

Legal 500

Country Comparative Guides 2024

New Zealand

Franchise & Licensing

Contributor

MinterEllisonRuddWatts



MinterEllison
RuddWatts.

Christopher Young

Partner Head Of IP; International Lead | christopher.young@minterellison.co.nz

This country-specific Q&A provides an overview of franchise & licensing laws and regulations applicable in New Zealand.

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New Zealand: Franchise & Licensing

1. Is there a legal definition of a franchise and, if so, what is it?

"Franchise" is not defined by statute in New Zealand.

The Franchise Association of New Zealand (FANZ) Best Practice in Franchising Rules define a "franchise" as the method of conducting business under which the right to engage in the offering, selling or distributing of goods or services within New Zealand includes or is subject to at least the following features:

- the grant by a franchisor to a franchisee of the right to the use of a trade mark, in such a manner that the business carried on by the franchisee is or is capable of being identified by the public as being substantially associated with a trade mark identifying, commonly connected with or controlled by the franchisor; and
- the requirement that the franchisee conducts the business, or that part of the business subject to the franchise agreement, in accordance with the marketing, business or technical plan or system specified by the franchisor; and
- the provision by the franchisor of ongoing marketing, business or technical assistance during the term of the franchise agreement.

Membership of FANZ is not compulsory so this definition is not determinative in New Zealand but may guide interpretation of the definition of "franchise".

2. Are there any requirements that must be met prior to the offer and/or sale of a franchise? If so, please describe and include any potential consequences for failing to comply.

There are no statutory requirements prior to the offer and/or sale of a franchise under New Zealand law. As with any business, the buyer should make its own enquiries and obtain financial and legal advice. The franchisor should ensure it complies with New Zealand's general commercial and contract laws including the Fair Trading Act 1986 which prohibits (amongst other things) misleading and deceptive conduct and unsubstantiated representations.

If the franchisor is a member of FANZ (membership is not compulsory), then the FANZ Code of Practice will apply. The Code of Practice requires that before execution of any franchise agreement franchisors will require:

- the franchisee to certify it has received and read the Disclosure Document (contents are prescribed in the Code), the Code of Practice and the Code of Ethics.
- each franchisee to either:
 - produce a certificate from a solicitor certifying that the solicitor is acting independently for the franchisee and has explained the franchise agreement (and preliminary agreement if there is one) to the franchisee; or
 - sign a statement that the franchise agreement has been explained by a solicitor or that the franchisee declined to take independent legal advice.

3. Are there any registration requirements for franchisors and/or franchisees? If so, please describe them and include any potential consequences for failing to comply. Is there an obligation to update existing registrations? If so, please describe.

There are no specific registration requirements for franchisors and/or franchisees.

If the franchisors and/or franchisees are New Zealand companies, there will be requirements including the filing of annual returns and constitution of boards of directors.

4. Are there any disclosure requirements (franchise specific or in general)? If so, please describe them (i.e. when and how must disclosure be made, is there a prescribed format, must it be in the local language, do they apply to sales to sub-franchisees) and include any potential consequences for failing to comply. Is there an obligation to update and/or repeat

disclosure (for example in the event that the parties enter into an amendment to the franchise agreement or on renewal)?

There are no franchise specific requirements under New Zealand law although there are if the franchisor is a member of FANZ.

Where disclosure is made, the franchisor should ensure it complies with New Zealand's general commercial and contract laws including the Fair Trading Act 1986 which prohibits unconscionable conduct in trade, misleading and deceptive conduct (which can also arise through omissions of disclosure) and unsubstantiated representations. A franchisor must ensure all important information is disclosed, has been substantiated, and is not inaccurate or misleading.

If the franchisor is a member of FANZ, then disclosure must be made to franchisees and potential franchisees in accordance with the FANZ Code of Practice. The Code of Practice requires the franchisor to have a Disclosure Document (the contents of which are prescribed in the Code). The Disclosure Document must be updated at least annually and be provided to all prospective franchisees at least fourteen (14) days prior to signing a franchise agreement (or, if preceded by the signing of a preliminary agreement, fourteen (14) days before the prospective franchisee becomes bound by the preliminary agreement to proceed. A Disclosure Document is required to be provided to an existing franchisee in conjunction with the renewal of the franchise agreement within one month of being requested by the franchisee.

There may be additional disclosure requirements if, for example, franchisors or franchisees have a primary listing in New Zealand, as such entities have primary continuous disclosure obligations to the stock exchange in respect of material information.

5. If the franchisee intends to use a special purpose vehicle (SPV) to operate each franchised outlet, is it sufficient to make disclosure to the SPVs' parent company or must disclosure be made to each individual SPV franchisee?

New Zealand law does not specify disclosure requirements for franchising.

6. What actions can a franchisee take in the event of mis-selling by the franchisor? Would

these still be available if there was a disclaimer in the franchise agreement, disclosure document or sales material?

The remedies that may be available to a franchisee in this scenario are, if not expressly provided for in the franchise agreement, governed by the Contract and Commercial Law Act 2017 which provides that:

- where a party to a contract (say, a franchisee) has been induced to enter into the contract by a misrepresentation, whether innocent or fraudulent, made to them by or on behalf of another party to that contract (say a franchisor), the franchisee would be entitled to damages from the franchisor in the same manner and to the same extent as if the representation were a term of the contract that has been breached and the franchisee is not, in the case of a fraudulent misrepresentation, or of an innocent misrepresentation made negligently, entitled to damages from the franchisor for deceit or negligence in respect of the misrepresentation.
- a right to cancel the contract for misrepresentation may arise if the party has been induced to enter into it by a misrepresentation (whether innocent or fraudulent) made by or on behalf of another party to the contract and:
 - the parties have expressly or impliedly agreed that the truth of the representation is essential to the cancelling party; or
 - the effect of the misrepresentation will be to substantially reduce the benefit of the contract to the cancelling party or substantially increase the burden to the cancelling party under the contract.
- a court may make an order(s) granting relief where a contract is cancelled, including damages.

However, if the franchise agreement provides a remedy for misrepresentation, the provisions of the Contract and Commercial Law Act apply subject to the provisions in the agreement.

In addition, a franchisee could consider taking action pursuant to the Fair Trading Act 1986 on the basis that the franchisor has acted in breach of its obligations e.g. by engaging in unconscionable conduct, or misleading and deceptive conduct.

It is possible to contract out of some or all of the above remedies. Including a disclaimer, or exclusion clause, in the franchise agreement or other sales material may further limit the availability of the remedies referred to above. The effect of a disclaimer will depend on whether

it is a term of the franchise agreement, and whether notice of it was given before or at the time the contract was entered into.

Exclusion clauses are interpreted by the courts strictly; if there is any ambiguity, that ambiguity will ordinarily be resolved against the party seeking to rely on the clause, and exclusion clauses which attempt to exclude fraudulent misrepresentation are always unenforceable.

Given exclusion clauses will not always be effective to limit liability, franchisors should take care to provide fulsome and accurate disclosure and sales material to prospective franchisees.

Note also that it is a requirement on FANZ members to ensure that franchise agreements contain a "cooling off" provision where new franchisees have at least a 7 day period from the date of entry into a franchise (or preliminary) agreement during which the franchisee can reconsider their decision to enter the franchise and withdraw from the agreement.

7. Would it be legal to issue a franchise agreement on a non-negotiable, "take it or leave it" basis?

Although franchise agreements can be issued on a non-negotiable, "take it or leave it" basis, care should be taken to assess the terms. New Zealand's Fair Trading Act 1986 provides that "unfair contract terms" are prohibited in small business to business contracts – these are defined as standard form contracts (ie those that are non-negotiable or on a "take it or leave it" basis) and where the trading relationship is not expected to exceed an annual value of NZ\$250,000 (including GST) at the time the relationship is formed.

A Court may declare a term to be unfair if it meets all three of the following requirements.

- would cause a significant imbalance in the parties' rights and obligations arising under the contract;
- is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by it; and
- would cause detriment (whether financial or otherwise) to a party if it were applied, enforced or relied on.

In making this determination, the Court may consider any matter it thinks relevant, but must take into account the contract as a whole and the extent to which the term is

transparent. The Fair Trading Act also includes a list of examples of terms that may be unfair terms. These examples primarily involve allowing one party to do something and not the other party - i.e. avoiding/limiting performance, terminating the contract, varying the terms or penalty clauses. Some "exempt terms" cannot be declared unfair. These are terms that define the main subject matter of the contract or sets the upfront price payable under the contract.

Franchise agreements are typically strongly in favour of the franchisor so care should be taken to ensure a franchise agreement does not contain unfair contract terms.

8. How are trademarks, know-how, trade secrets and copyright protected in your country?

Generally trade marks for franchises should be registered. A core attribute of franchises is the licensing of the trade mark so this is often an expectation of franchisees, and from the franchisor's perspective gives the franchisor stronger rights if franchisees misappropriate branding in future.

New Zealand protects registered trade marks under the Trade Marks Act 2002, and unregistered trade marks under the Fair Trading Act 1986 and through the tort of passing off. The Madrid Protocol is in force in New Zealand and international registrations filed through WIPO can designate New Zealand.

In New Zealand, generally, the first person to use a trade mark or, in the absence of use or reputation in New Zealand, the first person to file an application to register the mark, is entitled to be registered as the owner of that trade mark. Applications/registrations can be challenged if a third party has sufficient reputation in New Zealand.

Franchise businesses expanding into New Zealand should check the ability to use a trade mark in New Zealand without infringing third party rights and register trade marks. The franchise agreement should clearly cover ownership of the trade marks in New Zealand. In New Zealand licensed use of a trade mark should be authorised by the registered proprietor of the trade marks to help maintain the validity of the registered trade marks.

Know-how and trade secrets are typically protected by confidentiality and other contractual arrangements. In a franchise context know-how about the franchise is typically recorded in a franchise operation manual. In New Zealand copyright will generally subsist in the manual. Copyright subsists automatically and New

Zealand does not have a copyright registration regime.

9. Are there any franchise specific laws governing the ongoing relationship between franchisor and franchisee? If so, please describe them, including any terms that are required to be included within the franchise agreement.

There are no franchise specific laws that govern the ongoing relationship between franchisor and franchisee. The parties need to comply with various New Zealand laws that will apply to franchise agreements, including contract, intellectual property, real estate and competition. In addition, the Fair Trading Act 1986 contains a range of requirements on traders including prohibiting unconscionable conduct in trade, misleading and deceptive conduct and unsubstantiated representations.

All members of FANZ (membership is not compulsory) will need to comply with the FANZ Code of Practice and Code of Ethics.

10. Are there any aspects of competition law that apply to the franchise transaction (i.e. is it permissible to prohibit online sales, insist on exclusive supply or fix retail prices)? If applicable, provide an overview of the relevant competition laws.

In New Zealand, the Commerce Act 1986 prohibits the entering into or giving effect to cartel provisions between competitors (s 30). A cartel provision is a provision contained in a contract, arrangement or understanding between competitors (including potential competitors) for the supply or acquisition of goods or services which has the purpose, effect or likely effect of fixing prices, restricting output or allocating markets. Breach of the cartel prohibition is a criminal offence in New Zealand.

The Commerce Act also prohibits the entering into or giving effect to a provision of a contract, arrangement or understanding (s 27), or a person with substantial market power from engaging in conduct (s 36), which has a purpose, effect or likely effect of substantially lessening competition in a relevant market.

From 5 April 2023 the Commerce Act was amended to remove historic protections for IP licensing agreements and the enforcement of statutory IP rights.

Previously section 36(3) provided that a business does

not take advantage of market power simply by enforcing a statutory IP right (eg a patent, trade mark, copyright). Section 45(1) also previously added that the Act's other prohibitions do not apply to the entering into of IP agreements (such as licences, settlement and co-existence agreements) in so far as they contained a provision that authorises something that would otherwise be prohibited by an IP right, or giving effect to such provisions. This could extend to restraints on operating areas, first and third line forcing and other structural arrangements.

These protections have now been removed, bringing New Zealand into line with Australia. There is considerable uncertainty about the extent to which the removal of the IP exception will impact the exercise of IP rights in New Zealand.

Franchisors will licence IP to franchisees, and often the model means the franchisor is itself operating in the market also selling goods or providing services which means that they may be competitors for the purposes of the Commerce Act. Often franchise agreements contain restrictions which could therefore be viewed as potential cartel provisions (ie territorial, field-of-use or customer restraints). These provisions may breach the Commerce Act's cartel prohibition or prohibition on anti-competitive arrangements unless one of the exceptions applies.

In addition, businesses with substantial market power which enforce statutory IP rights in a way that has the purpose and/or effect of substantially lessening competition in a market are now subject to the s 36 market power prohibition. An owner of IP rights might have a substantial degree of power in a market simply by virtue of its ownership of those rights, especially if there are no acceptable substitutes for the products/services the owner supplies in that market (for example, where the party is the first to patent a particular technology).

The Commission considers this situation in its Guidelines on the Application of Competition Law to Intellectual Property Rights and notes that a refusal to license to a competitor or even a potential competitor may be a misuse of market power in those circumstances.

New Zealand law also prohibits suppliers from specifying a minimum resale price or taking actions to enforce a specified price (including inducing or attempting to induce another person not to sell at a price less than that specified).

11. Are in-term and post-term non-compete and

non-solicitation clauses enforceable and are there any limitations on the franchisor's ability to impose and enforce them?

Yes in-term and post-term non-compete and non-solicitation clauses are enforceable in some situations. All such clauses should be assessed in the context of competition law (ie to ensure the clause is not in breach of the Commerce Act 1986) and what is reasonable in the circumstances.

12. Is there an obligation (express or implied) to deal in good faith in franchise relationships?

Currently, there is no express or implied obligation of good faith in franchisee / franchisor relationships under New Zealand law. However, the Fair Trading Act 1986 prohibits unconscionable conduct in trade and one of the matters a court can consider when assessing whether conduct is unconscionable is whether the trader and affected person acted in good faith. Other matters include the parties' relative bargaining power, whether an affected person was able to understand any documents provided to them, and the terms and circumstances of any contract to which the conduct relates.

It is possible that a general duty of good faith may be implied into "relational" contracts in future. Such duties have been discussed in recent years in the United Kingdom, where there is a growing line of authority suggesting that a duty of good faith will be implied into relational contracts. While the question of whether a contract is "relational" will depend on the facts of any particular case, broadly speaking, they are generally those which involve a longer-term relationship between the parties in which both sides made a substantial commitment, and where the nature of the contract requires a high degree of communication, co-operation and predictable performance by both parties. Franchise agreements are likely, under this formulation, to be relational contracts.

In *Dymocks Franchise Systems (Pty) Ltd v Todd* [2004] 1 NZLR 289, the Privy Council expressly left open the question of whether there is room for the implication of an obligation of good faith into franchise agreements under New Zealand law. If the issue comes before the New Zealand courts again, the UK authorities on this issue will be persuasive (but not binding) authority.

13. Are there any employment or labour law

considerations that are relevant to the franchise relationship? Is there a risk that the staff of the franchisee could be deemed to be the employees of the franchisor? What steps can be taken to mitigate this risk?

Like any other employer, franchisors and franchisees must comply with New Zealand employment and immigration laws in relation to their own employees. This includes requirements relating to minimum employment entitlements and, in the case of migrant employees, work visas. While franchisors will not employ a franchisee's employees, there is a risk that employees of a franchisee could join the franchisor as a party (called a 'controlling third party') to an employment claim against the franchisee. This will depend on the degree of direction and/or control the franchisor has over the franchisee's employees. To mitigate this risk, franchisors should limit the degree of direction and/or control it has over a franchisee's employees. The relevant franchise agreement should also expressly address how the franchisor and franchisee will respond to controlling third party claims and any associated liability.

14. Is there a risk that a franchisee could be deemed to be the commercial agent of the franchisor? What steps can be taken to mitigate this risk?

Yes, this is possible so generally a franchise agreement should clearly specify that the agreement does not create an agency relationship and ensure that arrangements that are typically those of an agency relationship are not included.

15. Are there any laws and regulations that affect the nature and payment of royalties to a foreign franchisor and/or how much interest can be charged? Are there any requirements for payments in connection with the franchise agreement to be made in the local currency?

There are no specific laws or regulations (such as exchange control restrictions) in New Zealand that affect a New Zealand resident's ability to make a payment of royalties or interest to a foreign franchisor. That said, New Zealand tax law can impose restrictions on tax deductions for payments of royalties or interest to related parties, and/or re-characterise these amounts for tax purposes in certain circumstances (e.g. where they do not reflect market value). There are no requirements for

payments in connection with a franchise agreement to be made in New Zealand dollars.

16. Is it possible to impose contractual penalties on franchisees for breaches of restrictive covenants etc.? If so, what requirements must be met in order for such penalties to be enforceable?

Previously, New Zealand law distinguished between penalty clauses, which were unenforceable, and liquidated damages clauses, which were enforceable provided that they represented a "genuine pre-estimate of loss". However, in *127 Hobson Street Ltd v Honey Bees Preschool Ltd* [2020] NZSC 52, [2020] 1 NZLR 179, the Supreme Court adopted the approach taken in the United Kingdom, holding that a penalty clause will only be unenforceable if the consequence stipulated in that clause is out of all proportion to the legitimate interests of the innocent party in performance. Such a clause would have to be "exorbitant".

There is, then, some ability to impose contractual penalties on franchisees for breaches of restrictive covenants, provided those penalties are in proportion to the legitimate interests of the innocent party (the franchisor) – which may include that party's interest in enforcing performance.

17. What tax considerations are relevant to franchisors and franchisees? Are franchise royalties subject to withholding tax?

There are no tax rules or regimes that are specific to franchisors. Instead, the ordinary tax rules will apply to franchisors. In general, non-resident entities will be subject to New Zealand tax on their New Zealand sourced income, subject to:

- Tax treaty relief. New Zealand has an extensive tax treaty network. Where a non-resident is eligible for treaty benefits under a treaty with standard "business profits" and "permanent establishment" articles, the non-resident will generally not be subject to New Zealand income tax on New Zealand sourced business profits except to the extent they are attributable to a permanent establishment maintained by the non-resident in New Zealand.
- Withholding tax rules for certain forms of income. For example, New Zealand non-resident withholding tax may apply to royalties paid by a New Zealand franchisee to a non-

resident franchisor. The definition of "royalties" in New Zealand Income Tax legislation includes a payment for know-how. The default rate of non-resident withholding on royalties is 15%, which may be reduced to 10% or 5% under a tax treaty.

Non-residents will also need to consider their liability for New Zealand's goods and services tax (New Zealand's VAT), which broadly applies to supplies of goods and services to New Zealand consumed in New Zealand and can apply to supplies made by non-residents with no presence in New Zealand. New Zealand employment related withholding taxes may be applicable to payments of salary and wages to New Zealand based employees and contractors (in certain circumstances).

18. How is e-commerce regulated and does this have any specific implications on the relationship between franchisor and franchisee? For example, can franchisees be prohibited or restricted in any way from using e-commerce in their franchise businesses?

E-commerce is regulated by a range of statutes in New Zealand including the Fair Trading Act 1986, the Consumer Guarantees Act 1993 and the Contract and Commercial Law Act 2017.

The Consumer Guarantees Act 1993 sets out guarantees in respect of goods and services that are purchased for personal use in New Zealand. Depending on the nature of the defect and subject to conditions/exceptions, consumers may have rights of redress against the supplier or the manufacturer (or both) in relation to defective goods or services. This means that consumers may have rights of redress against franchisors and/or franchisees.

Arrangements which restrict a franchisee's use of e-commerce, reserving this channel to market for only some franchisees or the franchisor can raise issues under the Commerce Act 1986, and will need to be carefully considered.

19. What are the applicable data protection laws and do they have any specific implications for the franchisor/franchisee relationship? Does this have any specific implications in the franchising context? Is the franchisor permitted to restrict the transfer of (a) the franchisee's rights and

obligations under the franchise agreement or (b) the ownership interests in the franchisee?

In New Zealand the Privacy Act 2020 governs how organisations collect, store and use personal information. Franchisors and franchisees will need to comply with their obligations under the Act in respect of "personal information" which is defined as information about an identifiable individual. One area to be aware of is where a franchisor/franchisee is sending information to foreign entities outside of New Zealand – agencies must comply with Information Privacy Principle 12 before making any offshore disclosure to ensure that the personal information is protected by comparable safeguards as those in the Act.

The Unsolicited Electronic Messages Act 2007 prohibits the sending of unsolicited commercial electronic messages (commonly referred to as spam) without the individual's consent. Consent can be express, inferred or deemed. The Act also requires certain information to be contained in each message as well as a functional unsubscribe facility.

Restrictions on transfer of the franchisee's rights and obligations under the franchise agreement and/or the ownership interests in the franchisee can be imposed by contract. There is no statutory restriction under New Zealand law. Provisions covering assignment and change of control are often included in franchise agreements and can include regimes where consent of the other party is required prior to entering into such arrangements, or in some cases a first right of refusal for the other party.

20. Does a franchisee have a right to request a renewal on expiration of the initial term? In what circumstances can a franchisor refuse to renew a franchise agreement? If the franchise agreement is not renewed or it if it terminates or expires, is the franchisee entitled to compensation? If so, under what circumstances and how is the compensation payment calculated?

There are no requirements under New Zealand law. These types of provisions would generally be negotiated by the parties.

21. Are there any mandatory termination rights which may override any contractual termination rights? Is there a minimum notice period that the

parties must adhere to?

There are no mandatory termination rights or minimum notice periods. These types of provisions would generally be negotiated by the parties.

22. Are there any intangible assets in the franchisee's business which the franchisee can claim ownership of on expiry or termination, e.g. customer data, local goodwill, etc.

For clarity ownership of intangible assets including customer data and goodwill should be covered in the franchise agreement, including any requirements on expiry or termination of the franchise agreement.

If the franchise agreement does not specifically cover intangible assets the general position at law will apply. Generally in New Zealand the first owner of copyright works is the author of the work (s21 Copyright Act 1994) unless certain exceptions apply (ie in relation to works created by employees and commissioned works) or the ownership position at law is varied by contract.

23. Is there a national franchising association? Is membership required? If not, is membership commercially advisable? What are the additional obligations of the national franchising association?

Yes, the Franchise Association of New Zealand. Membership is not compulsory but is common with leading New Zealand franchisors. Members must comply with the Franchising Code of Practice and the Association's Code of Ethics and must submit their documentation for review to check that their processes and information are compliant.

24. Are foreign franchisors treated differently to domestic franchisors? Does national law/regulation impose any debt/equity restrictions? Are there any restrictions on the capital structure of a company incorporated in your country with a foreign parent (thin capitalisation rules)?

A foreign franchisor is generally treated the same as a resident franchisor. There are differences relating to certain overseas investment and tax law.

Overseas investment in New Zealand is governed by the

Overseas Investment Act 2005, under the Act certain investors require approval to acquire a direct or indirect interest in sensitive assets (including some New Zealand land). In general terms, the Act seeks to regulate the acquisition of interests in certain land, and the acquisition of assets which are worth more than NZ\$100m. Transactions can also be caught where securities in entities directly or indirectly having such land or assets are acquired above 25%. These are not the only categories of consent, and additional conditions apply to interests in strategically important businesses, depending on the type of business. Further if the investment changes the status of the target i.e. into an overseas person because of percentages of existing overseas ownership then consent is also needed.

New Zealand's tax rules include thin capitalisation rules that can reduce the income tax deduction available for interest paid by a NZ subsidiary of a foreign parent where the NZ subsidiary's debt to asset ratio exceeds certain prescribed safe harbours. Non-resident franchisors should also consider the application of New Zealand's transfer pricing rules, anti-hybrid rules and anti-avoidance rules (among other things) when setting up related party structures in New Zealand.

Note also that New Zealand has imposed export and/or import sanctions under the United Nations Act 1946 (generally in line with the UN) and the Russia Sanctions Act 2022.

25. Must the franchise agreement be governed by local law?

No, the parties are free to choose the governing law. The franchise agreement should clearly specify the governing law and forum, and whether this is exclusive or non-exclusive.

26. What dispute resolution procedures are available to franchisors and franchisees? Are there any advantages to out of court procedures such as arbitration, in particular if the franchise agreement is subject to a foreign governing law?

The dispute resolution procedures available to franchisors and franchisees will depend on the terms of their franchise agreement. If, for example, the franchisor is a member of the Franchise Association of New Zealand (FANZ), the FANZ Code of Practice stipulates that any franchise agreement contain alternative dispute resolution provisions which are the same, or similar in effect to, provisions set out in the Code itself. These

provisions set out a cascading set of dispute resolution procedures whereby the parties are to seek to resolve any dispute by mutual negotiation in the first instance and, failing that, they are to attend mediation.

There are no New Zealand-specific advantages to alternative dispute resolution procedures such as mediation or arbitration. New Zealand is a signatory to the New York Convention on the Mutual Recognition of Arbitral Awards, and so arbitral awards can be enforced through the Convention protocols.

If the franchise agreement is subject to a foreign governing law, arbitration may be preferable to foreign court proceedings depending on whether there exists an agreement on the reciprocal enforcement of judgments between the country in which the foreign judgment would be issued and New Zealand.

27. Must the franchise agreement and disclosure documents be in the local language?

The official languages of New Zealand are English and Te reo Māori. Generally franchise agreements are in English.

28. Is it possible to sign the franchise agreement using an electronic signature (rather than a wet ink signature)?

Under New Zealand law electronic signatures are generally permitted and can be used to sign a franchise agreement provided certain conditions are met ie the electronic signature (a) adequately identifies the signatory and adequately indicates the signatory's approval of the information to which the signature relates and (b) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required (s226 Contract and Commercial Law Act 2017). The franchise agreement should include a provision stating that electronic signatures are acceptable.

29. Do you foresee any significant commercial or legal developments that might impact on franchise relationships over the next year or so?

The Privacy Amendment Bill is currently before Parliament and is expected to be enacted within the next year. Currently there is no requirement for an agency to notify an individual when it collects personal information about the individual indirectly (ie other than from the individual concerned). This means an individual may not

know that an agency holds their personal information. The Bill will introduce an obligation on an agency to notify individuals when it collects their personal information indirectly. This may impact franchisors where personal

information is being collected indirectly, for example through franchisees. Once the Bill is enacted, franchisors should check and update their privacy policies as applicable.

Contributors

Christopher Young
Partner Head Of IP;
International Lead

christopher.young@minterellison.co.nz

