

LEGAL ASPECTS OF FRANCHISE DISCLOSURE REQUIREMENTS

Introduction – Franchise disclosure requirements apply when buying, extending, renewing or selling any Franchise. Parties, especially an incoming Franchisee, must be privy to all relevant information relating to the Franchise and know what they are buying. One key document contributing to a Franchisee making an informed decision based on accurate information is a Disclosure Statement.

Disclosure Requirement - A minimum level of disclosure is required by the Trade Practices (Industry Codes – Franchising Regulations 1988) (the “**Code**”). The disclosure of information to prospective and current Franchisees is a core requirement of the Code. The disclosure document is the most significant business information mechanism provided under the Code. The Code specifies what information must be provided when entering, renewing or extending a Franchise Agreement.

When must a Disclosure Statement be provided? - Franchisors must provide a Disclosure Statement to prospective Franchisees at least fourteen (14) days before the prospective Franchisee enters into a Franchise Agreement, or Agreement to enter a Franchise Agreement, or pay non-refundable money (whether of money or other consideration) to the Franchisor or Franchisor associate. A Franchisor must also provide a copy of a Disclosure Statement to a Franchisee at least fourteen (14) days before renewal or extension of the Franchise Agreement. Further, in certain circumstances, Franchisors must provide a Disclosure Statement to current Franchisees.

Contents of a Disclosure Statement - A Disclosure Statement generally contains the following: -

- Franchisor’s Details and Business Experience. Franchisors must provide details of the business (including its business experience, its business names, its associates and a statement that the business is solvent).
- Litigation. Past and present litigation. Generally for matters including fraud, dishonesty and breach of Franchise.
- Agent Payments. This requires disclosure of anyone receiving money in connection with the introduction or recruitment of the Franchisee.
- Existing Franchises. A list of existing Franchisees is to be provided.
- Intellectual Property. The Franchisor should describe and list its intellectual property and outline the conditions which restrict the use of intellectual property by Franchisees.
- Territory. Details of the franchise territory. This includes a statement relating to exclusivity.
- Goods and Services. Information about the supply of goods and services to the Franchisee and any supplier restrictions.
- Fees and Payments. Information about any Franchisee payments. This must include information about the marketing, advertising fees or other financial obligations requiring contributions.
- Obligations of Franchisor and Franchisee. These include the Franchisor’s obligations before and after the franchised business opens. The nature of the training to be provided by the Franchisor should also be outlined. The Franchisee’s obligations include site selection and acquisition, training before and during operating franchised business, compliance with standards, warranties and customer service, insurance, marketing indemnities, records and reports, inspections and audits.
- Franchise Agreement Conditions. Summary of the main conditions contained in the Franchise Agreement.
- Other Documents. Obligations to sign related agreements such as a lease for the premises of the franchised business, a Hire Purchase Agreement, a Security Agreement, a Confidentiality Agreement, an Agreement not to carry on business within an area or for a time after the Franchise Agreement is terminated

Waiver – There is no provision in the Code relating to waiving the fourteen (14) day period provided for the prospective Franchisee to read and understand the Franchisor’s Disclosure Statement. In our view, a party cannot provide for the prospective Franchisee to waive its rights to this period.



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Fee – In our view, Franchisors cannot charge a fee for providing the Disclosure Statement.

Remedies - The Code provides a mediation process between the parties if there is a dispute. Due to the time and cost involved, litigation should be seen as a last resort. Apart from contractual remedies available to both Franchisor and Franchisee, various provisions of the Trade Practices Act prescribe various remedies and list several offences.

Conclusion – Involvement with a Franchise is exciting yet inherently involves risk. The Code states that a Franchisee must be given an opportunity to seek legal and financial advice and it is in the best interests of all parties to comply with this suggestion. It is strongly recommended that Franchise advisers including accountants and lawyers are involved in the process, to ensure rights and obligations are respectively protected and honoured.

DISCLAIMER

This information sheet is a guide only and legal advice should be sought in individual circumstances. While every effort has been made to ensure the accuracy and appropriateness of the above information, neither MCP Group nor any of its officers, employees or agents accept any responsibility or liability for any loss occasioned by a person relying on the above information.