

FRANCHISE AGREEMENT COMPLIANCE ISSUES

The following is presented from the perspective of a businessperson, is simply illustrative, and should not be construed as legal or transactional advice. Any such advice needed should be obtained from attorneys and other professionals that you have retained and have reviewed your franchise agreement and other relevant documents. The below is presented for informational and illustrative purposes and should not be relied upon for any transaction, financial, communication or legal decisions.

If you would like to discuss any franchise agreement compliance issues, I may be contacted at jonathan@jfcap.com or at 917-238-6917.

In these unprecedented times, hotel owners and operators are taking aggressive and necessary steps to manage hotel operations with minimal customer demand. In many cases this has involved shut down of hotels or suspension of substantially all normal course operations. This has been necessary to manage highly challenged cashflows and to protect employees and customers. Each franchisor has responded in a different manner and franchisors have generally granted some relief on fees, operating standards PIP timelines, and franchise agreement compliance.

At a certain point, the closed hotels will come back on-line, business will slowly resume, and franchisors and their attorneys will be looking closely at franchise agreements. Each brand has a different franchise agreement form but many of the areas to be mindful of for ongoing franchisee compliance include:

1. **Commencement and Completion Dates:** Construction commencement dates and completion dates may be interrupted or postponed due to availability of capital, availability of contractors legal ability to do construction work; PIP completion dates may be missed and need to be extended, especially if scope of work is modified.
2. **Force Majeure:** Force majeure provisions and definitions differ, and some may be relevant while with other definitions they may not be at all relevant – these provisions can impact many of the franchisee operating covenants and compliance.

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3. **Brand Requirements:** Brands have responsibilities for training, marketing and providing services to their franchisees – essentially providing the “system”; however most of the brands have laid off or furloughed large portions of their workforce including revenue management, field marketing, e-commerce, national sales, quality assurance, design, construction and loyalty support. Franchisees may end up suffering as a result of a failure of these brand services.
4. **Continuous Operation:** Franchisees have a requirement to operate continuously and 24 hours per day; most franchisors have consented to shut down or meaningful suspension of operations where asked by franchisees.
5. **Brand Standard Compliance:** Franchisees have a requirement to operate in compliance with all brand standards, at all times. Most franchisors have temporarily suspended many of these operating requirements. At a point in time, the brands will reinstate and will demand compliance with some or all brand standards. Franchisees need to be ready for the operational and fundamental impact of these brand standards as re-introduced.
6. **No Sharing:** Franchisees have a requirement not to share with any other business. Hotel owners or operators that are cross marketing different brands or partnering with other businesses or other uses will need to be mindful of compliance with these provisions.
7. **Consents:** Franchisees are required to obtain consents for the retention of architects, designers, contractors, and in some cases sub-contractors. For new construction and for PIP work, some architects, designers and contractors may be too expensive, too busy or incapable of handling work. Additionally, the brands have furloughed many of its design, architectural support, staff leading to slow response times.

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8. **Plan and Design Approval:** Franchisees need to obtain franchisor approval for plans, architectural designs, and interior design. The brands have furloughed most of their staff which may lead to extremely slow franchisor response times.
9. **Lease Approval:** Brand consent is generally required to execute a major lease or agreement to effectively lease a part of the hotel. Leases of rooms or entire buildings to municipalities, hospitals, medical centers or other groups may breach these provisions unless franchisors have granted approval.
10. **Failure to Pay Debts:** Most franchise agreements can be terminated immediately by franchisors for failure to pay debts as they come due, if the franchisee admits in writing its inability to pay debts, and if there is a general assignment for the benefit of creditors. As a result, many appeals to lenders indicating inability to pay debts could potentially cause franchise agreement defaults.
11. **Appointment of a Receiver:** Most franchise agreements can be terminated if a Receiver is appointed to control the cashflow of the underlying hotel.

The above is illustrative of franchise agreement issues in general. Each franchise agreement and situation is unique. If you would like to discuss your situation, I may be reached at jonathan@jfcap.com or at 917-238-6917.