

3.6 Checklist—conditions of a franchise agreement

What are the conditions of a franchise agreement?

The code prescribes a number of specific conditions for franchise agreements. These include provisions in relation to:

- **the cooling-off period**

The code provides that a prospective franchisee is entitled to a cooling-off period of seven days after entering into a **new** franchise agreement (not a renewal, extension or transfer) or making any payment under the agreement, whichever occurs earlier.

In the event that the franchisee terminates the agreement within the cooling-off period, you must fully refund all payments made by the franchisee under the agreement within 14 days.

However, you may deduct your reasonable expenses from the amount to be repaid if the expenses or their method of calculation have been set out in the agreement.

- **the association of franchisees and prospective franchisees**

You are prohibited from inducing franchisees or prospective franchisees not to:

- form an association or
- associate with other franchisees or prospective franchisees for a lawful purpose.⁶

- **the prohibition on general release from liability and waivers of representations**

A franchise agreement entered into on or after 1 July 1998 must not contain, or require a franchisee to sign, a statement that releases you from general liability towards the franchisee.

A franchise agreement entered into on or after 1 March 2008 also must not contain, or require a franchisee to sign, a waiver of any verbal or written representation made by you.

When can I transfer or novate a franchise agreement?

The code provides for the transfer or novation of a franchise agreement to a third party. A request to transfer or novate a franchise agreement must be put in writing to you, and you must not unreasonably withhold consent. Circumstances considered reasonable for refusing the transfer or novation of a franchise agreement include when:

- the proposed transferee is unlikely to be able to meet the financial obligations of the franchise agreement
- the proposed transferee does not meet a reasonable transfer requirement of the franchise agreement
- the proposed transferee does not meet your selection criteria
- agreement to the transfer or novation will have a significantly adverse effect on the franchise system
- the proposed transferee does not agree in writing to comply with the obligations of the franchisee under the franchise agreement
- the franchisee has breached the franchise agreement and has not remedied the breach.

⁶ It is unlawful for franchisees to meet and make a contract or arrangement, or arrive at an understanding, for the purpose of fixing, controlling or maintaining the price that they will charge for goods or services.

You will be taken to have consented to the transfer or novation if you do not object within 42 days of the written notice.

It is also important to note that, while you have the right to exercise your discretion in this instance, such discretion should not be exercised unconscionably.

Do I have to renew the agreement when it expires?

No. However, if the term of the franchise agreement is six months or longer, you must notify the franchisee at least six months before the end of the term of the franchise agreement of your decision to either:

- renew or not renew the franchise agreement
- enter into a new franchise agreement.

If the term of the franchise agreement is less than six months, you must notify the franchisee of your decision at least one month before the end of the term of the franchise agreement.

What if I or the franchisee want to terminate the franchise agreement?

The code sets out the specific requirements where parties seek to terminate a franchise agreement. The requirements will depend on whether termination is sought in circumstances where:

- the franchisee has breached the franchise agreement
- special circumstances apply in which the code permits you to terminate the agreement
- the franchisee has not breached the agreement and you seek to terminate the agreement in accordance with its terms without the consent of the franchisee.

Further information about the requirements to terminate a franchise agreement can be found on page 34.

Is there a requirement that the parties must act in good faith?

The code provides that nothing in the code limits any obligations imposed by the common law on the parties to a franchise agreement to act in good faith.