

## Franchising: the Cyprus landscape

November 22, 2017

It is common knowledge that the franchise concept has come a long way from its inception in the mid nineteenth century after Isaac Singer, the inventor of the sewing machine, conceived what was then perceived as an imaginative and innovative distribution strategy to accelerate and broaden market penetration of his product.

Cypriot entrepreneurs have, in the last decade or so, become increasingly aware of the multiple commercial advantages and financial benefits that may flow from franchising which has universally proven to be a dynamic medium for undertaking business operations. A key characteristic of this concept is that it encompasses a wide cross-section of activities in various key sectors of the economy such as those relating to the automotive industry, cleaning, coffee, leisure & entertainment, fitness, food & beverage, health and beauty, real estate, retail, travel and a host of other diverse sectors and disciplines.

Owning a franchise is now widely perceived, and indeed globally recognized, as being an effective and efficient means by which a happy medium can be struck between cherishing the independence of owning one's own business on the one hand, whilst ensuring a significant and tangible diminution in inherent risks and pitfalls that may be encountered when entering the potentially hazardous ranks of the self-employed. Taking the franchise route has, most appropriately, been referred to as "being in business for yourself and not by yourself" and its versatility, adaptability and flexibility is perhaps most evident in the USA where the business format is used in no less than 120 different industries.

A survey or overview of the current franchise regime in Cyprus underscores its rapid growth and development whilst demonstrating that consumers are most receptive to the idea of patronising a wide cross-section of business concepts originating from countries as far afield as the UK, USA, Australia, South Africa, Spain, Greece, France, Italy and other countries. This phenomenon is, needless to say, accentuated by the influx of tourists on the island who, in the main, are already familiar with many of the franchise operations for which there is instant or ready-made brand awareness that they can readily identify with.

As is generally the case, franchise entities in Cyprus operate under appropriate contractual arrangements with foreign enterprises which, in their capacity as franchisors, license selected domestic concerns which, as duly appointed franchisees, are afforded the right to conduct designated business activities under appropriately drafted agreements which cater for the parties' specific requirements and govern their respective rights and obligations.

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By way of an overview of foreign franchise penetration in Cyprus, the non-exhaustive list in the box below provides a preliminary indication of the extent to which the concept has appealed to the local business community and illustrates the preference for, and market domination of those franchises which are concerned with the food, beverage and apparel industry:

Coffee Brands (Switzerland), Grind Café (USA), Coffee Beanery (USA), Second Cup (Canada), Wayne's Coffee (Sweden), Caffè Nero (UK), Starbucks (USA), Gloria Jean's (Australia), Presse Café (Canada), Coffee Island (Greece), Café Route 66 (USA), Costa Coffee (UK), Gregory's (Greece), Whittard of Chelsea (UK), Dunkin' Donuts (USA), KFC (USA), McDonalds (USA), Burger King (USA), TGI Fridays (USA), Pizza Hut (USA), Taco Bell (USA), Derlicious (Greece), Ocean Basket (South Africa), Subway (USA), Hard Rock (USA), Papa John's Pizza (USA), Domino's Pizza (USA), Bennigans (USA), Cinnabon (USA), Croissanterie (France), Wagamama (UK), Crepaland (Greece), Zak (Cyprus), Pingu's English (UK), RE/MAX (USA), ERA Real Estate (France), Accessorize (UK), Cartridge World (USA), Holland and Barrett (UK), Helen Doron (Israel), Cold Stone Creamery (USA), Pitman Training (UK), Early Learning Centre (UK), BSB (Greece), Marks & Spencer (UK), Debenhams (UK), Zara (Spain), Pull & Bear (Spain), Celio (France), Tally Weijl (Switzerland), United Colours of Benetton (Italy), H&M (Sweden), Stradivarius (Spain), Mango (Spain), Terranova (Italy), Guess (USA), Tsakiris Mallas (Greece), Armani Exchange (Italy), Next (UK), Oysho (Spain), Bershka (Spain), Massimo Dutti (Spain), OJO (Portugal), Estrella (Greece), Curves (USA), Toni & Guy (UK), Sports Direct (UK), Top Shop (UK), WSI (Canada), OVS (Italy), Esso (USA), EKO (Greece), Carlsberg (Denmark), Coca Cola (USA), Pepsi Cola (USA).

In a nutshell, franchising as a universally entrenched concept, is aptly described by the International Franchise Association (IFA) as “a method for expanding a business and distributing goods and services through a licensing relationship”. (<http://www.franchise.org/what-is-a-franchise>)

The essence of the foregoing, is further explained by the IFA in terms of an arrangement whereby the franchisor (as grantor of the license), not only specifies the product and services that will be offered by the franchisee (the grantee of the license), but also undertakes to provide the latter with a “tried and tested” operating system coupled with brand awareness and ongoing administrative and operational support services embracing quality control procedures and, most significantly, training, management and marketing strategies. Furthermore, a crucial feature of franchising is that all business will effectively be conducted under the trade name and trademark of the franchisor – a factor which results in an all-important, instantly recognisable business concept.

Whilst a franchise is capable of taking on a multiplicity of forms, in broad, and somewhat over-simplistic terms, it may be said to be a suitable method of conducting business in circumstances where a particular operation is capable of being replicated in or effectively “transplanted” to another location. Within this context, it is hardly surprising therefore that the franchise model, as a highly effective business vehicle, is

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extremely adaptable to the extent that it may embrace multiple business disciplines in all sectors of the economy.

A so-called “product distribution or business format franchise” is a relatively straightforward arrangement which, being akin to a supplier/dealer relationship, permits the latter (as franchisee), to sell the products or services of the former (the franchisor), under the trademarks, name and logo of the franchisor who is the grantor of the license. One may typically encounter this particular franchise structure in motor car dealerships, petrol stations as well as soft drink bottling plants and distributorships (as an example of the latter, Coca Cola has, since 1889, adopted a franchise operation formula which entails the delivery of syrup concentrate to bottlers worldwide, who in turn enjoy exclusive distribution rights of the finished product in their respective designated territories). It is pertinent to mention however, that such an arrangement has no bearing on, or connection with, the particular business format to be adopted by the franchisee. Accordingly, in such arrangements, the granting of franchisor rights is essentially limited to the use of the relevant product or trade mark by the franchisee (as opposed to extending the ambit of the operative license to encompass a wider spectrum of the franchisor’s intellectual property rights).

In direct contrast with the foregoing, the so-called “business format franchise”, whilst sharing the basic features of the product distribution franchise, also additionally calls for providing the complete methodology and systems for conducting the business itself. In effect, this arrangement goes beyond the authorized use of a product or trade mark in that the franchisee may be granted due access to the franchisor’s copyrights, goodwill, know-how, trade secrets, dress code, operating manuals as well as training and quality control methods, marketing strategy etc. Accordingly, this is a relatively more sophisticated concept which encapsulates a broader spectrum of rights that are passed down by the franchisor to the franchisee.

There is a further categorization aspect whereby the nature of a particular franchise arrangement might also be differentiated in terms of certain other rights and obligations that may be conferred on the franchisee. Thus, a so-called “single unit” franchise might be created in circumstances where the licensee is at liberty to initially operate a business unit with the possibility or option of subsequently acquiring additional single units, should he choose to do so. On the other hand, a “multi-unit” format might be the selected basis for a franchise arrangement that can, in turn, take on either of the following forms:

An “area development” option whereby the franchisee is entitled to open multiple outlets/units within a designated geographical area or territory. A “master franchise” option which would essentially goes a step further in that a person may be designated as a master franchisee in relation to a specific area. In effect, the licensee would be duly authorised to appoint sub-franchisees in relation to whom he would, for all intents and purposes, undertake a role which is akin to that of a franchisor, with the latter’s corresponding rights and obligations. Whilst the Republic of Cyprus does not currently have a “franchise-specific” regulatory framework in place, the existing domestic legal landscape comprising established

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principles of common law and equity, in conjunction with European law, as well as comprehensive legislative provisions embracing a broad spectrum of subject areas and legal disciplines, would appear, for the time being at least, to adequately cater for dealing with issues arising from, and associated with, the franchise concept. In this regard, specialist legal advice would, needless to say, ensure that the parties to a franchise arrangement are well-acquainted with their respective rights and obligations, bearing in mind that the nature of such advice would necessarily be dependent upon which of the undermentioned categories may be applicable to them:

International franchisors seeking to enter the Cyprus market with a view to concluding agreements with prospective domestic franchisees. Prospective domestic franchisors seeking assistance in creating or developing new franchise networks both on a national scale and in the international arena. Prospective domestic franchisees who wish to invest in a franchise license granted by national or international franchisors. The following legislative provisions may, inter alia, be regarded as indicative of existing legal mechanisms which might conceivably be applicable to matters arising in connection with the franchise regime in the Republic of Cyprus:

Contracts Law CAP 149, as amended.

The Companies Law CAP 113, as amended.

The Partnerships and Trade Names Law CAP 116, as amended.

The Civil Wrongs Law CAP 148, as amended.

The Protection of Competition Law 13 (1) of 2008, as amended.

The Income Tax Law 118 (1) of 2002, as amended.

Intellectual Property Rights as reflected in:

The Trademarks Law CAP 268, as amended.

The Patent Rights Law 16 (1) of 1998, as amended.

The Intellectual Property Law 59 of 1976, as amended.

The Legal Protection of Individual Designs and Models Law 4 (1) 2002, as amended.

The Copyright and Neighbouring Rights Law of 1976, CAP 59, as amended.

European Law.

Other legal disciplines (such as employment or real estate law) which may draw on applicable common law principles as well as relevant statutory provisions and regulations.

The European Franchise Federation (EFF) has drawn up a European Code of Ethics described as “a practical ensemble of essential provisions and fair behaviour for franchise practitioners in Europe”. (<http://www.eff-franchise.com>) This sets out minimum requirements for ensuring that the respective rights and obligations of the parties to a franchise are clearly set out with a view to achieving a balanced, equitable and workable business arrangement. Whilst Cyprus is not, as yet, a member of the

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EFF, no one can deny the desirability of abiding by the positive elements of the Code in question.

Within the parameters of the above-mentioned Code, franchisors are, inter alia, expected to have operated a pilot scheme prior to the implementation of a formal franchise programme and to ensure that their duly appointed franchisees are afforded adequate training on an ongoing basis. On their part, it is incumbent on franchisees to respect confidentiality, to furnish relevant data to franchisors in respect of the operational and financial aspects of the franchise, and to demonstrate their dedication and commitment to attaining a successful business model. In addition to the foregoing, the Code provides useful guidance as to the particular contractual terms which are to be incorporated in the all-important franchise agreement, including terms of payment, duration, parties' rights and obligations, renewal clauses, sale of the franchise business to third parties, matters concerning intellectual property rights, franchisors right to adapt systems and adopt new methods, provisions for terminations etc.

A review of the above is indicative of the nature and extent of multiple key issues which shall require due consideration and careful scrutiny in any process which may ultimately culminate in concluding a franchise arrangement. In this regard, it is, needless to say, critical and imperative that expert legal advice is readily at hand as a prudent and effective means of avoiding potential pitfalls, achieving a significant diminution of risk, and making a tangible contribution towards attaining a trouble-free working relationship between the franchise parties. In this context, it is of vital importance that the provisions embodied in the operative agreement adequately safeguard the interests of all concerned by offering a clear perspective of their respective rights and obligations in relation to the precise nature and extent of the license, fee structure and royalty payments, contract duration and renewal, termination and post-termination issues, restraint of trade matters, disclosure and confidentiality, suretyships, intellectual property, proprietary rights etc.

It is evident that franchising in Cyprus is dominated by the significant penetration of tried and tested foreign business concepts, the majority of which have met with relative success and enjoy a strong following amongst "loyal" local consumers. This trend appears likely to continue as the global franchise market continues to gather momentum and franchisors seek to promote their products or services on an international scale through a business format which has proven to be an operationally advantageous, sustainable and cost effective method of achieving growth (little wonder therefore that McDonald's has announced an expansion drive in China which will increase its franchised fast food outlets by 2000 units which, by the target year 2022, will bring its total number of restaurants in the country to 4500).

Whilst it is acknowledged that some attempts have been made in Cyprus to implement the franchise concept in relation to the expansion of domestic operations, this has had a negligible practical impact which might perhaps be attributable to the island's limited geographical area, as well as a deeply engrained culture amongst individual or corporate proprietors to retain direct control over their particular business concerns. It is anticipated however, that this trend is likely to change, albeit gradually, with an



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increasing awareness, amongst local entrepreneurs, of the fact that franchising could be an ideal vehicle not only for achieving island-wide expansion but also for the realization of the more ambitious goal of attaining growth in the international arena. In the interim, it is envisaged that the franchise concept on the island will continue to thrive, insofar as international franchisors appear to retain an interest in expanding their global operational outreach to a country which has a favourable consumer track record in welcoming them with open arms, as well as a domestic reservoir of willing prospective franchisees who are quick to recognize the benefits of a tried and tested format, which has proven itself as a universally preferred mode of conducting business.

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