

Acquiring a Franchise

Alem & Associates

Barristers & Solicitors

Why Franchising

So you have found a good franchise deal. The franchise related fees seem to be fair, the business plan and the brand are promising! I take the deal!

A prospective franchisee will most probably consider the pure commercial terms related to a franchise offer while taking a decision to invest in a new venture and the tendency is to relinquish other terms and conditions of the franchise agreement.

Indeed, the franchise agreement is often seen as a mere paperwork formality until the time the franchisee faces his first problem with the franchisor.

Instead of a simple formality, franchise agreements are the essence of franchisor-franchisees relationship. Franchise agreements will set the rights and obligations of the parties and the rules and methods related to the exercise of said rights and obligations.

It is true that the most of the terms and conditions of franchise agreements are non-negotiable, as they are often offered by the franchisors - especially by internationally well-known franchisors - as a "take it or leave it" deal.

However, and from 10 years of legal experience in preparing and negotiating franchise related agreement, I can say that in most of the cases there is always room for some negotiation. The franchisors will often accept to adapt the "negotiable" provisions of the franchise agreement to make the franchisee comfortable. This is commonly seen in area development and master franchise agreements negotiated in the Middle East.

No matter how opened for negotiations a franchisor is, it is very important that a franchisee understands the exact rights that he is acquiring and the "rules of the game" before making his decision to invest in a franchise venture.

A franchisee should understand all issues raised in the franchise agreement in order to better assess the quality of the franchise relationship, essentially:

- The legal status of franchisor's trademark registration in the territory
- The length of the franchise agreement (is it fair enough to allow me to recoup initial investments?)
- Provisions related to franchisee's right to renew the franchise agreement
- Provisions related to the sale of franchisee's business during the term of the franchise agreement
- Exclusivity rights and Territory
- Franchisor's obligations (especially those related to continuous assistance towards franchisee's operation)
- Provisions related to the termination of the franchise agreement
- Provisions related to franchisee's non-competition (similar or competitive business) upon termination or expiration of the franchise agreement.
- Calculation and payment of franchise related fees.

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A franchise relationship is a long term partnership between two independent entities and it must be founded in fair and reasonable legal arrangements aiming at a win-win situation for both, the franchisor and the franchisee.

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