



**Retail**

Newsletter

Issue 1

**Businesses set sights on international franchising**

Retail in the UK is admired globally for being a mature market boasting many industry-leading brands.

Capitalising on this powerful reputation, an ever-growing number of British businesses are choosing international franchising to expand into overseas markets. The benefits are clear. Franchising offers a cost-effective way to exploit new markets and increase brand exposure, while limiting investment costs and retaining a high level of control over the quality and consistency of the offering.

Businesses can expand internationally via franchises in a number of ways:

- Granting a direct franchise to franchisees in the country of expansion;
- Granting a master franchise agreement to a master franchisee, giving that person the right to operate and grant franchises in the country of expansion. In this scenario, the master franchisee appoints franchisees using a standard franchise agreement specified by the franchisor business;
- Granting a master development agreement to a master developer in the country of expansion. Typically, a master developer cannot grant other franchises within that country, instead operating a number of outlets itself;

- Setting up a subsidiary, branch operation, or joint venture company in the country of expansion which will then grant franchises within that country.

There are benefits and drawbacks to each of these models. The decision will depend on the nature of the business, the degree of control the company wants to retain, the resources available, and the extent to which it must rely on the local knowledge of third parties.

When exploring any new territory, a franchisor business should consider the following:

- Any local laws which will impact the franchised business;
- The taxes applicable to the income of the franchised business, and to any ongoing fees payable to the franchisor. The export of these sums can sometimes trigger tax deductions;
- Any legal requirements governing the launch of new companies;
- Variations to the business systems and product lines being licensed, to take account of local laws, linguistic and cultural differences between the home and destination country;

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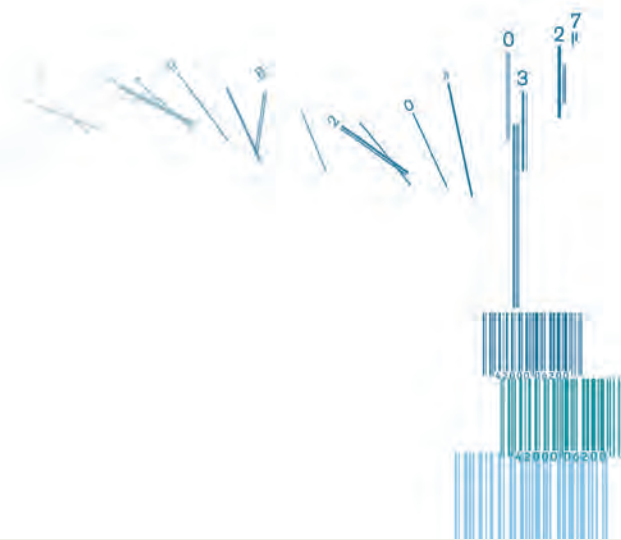
- Any franchise regulations that might apply overseas. For example, America, Germany, France and Spain have disclosure requirements detailing the information which must be provided to franchisees before an agreement;
- How to ensure the successful launch of the franchised businesses via support, consultation and other assistance.

The franchisor business must also protect its trademarks and trading names in the country of expansion. Trademark rights vary between countries and often

require separate registration in each territory.

The commitment needed to establish and manage an overseas franchise network should not be underestimated. Local laws should be investigated as early as possible and professional advice sought. But, of course, the real key to success lies in finding an international business partner who understands and embraces your brand values.

Over the last 12 months, TLT has advised WHSmith on extending its franchise operations in India, Oman and the United Arab Emirates.





## Retailers braced for new supply code

Last summer, the Competition Commission (CC) published the final Groceries (Supply Chain Practices) Market Investigation Order 2009.

Designed to address market failures on the supply side, the Order required designated retailers (at the date of writing, Asda, Co-op, Marks & Spencer, Wm Morrison, Sainsbury, Tesco, Waitrose, Aldi, Iceland and Lidl) to incorporate the related Groceries Supply Code of Practice (GSCOP or Code) into its supplier contracts. The CC also recommended that an ombudsman arbitrates any disputes under the Code.

The Department for Business Innovation and Skills issued a consultation on February 5, 2010 on taking forward the CC's recommendations, as well as deciding whether

there should be penalties for infringements of the Code. In response to the consultation, the government has confirmed that new legislation will be prepared to establish a Groceries Code Adjudicator (GCA), to form part of the Office of Fair Trading (OFT).

According to Consumer Minister Edward Davey, the GCA will have the power to prevent unfair practices and ensure a better deal for producers.

The GSCOP came into force on February 4, 2010 and says that designated retailers must:

- incorporate the GSCOP into supply agreements and make those agreements available in writing to their suppliers;
- train staff on the implications of GSCOP;

The government has confirmed that new legislation will be prepared to establish a Groceries Code Adjudicator (GCA), to form part of the Office of Fair Trading (OFT).

- appoint a compliance officer;
- respond to requests from suppliers to commence dispute resolution proceedings;
- produce compliance reports to be submitted to the OFT.

Until the GCA is in place, there is no enforcement body for the GSCOP and complaints about breaches must be pursued with the retailer.

Nicola Kingaby, TLT competition law specialist, said: "Designated retailers would be wise, during

this period in which penalties are not applicable, to ensure they have complied with both the Order and GSCOP. Suppliers are expected to familiarise themselves with their rights under the GSCOP and introduce systems for challenging alleged infringements."

## When is it reasonable for a landlord to refuse consent to assign a lease?

Most commercial leases will contain restrictions on the ability of a tenant to assign. Typically, a landlord's consent is required (not to be unreasonably withheld or delayed). However, legislation does not define what is reasonable - it has been left up to the courts to decide. Judgments passed down so far have gone some way to defining what constitutes 'reasonableness', including two recent cases in which these principles have been applied.

**Norwich Union Life and Pensions v Linpac Mouldings (2010)** concerned two long leases at very high rents. The tenant applied for consent to assign the leases to Linpac, but consent was refused. The landlord, keen to ensure that the leases ran their course, was concerned that the assignment might revive an earlier right to break in favour of Linpac. The court decided otherwise, but still concluded that the landlord had acted reasonably in avoiding any risk whatsoever.

In **Landlord Protect v St Anselm Development Co (2009)**, the landlord's consent was only given on condition that the assignee, a newly-formed company, offered a guarantee from its sole director. The court concluded that the landlord had acted reasonably in asking for a guarantee, but that its terms were unreasonable because the guarantee might potentially last for the remainder of the lease. After all, the company taking the lease would only be liable for covenants

while the lease was vested in it, and to require the guarantee to continue potentially after the tenant had ceased to be liable was inherently unreasonable.

The message is clear. When assessing risk, a landlord is entitled to exercise caution. However, a landlord will not be permitted to use the assignment process to improve on his existing rights and gain a benefit to which he is not entitled.





## Supporting our nation of shoppers

The south west retail team for Barclays Corporate covers a huge area, from the edge of the Cotswolds to the tip of Land's End. Head of the team, **Howard Noye**, spoke to TLT.

Howard Noye has worked with the retail sector for a number of years, initially with two large retailers for six years, before joining Barclays 10 years ago. He is now well versed in the nation's shopping habits.

Relationship Director for retail at Barclays Corporate, Noye looks after some of the biggest retailers in the south west on behalf of the banking giant.

"We define retail as being high street retail, online, mail order, anything with a retail consumer slant. We also work with some wholesalers who are suppliers to the sector," explains Noye.

He heads up a team of six, based out of Bristol, working hand-in-hand with the region's retail businesses. Industry understanding is vital as his team looks after retail businesses with a turnover of around £25 million or more. He and his colleagues provide

a comprehensive specialist banking service, ranging from debt funding and operational capital to everyday needs such as internet banking and stationery.

As an example of the type of business Noye and his team work with, he cites the British School of Motoring (BSM). BSM, 100 years old this year, is based in Bristol, with a 140-strong branch network across the UK and 3,500 instructors. Its success in recent years is largely down to its innovative retail operation – with BSM high street branches in most major towns where would-be learner drivers can purchase driving licences. It's this innovative aspect of the business that Noye believes plays to Barclays' understanding and experience in the wider retail sector.

"We were delighted to take on BSM's operational banking last year, as well as funding the 3,500-strong fleet of cars for its driving instructors," he says. "It's the kind of multi-dimensional banking work that is ideal for us."

Although large retail businesses make up a significant portion of his client portfolio, it's the medium-sized operations that make up the bulk of his work.

The key issue is around consumer confidence and how good people are feeling about what's in their pocket.

Explains Noye, "we've got a good concentration of businesses at the small-to-medium-sized end, particularly in Devon and Cornwall where there are fewer of the large retailers."

Indeed it would appear the South West has benefited from smaller businesses, particularly online set-ups, migrating away from the higher cost of living in the South East and being less reliant on geography. The 'staycation' phenomenon has also played a part, with more holidaymakers visiting the region in place of overseas holidays.

It's not all sunny weather, however. In recent months retail figures have increased by just 1% year on year, and that's even with events like the World Cup to supposedly boost sales.

"Quite a few categories are still finding things pretty tough at the

moment. The key issue is around consumer confidence and how good people are feeling about what's in their pocket. For the time being, the climate is going to remain pretty challenging for retailers in general," says Noye.

With a VAT rise around the corner and more new government legislation on the horizon as well as the impact of the CSR, it's easy to see the rationale for the cautious outlook. But he remains confident that the longer term prospects for the retail sector are strong for those retailers that can adapt and remain flexible.

"Despite everything, there are opportunities out there for retailers, whether it's in terms of negotiating favourable rental packages, or pursuing new channels like the internet, and we are keen to support businesses that are looking to do that," says Noye.



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