



# Franchising

Franchising in the UK is now a £12.4 billion industry and its popularity as a business model continues to grow. In this briefing, we look at some of the factors which have driven this expansion and discuss some of the questions we are commonly asked about the legal aspects of franchising.

## Why is franchising growing?

Franchising offers a route to expansion without over-reaching when it comes to either finance (where the burden is shared with franchisees) or breaking into new markets (where franchisees offer local expertise). As a result, many businesses which did not start off using a franchise model have used it to achieve growth.

Examples include high street names such as Orange mobile phone stores (which have used franchising to expand beyond their existing network of non-franchised stores) and Mothercare/Early Learning Centre (which operates overseas through franchised outlets).

## A more mature marketplace

In the past, franchisees tended to be small players, often sole traders. However, more recently, there has been significant growth in the number of larger businesses which specialise in operating particular business formats. One example is the Moto motorway service station business, where travellers can shop at a range of retail outlets that they will recognise from the high street – operated under franchise by Moto.

nationwide scale. Multi-brand franchising involves franchisees looking to diversify so that they are no longer reliant on a single brand. Both these trends illustrate the increasing maturity and sophistication of the franchising market. They also mean that the options for franchisors are greatly expanded.

## I want to franchise internationally - what should I worry about?

Local legislation may give franchisees significant rights (especially relating to the availability of compensation to the franchisee on termination) which override the terms of the franchise agreement.

This should be fully investigated before making any significant commitments overseas; some businesses choose certain jurisdictions for franchise-based expansion over others because the local laws are more franchisor-friendly.

*“Franchisees outside the UK may have rights to significant payments following termination.”*

## Do I need to worry about competition law?

If the business only has a small market share, certain aspects of franchise arrangements that might otherwise fall foul of competition legislation (for example in relation to exclusivity) may be exempt. However, regardless of market shares, certain so-called "hard-core restrictions" in franchise arrangements can nonetheless amount to infringements of competition law.

### Key "hard-core restrictions"

The most relevant "hard-core restrictions" in a franchising context tend to be:

- minimum or fixed re-sale prices; and
- banning franchisees from making passive (unsolicited) sales outside an exclusive territory or customer group.

## Can I prevent ex-franchisees competing with new ones?

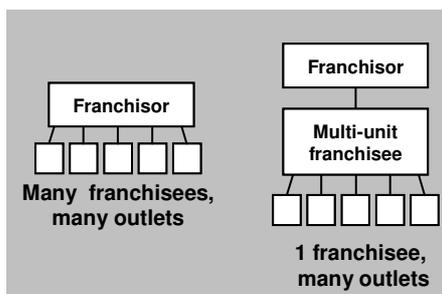
Franchisors are likely to have a considerable amount of know-how and expertise which would enable ex-franchisees to compete effectively with them after termination, so franchisors will invariably wish to prevent them from setting up "copycat businesses".

Depending on the nature of the franchise, it may well be possible to achieve some protection from this by imposing a post-term non-compete on the franchisee. However, any such non-compete will need to be for a relatively limited duration (e.g. one year) and appropriately limited in geographic application – otherwise it risks being unenforceable.

## What should I look out for when terminating a franchise?

As with all significant commercial agreements, it is important to ensure that the agreement is terminated lawfully – for example, by giving the right amount of notice or by ensuring that any breach is serious enough to justify termination.

Failure to do so may leave the relevant party exposed to a damages claim. It may also mean that, in the case of the franchisor, it cannot enforce post-termination non-compete provisions – even where they have been drafted so as to comply with competition law (see above).



Moto also illustrates two more recent trends – multi-unit and multi-brand franchising. Multi-unit franchising is where a franchisor appoints one franchisee to operate many outlets on a regional or

## *How we can help*

If you are weighing up options, we are always happy to talk informally about franchising generally and to act as a “sounding board”, even before being formally instructed. We act for both franchisors and franchisees. We have recently advised:

### **Moto Hospitality**

on franchising arrangements (as franchisee) with M&S Simply Food, Burger King, WH Smith and BP.

### **GaUCHO Grill**

on its Argentine steak restaurant franchise across the Middle East and a UK outlet for its Freddo ice cream franchise.

### **Select Service Partner (SSP)**

on the franchising of its Upper Crust and Caffè Ritazza brands, including outlets in India and the UAE, and its arrangements as franchisee with retailers including Starbucks and Burger King.

### **Baring Private Equity Partners**

on global licensing arrangements enabling independent private equity businesses to operate as franchisees under the Barings brand.

### *Top tier firm for franchising*

Legal 500 (2011)

### *Franchising Law Firm of the Year*

Finance Monthly Magazine (2011)



*“Travers Smith LLP’s dedicated franchising group is commended for its ‘consistently high standards’ and ‘good spirit and culture’.”*

Legal 500 (2011)

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