

FRANCHISING UPDATE

ISSUE 1, 8 APRIL 2009

FRANCHISING GROWTH & RISK

Franchising is one of the fastest growing business sectors in Australia. For example, Griffith University's Asia-Pacific Centre for Franchising Excellence produced a very thorough survey entitled Franchising Australia 2008 which noted among other things:

(a) the growth of franchisors in the franchising sector for the past ten years was as follows:

1998 693 franchisors	2002 700 franchisors	2006 960 franchisors
1999 708 franchisors	2004 850 franchisors	2008 1100 franchisors

(b) there are an estimated 71 400 units operating in business format franchises.

(c) more than 400 000 persons are employed in business format franchise organisations.

A business format franchise is one in which the whole business concept is licensed, including the name, appearance and method of carrying on the business. The Franchisor also typically offers training, guidance and advice to assist the franchisee. This type of franchise is adopted by many well known brands.

In tough economic times franchising can appear a safer option than perhaps acquiring a separate stand alone business, however, as with any business there is risks you need to consider.

To help protect the rights of franchisees and reduce risk, the Franchising Code of Conduct has been prescribed under the Trade Practices Act 1974 which sets out minimum obligations upon franchisors, for example as regards disclosure. The Australian Competition and Consumer Commission (ACCC) has the responsibility of enforcing the Code.

Although the Code regulates certain conduct of the franchisor and aspects which must be or not be included in a Franchise Agreement, for example, in relation to (a) cooling off periods (b) marketing funds (c) transfer of existing franchises (d) dispute resolution and (e) termination, the Code does not regulate every aspect of the franchisor – franchisee relationship.

Given a Franchise Agreement is a written document outlining the rights and obligations of both the franchisor and the franchisee and is a legal and binding contract, much care should be given to understanding its terms and conditions. The success or otherwise of your proposed franchised business could ultimately be decided by those terms and conditions.

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Another important aspect of risk minimisation includes ensuring you have properly considered structuring and estate planning. In our experience these are two (2) areas that potential franchisees do not place sufficient attention on. If these issues are not properly considered it can be a costly exercise to re-structure your business down the track. Further, without proper estate planning you can risk breaching a Franchise Agreement and either de-valuing your business or losing a business you may have built up over a long period of time if you become ill or die and either have not checked to see if the Franchise Agreement sufficiently deals with this scenario or you do not have trusted people in a position to continue on with the business.

Accordingly, we recommend you undertake all appropriate due diligence and seek appropriate professional advice from a business adviser and accountant as regards all financial, taxation and business considerations before entering into a Franchise Agreement.

Quinn & Scattini Lawyers have a successful track record of assisting franchisees in relation to the proposed acquisition and sale of franchised business, having assisted clients in respect of many well known brands. We can ensure you understand the terms and conditions of your proposed Franchise Agreement and have considered appropriate structuring issues. Please contact one of our franchising lawyers to receive appropriate franchising advice.

Please also see our separate Estate Planning Update for more information on this topic.

Raymond Duffy, Associate, Quinn & Scattini Lawyers

If you would like to ask any question about this or any other similar issue Raymond may be contacted on 5499 3622 between 8.00am to 5.30pm Monday to Friday or email rduffy@quinnscattini.com.au

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*In addition to Business services,
our team of experienced lawyers practise in Business Law, Commercial Litigation,
Property Law, Conveyancing, Criminal Law and Family Law.*

