

KNOW BEFORE YOU GO...

Benefits and constraints of mobile franchises

Do not be fooled into believing that a mobile franchised business is simple.

There are certainly advantages of mobile franchises over franchises conducted from fixed premises, including the following:

- Since there are no premises, there are no leases, licences, rent or other obligations to a landlord.
- Overheads may be substantially lower because there are no premises.
- There may be no (or only a small number of) employees or contractors, reducing employment law obligations.
- The cost to purchase a mobile franchise, including the up-front franchise fees and the costs of purchasing a vehicle and other equipment, is usually a fraction of the establishment costs of a premises-based franchise.

However, there is more to a mobile franchise than meets the eye. In fact, many of the legal issues relevant to purchasing a premises-based franchise will apply equally to a mobile franchise, and some will be even more pertinent. Following are some of the key legal issues affecting mobile franchised businesses.

[Exclusive or non-exclusive territory](#)

Most mobile franchise systems grant a territory to their franchisees. It is very important that you understand the extent of the rights attached to your territory.

You may be granted rights to operate and market exclusively in a particular territory.

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Louise Wolf, Senior Associate,
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In this case, your main competitors are external to the franchise system. If your territory is non-exclusive, others are able to operate and market in the same territory and you will also be competing against your fellow franchisees.

Some franchise agreements purport to grant exclusive territories, but on closer reading, the agreement reserves rights of the franchisor to convert the territory to non-exclusive or to split or change the boundaries of the territory. For example, franchise agreements sometimes allow franchisors to appoint others to operate in a territory or to reduce the boundaries of the territory if the franchisee does not meet certain performance criteria, or if the franchisor ‘reasonably’ believes that the franchisee is not meeting customer demand.

Lead generation and allocation

Linked to the issue of exclusivity of territory is the issue of leads. It is important that you understand if and how leads are generated and allocated to you. You should ask the following questions:

- Does the franchise agreement require the franchisor to provide you with leads in your territory?
- Do leads come to a central location via a call centre or website?
- Are you required to meet certain criteria before being eligible to be sent leads? For example, do you pay a lead fee, irrespective of the quality of the lead and whether you were able to convert the lead into a paying customer?

- Is the process of allocation automated by reference to postcodes or does the franchisor decide?
- What happens if leads are allocated automatically on the basis of postcodes and the territory boundaries are not the same as the postcode boundaries?

Franchise agreements generally provide for the allocation of leads along the same lines and on the same conditions as exclusivity of the territory. In these cases, there may be circumstances under which you lose the right to be allocated any leads within your otherwise ‘exclusive’ territory.

If you have a non-exclusive territory and the franchisor allocates the leads, it is important to understand how leads are allocated between the various franchisees within the territory.

Quality of the territory

The quality of the territory is one of the most important issues for a prospective mobile franchisee to consider prior to signing a franchise agreement. You should review the franchisor’s disclosure document, which should detail the franchisor’s territory selection policy.

You may be told by the franchisor that your franchise territory consists of 15,000 households. This may be the case and may also sound like many prospective customers; however, unless the prospective franchisor has undertaken specific, in-depth research, they will not know whether they need 15,000 households or 150,000 households to build a successful business.

Prospective franchisees should ask the franchisor about the proven drivers for the business. These include:

- What type of people, households or businesses are likely to have a demand for the products or services being offered?
- How many of these potential customers will it take to provide the best opportunity to build a successful business?
- Most importantly, are there enough customers within the proposed territory?

Franchisors may have already undertaken such research. However, you should conduct your own enquiries. There are a number of organisations who specialise in providing demographic information and analysis who can assist would-be franchisees with information about their specific territory.

Franchisor representations about the quality of a territory can be a source of dispute and even litigation in the future, involving unwelcome cost, expense and trauma. These are all avoidable if a little information is sought from experts before a franchisee enters into a franchise agreement.

Issues arising from the new Australian Consumer Law (ACL)

The ACL came into effect on 1 January 2011. It has a number of implications for mobile franchisees who conduct visits to customers’ homes.

For example, if after receiving a lead from a franchisor, you are invited by a prospective customer to visit their home to provide a quote, the ACL provides that if, in the same

visit, you not only provide the quote but also take an order from the customer, the sale may be deemed to be an 'unsolicited sale'.

The ACL prescribes that quotations and order forms contain specific warnings on this point and if an order is deemed to be an unsolicited sale, a mandatory 'cooling off' period of 10 days applies. During this period, you are prohibited from delivering the goods or performing the services and cannot accept payment from the customer. Customers cannot waive the 'cooling off' period. Failure to comply with the ACL unsolicited sale requirements could see the 'cooling off' period extended for up to six months, and could entitle the customer to end the contract, reject the goods or services, and obtain a full refund.

A 10 day 'cooling off' period could be quite impractical for mobile franchisees, particularly mobile cleaning services which are often quoted and undertaken on the same day. One way to ensure that a visit to a customer's home does not become an unsolicited sale is to make it clear in the initial telephone discussion, or online form, that the purpose of the visit is two-fold. That is, to quote, and if the quote is acceptable to the customer, to take an order or perform the services, as the case may be. If the franchisor controls all leads and requires you to use printed quotation and order forms, you should query the franchisor as to whether they have been updated to take account of the provisions in the ACL. If you generate your own leads, you should also bear this in mind. Discussions along the lines of the above should be had by you each time you

make an appointment to visit a customer. You should also keep a written record of all your discussions with customers.

Preparing your business for sale

Legal issues relevant to the sale of a mobile franchised business are similar to those relevant to any other business. The sale contract may be simplified in so far as not needing to obtain landlord or mortgagee consent to transfer a lease, and there may be no (or only a few) employees to be employed by the purchaser.

However, there is one core issue that usually does not exist with a premises-based business. This is that the operator has become the main business asset, potentially making it difficult to encourage customers to transfer their business to the purchaser. This is often the case when the services provided require a high and/or unusual skill or knowledge, or where the relationship between the franchisee and each customer is critical. Although this is often perceived as desirable, a savvy purchaser will realise the operator is central to the business and will be less effective without that person.

If selling, you may wish to consider offering to continue working in the business for a time, or to provide assistance in addition to the training provided by the franchisor so as to maximise your sale price. You could also offer to spend time introducing the purchaser to your customers.

Having highly skilled employees who can be employed by the purchaser is another way of ensuring that you have a valuable asset to

sell. Alternatively, you could consider selling the business to such an employee, but this strategy requires time and forward planning.

Summary

As always, it is vital that would-be franchisees obtain qualified legal and accounting advice about a proposed purchase. In particular, potential mobile franchisees need to obtain advice from experts in demographics. If you find that you and your skills or knowledge have become the key element of your business, you need to plan ahead before attempting to sell your business in order to maximise your return.

A mobile franchised business may not be the 'simple' option you expected, but with the help of experienced advisors plus relevant information, you will be armed with the best tools to make appropriate business decisions.

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Mason Sier Turnbull is renowned for its franchising law expertise. Located in Melbourne's industry heartland, the firm has strong commercial law skills and provides clients with sensible business solutions.

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