

Hamilton Pratt Article

9 March 2012

FRANCHISE AGREEMENT RENEWALS



Franchisees should be granted the right to renew on, at least, two occasions resulting in a minimum fifteen year term

The great majority of franchise agreements contain a renewal clause which allows franchisees to require their franchise agreements to be renewed. Usually, the only exceptions are those franchise agreements which are granted for twenty years or more. There are no rules concerning renewals, but the British Franchise Association has indicated that in relation to five year franchise terms - which is the term granted by most franchisors in the UK - franchisees should be granted the right to renew on, at least, two occasions resulting in a minimum fifteen year term and in relation to ten year franchises the BFA would expect, at least one renewal to be granted. Some - but not many - franchise agreements are perpetually renewable but that is not normally considered to be sensible for franchisors because refusing renewal is usually simpler than terminating a franchise agreement.

The BFA has also indicated that when a purchasing franchisee acquires a franchise business the purchaser should be granted a franchise agreement with the same rights to renew as a "new" franchisee otherwise, a franchisee of a business at the end of the final renewal term, would be unable to sell the business because it would only continue for a short period.

In order to require a franchisor to renew, franchisees do have to comply strictly with the requirement to give notice to the franchisor of their intention to renew - the notice has to be given within the renewal notice period specified in the franchise agreement - and will lose the right to renew if they have committed serious breaches of the franchise agreement or have not performed to the franchisor's reasonable satisfaction. Franchisees need to ensure that their franchise agreement is not drafted in such a way that the right to renew is lost for very minor breaches of the franchise agreement because, inevitably, in a five year term minor breaches will occur! The franchise agreement should also ideally set out what performance standards franchisees must achieve.

The right to renew does not entitle franchisees to continue to operate using the original agreement. All properly drafted franchise agreements require franchisees, on renewal, to enter into the franchisor's then current franchise agreement which could vary substantially from the agreement that a franchisee enters into originally. Many franchisees' lawyers try to ensure that the changes that a franchisor can make on renewal are minor, but most franchisors resist any restriction on their ability to make changes on the grounds that they simply cannot predict what will happen in five years' time. Having said this, the law does not allow franchisors to change the agreement to such an extent that it becomes unattractive for franchisees to continue to operate their franchise business.

Franchisees should not generally have to pay a renewal fee although they may be required to contribute to the franchisor's legal and administrative costs

In addition to entering into the franchisor's new agreement franchisors usually require franchisees to waive any claims that they have against the franchisor on entering into the renewal franchise agreement. You can understand why they do this because franchisors do not want to have to renew "difficult" franchisees, but the provision is potentially unfair because a franchisee could have a perfectly valid claim against the franchisor which it would wish to pursue and want to renew. Unfortunately these waiver clauses have now become standard in franchise agreements.

Franchisees should not generally have to pay a renewal fee although they may be required to contribute to the franchisor's legal and administrative costs in issuing a renewal agreement. These costs should be low and the franchise agreement itself should either set the maximum costs that the franchisor could recover or, at the very least, contain a statement that these costs will be reasonable. At the same time the franchisee may be required to undertake additional training, "refresh" the premises or their vehicle.

John Pratt
Partner
Hamilton Pratt

*Hamilton Pratt
Franchise House
3A Tournament Court
Tournament Fields
Warwick
CV34 6LG*

*Tel: 01926 838 900
Fax: 01926 258 799*