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Franchising in The Bahamas

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There are currently no specific franchising laws or regulations in force in The Bahamas nor are there any proposals to implement such legislation. Accordingly, parties to a franchise agreement enjoy contractual freedom to agree on:

- the law governing the contractual relationship. If the parties do not choose a governing law, then the courts will apply conflict of laws rules to determine the proper law of the contract;
 - how to regulate transfers of the business or of any interest in or assets of the franchise business - There are no restrictions on a franchisor's ability to restrict transfers by a master franchisee, or on the master franchisee's ability to restrict transfers by a sub franchisee;
 - how to settle disputes - If there is an arbitration clause or dispute resolution procedure within the contract, the Courts will decline to hear any dispute unless the requirement for arbitration or dispute resolution is waived by all relevant parties to the contract or there has been compliance with such requirements; and
 - how to terminate the relationship, which may be by (i) mutual agreement, (ii) expiration of the term of the franchise agreement, (iii) unilateral termination, or (iv) termination due to breach of the terms and conditions of the franchise agreement.
- the duration of the contract, which may be indefinite;
 - the currency in which payments such as dividends and franchise fees may be made, provided that any remittance of a foreign currency outside of The Bahamas has been approved by the Exchange Control Department of the Central Bank of The Bahamas;

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Franchise agreements are, however subject to the general common law and equitable principles which apply to contracts in general.

Disclosure

While, in some jurisdictions, franchise agreements are subject to requirements for the disclosure of certain material information between the parties, there are currently no such requirements in The Bahamas. However, franchisors and franchisees are bound by contractual principles relating to fraud and misrepresentation.

Additionally, while there are no governmental filing or registration requirements, a Bahamian franchisor or franchisee will be subject to local regulations which apply generally to business operations. These include organizing the required business structure, registration with the National Insurance Board, obtaining a Tax Identification Number (“TIN”) (where the business is projected to generate BSD\$100,000.00 or more in gross revenue per annum), and obtaining a business licence in accordance with the Business License Act, 2010. Further, if a non-Bahamian franchisor seeks to engage in a franchising arrangement using a direct franchising structure, a joint venture, or a subsidiary/branch arrangement, then that franchisor must file this structure with The Bahamas Investment Authority and the Exchange Control division of the Central Bank of The Bahamas prior to any other approvals being granted.

Taxes

The Bahamas has no withholding, personal income, capital gains, estate,

gift, or inheritance taxes; as such, many of the taxes which impact upon franchises in other jurisdictions do not arise in The Bahamas. However, like other businesses operating in The Bahamas, parties to a franchising agreement are subject to business licence tax, real property tax (on owned land or leases over seven years), stamp duty, Value Added Tax (“VAT”) and customs duties. The application and prescribed rate of stamp duty depend on the franchising structure in place and the nature of transactions. For example, funds remitted outside of The Bahamas under a master franchising arrangement or master development arrangement are subject to stamp duty on each remittance at the rate of 1.5% of the amount remitted or transferred. Where the amount remitted over a period of one year is more than \$500,000.00 and funds have been converted from Bahamian dollars to a foreign currency prior to being remitted, the stamp duty is 5.00%. VAT of 7.5 % is charged on all supplies of goods and services. The franchising agreement must include provision as to which party will be responsible to pay VAT.

Franchisees must pay customs duties when importing goods into The Bahamas, unless the franchisee is exempted from paying customs duties or is located in the Port Area in Freeport, a free trade zone under the administration of the Grand Bahama Port Authority, Ltd..

Specific Terms

As set out above, the parties to a franchise agreement are, in general, free to agree any terms they consider appropriate. Common clauses include

provisions for tax gross up, non-compete; venue for resolution of disputes; and the nature, amount and frequency of fees.

Tax gross up clauses are used to account for possible future changes in the law which may impose a tax not initially contemplated by the parties or not existing at the time of the agreement.

Non-compete clauses are enforceable to a ‘reasonable extent’ where the clause has a short duration (e.g.12 months) and reasonable geographical scope. In determining whether to enforce a non-compete clause, the Courts will consider all the circumstances of the case, particularly the prevailing industry norms.

When parties enter into franchise agreements in a foreign language, all legal documents which require recording in The Bahamas or which are to be used in Bahamian legal proceedings must be written in English. The Memorandum and Articles of Association of a company to be incorporated in The Bahamas must be written in English to be filed with the Companies Registry.

The nature and scope of fees in franchise agreements are unlimited. The parties may agree that fees be paid by way of royalties, periodical fees, fixed fees, etc. However, any clause which imposes a penalty fee for non-performance or breach may not be enforceable in a Bahamian court unless it represents a reasonable pre-estimate of loss.

In all of the circumstances, The Bahamas is a favourable jurisdiction for franchising as parties have considerable contractual freedom with relatively little interference in the form of statutory regulation. 



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