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Prospective franchisees should consider taking advice from professional advisors experienced in franchising

Making the decision to join a franchise network can be empowering and rewarding. The prospective franchisee will have considered the franchise offering, discussed the ins and outs of the business with the franchisor and, possibly, a selection of its franchisees, considered the territory within which it would like to operate its business and contemplated funding options. However there are also some risks involved. A franchise typically requires an upfront investment, together with ongoing payments throughout the term of the franchise agreement, and frequently precludes the franchisee from engaging in any other form of business or enterprise. Prospective franchisees should consider taking advice from appropriate professional advisors who are familiar with the industry and offer not only advice on the relevant documentation or procedures but also the benefit of their experience and knowledge of the franchise industry and its standards.

The franchise agreement governs the relationship between the franchisee and the franchisor and is, therefore, probably the most important document in the transaction process. A franchise agreement is a substantial document, often running to 40-60 pages (sometimes a good deal more) and is often for a period of five years (although it can run for longer). Typically a franchise agreement will contain a right to renew on broadly similar terms so, in effect, the agreement can remain in place for ten to fifteen (or more) years. Frequently, franchise agreements are expressed to be “non-negotiable” and this is often the case to ensure that all franchisees in a network are being treated consistently and fairly and operating under the same terms. Sometimes franchisors may allow limited variations to the standard form agreement.

It is important that franchisees understand what the franchise agreement contains in terms of their commitment, expenditure and obligations to the franchisor. Taking legal advice from specialist franchise solicitor should mean

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that franchisees get the right advice together with a better understanding of the franchise industry. Although franchises are commercial enterprises, the legal agreement and the industry standards are fairly unique and knowledge of both can prove invaluable in helping prospective franchisees save time and money.

Solicitors who are not familiar with the issues surrounding franchising may suggest changes to the franchise agreement or seek to negotiate concessions with the franchisor to what they consider to be unreasonable terms. Although some provisions of a franchise agreement may appear one-sided or onerous, these may be perfectly normal for the industry and a solicitor experienced in franchising will be able to advise accordingly. Franchise solicitors will make certain that prospective franchisees realise and understand the full obligations they are undertaking however they will not suggest unrealistic alterations to a standard form franchise agreement. Frequently when franchisees take advice from solicitors not experienced in franchising and go back to their franchisors with a long list of queries and possible variations to the agreement, the relationship with the franchisor, which might have been great up until that point, can become strained and argumentative.

Often franchise solicitors will offer a fixed fee reviewing service rather than charging an hourly rate. This involves the solicitor reviewing the franchise agreement and producing a comprehensive written report which highlights the rights, duties and obligations of the franchisee. It should also note anything in the contract which is unusual or missing. If anything needs to be clarified, this will be highlighted by the solicitor and in the rare circumstances where variations to the franchise agreement are necessary and permitted by the franchisor, the solicitor will be able to advise on the best way to handle this with the franchisor and, if appropriate, will suggest some wording for a simple side letter to the franchise agreement.

Prospective franchisees should also consider the legal status of their trading entity. Will they be a sole trader, partnership, limited company etc? This is

important for a couple of reasons. Firstly, franchise agreements are often drafted in either sole trader/partnership form or corporate form and there are differences between the two which need to be considered. It is also important for the franchisee to take legal advice on a franchise agreement that properly reflects its legal status. If a franchisee begins as a sole trader but later decides that a limited company would be a better vehicle through which to operate its business, it will usually require the approval and consent of the franchisor. If consent is granted the franchisor will usually issue the franchisee with a new franchise agreement in the appropriate form. This normally requires the principals of the new franchisee company to guarantee their company's performance of its obligations to the franchisor. Often franchisees are required to pay the legal and administrative costs of the franchisor in this situation so it is recommended that prospective franchisees consider how they will operate their franchise and discuss this with the franchisor at the outset. Franchise solicitors will be able to discuss the options and implications with prospective franchisees.

There are several solicitors experienced in franchising and many are affiliated and accredited by the British Franchise Association (bfa) details of which can be found on the BFA's website, www.thebfa.org/members/affiliates/legal-advisors.

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