

Franchising.

Understanding the legal aspects

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Facts & figures.



710,000

People employed in franchising



£17.2 bn

Turnover generated



48,600

Franchised units in the UK

18% of all franchisees
are under 30

93% franchisees claim
profitability

source: Natwest Franchise Report 2018

Franchising Law.

Is there such a thing as “Franchising Law”?

Unlike many other countries worldwide, Franchising is not regulated in the UK. Instead it is governed by the following:

- General Commercial Law (e.g. Contract, Corporate, Property and IP)
- Specific Acts of Parliament (e.g. Trading Schemes Act 1996)
- European and UK Competition Law (e.g. on price fixing and vertical agreements)
- Court Judgements
- The European Code of Ethics for Franchising
- British Franchise Association Guidance
- Best Practice!!

Legal requirements.

- **Franchise Documents:**
 - Confidentiality/Non Disclosure Agreements
 - Deposit Agreements
 - Franchise Agreements
 - Side Letter?
- **Trade Mark Registration**
 - Trademark License agreement
- **Operations Manual**
 - Closely linked to the Franchise Agreement

Relationship.

Key terms

- **Rights Granted**

- What is the Franchisee allowed to do?

- **Fees**

- Initial Fee
- Management Services Fee
- Product/Service Fees
- National Marketing Contribution

- **Term**

- How long will the relationship last?
- Franchisee's Right of Renewal
- Territory
- Where can the Franchisee operate from?
Exclusive Territory?

- **Targets**

- Will the Franchisee be required to meet any minimum performance targets?

Obligations.

Franchisor

- **Initial Obligations**
 - Provide Initial Training
 - Provide Start-up Package/Equipment
 - Supply an Operations Manual (on loan)
 - Assist with Set-up
- **Ongoing Obligations**
 - Ongoing Training and development
 - Updates to Operations Manual/Procedures
 - Supply products/services to the Franchisee
 - Provide a Helpline/Support for enquiries
 - Provide Annual Conference/Regional Meetings (at Franchisor discretion)

Obligations.

Franchisee

- Supply Products & Services to Customers
- Recruit, Train and Supervise Employees
- Locate Premises (and take the lease of the premises, if appropriate)
- Vehicles (buy/lease suitable vehicle)
- Intellectual Property, Internet and Social Media (comply with brand guidelines)
- Accounting & reporting Requirements
- **COMPLY WITH THE OPERATIONS MANUAL!**

Franchisee's right to sell.

- Franchisor's prior consent is required
- Payment of Costs (legal/training)
- Commission on introduction of a Purchaser
- Right of First Refusal – Franchisor can buy the business back (at market rate)

Death/Incapacity of the franchisee.

- Right of a family member (acceptable to Franchisor) to step-in
- Right of the family to find a purchaser (acceptable to Franchisor)
- Buy back/Termination

Termination.

- One-sided – normally allowing only Franchisors to terminate. Some common grounds for termination might be:
 - Failing to pay sums due
 - Material or repeated breach of the Franchise Agreement
 - Providing false or misleading information to the Franchisor
 - Damaging the Brand
 - Failing to obtain Franchisor consent (buying from non-approved suppliers)
 - Bankruptcy
 - Suspending (or threatening to suspend) business
- Franchisee's common law right to terminate if the Franchisor is in breach of the agreement

Termination.

Consequences

- Franchisor's right to recover loss (including loss of anticipated earnings)
- Franchisee ceases to trade and ceases use of all Intellectual Property
- Abide by Restrictive Covenants (including "Connected Persons"):
 - Non-compete provisions (in the Territory)
 - Non-solicitation of employees/suppliers
 - Non-solicitation of customers

General Clauses.

- Individual's Guarantee and Covenants
- Indemnity by Franchisee
- Acknowledgements
 - No rights to the System
 - No guarantee or warranty provided by Franchisor
 - Exercising own personal judgement following legal advice
- Entire agreement
- Alternative Dispute Resolution
 - Informal meeting
 - Mediation
 - Arbitration (BFA Arbitration Scheme)
- Governing Law

Role of the BFA.



- Trade Body for Franchising in the UK
- Only source of governance for franchising
- Courts have deemed their guidance useful in determining cases
- Why use BFA accredited advisors?
 - BFA accreditation helps you to find genuine expertise

Franchising.

Clients & experience



Jenny Parkham



Driven to deliver

Questions?

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