

Guide to: Franchises

If you are considering setting up your own business, a franchise model can offer an opportunity to do that with what can be a simple, ready-made solution. But what is a franchise?

The term “franchising” has been used to describe many different forms of business relationship, but the most common meaning of the phrase is used to describe business format franchising. According to the British Franchise Association, business format franchising is the granting of a licence by one person (the franchisor) to another (the franchisee), which entitles the franchisee to trade under the trademark/trade name of the franchisor. It will usually include an entire business package, comprising all the elements necessary to establish a previously untrained person in the business and run it with continual assistance on a predetermined basis.

A franchise in this sense will therefore normally involve the following features:

- The franchisor allows the franchisee to use the business name which is associated with the franchisor.
- The franchisor exercises continuing quality control over the franchisee to protect the franchisor’s brand.
- The franchisor provides assistance to the franchisee.
- The franchisee makes regular payments to the franchisor.

What are the advantages for a franchisor?

Where a business owner has created a successful business and brand, they may be considering ways to continue to grow their business. A traditional way of doing so would be to look at expanding through buying new sites and potentially employing a management team to oversee them but such an approach would generally involve a large capital expenditure. Whereas if the business is one which is suitable for a franchise model and is one that can be easily replicated by someone else in another location, franchising out offers an alternative way to grow your business potentially exponentially in what could be a fairly short period of time. While maintaining a successful franchise is not easy, the benefits can become quite substantial.

What are the advantages for a franchisee?

Setting up a new business can be daunting for most people and it’s not always easy working out everything that needs to be done and making sure that you have everything you need to make the business a success. Even the best-laid plans can go awry and stories about failed start-up businesses are not hard to find. If someone has already created a viable business with a strong brand, has a proven business model and is willing to share their business processes and procedures with you to create a successful business, then the proposition can clearly be quite appealing to someone looking to start a business. In 2018, NatWest and the British Franchise Association produced their most recent report on the UK franchise industry with 93% of franchisee-owned units reporting profitability which is an impressive statistic and one which demonstrates the attractiveness of a

franchise. While it is not a guaranteed method of success, it does potentially offer a way to avoid common mistakes which new business owners might make and offers a helping hand to get started.

Why do franchisors and franchisees need legal advice?

Whether you are a franchisor or franchisee, there are many areas where you might need to take legal advice. The key agreement which governs the relationship between the franchisor and franchisee is known as the franchise agreement and this is an important agreement for both parties. From the franchisor's point of view, having a robust franchise agreement ensures that the franchisee operates the business accordingly and does not damage their brand. It also allows them other ways to protect the value in the franchise e.g. personal guarantees, restrictive covenants and a franchise agreement needs to be carefully drafted to offer the maximum amount of protection.

From the franchisee's point of view, the franchise agreement will be heavily in the franchisor's favour and so having a solicitor provide a report of the terms can give them comfort about what they are agreeing to and whether it is normal practice. A new franchisee may also be entering into a lease for new premises and expert legal advice from a property solicitor is always recommended when committing to the long-term obligations of a property lease.

Other additional legal needs which may arise include the preparation of a Franchise Manual (a document which sets out the rules, procedures etc. to the franchisee), the management of any dispute which may arise between a franchisor or franchisee, employment law advice or the protection of intellectual property rights on behalf of the franchisor.

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