

FRANCHISES



ESTABLISHING A FRANCHISE OPERATION IN BARBADOS

Section 2 of the Franchises (Registration and Control) Act (the "Act") defines a franchise as: "a right granted in writing by the owner of a mark, product, service, technique or device to another person to use the mark, product, service, technique or device, whether or not the mark, product, service, technique or device is protected by a trademark or trade secret, or by usage, or otherwise."

The Act provides that any person:

- (a) who wishes to operate a business in Barbados on franchise; or
- (b) who, not being a citizen or permanent resident, wishes to operate a business in Barbados using his own mark, product, service, technique, device, copyright, industrial design or invention before commencing business, must obtain from the Minister of Finance and Economic Affairs a license for the purpose.

It is an offence to operate a franchise without first being licensed by the Minister, and it is punishable by a fine or imprisonment or both.

In order for a franchise to be operable in Barbados, it must be licensed under the Act, either by:

- (i) directly applying under s. 3 of the Act for a franchise license, or
- (ii) having an independent licensee (e.g. a Barbados company) apply for the franchise licence.

The party which will be operating the franchise must apply for the franchise licence and it is advisable for the parties to enter into a franchise agreement with each other before the licence application is made to agree certain matters, including, but not limited to an express term regarding which party will pay for the licence if it is granted.

LICENCE APPLICATION

Applications are to be made on the prescribed form to The Director of Finance and Economic Affairs.

The application must be accompanied by a projected Profit and Loss Income Statement for each of the first two years of the proposed operations. (For the purposes of the application all currency must be quoted in Barbados dollars, BBD)

There is no fee for processing the application. A licence fee is, however, payable if the application is successful and a franchise licence granted.

INFORMATION REQUIRED

- Names, nationalities and domiciles of the Chairman, Managing Director, other Directors and Company Secretary of the firm applying for the franchise licence.
- Whether any persons associated with the application have been involved in any similar project(s) in the Caribbean Community (CARICOM) area, and if so the particulars of the project(s).

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- The amount of capital to be invested in the proposed operations (in BBD) by category:
 - (i) land
 - (ii) building and /or leasehold improvements
 - (iii) machinery and equipment
 - (iv) other fixed assets
 - (v) networking capital
- The company's nominal or authorised share capital, share capital issued or to be issued, and the country of issue.
- The source and amount of share and loan capital in the proposed operation from external sources.
- The number and remuneration of persons expected to be employed in the proposed operations, by category:
 - (i) managerial and technical
 - (ii) skilled
 - (iii) semi-skilled
 - (iv) unskilled
 - (v) clerical and other

APPROVAL PROCESS

On receipt of an application, the Minister directs that a notice inviting objections to the issue of a licence is published in the Official Gazette. Any objections must be made during a specified period of time at the Minister's discretion, and must specify the reasons for objection.

The Minister considers the application and any objection to the issuing of a licence, and in so doing may:

- (a) require the applicant and the objector to appear before him to be interviewed; and
- (b) require such other information in writing from the applicant or the objector as he thinks necessary.

There is no precise time frame for the licensing process. The length of time for considering a licence will be longer where there are numerous or strong objections to be grant of the licence.

FACTORS CONSIDERED IN EVALUATING LICENCE APPLICATION

One of the purposes of the Act is the orderly development of franchise businesses in Barbados, and in order to achieve this goal the Act is to be given a large and liberal interpretation. Therefore, the licence is granted at the discretion of the Minister, who first generally evaluates any potential competitive impact on non-franchised local businesses in Barbados before approving a franchise licence.

Once the licence is approved it must be entered in the Ministry's register of franchises which records

- a) the name and address of each person to whom a licence is issued;
- b) the type of business in respect of which such licence is issued;
- c) the number of the licence; and
- d) the address at which the business is conducted.

The register is open to public inspection at the Ministry of Trade.

A franchise licence is valid for a period not exceeding 1 year and is not transferable. A licence may be renewed for a period not exceeding 1 year.

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