



What to do at the end of a franchise term

There are many matters that a franchisee must consider towards the end of the term of a franchise. Fundamentally, the franchisee will need to make a commercial decision. Do I wish to continue operating the franchise business? Would I prefer to sell the franchise business? If you need advice on Franchise Agreements or if you are thinking of selling or not continuing with your franchise, please contact Bill Morgan.

The relevant legal considerations for the franchisee will depend on the franchisee's commercial objectives. For example, one objective may be to avoid losing what has become a valuable asset as a result of the franchisee's efforts without any compensation from the franchisor. Another example, arises when the franchisee wishes to continue the franchise business.

There are several key legal questions that must be asked in assessing whether these commercial objectives can be achieved:

- * does the Franchise Agreement contain an option to renew the franchise;
- * if the Franchise Agreement contains an option to renew the franchise, how and when must the option be exercised;
- * if the Franchise Agreement does not contain an option to renew, has the franchisor complied with its obligations in relation to termination of the franchise pursuant to the Franchising Code of Conduct.

The above questions are also important to a franchisee who has a profitable franchise, but does not wish to continue to operate the franchise business. Such a franchisee may instead wish to sell the franchise business as a valuable asset before the expiry of the current term. If the franchise term is coming to an end and there is no option to renew the Franchise Agreement, the franchisee may find it has in reality no business to sell. If there is an option to renew the Franchise Agreement, but it has not yet been exercised, then the franchisee must decide whether to exercise the option so that it is able to sell the franchise business to a prospective purchaser who will have the benefit of the renewed term of the Franchise Agreement.



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By Commercial Litigation specialist Bill Morgan

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Franchisee risks

The franchisee needs to be aware of the risks of renewing the franchise term and not being able to sell the business. If the franchisee renews the franchise term and is unable to sell the business it will be liable to the franchisor for its obligations under the renewed Franchise Agreement.

There are a number of reasons why the franchisee may not be able to sell the franchise business. For example:

- * the Franchise Agreement may contain a term requiring the franchisee to first offer the franchise business to the franchisor. This is usually called a "right of first refusal". The franchisor may exercise its rights under this term and require the franchisee to sell the business to it. The problem that may arise in this circumstance is a dispute about the purchase price the franchisor is prepared to pay for the business. If this dispute is not resolved, or until it is resolved, the franchisee is left running a business it wishes to sell;
- * the franchisee may not be able to find a purchaser for the business even if it is profitable or may not be able to find a purchaser prepared to pay the price required by the franchisee. Until the franchisee finds a purchaser prepared to pay the price required by the franchisee, the franchisee will be forced to continue to run the business;
- * the franchisee may reach agreement with a purchaser for the sale of the business at a price acceptable to the franchisee but the franchisor may decide not to consent to the sale of the franchise to the prospective franchisee.

Franchise Agreements

Franchise Agreements usually contain a term that the consent of the franchisor is required before the franchisee can sell the franchise business to a prospective purchaser. If the franchisor exercises its rights under such a clause not to consent to the sale of the franchise to the prospective purchaser, then the franchisee will be left running a business it no longer wishes to run.

These issues show how important it is for a franchisee to seek legal advice as soon as possible before the end of the term of the current franchise. In many respects, it is as important to seek legal advice at this stage as it is to seek legal advice prior to entering into the Franchise Agreement in the first place.

Our franchise law expert



Bill Morgan

About Bill Morgan

Our franchising law practice is led by Bill Morgan, who has over 20 years experience in all facets of commercial litigation matters such as franchise disputes, consumer protection, contractual disputes, property disputes, insolvency and bankruptcy proceedings.

Bill has acted over a number of years in disputes between franchisors and franchisees of franchises including Michele's Patisserie, Pets Paradise, Frontline Recruitment, First Class Accounts, Cold Rock Ice Cream, Destiny Financial Services, Kleenit, Begin Bright, Yarra Valley Farms, Nutrition Station, Red Rock Noodle Bar, Home Icecream, Night Owl, Pizza Temptations, Express and Red Rooster. These disputes have been litigated in the Federal Court, Federal Circuit Court and State Courts or resolved through the mediation service provided by the Office of the Franchising Mediation Adviser. Bill is also a nationally accredited mediator and on the panel of mediators of the Office of the Franchising Mediation Adviser.

Bill's focus is to offer and deliver exceptional service to his clients that is highly effective and cost-competitive.

Bill has provided advice to franchisees considering purchasing franchises such as StellaRosa Espresso Bars, Michele's Patisserie, Pack & Send, John's Nuts, F45 Training and Jim's Cleaning. His advice deals with the legal and commercial risks and benefits of a prospective franchise agreement and assists franchisees to make relevant enquiries and seek key information before making a decision to acquire a franchise.

Call Today: 0473 667 426



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