

Omissions from the Franchise Agreement from a Franchisee's Perspective

There are many important issues to consider when taking on a franchise e.g. financing the purchase and raising working capital, getting up to speed with the franchisor's system, finding premises and staff etc but one of the most important issues to consider is the franchise agreement itself.

The agreement you will be asked to sign usually won't be given to you until late on in the recruitment process when you are being pushed to sign up quickly to secure training dates and territories but you should make sure that you take sufficient time to read and understand its provisions before you sign up. This is because once you have signed the franchise agreement you will normally be bound to the franchise for a minimum period for five years but with little ability to get out of the agreement. That makes it very important to have the agreement checked by a suitably experienced franchising solicitor so that you are aware of your rights and obligations. You should also ensure that you read through the agreement yourself and identify those areas of concern to you in order to discuss these with your solicitor and the franchisor.

However, you should also identify what hasn't been included in the agreement as these can be as much of an issue for you as the provisions that the agreement does contain. Some of the most common omissions that should be noted on your checklist of points to raise with your solicitor and/or the franchisor include:

- No details of registered trade marks for the brand under which the franchise trades. You need to be sure that the brand you're buying into is protected, as your trade and goodwill rely on the identity being protected from competitors.
- No right to renew the agreement after the expiry of the initial term. You should be allowed to renew the agreement at least once. If not, consider if the initial fee is justified for potentially only a five year trading opportunity. You should also note that you may only be given one right of renewal, therefore, you will only be able to run the business for possibly ten years before having to hand it back to the franchisor.
- No right to source comparable products from a third party where you can obtain them at a lower price. If you aren't required to use brand name or specialist products in your franchise (and possibly even where you are so required), the franchisor shouldn't stop you buying elsewhere if you can find products cheaper. That helps keep costs down for you, which should lead to greater profit for you and more fees for the franchisor.
- No right to your own website or web presence. The franchisor will want to control the look and feel of any website that you want to operate in order to maintain brand identity but you should be allowed your own website to attract customers for your franchise territory.
- No right to sell the business before the end of the term. This is usually the only way out of a franchise before the end of your term for a franchisee, therefore, if no provisions are included in your agreement you should be wary.
- No obligations on the franchisor to buy-back stock / equipment at a reasonable price on termination or expiry of the agreement. Your assets shouldn't be taken back at no cost by the franchisor or at an unjustified discount on their value.
- No right to a period of time to rectify defaults. If you fail to pay on time or don't submit information by the required date, you should be given time to rectify this before the franchisor is permitted to terminate your agreement. Some defaults will be sufficiently serious to justify the franchisor terminating your agreement immediately. However, many defaults can be rectified if time is given to the franchisee to do so.
- No right to talk to the British Franchise Association if things are going wrong (where the franchisor is a British Franchise Association member). You shouldn't be subject to any form of gagging order and should be allowed to discuss problems that you're having with your franchisor.
- Promises made by the franchisor during the recruitment process. Often the franchisor will say things during the process to encourage potential franchisees to sign up. However, these promises rarely, if ever, make their way into the franchise agreement. If you have given assurances e.g. about levels of marketing support or the right to work part-time in another business then you should make sure that these are addressed either in the agreement or in a side letter.