Changes to a Dealer's Corporate Structure

If you are an automotive franchisor and your dealer agreement does not contain requirements of a dealer to obtain your consent in these circumstances, the agreement needs to be reviewed. If the agreement does contain these provisions but your processes and procedures do not demand that consent is obtained, then they need to be reviewed.

Car company franchisors considering changes to a dealer's corporate structure will be (or should be) most interested in changes;

- Where there are significant shareholding changes rather than minor ones;
- Where the change will result in a change to the control (voting rights) of the franchisee company. You will need to be aware that Pty Ltd companies may have different classes of shares to which different rights are attached so it is not necessarily percentage of share ownership which will determine control;
- Where there are new incoming directors or shareholders as opposed to simply a transfer between existing shareholders. This may necessitate the completion of an application pack by the incoming party as the franchisor is entitled to know all about the person before consenting to the change. If personal guarantees are required, the incoming people may be asked to provide one as a condition of the franchisor's consent to the change.
- Where existing directors or shareholders are exiting the corporate structure. These people may have been considered integral to the operation of the franchised business and may have been a factor in the decision to grant the franchise to this company. If so, the franchisor might need to re-assess the capability of the remaining people to take the business forward.

A prudent franchisor may also wish to extend the requirement to obtain consent to changes to capture changes to not just the franchisee entity but the companies which may be corporate shareholders of the franchisee entity and this may involve several layers of shareholding to get to the ultimate holding company or individuals.

A very prudent franchisor will also look to capture changes to trusts which may be used in a dealer's corporate structure as a change for instance to the unit holders of a unit trust could alter the beneficial ownership of the dealer. A detailed analysis by appropriately skilled lawyers will be required to properly assess these aspects of a transaction..

There are facilities available with ASIC to monitor (receive notification of) changes to Pty Ltd companies and car companies should certainly make use of these for all their franchisee entities.

Large groups who have an ultimate holding company which is publically listed and therefore trading shares on the stock exchange regularly will obviously need to be exempt from the requirement to obtain consent in these circumstances.

For advice on this or any other franchising matter, Steven Crea can be contacted on 0411 777 695 or steven@crealegal.com.au.