

Unfair Terms Legislation is Here -Are Franchisors Ready for It?

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Most franchisors have been inundated with information regarding the introduction of legislation known as the *Unfair Terms Legislation* which came into effect on 12 November 2016. The legislation will apply to most franchise agreements (and many other standard form agreements used by franchisors) which are entered into, renewed or amended (with respect to the terms amended) after 12 November 2016 where the counterparty is a "small business".

Now is a good time for franchisors to take a fresh look at the matter by considering the following checklist and whether they are ready for the Unfair Terms Legislation.

1. Is the franchise agreement "standard form"? Have I considered the ancillary agreements? If the agreements are not standard form, do I have sufficient proof of this?
2. With respect to the franchise:
 1. Does the franchisee have less than 20 employees at the time the agreement is entered into?
 2. Is the upfront price payable under the agreement \$1million or less (if the agreement has a duration of 12 months or longer) or \$300,000 or less (if the agreement has a duration less than 12 months)?
 3. Am I going to treat franchisees differently depending on whether the Unfair Terms Legislation applies
3. Have I highlighted the key terms and conditions in my agreements which are necessary to protect the franchisor's legitimate interests?
 1. Is the agreement core to the operation of your franchise system?
 2. What terms are most likely to be alleged to be unfair, are those terms important to the franchise? Have important terms been clearly highlighted to the franchisee?
 3. What are the implications if that term is not included in the agreement?
 4. Are franchisees likely to complain about the term, what would my response to that complaint be?
4. Does the term require amendment or deletion? If the term is necessary to protect the franchisor's legitimate business interests, is there evidence of the nature of those interests?
5. Has the agreement been drafted in transparent/plain English. Do I need to highlight the franchisor's legitimate interests in this document or in an ancillary document?
6. Are the relevant people in the franchisor's organisation aware of the Unfair Terms Legislation and its impact with respect to agreements and dealings with franchisees?



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