

What is the difference Between a Franchise and a Licence?

We act for both Franchisors and Licensors. We have also advised both Franchisees and Licensees. Often we are asked what is the difference between a Franchise and a Licence?

In order to understand the difference, it is necessary to understand exactly what a Licence and a Franchise are.

In its simplest form, a licence is where a person (called the Licensor) owns or has rights to something ("the Licensed Property") allows another person (called "the Licensee") to use it in return for some form of payment. The Licensor does not pass any ownership rights to the Licensee - the Licensee is merely getting the rights to use the Licensed Property.

A Licence Agreement can be very simple or it can be quite complex. It will usually cover the following areas:

1. Identification of the Licensed Property – it is vital that both parties know exactly what is being licensed.
2. Term – how long does the Licensee have a right to use the Licensed Property? Sometimes this period of time can be indefinite.
3. Royalty – what amounts does the Licensee have to pay the Licensor in return for the Licence. Usually there is an

initial licence fee and an on-going obligation to pay a royalty/ licence fee.

4. There may be restrictions placed on the Licensee on what they can and cannot do to the Licensed Property.

If you buy a Franchise, what you are buying is licence to use certain intellectual property which usually consists of the use of a system to conduct your business in certain way (as prescribed in a manual) and a right to use various trademarks and brand names. Where it differs from a Licence is in the obligations of the Franchisee which are usually quite extensive and prescriptive.

A Franchise Agreement is usually more complex than a Licence Agreement and will cover the following areas:

1. Grant of a right to conduct business in accordance with the franchise system and using certain trademarks and branding
2. The Franchisee may be restricted to operating the business within a certain territory or from a certain location.
3. Because it is vital that all Franchisees operate their business in a certain way there will be extensive obligations on the Franchisee in relation to how their business is to be run and these will be set

out in the Franchise Agreement and the Manual

- 4. The Franchisee will be required to purchase all its supplies from either the Franchisor or suppliers who have been approved by the Franchisor.
- 5. Usually the Franchise Agreement is for an initial term with rights of renewal and certain conditions will need to be met in order for the Franchisee to renew. Usually, the Franchisee is unable to cancel the Franchise Agreement unless the Franchisor specifically agrees or during any initial cooling off period.
- 6. The Franchisor will have the right to terminate the agreement in certain situations and if it does it will usually have the ability to purchase the business assets and take over any lease.
- 7. The Franchisee can only sell its business if it complies with certain conditions which usually include payment of a transfer fee.

So you can see that while a Licence provides the Licensee with the right to use certain property for a certain period of time. A Franchise provides the Franchisee with a comprehensive system for managing its business. Accordingly a Franchise Agreement is typically a lot more prescriptive than a licence agreement.

We can help!

If you are looking at buying or selling a franchise or a licence we would love to help you. Please call for more information.



Rory MacDonald by phone **(09) 307 3324** or by email rory@mllaw.co.nz