M Fact Sheet

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> FRANCHISOR NEWS

PREMISES LEASING

Where a franchise system involves use of fixed premises Franchisors will usually enter into a head lease with the Landlord subject to conditions allowing the Franchisor to offer a sub-lease or licence to occupy to their Franchisees.

Franchisor as Tenant

This method:

- > allows the Franchisor to retain control of the site in the event of default by the Franchisee
- does expose the Franchisor to liability if the Franchisee defaults and is subsequently evicted from the premises – the Franchisor would then remain liable to the Landlord for the rent and other obligations whilst a new Franchisee is found;
- > would normally involve an arrangement whereby the Franchisee would be required to provide the bank guarantee/security deposit and take out relevant insurances.

Also, where the fixed premises are retail in nature, the disclosure regime under the Retail Shop Leases Act 1994 (Qld) must also be complied with.

Franchisee as Tenant

The other option is to require the Franchisee to enter into a Lease directly with the Landlord.

In this case:

- if the Franchisee were to default under the Lease, the Franchisee would be directly liable to the Landlord for rent and the other obligations under the Lease;
- the Franchisee would directly provide the security bond/bank guarantee to the Landlord and take out relevant insurances;
- > make good obligations would fall solely to the Franchisee

Premises Control and Step In Clauses

The trade off for enabling the Franchisee to directly enter into the Lease with the Landlord is that the Franchisor loses control of the site.

One way to get around the issue of site control where the Franchisee is the tenant is for the Franchisor to negotiate "step in" clauses with the Landlord. In the event the Franchisee's lease is terminated, the Franchisor has the option to "step in" to the premises and either continue the franchised business or grant a licence to use the premises to another Franchisee.

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