

NEIL
MYERSON
LLP

SOLICITORS

Guide to Franchising

The Cottages
Regent Road
Altrincham
Cheshire
WA14 1RX

T (0161) 941 4000

F (0161) 941 4411

E lawyers@neilmyerson.co.uk

W www.neilmyerson.co.uk



Neil Myerson LLP – Guide to Franchising

This document is intended to provide general information only and does not constitute advice
Please contact us if you require advice or assistance on any specific legal matter

Franchising - A golden opportunity or one to be avoided?

McDonalds, Starbucks and Subway have outlets all over the world. These outlets are usually franchises. Franchising can be a cost and time effective way to expand your business and open new outlets as those costs and the time involved are borne by another (the "Franchisee"). The Franchisee will pay you (the "Franchisor") for the right to use your business knowledge, model, name and intellectual property, and by operating the franchise will grow your business presence and reputation.

This article highlights some of the main points to consider when deciding whether to franchise your business.

What are your business requirements? Is franchising the solution or would an alternative arrangement be more suitable?

Franchising is sometimes used to describe a variety of business arrangements from a mere licence to agency agreements. You should identify what you are trying to achieve. Different agreements create different rights and obligations on the parties to them.

Franchising usually grants a licence to the Franchisee to use the Franchisor's business format, know-how and intellectual property to operate a business under the Franchisor's trade name.

Agency arrangements permit the agent to act on your behalf to either market your business and introduce new customers or to enter into contracts directly with your customers on your behalf.

A licence simply grants specific limited rights to a third party.

Do you have something to franchise?

Having a successful business does not mean that multiple outlets will be successful. You should research the market carefully and run a pilot scheme before granting numerous franchises. You should consider the shelf life of your business as most franchises are granted for five to ten years.

Do you have the time and the resources to franchise?

Franchising part of your business is separate to the day to day operations of your business. Usually the Franchisor has the following minimum obligations:

Training - to provide initial training to the Franchisee on the grant of a new franchise and, depending on the nature of the franchise, ongoing training may also be required.

Marketing – although the Franchisee may be required to market their franchise locally, it is usual for the Franchisor to be responsible for the national marketing of its network of franchises.

Ongoing support and assistance – What attracts people to franchising is that the Franchisor provides guidance, support and assistance to Franchisees continually throughout the term of the agreement. The Franchisor will usually have been trading for some time before it decides to franchise and therefore will have invaluable experience on the potential pitfalls of operating a new business and more importantly, operating the franchised business.

What are you going to get out of it?

The grant of a franchise is usually conditional upon the Franchisee paying an initial one off fee to the Franchisor for the right to operate the franchise. The amount of the initial fee varies considerably from franchise to franchise. There is also sometimes a separate fee to cover the costs of the initial training that the Franchisor provides to the Franchisee, although this can be incorporated into the initial fee.

The Franchisee will usually be required to pay ongoing fees for advertising and support and assistance given by the Franchisor during the term of the franchise agreement. These fees tend to be based on percentages of the annual or monthly gross revenue generated by the Franchisee in operating the franchise and are usually payable to the Franchisor on a monthly basis. The advertising fee is used to cover the costs incurred by the Franchisor in marketing and advertising its network of franchises nationally.

Do you have all the paperwork in place?

Generally the following documents are necessary:

Manual – this is basically an a-z of your business. It should contain all the information that is required by the Franchisee to set up and run your business.

Trade Marks – you need to consider whether you are going to register any trade name or marks. The Franchisee is buying into your reputation, branding and goodwill associated with your products and/or services as well as your knowledge. Therefore you need to make sure your business assets are protected.

Legal documentation – at the very least you will need a franchise agreement to set out the terms upon which you are prepared to grant a franchise.

Other documents may include:

a business sale agreement, confidentiality agreement, intellectual property licences and property leases/licences.

And finally...

Franchising is not a method of reviving a company that is failing financially. Franchising requires dedication by both the Franchisor and the Franchisee. Selecting the right person to be a franchisee is paramount. You should have rigorous selection criteria in place as they are representing your business.

Franchising might be the golden opportunity your business has been waiting for. However, the above is not an exhaustive list of the considerations and issues with franchising but is designed to give you an idea of some of the points to consider if you are looking to franchise your business.

Contacts

If you have any queries please do not hesitate to contact a member of our dedicated team:

Akeel Latif T 0161 941 4000
E akeel.latif@neilmyerson.co.uk

Carla Murray T 0161 941 4000
E carla.murray@neilmyerson.co.uk

Carl Newton T 0161 941 4000
E carl.newton@neilmyerson.co.uk