



5 FACTORS TO FIND YOUR FRANCHISE COUNSEL

Selecting the right franchise lawyer for you is not an easy business. Andrae Marrocco offers solid advice to assist you in making this vital decision.



BEYOND EXPERTISE AND EXPERIENCE, IT IS IMPORTANT TO WORK WITH A FRANCHISE LAWYER WITH WHOM YOU HAVE THE RIGHT SYNERGY AND RAPPORT"

Identifying and selecting the right franchise lawyer and law firm to partner with can significantly impact the strength and growth of your franchise system.

A good franchise lawyer will prepare robust franchise documentation, provide pertinent and prudent legal advice, and help with early-stage problem solving. Pinpointing the most suitable franchise lawyer for you can mean the difference between a healthy growing system and one that is mired in a host of issues.

As with many service providers, when it comes to lawyers and law firms, there are many options, varieties and complexities involved in making such an important decision. Law firms come in all shapes and sizes, international, regional, full service, boutique etc. Moreover, each franchise lawyer has their own unique blend of expertise and experience based on the types of franchise systems they have worked with, the specific franchise work and transactions they have undertaken, and their other areas of practice.



Here are five factors to consider when choosing the right franchise lawyer for you.

1. YOUR FRANCHISE BUSINESS

When deciding on which lawyer to work with in any area of practice, one is well advised to consider how well they understand your business and industry. In the context of advising a franchise system, it is critical that you work with a lawyer who understands the franchise business model, its dynamics and complexities, the regulatory environment, and how to translate your business plans into a functional legal framework that underpins your franchise system.

Valuable franchise counsel are proactive and able to identify the moving pieces and areas that require further bolstering to strengthen your franchise business. Take the often-used example, international expansion of your franchise system. Experienced franchise lawyers can assist you in: (i) formulating expansion strategy, corporate/tax structuring, and the interplay between franchise laws in both jurisdictions, (ii) analysing the advantages and disadvantages of adopting various forms of structure for various jurisdictions (eg. direct franchising, master franchising, area development arrangements etc), and (iii) determining how the respective fees and obligations should be divided up between the franchisor and franchisee.

2. CONTRACT CUSTOMIZATION

Using well-drafted franchise precedents can be cost-effective, expeditious and advantageous. However, it should not be to the

exclusion of appropriate adaptation, customization and tailoring. While franchise systems have common attributes and structures, there are often nuances and unique elements that should be reflected in the principal and ancillary documents (eg subleases, security agreements, construction and development arrangements etc). If you operate in a regulated industry, your franchise documentation should be adapted to reflect the regulations (and any licensing obligations). This often involves drafting specific obligations that likely need to be carried through to renewal and transfer conditions.

Depending on current and future contemplated activities, the exclusivity, reservation of rights, and default provisions may need to be customized to offer enhanced protection and facilitate future goals. Development milestones and minimum performance requirements can also necessitate the drafting of tailored processes (particularly around the consequences of success or failure). It is critical that you work with franchise counsel that have the expertise and experience to leverage the benefit of precedents while working them to include the right processes, provisions and protections.

3. BROADER LEGAL EXPERTISE

If you operate a real estate management franchise system, it makes good sense to work with a law firm that has strong expertise in real estate (in addition to franchise capability). At present, the writer and his firm are representing a franchise system that is structured as an investment fund, with national and international locations (corporate and franchise), a large real estate portfolio, and which plans to go public within



the next three years. In choosing a firm that has, among other areas, securities/public company, private equity, tax, international transactions, experience was critical to ensure the correct structure, documentation, and legal framework was implemented.

Equally, selecting a firm with bench strength in the areas of technology and intellectual property is important if your franchise system has need for patent applications or intricate technology contracts in order to protect quintessential assets. Reviewing the 'legal services' pages on law firm websites together with lawyer profiles is a good starting point to researching the capabilities of law firms. It can also be helpful to interview firms and specific lawyers to learn more about their areas of practice (expertise) and the types of work/transactions (experience).

4. BEYOND THE LAW

Building on from the theme of knowing your business and industry, valuable franchise counsel are able to assist you at the point where business and law intersect. Franchise lawyers with experience relevant to your franchise business will be able to provide you with insight on what they have seen work and not work in the past, for example, as it relates to franchise structures, intellectual property protection, exclusivity of territory, training etc, specific to your line of business and industry.

They are also well-positioned to make useful introductions from their extensive network, for example, to professional service providers such as: (i) accounting firms, financial institutions, advisory services, and real estate firms, (ii) franchise brokers and consultants, (iii) franchise lawyers and other professionals in jurisdictions outside of their jurisdiction of practice

(that can assist with your expansion). The value in having a referred service provider with whom your franchise counsel has worked with, and in respect of which your franchise lawyer acts as intermediary, cannot be overstated. It will often result in more efficient and cost effective services than would have otherwise have been realized.

5. SYNERGY AND RAPPORT

Finally, beyond expertise and experience, it is important to work with a franchise lawyer with whom you have the right synergy and rapport.

Communication styles – is the way your franchise lawyer communicates with you, your franchisees (when required) and other counsel, compatible with yours and does it serve your purposes?

Legal advice – does their perspective on legal issues, and the solutions that they provide, meet your expectations?

Responsiveness – are you satisfied with your franchise counsel's responsiveness?

Advocacy – when it comes to taking instructions and negotiating documentation, is there a meeting of the minds and business goals?

Synergy – do you find it easy to pick up the phone and call your franchise lawyer to discuss strategy and objectives? Are you able to arrive at workable legal solutions taking into consideration challenge, complexity, and situations where business goals are at odds with legal requirements?

Ultimately, it is imperative that you select a franchise lawyer who optimally supports and complements your franchise system through, among other things, one or more of the attributes described above.



ABOUT THE AUTHOR

Andrae J. Marrocco is an international franchise lawyer who specializes in franchise & distribution and corporate M&A transactions. He is a partner in the Business Law Group and the Franchise and Distribution Law Group in the Toronto office of McMillan LLP. His transactional practice is focused on advising domestic and international businesses on franchise and distribution matters and corporate/M&A transactions. He has particular expertise in complex franchise arrangements, franchise system mergers and acquisitions, and cross-border/international transactions.