



Fraser Brown
SOLICITORS

October 2008 **AGREE TO YOUR FRANCHISE WITH YOUR EYES OPEN**

In previous economic downturns franchising has flourished as people use redundancy as an opportunity to invest in an established business and become their own boss. Many of these people will have no experience of setting up and running their own business so need to ensure they know exactly what they are entering into before signing on the dotted line.

Robin Wright, a solicitor at Fraser Brown in Nottingham advises Franchisees start by scrutinising the Franchise Agreement at the outset. “Reviewing the Franchise Agreement with your solicitor needs to be a priority, particularly if this is the first time you’ve run your own business. Together you will be able to ensure that you and the Franchisor are happy with the terms of the agreement and that there is profit and flexibility built in for both of you. The earlier you do this the better as in my experience Franchisors are more receptive to amendments and requests early on.”

Robin advises on the top ten points Franchisees should be aware of when going through their agreement:

- 1. Do your research** - Visit and check out other Franchisees, and not just those that are offered to you who will inevitably be the success stories, but also find those that may be doing less well so you get a true picture of the Franchise. It is also worth checking that the Franchise is approved by the

British Franchise Association and clearing banks as this gives it more credibility.

2. **Registration** - Check whether the trademarks for the business are actually registered. It is not unheard of for trade marks not to be registered and /or to be owned by others which could reduce the value of the franchise.
3. **Purchasing goods** - Are you obliged to buy all materials you are selling from the Franchisor or from approved suppliers? Franchisors often want control over materials used but this can mean you pay more for the goods.
4. **Advertising** - Becoming part of a national brand may mean that you have to contribute towards their advertising. If this is the case find out whether you can have any control over where this is spent.
5. **Operating restrictions** - Ensure you check the operations manual as this vital document tells you exactly how you must run the business. This may not allow much flexibility and may be changed by the Franchisor at any time so you need to ensure you are comfortable operating under these restrictions.
6. **Mark your territory** - If you are entering into a sales franchise you need to know whether people from other territories will be allowed to sell on your patch. Does the Franchisor reserve the right to have “house accounts”.
7. **Training** - Your initial investment in the franchise should include your training to get you up and running. However additional training may come at a cost which will be outlined in the agreement.
8. **Minimum performance** - It is quite reasonable for a Franchisor to stipulate a minimum performance level since it has granted franchises to people to exploit the market and if you don't do very well it hurts them as well as

you. You need to be sure that you think the minimum performance targets are achievable.

9. **Obligations** - Carefully read yours and the Franchisor's obligations and ensure you keep an eye on the progress of these as the business develops. As well as making sure you get everything you need from the Franchisor it is vital you understand exactly what is expected of you.
10. **Ending the business** - If for some reason you or the Franchisor need to end the business, depending on the circumstances you need to ensure you're protected
 - Protection against liquidation- Every business comes with risk and you need to bear in mind what will happen to your investment should the Franchisor go into liquidation.
 - Death or incapacity - If this happens the Franchisor will usually want to keep the business going and take over, whatever the views of your family may be. This may also incur a management fee.
 - Grounds for termination - Check the scope the Franchisor has within the agreement to terminate the business or take it over without paying for it.
 - Future business restrictions - There will probably be restrictions regarding your business activities during and after the agreement which are perfectly normal, but be aware of the implications of these should you decide to leave the business. You may want to set up near to the existing franchise territory doing approximately the same thing. This will probably be prohibited and so is not an easy option.
 - Sale of Business - Check the Franchisor's position if you decide to sell the franchise. It is fairly common practice for franchises to have clauses in place so they can take a proportion of the price on the sale and they may also be able to delay a potential sale.

Every franchise agreement is individual and can be a very complex contract which is why it is essential to go through it in detail with a specialist solicitor who can interpret it for you and alert you to any potential issues or areas you need to be aware of at the outset.

For more information about Fraser Brown's franchise services, visit

www.fraserbrown.co.uk, telephone 0115 9 888 777