

FRANCHISE AGREEMENT

After narrowing down the choices and deciding upon one or two franchises, carefully review the franchise agreements. Depending upon the franchiser, you should be able to successfully negotiate some terms of the agreement. Franchisers generally will not agree to major variations; however, the widely held belief that franchise agreements are nonnegotiable is not true.

Below are some issues that may arise when reviewing franchise agreements. Although these issues will not arise until negotiations begin, keep them in mind when comparing franchises in the first stages of investigating business opportunities.

- ◆ You will be required to pay a franchise fee set by the franchiser. Usually, they offer two main selling points: a trademark and a marketing or business plan. Potential franchisees should assess the strength and image of the trademark, and its potential confusion with other trademarks. Consulting an attorney if possible, may be helpful in making such an assessment. Moreover, the franchise agreement should contain specific representations regarding ownership and history of the trademark. The franchise agreement should also obligate the franchiser to indemnify you, the franchisee, from any claims by third parties challenging the validity or use of the trademark. Bearing in mind the potential location of the operation, you should arrange for an independent evaluation of the business strategy.
- ◆ In addition to the up-front franchise fee and royalties that you may be required to pay, additional hidden costs may be associated with the franchise operation. These hidden costs can come in many forms such as accounting fees, lease location expenses and supervision fees. Furthermore, the franchiser may be receiving additional sources of revenue from the franchise arrangement, such as rebates from suppliers.
- ◆ You should carefully consider the geographic scope of your proposed franchises territory while keeping in mind its location and your ultimate business plan.
- ◆ The franchise term is an issue that is sometimes disputed. Franchisers typically grant terms of eight to 15 years. You, as the franchisee, should ask for a term that allows you to establish the business and recover your capital costs. Be careful; franchisers can terminate some franchise agreements at will upon written notice to the franchisee. Although the franchiser may insist on flexibility, it is not in your best interest, especially if you must pay a substantial up-front fee.
- ◆ You and the franchiser must also agree upon: the ability to renew the agreement; what will happen to the franchise if the franchisee dies; whether the franchiser can sell competitive products; and the amount of ongoing services that the franchiser will provide during the term of the agreement. While these issues are too complicated to consider here, be aware that important business and legal issues arise when entering a franchise arrangement. You should consult a lawyer and an accountant before entering such an arrangement.

OTHER POINTERS

Obtain information from several sources. First, ask the franchiser for a list of all existing and past franchisees with names, addresses and telephone numbers, and call as many as possible. Ask questions about the business and about the franchisers representations. Any reluctance by a franchiser to provide this information should cause concern.

Each franchiser doing business in Florida must register with the State. Registration requires the franchiser to file a disclosure document, called a prospectus, which contains important information describing the franchise. By law, the prospectus must provide pertinent details about the franchise offer, including the franchise fee or information about the way the fee will be set. Moreover, a franchiser must provide a franchisee with a copy of the prospectus and copy of any agreement involved in the sale of the franchise. Such copies must be provided either the first time the franchiser and franchisee meet, or within 10 days before any contract is signed or payment is made that relates to the franchise.

If you are considering a franchise, let me recommend that you seek the advice of an experienced attorney who practices business law which includes franchise experience.