

Staying Abreast of Franchising

The Franchising Code of Conduct applies to franchise agreements that were entered into, renewed or extended on or after 1 October 1998. By regulating the conduct of participants in franchising, it serves to assist and protect the franchisee and to guide the franchisor.

It imposes specific disclosure obligations upon the franchisor and thereby identifies which information the franchisee is entitled to in the process of franchising.

In August 2007, this complex industry code was amended by the *Trade Practices (Industry Codes – Franchising) Amendment Regulations 2007 (No.1)*. The impact of these amendments commence 1 March 2008 and will be far reaching.

What are the changes?

Some of the more significant changes that have resulted are;

- franchisors must provide the franchisee with all other agreements that must be signed as part of the franchise acquisition process 14 days before the signing of the franchise agreement.
- franchisors must now provide a copy of the franchise agreement to the franchisee in the exact form as it is to be executed and not in the form it may have been in when the original disclosure document was produced.
- directors of the franchisor must now make similar litigation disclosures as are required to be made by the franchisor.

The amendments have significant implications on participants in franchising agreements, for example;

- a franchisor will need to produce and use an amended form of disclosure document from 1 March 2008;
- a franchisor will need to produce a further disclosure document within four months of the end of the 2007/2008 financial year;

Previous to the amendments, overseas franchisors who granted only one master franchise in Australia were able to be exempt from the Code.

A very significant change has been the removal of this foreign franchising exemption. This removal carries implications for not only parties that engage in franchising agreements from 1 March 2008 onwards, but also on those who seek to renew or extend an existing foreign franchise.

Participants of franchising agreements must exercise special care and observance of the Code and its recent amendments when entering into, renewing or extending a franchise agreement.

Summary

Obtaining informed, accurate and timely legal advice about your duties and obligations when participating in franchising agreements is essential to avoiding unnecessary and potentially very costly time delay for your business.

Kreisson Legal is able to assist and provide advice to parties involved in or parties seeking to become involved in franchising agreements.

If you would like any further information on this topic, please contact Ishita Sethi, Solicitor on 9230 6514 or ishita.sethi@kreissonlegal.com.au



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