

The Franchising Code of Conduct (“Code”)

Australia has specific federal legislation, by way of the Franchising Code of Conduct, prescribed under section 51AE of the Trade Practices Act, and which came into effect on 1 July 1998.

The Code applies to all agreements that have been entered into, renewed, or extended after 1 October 1998. Where any clause in an existing agreement is inconsistent with the Code, that clause is unenforceable.

The Code has rigorous disclosure requirements about the following.

- The franchisor's business and business experience.
- Any current litigation affecting the franchise, the franchisor or the franchisor's principals.
- Existing franchises and any sales, transfers or buy-backs.
- Intellectual property.
- The franchised territory.
- Supply requirements.
- Site selection.
- Marketing funds.
- Payments - establishment, royalty and others.
- Financing conditions.
- Franchisor's obligations.
- Franchisee's obligations.
- A summary of the conditions of the agreement.

Besides the franchise agreement there may be other documents involved in a franchise:

- A disclosure document (this is a requirement, and it is a regulatory requirement in Australia);
- Procedures Manuals containing the instructions to a franchisee on how the franchised business is to operate;
- Confidentiality agreements to be signed before a prospective franchisee has a look at the internal workings of a franchise system (otherwise there is a risk of the franchisee picking up the knowledge of the franchisor and instead of signing up for a franchise, starting up his own independent business);
- lease documents; and
- fit-out contracts.

Disclosure requirements

Before a franchise agreement is signed a franchisor must provide a "Disclosure Document" to a prospective franchisee.

Disclosure Document

There are two types of disclosure document:

- The Standard Disclosure Document - this is in Annexure 1 of the Code.
- The Short Form Disclosure Document - this is in Annexure 2 of the Code.

Make sure you talk to a lawyer about which document applies in your circumstances.

Some of the issues covered by these disclosure documents include:

- details about litigation;
- details of the exclusivity or non-exclusivity of territories;
- details of marketing and other combined funds, and their administration;
- establishment costs;
- a summary of the obligations of franchisee and franchisor etc.

Compulsory franchise conditions

The Code also lists various compulsory conditions. These cover:

- leases;
- franchisee associations;
- cooling off period;
- provision of Disclosure Documents;
- consent to transfer the franchised business;
- termination etc.

Where can I get help?

There are many complicated issues related to franchising. Because of this the Franchising Code of Conduct makes it compulsory for a franchisee to get proper professional advice before signing any franchise agreement.

We can:

- draft and advise on franchise documents; and
- act in disputes regarding franchises.

For further information, contact:

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