

Issue: February 2014

## FRANCHISING ALERT

## **MINIMUM INCOME GUARANTEES**

If you are considering acquiring a franchised business be weary of representations by Franchisors of minimum guaranteed income.

Franchisors must have a reasonable basis for making income representations to potential Franchisees.

Make sure you carry out appropriate enquiries to verify any claims made by Franchisors about earnings information.

If you are an existing Franchisee and have been guaranteed or promised by the Franchisor that you will earn a minimum income level, but in reality you have derived little or no income from the franchise, the Franchisor may have breached the Competition and Consumer Act 2010 through engaging in misleading or deceptive conduct. Such breaches may expose the Franchisor to penalties and a damages claim.

In more extreme cases, directors of Franchisor companies can be held personally liable for misleading and deceptive conduct.

A prudent step that can be taken by a Franchisee if you are considering buying into a franchise system is:

- to contact other franchisees and verify if those franchisees are receiving income at the levels the Franchisor clams;
- request the Franchisor provide written evidence as to the basis upon which it calculates the minimum earnings;
- > seek advice from a lawyer and accountant experienced in franchising.

Any enquiries about franchising can be directed to Raymond Duffy, Associate on 07 3370 5132 or email: <a href="mailto:raymondd@mdl.com.au">raymondd@mdl.com.au</a> or Nathan Hardman, Director on 07 3370 5113 or email: <a href="mailto:nathanh@mdl.com.au">nathanh@mdl.com.au</a>.

