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Franchising 2025

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New Zealand: Law and Practice

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Law and Practice

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Contents

1. An Introduction to Franchising p.4

- 1.1 Franchise Market Overview p.4
- 1.2 Franchise Regulation p.4
- 1.3 Definition of a Franchise Agreement p.4

2. Franchise Disclosure p.4

- 2.1 Mandatory Disclosure p.4
- 2.2 Consequences of a Failure to Disclose p.5
- 2.3 Franchise Disclosure Exemptions p.6
- 2.4 Franchise Disclosure Language/Translation Requirements p.6

3. Franchise Registration p.6

- 3.1 Mandatory Registration p.6
- 3.2 Franchise Registration Process p.6
- 3.3 Consequences of a Failure to Register p.6

4. Other Requirements p.6

- 4.1 Past-Profitability Requirements p.6

5. Duration, Renewal and Termination p.6

- 5.1 Duration of a Franchise Agreement p.6
- 5.2 Franchise Renewal p.6
- 5.3 Termination of the Franchise Agreement p.7

6. Restrictions on Competition in Franchise Agreements p.7

- 6.1 Treatment of Competition Restrictions in Franchise Agreements p.7
- 6.2 Exclusive Territories and Competing Businesses p.8
- 6.3 Requiring Franchisees to Purchase Specific Goods and Services p.9
- 6.4 Channel Reservation p.9
- 6.5 Vertical Agreement Block Exemptions p.9

7. Choice of Governing Law p.10

- 7.1 Possibility of a Franchisor Stipulating Non-Local Law p.10
- 7.2 Local Law Requirements p.10
- 7.3 Mandatory Content p.10
- 7.4 Prohibited Provisions in Local Law p.10

8. Dispute Resolution p.11

- 8.1 Enforcement of Foreign Judgments p.11

9. Payment and Taxes p.11

- 9.1 Restrictions or Limits on Franchisee Fees and Royalties p.11
- 9.2 Withholding Tax p.11
- 9.3 Foreign Currency Controls p.12

10. Execution Formalities p.12

- 10.1 Authentication, Notarisation, Witnessing, Etc p.12
- 10.2 Electronic Signatures p.12
- 10.3 Stamp Duties p.12

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1. An Introduction to Franchising

1.1 Franchise Market Overview

Franchising is a very common business model in New Zealand.

The Franchising New Zealand 2024 survey conducted by Dr Simon Moore and Prof Jonathan Elms at Massey University identified that in 2024 the franchise sector's turnover was approximately NZD73.4 billion, including business format franchises, motor vehicle sales and retail of fuel.

International franchise brands operating in the New Zealand market include:

- McDonald's;
- Domino's;
- Pizza Hut; and
- Starbucks.

New Zealand-founded franchise brands include:

- Green Acres (lawn and garden care);
- Rodney Wayne (hair salons);
- Stirling Sports (athletic retail); and
- Robert Harris (cafes).

1.2 Franchise Regulation

New Zealand does not have legislation that specifically regulates the ongoing relationship between franchisors and franchisees. Instead, franchise arrangements are subject to a range of general laws – including those governing contracts, competition, intellectual property (IP), employment, consumer law, privacy and real estate – as well as a voluntary franchise code.

A key piece of legislation is the Fair Trading Act 1986, which imposes obligations on all traders. It prohibits unconscionable conduct, misleading or deceptive practices, and making claims that cannot be substantiated.

While membership in the Franchise Association of New Zealand (FANZ) is voluntary, those who join must adhere to its Code of Practice and Ethics (the "FANZ Code"). This code promotes ethical conduct and best

practice standards in franchising, including requirements for transparency, dispute resolution and fair dealing.

1.3 Definition of a Franchise Agreement

In New Zealand, there is no statutory definition of "franchising". However, FANZ provides a definition in its *Best Practice in Franchising Rules*.

A "franchise" refers to a method of operating a business that involves the right to offer, sell, or distribute goods or services in New Zealand, and includes at least the following elements:

- 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.

While FANZ membership is voluntary and the above definition is not legally binding, it is a useful reference when interpreting what constitutes "franchising" in New Zealand.

2. Franchise Disclosure

2.1 Mandatory Disclosure

New Zealand law does not specifically cover disclosure requirements in a franchise context. However, disclosure documents are best practice for ensuring that prospective franchisees are informed about the franchise and their investment, and for mitigating risks of misrepresentation.

Franchisors should ensure that all disclosure materials are thorough, accurate and transparent and comply

with New Zealand's general laws on commercial contracting and dealings, including the Fair Trading Act 1986. This Act prohibits unconscionable conduct in trade, misleading or deceptive conduct (which may include omissions) and unsubstantiated representations. Franchisors must ensure that all disclosed material information is accurate.

If the franchisor is a member of FANZ, mandatory disclosure obligations apply under the FANZ Code. The Code contains a list of required content in disclosure documents, including:

- franchisor details;
- a resume of the business experience of the franchisor and key directors/executives/managers;
- a current franchisor solvency certificate (the contents of which are prescribed in the Code);
- details of any bankruptcies, receiverships, liquidations, etc, of the franchisor or its directors/executive officers/principals from the past five years;
- a summary of the main particulars and features of the franchise;
- a list of components making up the franchise purchase;
- details of financial requirements of franchisees;
- information about current franchisees, recent terminations or non-renewal of franchisees, and litigation with existing or former franchisees;
- financial projections (or a statement that financial projections are not provided);
- a statement as to whether the territory or site to be franchised has been subject to any trading activity – particularly a previous franchise in the same franchise system within the previous five years – and if so, the history and details, including the circumstance of any cessation of the franchise; and
- a statement indicating that the prospective franchisee should seek independent legal and accountancy advice and, if the prospective franchisee declines to obtain that independent advice, that it will need to sign a statement to that effect.

Under the Code, the disclosure document must be updated at least annually.

The disclosure document must be provided to prospective franchisees at least 14 days before signing

a franchise agreement, or before becoming bound by a preliminary agreement. Existing franchisees are entitled to receive an updated disclosure document within one month of requesting it when renewing their franchise agreement.

If the franchisor or franchisee is a publicly listed entity in New Zealand, additional disclosure obligations may apply due to continuous disclosure requirements imposed by the stock exchange.

2.2 Consequences of a Failure to Disclose

If a franchisor fails to provide disclosure and this failure leads to a misinformed decision, the franchisee may be able to terminate the agreement and/or claim damages against the franchisor.

As New Zealand does not have specific franchise laws, a franchisee claim would be pursuant to New Zealand's general commercial laws, including under the Contract and Commercial Law Act 2017 and the Fair Trading Act 1986.

Under the Contract and Commercial Law Act 2017, a franchisee may be entitled to damages from the franchisor or be able to cancel a contract with a franchisor if the franchisor makes a misrepresentation. For example, a franchisee may be able to cancel a franchise agreement if:

- the truth of the representation is essential;
- the effect of the misrepresentation will substantially reduce the benefit, or substantially increase the burden, of the contract; or
- the effect of the misrepresentation will make the benefit or burden of the contract substantially different from that represented or contracted for.

Franchisees may also pursue claims under the Fair Trading Act 1986 if the franchisor engages in misleading, deceptive or unfair practices. In addition to remedies such as injunctions and awards of damages, companies can be liable for fines of up to NZD600,000 and individuals for fines of up to NZD200,000.

Disclaimers or Exclusion Clauses

It is possible to contract out of some statutory remedies through disclaimers or exclusion clauses. The

enforceability of such clauses depends on whether they were clearly communicated before or at the time of contracting. Courts interpret exclusion clauses strictly, and any ambiguity is typically resolved against the party relying on the clause. Notably, clauses attempting to exclude liability for fraudulent misrepresentation are always unenforceable.

FANZ

In addition to the foregoing, for FANZ members there is a complaints procedure for breaches of the FANZ Code. Sanctions that may be issued include:

- written censure of the member (confidential);
- suspension or removal from FANZ membership;
- a direction to undertake remedial action in respect of the conduct;
- a written apology to the complainant; and
- the recovery of reasonable costs incurred by FANZ.

2.3 Franchise Disclosure Exemptions

In New Zealand, there are no statutory franchise disclosure obligations under general law.

If a franchisor is a member of FANZ, they are required to comply with the FANZ Code, which includes mandatory disclosure requirements. There are limited exemptions under the FANZ Code – eg, full disclosure requirements do not apply to assignment of an existing franchise, and may not apply to renewals or extensions of an existing franchise.

2.4 Franchise Disclosure Language/ Translation Requirements

The official languages of New Zealand are English, Te Reo Māori and New Zealand Sign Language. Typically, contracts are in English.

3. Franchise Registration

3.1 Mandatory Registration

There are no franchise registration requirements under New Zealand law. Franchisors are not required to register their franchise agreement, disclosure document or themselves with any government authority before operating in New Zealand.

3.2 Franchise Registration Process

This is not applicable as there is no franchise registration process in New Zealand.

3.3 Consequences of a Failure to Register

This is not applicable as there is no franchise registration process in New Zealand.

4. Other Requirements

4.1 Past-Profitability Requirements

There are no past-profitability requirements under New Zealand law.

If a franchisor is a member of FANZ, the franchisor is required to comply with the FANZ Code, which includes a requirement to provide potential franchisees with a franchisor solvency certificate as well as ongoing disclosure requirements.

Similarly, the Fair Trading Act 1986 prohibits misrepresentations in the course of trade, and representations need to be true and substantiated.

5. Duration, Renewal and Termination

5.1 Duration of a Franchise Agreement

In New Zealand, there are no legal or regulatory requirements that prescribe a minimum or maximum duration for franchise agreements. The duration is agreed between the franchisor and franchisee. Note, however, New Zealand contract and commercial law requirements, including a prohibition on unfair contract terms – see 7.4 Prohibited Provisions in Local Law.

5.2 Franchise Renewal

In New Zealand, there are no legal or regulatory requirements that prescribe renewal rights. Note, however, New Zealand contract and commercial law requirements, including a prohibition on unfair contract terms – see 7.4 Prohibited Provisions in Local Law.

5.3 Termination of the Franchise Agreement

There are no franchise-specific requirements around termination or minimum notice periods under New Zealand law, and general commercial and contract law applies. Note, however, New Zealand contract and commercial law requirements, including a prohibition on unfair contract terms – see **7.4 Prohibited Provisions in Local Law**.

6. Restrictions on Competition in Franchise Agreements

6.1 Treatment of Competition Restrictions in Franchise Agreements

The Commerce Act 1986 prohibits various things, including the following.

- The entering into of or giving effect to cartel provisions between competitors (Section 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 entering into of or giving effect to a provision of a contract, arrangement or understanding (Section 27), or a person with substantial market power from engaging in conduct (Section 36), which has a purpose, effect or likely effect of substantially lessening competition in a relevant market.

The Commerce Act was amended from 5 April 2023 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 or 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 in line with Australia, though the Australian regime has more flexibility as it is permissive of “exclusive dealings”. 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. The Commerce Act is currently under review, including because of issues arising since the historic IP exceptions were removed; this is particularly relevant to business structures such as franchising and licensing. In August 2025, the Minister of Commerce and Consumer Affairs indicated changes to the framework around collaboration and the potential to include “class exemptions”. Details are not yet known, but this may impact franchise models given the inherent issues following the 2023 removal of the IP exception.

As can often be the model in franchise structures, if the franchisor is itself operating in the market and also selling goods or providing services in competition with its franchisees, they may be competitors for the purposes of the Commerce Act. Often, franchise agreements contain restrictions that 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.

Businesses with substantial market power that 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 Section 36 misuse of 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 that the owner supplies in that market (for example, where the party is the first to patent a particular technology).

The Commerce 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 some circumstances.

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

6.2 Exclusive Territories and Competing Businesses

The permissibility of including and enforcing exclusive territories in franchise agreements depends on the specific circumstances and the extent of restrictions imposed.

Exclusive territories in franchise agreements may trigger three prohibitions under the Commerce Act 1986:

- the cartel prohibition;
- the general prohibition on anti-competitive provisions; and/or
- the misuse of market power prohibition.

Cartel Prohibition

If a franchisor and franchisee are competitors for the supply of goods or services, an exclusive territory clause may amount to market allocation, which is a form of cartel conduct. This is prohibited unless an exception applies.

The most relevant exception to the cartel prohibition for exclusive territories is the collaborative activity exception. The collaborative activity exception applies where:

- the franchisor and franchisee are engaged in a collaborative activity;
- the dominant purpose of the collaborative activity is not to lessen competition between the parties; and
- the exclusive territory clause is reasonably necessary for the purpose of the collaborative activity.

Franchise agreements may qualify as collaborative activities. However, franchisors must ensure that the clause is reasonably necessary for the purpose of

the collaborative activity. This involves a fact-specific assessment of the exclusive territories' scope and duration, and whether less restrictive alternatives could achieve the same outcome.

If exclusive territories extend beyond the term of the agreement (eg, one year), the cartel prohibition does not apply if three conditions are met:

- the collaborative activity has ended;
- the exclusive territories were reasonably necessary to achieve the aims of that collaborative activity; and
- the agreement did not end because its dominant purpose became the lessening of competition between the franchisor and franchisee.

The other relevant exception is the vertical supply contract exception. For the vertical supply contract exception to apply to exclusive territories:

- the contract must be between a supplier or likely supplier of goods or services and a customer or likely customer of that supplier;
- the cartel provision must relate to the supply or likely supply of the goods or services to the customer or likely customers;
- the cartel provision must not have the dominant purpose of lessening competition between any two or more of the parties to the contract;
- the franchise agreement must involve the franchisor supplying goods or services to the franchisee; and
- the exclusive territory clause must relate to that supply and must not have the dominant purpose of reducing competition between the franchisor and franchisee.

General Prohibition on Anti-Competitive Provisions

The exclusive territories must also be assessed under the general prohibition on provisions in contracts, arrangements, understandings or covenants that have the purpose, effect or likely effect of substantially lessening competition in a relevant market. The relevant market is based on a market definition that best isolates the key competition concerns.

Misuse of Market Power Prohibition

Enforcing exclusive territories may also trigger the misuse of market power prohibition. This applies where the franchisor holds substantial market power and the enforcement of the clause has the purpose, effect or likely effect of substantially lessening competition in a defined market.

Restraint of Trade: Common Law Doctrine

Exclusive territories also constitute a “restraint of trade”. Under New Zealand common law, a restraint of trade is unenforceable unless the party seeking enforcement establishes that it is reasonably necessary to protect a legitimate commercial interest (eg, goodwill). Typically, franchise agreements will include a restraint of trade on that basis.

6.3 Requiring Franchisees to Purchase Specific Goods and Services

The franchisor may require a franchisee to purchase certain products or services from the franchisor or its nominated suppliers, provided this does not contravene Sections 27, 30 or 36 of the Commerce Act 1986.

A provision in a franchise agreement that requires franchisees to purchase certain goods or services from a third-party supplier may be considered a market allocation provision (a type of cartel provision) if the franchisor and franchisee are competing to acquire those goods or services.

There is an exception under the Commerce Act for joint buying and promotion agreements. The joint buying and promotion agreements exception applies where a provision in a contract, arrangement or understanding:

- relates to the price for goods or services to be collectively acquired by some of the parties to the arrangement;
- provides for joint advertising of the price for the resupply of goods or services acquired collectively;
- provides for a collective negotiation of the price of goods or services which are then purchased individually; or
- provides for the purchase of goods or services to occur via an intermediary.

The joint buying and promotion agreements exception only excludes the application of price fixing, not other cartel provisions such as market allocation provisions.

The provision that requires the franchisees to purchase specific goods or services from certain parties must also not have the purpose, effect or likely effect of substantially lessening competition in the relevant market, as prohibited under Section 27 of the Commerce Act.

Where the franchisor holds substantial market power, such a requirement on franchisees may also breach the misuse of market power prohibition if it has the purpose, effect or likely effect of substantially lessening competition in a defined market.

6.4 Channel Reservation

Franchisors can reserve certain channels, as long as the reservation:

- is not a cartel provision, or is a cartel provision but an exception applies;
- does not have the purpose, effect or likely effect of substantially lessening competition, in breach of the general prohibition against anti-competitive provisions; and
- (if the franchisor has substantial market power) does not have the purpose, effect or likely effect of substantially lessening competition in that market.

Channel reservations in franchise agreements, such as allocating online platforms or other sales channels, may be considered market allocation or output restriction provisions (which are cartel provisions) where the franchisor and franchisee compete for the supply of goods or services. As with exclusive territories, cartel provisions are prohibited unless an exception applies. The most relevant exception is the collaborative activity exception, though the vertical supply contract exception may also apply in some circumstances.

6.5 Vertical Agreement Block Exemptions

The Commerce Commission can authorise certain provisions in contracts, arrangements or understandings, or conduct that may breach competition laws, if the public benefits outweigh the anti-competitive detriments.

This authorisation can apply to:

- anti-competitive provisions (Sections 27 and 28 of the Commerce Act 1986);
- cartel provisions (Section 30);
- misuse of market power (Section 36); and
- resale price maintenance (Sections 37 and 38).

Once authorised, the provision or conduct subject to the authorisation is protected from legal action under the Commerce Act, both by the Commission and private individuals.

The Commission may grant clearance for cartel provisions under the collaborative activity exception. Clearance will be given if the applicant can demonstrate that all criteria for the collaborative activity exception are met. This clearance regime is voluntary and there is no statutory requirement to seek clearance for the collaborative activity exception to apply.

In August 2025, the Minister of Commerce and Consumer Affairs indicated that the review of the Commerce Act being undertaken by the Ministry of Business, Innovation and Employment may propose “class exemptions” – for example, to allow the Commission to exempt categories of conduct that are low-risk or clearly beneficial. No details have yet been announced.

7. Choice of Governing Law

7.1 Possibility of a Franchisor Stipulating Non-Local Law

The parties are free to select the governing law. It is important that the franchise agreement clearly identifies the governing law.

7.2 Local Law Requirements

The parties are free to select the governing law. It is important that the franchise agreement clearly identifies the governing law.

7.3 Mandatory Content

There is no mandatory content for franchise agreements under New Zealand law.

If a franchisor is a member of FANZ, they are required to comply with the FANZ Code, which stipulates that franchise agreements contain provisions requiring:

- a cooling-off period of not less than seven days from the date of entry into the franchise agreement (or preliminary agreement, as the case may be), during which the franchisee may, by formal notice to the franchisor (or master franchisee/sub-franchisor, as the case may be), elect to withdraw from the agreement at their discretion;
- that both the franchisor (and each master franchisee/sub-franchisor) and the franchisee use reasonable endeavours to comply with the provisions of the FANZ Code and rules;
- that the franchisee comply with the laws of New Zealand, including all laws relating to employment, health and safety, fair trading and tax; and
- that each franchisee use reasonable endeavours to clearly identify that the franchisee’s business is being operated under franchise from the franchisor, including in all written contracts entered into with customers of the franchisee.

7.4 Prohibited Provisions in Local Law

There are no prohibited provisions specific to franchise agreements under New Zealand law.

However, under New Zealand’s Fair Trading Act 1986, the use of unfair contract terms in certain types of contracts is prohibited. This includes “standard form” contracts where the expected annual value of the trading relationship is less than NZD250,000 (including goods and services tax) at the time the contract is formed.

A term may be declared unfair by the court if it meets all three of the following criteria:

- it creates a significant imbalance in the parties’ rights and obligations;
- it is not reasonably necessary to protect the legitimate interests of the advantaged party; and
- it would cause detriment (financial or otherwise) to a party if enforced or relied upon.

In assessing fairness, New Zealand courts must consider the contract as a whole and the transparency

of the term. The Fair Trading Act 1986 also provides examples of potentially unfair terms, such as clauses that allow only one party to:

- vary the contract unilaterally;
- avoid or limit performance;
- terminate the agreement; and
- impose penalties.

Certain terms are exempt from being declared unfair, including those that define the main subject matter of the contract or set the upfront price payable.

8. Dispute Resolution

8.1 Enforcement of Foreign Judgments

New Zealand is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the “New York Convention”); thus, arbitral awards can be enforced through the Convention protocols.

9. Payment and Taxes

9.1 Restrictions or Limits on Franchisee Fees and Royalties

There are no restrictions specific to the franchise sector.

Franchisors should be aware that New Zealand:

- implements United Nations Security Council sanctions – violations can result in severe penalties, including fines and imprisonment as well as commercial and reputational damage (New Zealand banks are generally risk-averse in relation to sanctions);
- has the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which imposes obligations on certain entities (including financial institutions, lawyers, accountants and real estate agents) to have in place procedures and processes to detect, deter, manage and mitigate money-laundering and the financing of terrorism; and

- has a range of import tariffs, taxes and charges that may apply depending on the relevant business area.

9.2 Withholding Tax

New Zealand imposes withholding taxes on interest, dividends and royalties paid by New Zealand residents to non-residents. Franchise fees, royalties and technical service fees may be subject to such withholding taxes if the payments fall within the definitions of interest, royalties or dividends, as defined under New Zealand tax legislation. While New Zealand does not have a specific withholding tax for management fees or technical service fees, the definition of “royalties” under domestic legislation is broad and includes payments for know-how. Accordingly, the withholding tax on royalties may capture certain types of technical service fees, depending on the exact nature of the activity being compensated.

Royalty withholding tax generally applies at 15% to the gross payment under domestic legislation, which may be reduced to 10% or 5% under an applicable double tax treaty.

Where New Zealand-sourced fees for services that are not characterised as dividends, royalties or interest for New Zealand tax purposes are paid to a non-resident franchisor, such fees may be relieved from New Zealand taxation under an applicable double tax treaty under the standard “business profits” article, unless that item of income is attributable to a permanent establishment of the non-resident franchisor in New Zealand, or unless that item of income is otherwise dealt with in another article of the relevant treaty.

New Zealand also imposes interim withholding taxes on certain contract payments made to non-residents that perform services physically in New Zealand, although exemptions may be obtained from the New Zealand tax authority if the non-resident establishes that its contract activity is treaty-protected (eg, not attributable to a permanent establishment in New Zealand under an applicable double tax treaty) or falls within certain prescribed limits under domestic tax legislation.

9.3 Foreign Currency Controls

In New Zealand, there are no specific foreign currency laws or regulations (such as exchange control restrictions) in relation to payment of franchise fees. However, foreign currency payments are controlled through related legislation, including:

- United Nations Security Council sanctions – violations can result in severe penalties, including fines and imprisonment, as well as commercial and reputational damage;
- the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which imposes obligations on certain entities (including financial institutions, lawyers, accountants and real estate agents) to have in place procedures and processes to detect, deter, manage and mitigate money laundering and the financing of terrorism; and
- a range of import tariffs, taxes and charges, which may apply depending on the relevant business area.

See 9.1 Restrictions or Limits on Franchisee Fees and Royalties.

10. Execution Formalities

10.1 Authentication, Notarisation, Witnessing, Etc

There are no formalities specific to franchise agreements, though normal New Zealand contract law requirements apply, including the need for legal consideration, as well as issues if there is past consideration. Otherwise, under New Zealand law, the franchise agreement can be executed as a deed. Generally:

- authentication and notarisation of documents is not required under New Zealand law;
- if the franchise agreement is executed as a deed, it will need to comply with the formalities for execution of a deed under New Zealand law; and
- companies will need to execute the agreement in accordance with their constitution.

10.2 Electronic Signatures

Under New Zealand law, electronic signatures may be used to execute a franchise agreement, provided certain conditions are met. Specifically, the electronic signature must:

- sufficiently identify the signatory and clearly indicate their approval of the relevant information; and
- be appropriately reliable given the purpose and context in which the signature is required, as outlined in Section 226 of the Contract and Commercial Law Act 2017.

To avoid ambiguity, the franchise agreement should include a clause confirming that electronic signatures are acceptable.

10.3 Stamp Duties

There are no document taxes or stamp duties in New Zealand.

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