Article Information

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When a franchisee sells – what franchisors need to look out for

As a franchisor, there are a number of pitfalls to look out for when a franchisee sells.

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*As a franchisor, there are a number of pitfalls to look out for when a franchisee sells. Some have always been there whilst others have arisen as a result of the introduction of the current Franchising Code of Conduct (**Code**) at the start of 2015. **Andrea Pane, Partner** discuss.*

Why is this important?

When you go to sell your business any potential buyer will do their due diligence to make sure that you have complied with the Code and that there is a "chain of title" for each and every franchised business, including where there has been a change in underlying ownership interests.

The ACCC are also watching closely to make sure franchisors are complying with the Code and have already issues fines to franchisors for failure to do so.

Changes in underlying ownership and guarantors

Like all businesses people come and go. Sometimes you may not even find out about it until after the person has left.

If there is to be any change in partners in a franchised business then, as franchisor, you need to –

- give an information statement to the person buying or taking the outgoing partner's interest as soon as you become aware
- give disclosure 14 days before the change takes effect **AND** documents are signed
- make sure the change is documented

This is the case even if –

- the person leaving only has a minor interest
- an existing partner is buying or taking the outgoing partner's interest
- there is no change in ownership, but a change in guarantors

Settlement

If the seller and buyer are ready to settle but the buyer has not had disclosure for 14 days, the seller and the buyer may want you to consent to settlement taking place before the 14 days has expired.

Before settlement can take place you must –

- give disclosure at least 14 days beforehand
- receive signed statements from the buyer and any guarantors stating whether they have or have not obtained independent legal, accounting and business advice
- receive the documents which you require signed by the seller and buyer and any guarantors

To avoid delays in settlement let the seller know as soon as possible –

- what is required of the seller and the buyer (eg. under the Code, the franchise agreement or otherwise). With any conditions outside the norm, make sure you have legitimate commercial reasons for these and where the buyer will

need to spend money make sure the costs are disclosed
- whether you want to buy the business. This will only apply if the franchise agreement contains a right of first refusal
- what amounts the seller and buyer need to pay and when eg. deposit on requesting consent, training fees, transfer fee and retention amount at settlement
- whether you will transfer the existing franchise agreement or have the buyer enter into a new franchise agreement. Typically you would only require the latter if there had been significant changes since the seller signed their franchise agreement or if the seller entered into their franchise agreement before the introduction of the current Code (otherwise you may need to vary the seller's franchise agreement on transfer to comply with the current Code)

Transfer Fee

Lastly, check the franchise agreement as to whether it provides for adjustments to the transfer fee (eg. annually in accordance with CPI) and make sure you request the adjusted amount and don't forget to include GST.

Should you have any questions please contact Andrea Pane.