

Article Information

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Can a franchisor really terminate?

Whilst franchisors can control how franchisees manage their business, they cannot control how their franchisees manage their finances.

And when a franchisee goes under, the first thing a franchisor will want to do is take control of the situation so as to protect the business and the brand.

But changes to Corporations Act 2010 referred to as the new ipso facto provisions, due in July, may leave franchisors sitting on the sidelines able to do very little or nothing.

The government recognised that franchisors, to protect their brand, need to be able to terminate a franchise agreement if the franchisee becomes insolvent, by making provision for this in the Franchising Code of Conduct.

Now it seems the changes to the Corporations Act 2010 may undo this.

At present, provided the franchise agreement gives the franchisor the right to terminate the agreement if a franchisee becomes insolvent, the Code permits the franchisor to terminate immediately.

The new ipso facto provisions will restrict franchisors from enforcing their rights until such time as the franchisee's situation is resolved, which could mean a restructure or it could be that the franchisee company is wound up.

This means that franchisors may be left in limbo.

Let's hope common sense prevails and franchise agreements are excluded from the new ipso facto provisions.

But if not, franchisors need to be reviewing their franchise agreements.