

# Aktuell

## Spezial-Firmeninformation für Franchiseunternehmen

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treffen, um den Einstieg ins System schmackhaft zu machen.

In einem Gespräch mit der Messegesellschaft haben Berater unseres Hauses angeregt, die 10 Jahren alte Start-Messe mit einem neuen Zusatz-Slogen zu versehen, um das Interesse am Thema Franchise zu forcieren. Warum nicht die Bezeichnung „Start mit Franchise - die Messe in die Selbständigkeit“. Die Wahrscheinlichkeit, dass nicht nur noch mehr Franchise-Systeme ausstellen, sondern die Besucherzahlen der Franchise-Interessenten steigen liegt, nah. Auch das Werbekonzept der Messe und aller beteiligten könnte auf internationale Portale ausgeweitet werden.

Warum lernen wir nicht von unseren benachbarten Ländern?

Es ist zu bedenken, dass Sie als Franchise-Geber Ihre Bemühungen bei der Franchise-Nehmer Suche mit derzeitig ca. 900 System-Gebern teilen.

Die Suche, die Auswahl und das Gründen wird somit nicht leichter. Es ist also notwendig, einen immer größeren Brocken zu stemmen, der da heißt Marketing. In dieser Ausgabe werden wir Ihnen einen neuen Partner der Branche vorstellen, der sich auf die Fahne geschrieben hat, Franchise-Nehmer Suche mit hoher Qualität anzubieten.

Die FranSearch GmbH mit Sitz in NRW wird sich nicht nur durch andere Abläufe von seinen Mitbewerbern abheben, sondern will gewährleisten, dass nach einer Einarbeitung in das jeweilige System immer nur ein und derselbe Mitarbeiter/in für Interessenten als

### Editorial

Auch wenn die Start-Messe in diesem Jahr nicht den gewollten Besucherstrom hatte, sind dennoch viele der System-Geber mit der Qualität der Besucher zufrieden. Einige unserer Mandanten wie z. B. Granite Transformations Deutschland GmbH konnten sich noch in der Folgewoche mit Interessenten im Showroom des Pilot-Franchise-Nehmers

Ansprechpartner zur Verfügung steht. Aber das scheint noch nicht alles zu sein, denn sollte ein Mitarbeiter/in bereits 10 Systeme begleiten so kommt ein/e weiterer ab dem 11 System hinzu. Hierdurch soll den hohen Qualitätsansprüchen Rechnung getragen werden.

Wir wünschen FranSearch viel Erfolg.

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### Delegationsreise zur Franchise Messe Istanbul (von Jörg T. Eckhold )

Eine ganze Weile hat es gedauert bis die Repräsentanten der UFRAD (Türkischer Franchise-Verband) sich entschlossen hatten, den deutschen Franchise-Markt im Zusammenhang mit der Start-Messe in Essen anzusehen. Aufgrund des stetig wachsenden türkischen Franchise-Marktes haben wir uns in Zusammenarbeit mit dem Deutschen Franchise-Verband, der asfc, TIGGES Rechtsanwälten, franchise-net zu einer programmreichen Sonderreise an den Bosphorus entschieden. Ein paar Zahlen für Sie zur Messe: Eintrittskosten ca. 6 Euro für die ganzen 4 Tage: Messedauer: vom 13. bis zum 16. Dezember 2007. Anzahl der Aussteller: ca. 300 Firmen, hiervon etwa 80 % türkische Franchise-Systeme.

In der Regel erwartet die Ausstellungsgesellschaft ca. 20 000 Besucher.

Das Begleitprogramm beinhaltet nicht nur den Flug, Hotel, Transfer und Abendprogramm, sondern Vorträge über: Wie bereite ich mein System für den Marktaustritt vor, welche rechtlichen Barrieren erwarten mich, wie sieht der Immobilienmarkt in der Türkei aus sowie Fachauskünfte über den Markt allgemein, die Kaufkraft, die Zielgruppen-Größe und das Marktsegment Franchise in seiner Gesamtheit. Wir erwarten von der Reise einen großen Erfahrungsaustausch mit Kollegen und insbesondere dem türkischen Franchise-

Verband. Unser Aufenthalt wird von den Betreibern des türkischen [franchise-net.com.tr](http://franchise-net.com.tr) begleitet.

Mehr Informationen zur Messe finden Sie unter: [www.be-mydealer.com](http://www.be-mydealer.com)

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### GASTBEITRAG

#### FRANCHISOR or FRANCHISEE Legal Considerations in Australia

(Marwan Kojok, Lawyer from Baybridge  
Lawyers – Sydney Australia)

#### **Are you a Franchisor?**

Putting aside the challenges faced when moving from a sole operator to a multi-unit operator and then becoming a Franchisor, you need to consider whether your business structure meets the criteria provided under the Franchising Code of Conduct. Whether you like to label your business structure a license, distribution, manufacturing, dealership or any other name, which better describes your business structure, if it meets the following criteria, you are deemed to be operating a franchise model. What does this mean? Well, it simply means that your business operation will be regulated by the Franchising Code of Conduct and accordingly, specifically if you are a Franchisor, you are required to provide a Disclosure Document to your prospective franchisees along with meeting other conditions such as providing a 'Cooling-Off' period.

The criteria to be met are generally known as the four pillars of franchising.

1. *Is there an Agreement?* It need not be an agreement in writing and may be made orally between the parties.

2. *Is it substantially or materially associated with a trademark or commercial symbol?* We all are familiar with the McDonald's golden arches or the Boost Juice brand. It has been well argued that the makings of a franchise model are generally based or founded on the trademark or commercial symbol of the business. It is behind this that goodwill is generated and interest is developed.

3. *Is there a payment of a fee?* In most franchise models whether it be in Australia or overseas, the Franchisor receives a fee generally known as a Royalty fee for the continued use of the brand and systems developed by the Franchisor. Such fee also may refer to the initial upfront fee, training fees and any other ongoing fees payable under the agreement.

4. *Is there a system or business plan substantially determined or controlled by the Franchisor?* The Franchising Code of Conduct does not define "System" or "Business Plan", and there is limited case law on this matter, however it can be argued that where there is an element of control by the Franchisor on the Franchisee to do certain things in respect to the operation and marketing of the business then it satisfy's this criteria.

If the above exist then you as the Franchisor must ensure compliance with the Franchising Code of Conduct. This means that you must issue to a prospective franchisee at least 14 days prior to the franchisee signing or paying any money a current Disclosure Document along with other requirements. This disclosure document will provide the franchisor's company details (directors, associates and experiences of the office holders in respect to the business), historical & current information pertaining to the franchise operation, ownership of the intellectual property, obligations of both the franchisor and franchisee in the franchise agreement and a solvency statement.

Once you have determined that the Franchising Code of Conduct regulates you, and then it is prudent that you locate and instruct a lawyer with franchise expertise to prepare the required documentation, which

should include the Disclosure Document and Franchise Agreement, which is the contract between you as the Franchisor and the Franchisee.

Following this and if you have not previously arranged to protect your brand, it is imperative before you launch the franchise that you have made all efforts to protect your intellectual property. First and foremost is to ensure that your brand (including name and any logo) is applied for registration as a trademark. This exercise may also include protecting any designs that you may have created and ensuring that copyright in your system and relevant systems and documents belong to you. I have on numerous occasions experienced prospective franchisors seek the services of consultants, graphic designers or web designers to find out later that they were unable to continue using the items without the prior and continuing consent of the service provider. Lesson to be learnt is to ensure that you agree upfront that upon completion of the services that copyright in the item will be held by the franchisor or a nominated entity.

Once you have completed the above it would be wise to contact an accountant to liase with your lawyer to setup the correct structure for the operation of the franchise. In most cases you will find that franchisors are structured in a variety of ways to protect itself from liability.

Each franchise has its unique qualities and the above is a general view on getting yourself ready for franchising your business and advises that you seriously consider appointing the right people to assist you in the further expansion of your business. There is a plethora of information in the market to further your knowledge on franchising which include franchise magazines, franchise expos and the Franchise Council of Australia.

### **Are you a Franchisee?**

Owing and operating your own business is daunting in itself without the responsibility and the obligations that you have to a franchisor. Notwithstanding this, it has been well documented that a franchise-operated

business attains a higher level of success than an independently owned and operated small business. Franchising has become such a successful model today because if done properly it is an efficient method of expanding a brand quicker across a State, Country or the globe by forming in essence partnerships with like-minded people to achieve the same goal...Success!

Before getting into a franchise business it is imperative that the franchisee does their homework.

Many individuals view franchising as a quick and easy way to start their own business. However, the purchase of a franchise consumes a substantial sum of your money and provides no guaranteed path to success. By investing time and effort to read the material provided to you by the franchisor including the Disclosure Document and Franchise Agreement will certainly paint a clearer picture of what's to be expected.

Any success you may have in franchising is essentially a combination of factors:

1. That the information provided to you is true and correct.
2. Your true understanding of your obligations under the franchise agreement.
3. Your ability to operate the franchise business as required.
4. The franchisors experience in conducting its business and supporting its franchisees.

Franchising is founded on open and honest relationships between you and the franchisor and on realistic expectations about the franchised business. There is no better way to ensure a mutually successful franchise relationship than for you and the franchisor to enter into the business fully aware of each other's rights and obligations.

Generally, I suggest that most franchisees speak to their accountants or financial advisers in relation to the documents to determine whether the financial aspect of the business meets your expectations. Does the establishment costs noted in the Disclosure

Document match your budget and the franchisor's estimate expressed to you? What structure (sole trader, partnership, company or trust) should you set up to operate the franchise business? These are some questions that you should address before seeing your franchise lawyer. I say franchise lawyer, because as you have different medical specialists, the same applies to lawyers. Find a lawyer who is experienced in providing franchise legal services because it will only be a cost benefit to you and ensure that you receive experienced legal services from a lawyer who has experience in respect to franchise documentation. This at times is invaluable as a franchise lawyer is able to compare your terms to those of other franchise systems.

Before you sign a purchase and sale agreement to buy an existing franchise or before you sign a franchise agreement consult your lawyer to assist you and guide you through the process of due diligence. Due diligence is the process of gathering and studying all the relevant information that you can find about the business you are purchasing or starting. During your due diligence you should look at:

- Financial information;
- Data about assets and liabilities;
- The history of the business;
- The historical tax returns of the business;
- Possible contingent liabilities including employee claims and environmental claims;
- The performance of similar franchises in your area and beyond;
- The history of the franchisor's relations with its franchisees;
- The reputation of the franchise brand among consumers;
- The historical profitability of the brand's franchise locations; and
- Information about many other issues.

Start with information provided by the seller or by the franchisor in the case of a new franchise, but prepare to quickly move beyond this limited and sometimes biased information. A unique advantage to the prospective franchisee conducting due diligence is the existence of other franchisees who run similarly situated businesses associated with the same brand. Existing franchisees are the single most valuable source of due diligence information to a prospective franchisee. Do not be reluctant to approach existing franchisees. Most will relate to the situation that you are in as they recall the time when they first got into their franchise business. Existing franchisees are usually more than willing to share great amounts of information including information about sales and profitability.

In addition to the information about the franchise brand generally and the historical experience of similar franchises, a prospective franchisee must look very carefully at the details of the operation he/she is about to acquire.

Do not make the mistake of waiting to contact a lawyer until you have been presented with a purchase and sale agreement. It is wise to work with your lawyer during the due diligence process before signing a contract. Issues with which you are unfamiliar can then be fully examined with the guidance of a professional accustomed to purchases of businesses. Also many of the things learned during the due diligence process will influence the terms and conditions that you will want to see in the purchase and sale agreement. If you wait to retain a lawyer until you have been presented with a purchase and sale agreement or your franchisor is pressuring you to sign a franchise agreement you will tend to have fewer negotiating opportunities in the transaction.

#### **What happens after the terms of the agreements have been negotiated?**

Once the franchise agreement has been negotiated, you will enter into the agreement and pay the required fees. Generally, at this stage and depending on the franchise system, you will be required to attend a training program provided by the franchisor. It is often

found that during this time that you're 'cooling off' period under the franchise agreement and provided under the Franchising Code of Conduct expires. Hence, be sure that you make your decision soon after the signing of the franchise agreement or during the training program (within 7 days from signing the franchise agreement or making any payment under the agreement) to decide whether you want to proceed with the franchise.

Upon satisfactorily completing the training program it then becomes a matter to either commence business or precede fitting out your store for commencement of your franchise business.

From experience, it is generally found that the secret to success can be increased if you have taken your time in making the right decisions and seeking experienced advisers to assist in your decision-making.

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## **GASTBEITRAG**

### **Underway in Europe – Thanks to a helping hand**

(Danny Hanlon, Granite Transformations  
Deutschland GmbH )

This momentous day saw the signing of our first German franchisee, Dirk and Asta Ruhfus, mind you we had 12 months worth of preparation in getting to that point and it really is just the beginning – Thank goodness we had a local helping hand.

#### **History**

Granite Transformations has over 160 franchisees in 9 different countries and our aim is to reach 1000 by 2020 making us the largest international kitchen worktop refacing company. We've practically created a niche market that didn't exist 10 years ago thanks largely to our unique product.

Our unique products comprise of 95% natural materials such as quartzite, granite and glass. These are combined with 5% Polymer Resin meaning that our products take on all the advantages of a solid granite surface but without any of the defects, therefore not only are they heat and scratch resistant but they are also maintenance free and non-porous meaning no staining. They come in sheet thicknesses of 6.5mm which allows our franchisees to apply the material directly over the top of existing surfaces – primarily kitchen worktops.

Despite our international experience we did our research before launching our system onto the German market. If I could give any other franchisor or business owner wanting to expand internationally, one piece of advice it would be to seek local professional guidance first and of course carry out a thorough due diligence first.

### **Why the German Market**

We chose Germany as our first non-English speaking country (which is daunting enough despite the fact that most Germans have a fantastic grasp of the English language) because it's the economic heart of Europe. With some 82 million citizens exercising a combined purchasing power of 1.26 trillion Euro and a growing taste for home renovations it made perfect sense. It's also the ideal market to base yourself in for further European growth bordering with 9 other countries.

### **Choosing local advisers**

When we took the strategic decision to expand onto the German market we soon realised the importance of selecting some qualified and experienced local experts to guide us through the process.

Sure we had knowledge when it came to franchising however there is local employment, consumer, franchising and business law that we were unfamiliar with so having the right solicitor was important? We also had to carry our extensive research to ascertain if our system would even work in Germany. We needed health and safety

advise not to mention local sales trainers, PR firms, marketing companies and tax advisors to help bring our system to a "launch point". For us it was important to have one contact, one consultant that we could get on the phone too and have them sort out any question or request no matter how menial it may have seemed. We interviewed a range of consultants before finally deciding upon Eckhold and Klinger.

We originally meet with Mr Jörg Eckhold at the 2006 Bremen franchise show and were impressed with his thorough approach to developing a franchise system for the German Market. We knew that the upfront costs would be high however the cost of not spending the necessary time and money to tailor your offering can be vastly more costly and damaging to the brand. I have a saying with I believe that Eckhold & Klinger also uphold "if a job is worth doing it's worth doing properly".

The most important thing when selecting a firm or consultant to help expand your system is "trust" it's a relationship that works both ways and be prepared to dedicate money and human resources to such a venture.

### **Modifying the system**

When entering a new market expect changes - whether it is in your marketing, sales approach or your operational systems, changes will need to be made. What's made Granite Transformations successful when expanding into international markets in the past is our company's ability to remain constantly alert thus reacting to any market changes instantly. In order to do this it's important to have a pilot programme.

We approached the German market slightly differently to others that we have expanded into, sure we still had a pilot but this time it wasn't a company owned pilot and the main reason being because of the language barrier. All our management staff are primarily from either the US, UK or Australia and English speaking so it would have been a fruitless exercise for us to try and run our own programme.

Instead we decided to recruit a local person as our first franchisee (Mr Dirk Ruhfus) and as our pilot. We work very closely with Dirk on all levels of the business to tweak and modify the system when and where we had too although the majority of our system translated quite easily. The important point here is to choose a cooperative pilot who is willing to listen and follow the system to intensely to ensure it's success.

## Results

We've found the entire German expansion experience relatively simple because we've had good advisors from the outset. The original deadlines and budget that we set jointly with our consultants have all been fulfilled and the results to date have been achieved.

We have plans to have up to 60 - 80 franchisees in the German market and with the streamline approach that we've developed with our consultants concerning recruitment and support the skies the limit.

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## GASTBEITRAG

### FranSearch - die Alternative

(von Michael Schlosser,  
FranSearch GmbH)

Im Oktober 2007 wurde das Unternehmen FranSearch GmbH mit Sitz in Tönisvorst am Niederrhein gegründet mit dem Ziel, bei Gewinnung von Franchise-Nehmern für Franchise-Geber einen entscheidenden Platz auf dem deutschen Markt einzunehmen.

Wir werden das Rad nicht neu erfinden, sondern wollen vielmehr unseren Kunden, Geschäftspartnern und zukünftigen Interessenten mit viel Vertrauen und Partnerschaftlichkeit gegenüber treten.

Die Arbeitsweise von FranSearch ist in verschiedene Schritte eingeteilt.

Im ersten Schritt erfolgt durch FranSearch eine Sichtung aller relevanten Unterlagen des jeweiligen Franchise-Systems. Dabei handelt es sich vorrangig um Verträge, Dienstleistungsbeschreibungen sowie die Handbücher.

Im zweiten Schritt arbeitet sich ein Mitarbeiter von FranSearch intensiv in das Franchise-System ein und erstellt gemeinsam mit dem Franchise-Geber ein Franchise-Nehmer Profil.

Die Einarbeitung und die Erstellung des Profils sind unabdingbar und entscheidend für die spätere, erfolgreiche Arbeit von FranSearch.

Im dritten Schritt selektiert FranSearch die Interessenten für den Franchise-Geber. Grundlage hierfür ist das vorher gemeinsam erstellte Franchise-Nehmer Profil. Durch mehrere Telefonate, das Ausfüllen von Fragebögen und des Franchise-Nehmer Profils verschafft sich FranSearch die Sicherheit, einen Interessenten zu finden, welcher einen absoluten Gründungswillen hat und somit als späterer Franchise-Nehmer erfolgreich in das Franchise-System integriert werden kann.

Sollte bis dahin der Gesamteindruck positiv sein, erfolgt der vierte Schritt. Nach Rücksprache mit dem Franchise-Geber lädt FranSearch den Interessenten zu einem persönlichen Gespräch ein. In einem intensiven Interview wird der Interessent umfangreich auf seine Eignung bezüglich des jeweiligen Systems geprüft. Auch hat er die Gelegenheit seine Anliegen vorzubringen und Fragen zu stellen. Durch die intensive Einarbeitung von FranSearch in das System kann der Mitarbeiter umfänglich und präzise Auskünfte erteilen. Der Interessent erhält dadurch den richtigen Eindruck, nämlich sich für ein professionelles und hochwertiges Franchise-System entschieden zu haben.

Nach dem erfolgreichen Interview, worin sich der positive Gesamteindruck des Interessenten vertieft und bestätigt hat, sendet FranSearch die Unterlagen und

Informationen darüber an den Franchise-Geber.

Dieser lädt nun seinerseits nach Sichtung der Unterlagen den Interessenten zu einem persönlichen Gespräch ein. Durch die intensive Vorarbeit von FranSearch findet der Franchise-Geber in diesem Gespräch einen hoch motivierten und absolut gründungswilligen Gesprächspartner. FranSearch hat den Anspruch an sich selber, dass 50% der Interessenten eine absolute Gründungsabsicht haben, was sich in der Erfolgsquote widerspiegeln wird. Kommt es zu einer Vertragsunterzeichnung zwischen Franchise-Geber und Interessent, wird FranSearch darüber seitens des Franchise-Gebers informiert.

Somit ist es durch eine intensive Einarbeitung, ein Pre-Select Verfahren und mehrere Gespräche zu einer erfolgreichen Zusammenarbeit zwischen dem Franchise-Geber und FranSearch gekommen. Diese basiert auf Kommunikation, Vertrauen und Partnerschaft.

Um sein Portfolio abzurunden, kooperiert FranSearch mit Anwälten, Unternehmensberatern, Steuerberatern und Netzbetreibern, die seit mehr als 10 Jahren tagtäglich, erfolgreich in der Franchise-Branche tätig sind.

Bedingt durch diese Kooperationen wird die FranSearch GmbH ein kompetenter Ansprechpartner.

Lassen Sie unsere Leistung für Sie sprechen und gehen gemeinsam mit uns in eine erfolgreiche Zukunft.

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- Franchise-Messe in Istanbul
- Franchisor or Franchisee - Legal Considerations in Australia
- Franchise-System Expansion auf den deutschen Markt
- Die FranSearch GmbH

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