

Article Information

Service: Corporate & Commercial, Franchising

Nothing stays the same

Commercial partner, Andrea Pane, looks at issues around capital expenditure under the new Franchising Code of Conduct.

Nothing stays the same! And this couldn't be truer than in franchising.

Franchising is all about improvement and innovation.

And so it comes as no surprise that franchisors will want to make changes to the way their franchisees run their business or how their stores look, to keep up with technology and customer taste or expectations.

Some franchisors, although not many, will try to introduce changes simultaneously across the chain.

In my experience, most franchisors will introduce changes gradually through a pilot store or stores and, if successful, then roll out the changes as each franchisee renews their franchise.

Having said that, to a certain extent the timing of the changes will depend on what those changes are. For example, if the franchisor is introducing a new point of sale system then they will most likely want all their franchisees to upgrade their system at the same time.

In my view the new Franchising Code of Conduct merely reflects what is already happening in practice in many franchise chains. And that is, if the franchisor wants changes to the system then regardless of what the franchise agreement may say, the franchisor needs to sell those changes to the franchisees, either one or one or as group, and get them on board. And this means telling the franchisees:

- what the changes are
- why the changes are needed
- what it's going to cost the franchisees
- what the franchisees can expect to gain

The only addition to this is that franchisors may now need to present their business case in a more formal fashion to franchisee and they need to let the franchisees know the likely risks associated with making the investment.

If you can, you should include details of any likely changes to the system in your disclosure document. You will need to be reasonably specific. Otherwise you can let your franchisees know about any changes in a separate statement.

Of course any changes required to comply with any laws are not negotiable and need to be made.

There is also scope under the new Code to put any changes to the system to a majority vote. This can presents obvious problems for franchisors but if the change is something completely unexpected it may be the only option.