code commence on 1 March 2008.

#### **Systems and Legal Compliance**

Legal compliance is now critical for franchisors having regard to:

- ☞ The *Trade Practices Act*, which imposes several onerous obligations on Franchisors, its Directors and Advisors;
- ☞ The mandatory *Franchising Code of Conduct*;
- ☞ *Occupational Health and Safety Acts*; and
- ☞ *Workplace Relations Act*.

Other industry's specific laws may also need to be considered depending on the type of franchise, for example those dealing with food need to comply with the *Food Act* and Regulations.

#### **Enforcement – The ACCC**

The ACCC can bring civil action against a Franchisor and prosecute its directors for breaches of the *Trade Practice Act*. The adverse publicity from an ACCC prosecution can be devastating to a Franchisor and its image in the market.

The ACCC is known to have an aggressive enforcement stance and have recently focused on the franchising sector. Recent cases include:

- ☞ Several franchisors who were found to have made misleading and deceptive representations to franchisees and prospective franchisees about the profitability of the system;

- ☛ A franchisor whose disclosure document was found to be ambiguous and potentially misleading, and a franchisor whose disclosure document was found to be incomplete and insufficient;
- ☛ A franchisor who did not provide franchisees with the safeguards provided under the Code, including failing to provide a disclosure document;
- ☛ A franchisor who was found to have issued notices to franchisees claiming that they had breached their franchise agreements that did not sufficiently describe the breach or the remedy required and did not give the franchisee a reasonable timeframe to remedy the breach;
- ☛ Several businesses that purported to offer a "licence" but which the ACCC found was actually a franchise, and as such that the franchisors were in breach of the Code;

The outcome of such investigations varies, but may include the franchisor having to give court enforceable undertakings, the franchisor having to refund franchise fees or provide compensation to the affected franchisees, and/or the franchisor having to undergo trade practices compliance training (at their cost).

Breaches of the anti-competitive conduct provisions of the Trade Practices Act can attract fines of up to \$2 million for corporations and breaches of the consumer protection provisions can attract fines of up to \$1.1 million.

Individuals such as directors, employees, agents and advisors of a corporation can also be fined if they are "involved in a contravention". Franchisees can also be implicated and can be prosecuted for being involved in contraventions.

### **Trade Practices Compliance**

Implementation of a Trade Practices compliance program is critical.

The existence of a comprehensive compliance program can aid in reducing franchisor's exposure to any prosecution and minimise potential penalties and also influence the enforcement action sought to be taken by the ACCC.

A proper compliance program will encourage and measure compliance and address non-compliance with sanctions as against franchisees.

The aim of the compliance program is to make those working within the system understand their obligations to minimise the risk of contravention.

Education and training is critical together with monitoring the implementation of policies and procedures.

You should refer to the Australian Standard on Compliance Programs (AS3806) which sets out guidelines for compliance programs developed by Standards Australia. This document describes a compliance program as an "important element in the corporate governance and due diligence of an organization" that should:

- ☛ Aim to prevent and where necessary identify and respond to breaches of laws, regulations, codes or organizational standards occurring in the organisation;
- ☛ Promote a culture of compliance within the organisation;
- ☛ Assist the organisation in remaining or becoming a good corporate citizen.

Your compliance program needs to address requirements for franchisees. Failure by a franchisee to comply prejudices enforceability of contracts, and adversely impacts on the franchise system.

## Key Elements

A thorough compliance program will:

- ☞ Identify the issues relevant to your business;
- ☞ Establish operating procedures for compliance. Requirements under the *Trade Practices Act* and the Code need to be integrated into the operations of the organisation on a daily basis;
- ☞ Implement a complaints handling procedure, which procedures should be part of the network;
- ☞ Have a program for maintaining records to ensure protection for franchisors, franchisees and its individuals; an
- ☞ Prepare up-to-date readable compliance manuals setting out a practical summary of the applicable *Trade Practices Act* provisions.

## Key Provisions to Consider

The following provisions of the *Trade Practices Act* are especially relevant to franchisors:

- ☞ *Misleading and deceptive conduct:* Under section 52 of the *Trade Practices Act*, a corporation must not engage in misleading and deceptive conduct in trade of commerce. While this applies to franchisors and franchisees in their everyday business (e.g. in advertising, pricing, labeling, etc), provision also prohibits franchisors from using misrepresentations (such as exaggerated earnings information) to induce franchisees from entering into a franchise agreement. From 1 March 2008 under clause 16 of the Code, franchisors will be prohibited from including a waiver of representations in the franchise agreement.
- ☞ *Unconscionable conduct:* Under section 51AC a corporation must not engage in unconscionable conduct. These provisions prevent franchisors from dealing with franchisees in a way that they know to be harsh or oppressive in the circumstances.
- ☞ *No litigation:* A clause in a franchise agreement that tries to prevent the franchisee from commencing litigation in the event of a dispute, or which attempts to limit the liability of the franchisor is prohibited by the Code.
- ☞ *Restraints of trade:* A restraint of trade provision is often included in a franchise agreement to prevent the franchisee from competing with the franchisor after the agreement has ended. These provisions are only enforceable to the extent they are reasonable, so need to be carefully drafted.
- ☞ *Pyramid Selling:* Section 65AAC makes this method of distribution illegal.
- ☞ *Price fixing:* Under sections 45A and 45C prevent franchisees from agree to fix the prices of their goods and services. Co-operative advertising by franchisees must also be considered carefully under section 45A.
- ☞ *Third Line Forcing:* Section 47 prevent franchisors from stipulating which third parties their franchisees must use to acquire goods or services. A franchisor may impose quality standards on franchisees and can nominate preferred supplies who meet those standards, but a franchisor cannot prevent a franchisee from acquiring goods or services from an alternative supplier who meets the franchisor's quality standards. Frequently agreements provide that the franchisor's consent to purchases but will not be unreasonably withheld provided the specifications and quality standards are met.
- ☞ *Exclusive dealing:* Section 47 may also prevent a franchisor from requiring a franchisee to take stock solely supplied by the franchisor. Known as "mandatory warehousing", this may be prohibited if the conduct substantially lessens competition in the market. It can

also be a breach of the unconscionable conduct provisions of the Act where the requirement is not in place to protect the legitimate interests of the Franchisor and if the Franchisee can establish they obtain similar standard goods and services at a lower price elsewhere.

- 🔄 *Re-Sale Price Maintenance:* Section 48 prohibits the franchisor from specifying a minimum price at which franchisees can sell their goods and services. This does not prevent franchisors from specifying a recommended price as long as that price is only a recommendation.

Officers of a Franchisor company may be personally liable for the conduct of the company under the *Trade Practices Act* and *Corporations Act* – see Section 75B, Section 80 and 82 of the Trade Practices Act and Part 5.7B of the Corporations Law.

## **5. DISCLOSURE DOCUMENT – CHECKLIST**

The following is a summary of the requirements for the Disclosure Document to be prepared by a Franchisor to give to prospective franchisees.

Note that this summary follows the form of Annexure 1 of the Disclosure Document contained in the Trade Practices (Industries Codes – Franchising) Regulations 1998 updated to 1 March 2008.

### **1. First Page**

The first page of the Disclosure Document must include:

- 1.1. The Franchisor's name, ABN, and details and the date of the document was prepared;
- 1.2. A prescribed statement which explains some of the Franchisee's rights; and
- 1.3. The signature of a director or other authorised officer of the Franchisor.

### **2. Franchisor's Details**

This section must include:

- 2.1. The name under which it carries on its business;
- 2.2. A description of the kind of business;
- 2.3. The registered office of business;
- 2.4. The principal place of business;
- 2.5. The name and address of each associate of the Franchisor; and
- 2.6. The name, position and qualifications of each director and other officers of the Franchisor.

### **3. Business Experience over the last 10 years**

The Franchisor must outline:

- 3.1. The experience of each person other than the executive officer;
- 3.2. The relevant business experience of the Franchisor in the last 10 years including:
  - 3.2.1. Experience in operating similar business;
  - 3.2.2. Experience in other similar franchises; and
  - 3.2.3. Whether the franchisor has offered franchises for other businesses.

### **4. Litigation**

The Franchisor must provide details of:

- 4.1. Current proceedings (if any) against the Franchisor or a director of the Franchisor; and
- 4.2. Whether the Franchisor or any of its directors:
  - 4.2.1. Have been convicted of a serious offence in the last 10 years;
  - 4.2.2. Have been subject to final judgment in civil proceedings in the last 5 years; or

- 4.2.3. Have been bankrupt, insolvent or under administration in the last 10 years;

Note: specific details are required to be disclosed.

## **5. Payments to Agents**

If the Franchisor pays introduction or other agency fees to a third part to assist in the recruitment of Franchisees, they must provide the name of the person or entity to whom the payment is made.

## **6. Existing Franchises**

The Franchisor must provide:

- 6.1. The number of existing franchised business, Franchisees and franchisor-operated business, sorted by State, Territory or region;
- 6.2. Details of all existing Franchisees, including the business address, phone number and year when the franchise commenced (unless there are more than 50 franchises, in which case only details for the State, Territory or region in which the franchise is to be operated need to be provided);
- 6.3. Figures for each of past three years for each of the following events:
  - 6.3.1. A franchise is transferred
  - 6.3.2. A franchise ceases to operate;
  - 6.3.3. A franchise agreement is terminated by the Franchisor;
  - 6.3.4. A franchise agreement is terminated by a Franchisee;
  - 6.3.5. A franchise agreement is not renewed; and
  - 6.3.6. A franchise business was bought back by Franchisor.
- 6.4. Contact details for each of the past Franchisees for the events listed above.

## **7. Intellectual Property**

The Franchisor must list details of any trade marks, patents, designs, or copyright that is material to the franchise system.

## **8. Franchise of site or territory**

This section must give details of

- 8.1. Whether the Franchisee will have an exclusive or non-exclusive territory; and
- 8.2. If there is a territory:
  - 8.2.1. Whether the Franchisor or another Franchisee can operate a business that is substantially the same in that territory;
  - 8.2.2. Whether the Franchisee can operate a business that is substantially the same outside the territory; and
  - 8.2.3. Whether the territory can be changed.

## **9. Supply of goods or services to a Franchisee**

The Franchisor must provide details of its requirements for the supply of goods and services to the Franchisee, such as:

- 9.1. Requirements to maintain a level of inventory;
- 9.2. Restrictions on acquiring goods and services from other sources; and

9.3. Return and refund conditions.

#### **10. Supply of goods or services by a Franchisee**

The Franchisor must provide details of restrictions on the supply of goods and services by a Franchisee.

#### **11. Sites or Territories**

The Franchisor must provide:

11.1. Its policy on site and territory selection;

11.2. A separate document outlining the details of whether the particular site or territory has been subject to a previous franchise.

#### **12. Marketing and other co-operative funds**

If the Franchisor has a marketing fund which Franchisees must contribute to, the Franchisor must provide details of that fund including who contributes to the fund, how much, who controls the fund and its expenses for the past year.

#### **13. Payments**

The Franchisor must give details of all payments to be made by the Franchisee under the Franchise Agreement, including:

13.1. "*Prepayments*" – that is, monies to be paid by a Franchisee prior to the Agreement being signed (including conditions of refundable and non-refundable amounts);

13.2. "*Establishment Costs*" – that is, all costs at the start of a franchised business, including:

13.2.1. Property;

13.2.2. Equipment, fixtures and assets, including construction costs;

13.2.3. Inventory;

13.2.4. Security deposits;

13.2.5. Business licenses and insurances; and

13.2.6. Other prepaid expenses and working capital required.

Note: a range of upper or lower limits can be supplied.

13.3. "*Other Payments*" – that is, any other recurring or isolated payments payable, such as periodic franchise royalties, marketing fund fees and transfer fees.

#### **14. Financing**

If the Franchisor offers financing arrangement to Franchisees, details must be provided, including any conditions.

#### **15. Franchisor's Obligations**

The Disclosure Document must give references to the particular conditions of the Franchise Agreement that deal with the obligations of the Franchisor, such as training and ongoing support.

#### **16. Franchisee's Obligations**

The Disclosure Document must give references to the particular conditions of Franchise Agreement that deal with the obligations of the Franchisee, including:

16.1. Site selection;

- 16.2. Requirements for starting the business;
- 16.3. Development of site and premises;
- 16.4. Vehicles and equipment;
- 16.5. Training before and during business,
- 16.6. Complying with standards or operating manuals;
- 16.7. Warranties and customer service;
- 16.8. Territorial development and minimum performance criteria;
- 16.9. Maintenance and appearance of premises;
- 16.10. Insurances;
- 16.11. Marketing;
- 16.12. Indemnities and guarantees;
- 16.13. Participation requirements for the Franchisee and its officers;
- 16.14. Records and reports; and
- 16.15. Inspections and audit.

**17. Summary of other conditions of Agreement**

The Disclosure Document must give references to other conditions of the Franchise Agreement, such as the term of the Agreement, renewal, termination, assignment, mediation, options, inspect, records and the operations manual.

**18. Obligations to sign related Agreements**

The Franchisor is to:

- 18.1. Provide a summary of any other agreements the Franchisee will need to enter, such as leases, chattel leases, financing arrangements, confidentiality agreements, restraint of trade, security agreements, loan agreements or bank guarantees; and
- 18.2. Provide a copy of these other agreements to the Franchisor as soon as available (preferably at least 14 days before the Franchise Agreement is signed).

**19. Earnings information**

The Franchisor may provide information to the Franchisee about earnings in this section:

- 19.1. If any earnings information is given, it must be based on reasonable grounds (can be in separate document and can be historical or future information);
- 19.2. If provided, projected or forecasted earnings information must include certain details; and
- 19.3. If earnings information is not given, the following statement must appear:

*The Franchisor does not give earnings information about a (insert type of franchise) franchise.*

*Earnings may vary between franchises.*

*The Franchisor cannot estimate earnings for a particular franchise.*

**20. Financial details**

The Franchisor must give a statement which states that it believes it is solvent and provide its financial reports for the last two completed financial years.

**21. Updates**

Certain information (in clause 18 of the Code) must be provided to Franchisees that may have occurred since the Disclosure Document was last updated. If such information is required, it can be included in this section rather than the Franchisor having to update the whole document.

**22. Other relevant disclosure information**

The Disclosure Document must:

- 22.1. Have attached a copy of the proposed Franchise Agreement;
- 22.2. Have attached a copy of the Code;
- 22.3. Include any other information the Franchisor wishes to give in this section.

**23. Receipt**

This section includes:

- 23.1. An acknowledgement for the Franchisee to sign to state that they have received the Disclosure Document; and
- 23.2. A statement that the Franchisee may keep the Disclosure Document.

## **6. CONTACT INFORMATION**

For Specialist Franchising Legal Advice contact **Wisewould Mahony Lawyers:**



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