



Before you sign a Franchise Agreement

Buying a franchise is a good way to share in the success of a well-established and well-known business and as a method of doing business, buying into an existing franchise has achieved tremendous worldwide growth in recent years. However too often, we find prospective franchisees rush into buying a franchise without conducting the necessary due diligence.

This article will outline some points to consider when purchasing a franchise as a franchisee.

What is a franchise?

A franchise is the right to operate a business under the marketing and branding of the franchisor for a predetermined set of time. This means that you are *not* buying a business from the franchisor, but merely *receiving the right* to operate the franchisee as the franchisee. At RRR Lawyers we have noticed an increase in franchises and have acted for franchisees in their 'purchase' of *Muffin Break*, *Degani* and *Nando's* as examples.

Some advantages

Franchising has many attractions compared to other forms of carrying on business. For a franchisor, it allows the growth of its business system without the investment required for the whole of the infrastructure. It also promotes incentive for the individual business operators to perform well. For franchisees, franchising allows a measure of business independence but with a ready-made system and the benefits that can flow from the pooling of resources.

What to consider prior to purchasing a franchise?

The franchising industry is a heavily regulated one, where all parties to a franchise agreement must comply with laws aimed at protecting them. In fact, a completely revised Code is expected to come into effect on 1 January 2015. The existing code requires the franchisor to compile numerous documents to provide to you, the prospective franchisee. As a franchisee, it is important to receive these completed documents, understand them and seek clarity when you are unsure.

Choosing the right franchise for you

The success of a franchise, like any business, depends on a number of factors. It is important to know the geographical area in which you propose to purchase the franchise. Consider things like where your nearest competitors are located, how

prominently they are advertising their business and whether there is a need for your type of franchise in that location.

Consider also whether you are purchasing a franchise at a new location, or simply becoming the new owner of a franchise at an existing and well-established location. This has a large impact on the amount of advertising you will need to do (sometimes at your own expense) to increase awareness of your franchise.

The franchise agreement

Your franchise will operate under a franchising agreement between you and the franchisor. This requires that you comply with this agreement during the term of your franchise. As with any agreement or contract, a breach of a term within the franchise agreement may give the franchisor the right to seek remedy under it. For example, the franchise agreement could allow that the franchisor be able to terminate your franchise agreement with them.

It is therefore important to conduct the necessary due diligence prior to making an investment into a franchising system. You should seek the advice of a lawyer with experience in franchising (not just a general business lawyer), who can provide you with the correct advice.

Conclusion

Entering into a franchise can be an exciting opportunity but we strongly urge you to have the agreement checked first before signing and proceeding as the terms may be unfair to you. Once signed in our experience you are unlikely to be able to change them. Further it may be appropriate to check with your accountant to have him review the financials and to undertake a due diligence.

At RRR Lawyers, we have lawyers who have experience in advising on in the franchising industry providing advice on various franchising matters. We have provided advice on franchising agreements and franchise systems, as well as assisted franchisees in case of unfair termination of their agreement by the franchisor.

If you or anybody you know is interested in buying a franchise then call us on 03 9387 2424 or email info@rrrlawyers.com.au today before anything is signed and see how we can help.