

Franchise Agreement Checklist

*While a franchise agreement is a critical document and should be carefully reviewed by a lawyer before it is signed, a franchisee should remember that:

1. The balance of power is usually significantly in favor of the franchisor and, therefore, so are the terms and conditions of most franchise agreements;
2. Not even the best franchise agreement offers absolute protection to a franchisee against an unscrupulous franchisor;
3. In the event of a dispute between a franchisor and a franchisee, most franchisors have a lot more time and money than franchisees to fight a protracted court battle.

So, a franchise agreement cannot and should not take the place of detailed and thorough due diligence by the franchisee before entering into the franchise agreement.

Term/Renewal

- Initial term how long? 5years? 10 years?
- Right to Renew? How long? 5 years? 10 years? Additional Fee Required? Can franchisor amend franchise agreement, royalties and other terms and conditions on renewal?

Territory

- Exclusive or non-exclusive
- Clearly defined
- Right of first refusal for adjoining territories

Franchise Fees/Royalties

- What percentage?
- Definition of "sales".
- When payable?
- Advertising or other fees? Is franchisee required to contribute to a national advertising campaign? Will advertising be conducted in territory? Does franchisee have to spend a minimum amount per annum on local advertising? Does franchisee require franchisor's approval with respect to advertising?

Manual/System

- Strict compliance with system, the franchisor's specifications and the operating manual.
- Standards in dealing with public.
- Sale of products and provision of services specified by franchisor.
- Purchase of inventory, supplies and equipment from the franchisor or franchisor-approved suppliers.
- Requirement to use the franchisor's trade marks and logos on all products.
- Hours of operation.
- Maintaining the condition of the premises and all equipment at a specified standard.
- No alteration of business premises without franchisor's consent.
- Participation in promotion initiated by Franchisor.
- Requirement to refurbish premises from time to time.
- Is principal required to work full time in business?
- Minimum levels of working capital and/or inventory.

Franchisor's Obligations

- Assistance in site selection.
- Assistance in construction of the business premises or construction of a turnkey operation.
- Initial training. On-going training. Who pays?

Site

- Does franchisee have to own business premises?
- Does franchisee have to lease business premises? Will franchisee hold head lease or will franchisor hold head lease and franchisee sublease from franchisor?

Accounting

- Reports, records, financial statements and audits. How often must reports be submitted? Does franchisor have full access to franchisees books?
- Is franchisee obliged to purchase uniform software? What is the cost?

Non-Competition/Confidentiality

- Both during and after termination of franchise agreement.
- For how long after franchise agreement terminated?
- In what territory?
- Non solicitation of employees of the franchisor, the franchisee or other franchisees.

Trademarks

- Franchisor absolute owner of trade marks.
- Franchisee obliged to prominently display trade marks of the franchisor and use franchisor's signage.
- Franchisee must report infringements of trademarks to franchisor.

Personal Guarantee/Security

- Required? For how long?
- Is guarantee capped?
- Is spouse obliged to sign guarantee?
- Security required? General Security Agreement over all assets of the franchised business? Mortgage on home? Letter of Credit?

Insurance and Indemnity

- Types of insurance franchisee required to obtain.
- Franchisor approval of insurance.
- Franchisor to be named as an insured.
- Copies of insurance to be given to the franchisor.
- Franchisee to indemnify franchisor with respect to the operation of the franchised business.

Death or Incapacitation of Franchisee

- Can franchised business be passed on to spouse, children or other heirs on death? If so, any fee to be paid or agreements to be signed?
- Does franchisor have right to buy back the franchised business? If so, at what price?

Sale and Assignment

- Franchisor can assign franchise agreement at any time.
- Franchisee can assign franchise agreement only with franchisor's consent. On what basis can franchisor withhold consent?
- Does franchisor have right of first refusal to purchase franchised business? At what price?
- Sale or assignment deemed to include transfer of control of corporate franchisee or change in partnership.
- Franchisee not permitted to mortgage or pledge assets or the franchise agreement without franchisor's consent.

Termination

- Events of default.
- Can franchise agreement be terminated immediately or is franchisor obliged to give notice of default and provide the franchisee with a reasonable period of time to remedy?
- Effect of termination.
- Franchisor's right to purchase franchise business on termination.

Miscellaneous

- Interest on overdue accounts.
- Non-withholding of payments and non-setoff.
- Notice. To whom? And how much?
- Applicable law?
- Are disputes to be arbitrated or mediated first?
- Four corners clause – entire agreement.
- Force majeure (include terrorism?)