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Mr Tony Greenwell
General Manager
Business Conditions Branch
Industry and Small Business Policy Division
Department of Innovation, Industry, Science and Research
GPO Box 9839
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By email franchising@innovation.gov.au

Dear Tony

Industry consultation on franchising reforms

CPA Australia represents the diverse interests of more than 122,000 members in finance, accounting and business in 100 countries throughout the world. Our vision is to make CPA Australia the global professional accountancy designation for strategic business leaders.

We make this submission not only on behalf of our members, but also taking into account the broader public interest. We have limited our specific comments to Recommendation 1 of the franchising report issued by the Joint Committee on Corporations and Financial Services.

General comment

CPA Australia is of the opinion that the financial disclosure requirements of the Franchising Code of Conduct do require the disclosure of financial information that is necessary for a potential franchisee and their accountant to make an informed judgement on the risks and benefits of entering into a franchise agreement at that point in time. Franchisees must however remain vigilant about the ongoing viability of their franchisor over the life of the franchise agreement (just as other businesses need to be cautious of the viability of a key supplier).

Specific comments

Our specific comments are limited to questions 1.8 through to 1.12 of the consultation paper. These questions relate to Recommendation 1 from the Joint Committee's report, which reads:

The committee recommends that the Franchising Code of Conduct be amended to require that disclosure documents include a clear statement by franchisors of the liabilities and consequences applying to franchisees in the event of franchisor failure.

We submit that it would be very difficult for a franchisor to assess and therefore disclose, all the potential 'liabilities and consequences' to a franchisee of the franchisor failure at the time a franchise agreement is being discussed.

For example, some of the potential 'liabilities and consequences' may arise not from the franchise agreement itself but from common law (such as a duty of care to a customer of the franchisee) or from separate agreements (such as supply agreements) that the franchisor and franchisee may enter subsequent to the commencement of the franchise agreement.

Another example of the difficulty of such disclosure is that the consequences to a franchisee of franchisor failure will differ from franchisee to franchisee depending on the franchisee's personal and business circumstances. For instance:

- franchisees may use different security such as the family home or something else in order to access a loan to buy into the franchise,
- franchisees may rely to different levels on the income from the franchise business, and
- the length of time the franchisee has been running the franchise may indicate different levels of reliance on the franchisor remaining in business (i.e. the longer the franchisee has been in the franchise, the greater the likelihood that they have built up greater personal goodwill and therefore they may be less reliant on the franchisor).

A further concern is that even if a franchisor can make a prediction of all the potential 'liabilities and consequences', the chances of a 'liability' arising to a franchisee may be so remote that the value of such disclosure would have to be questionable and may mislead potential franchisees about the extent of such risks.

We are also concerned that this recommendation could make a franchisor liable for a misstatement or incomplete disclosure, which may unnecessarily complicate the insolvency process

This recommendation presupposes a negotiating power imbalance exists between franchisees and franchisors. We therefore do not support this recommendation as it shifts the burden of responsibility too much onto the shoulders of the franchisor. We recommend that the disclosure of the rights and responsibilities of the franchisor and the franchisee, including the rights and responsibilities in the event of the franchisor failure should be set out in the franchise agreement, if not already the case.

If you have any queries about this submission, please do not hesitate to contact me.

Yours sincerely



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