



Australian
Competition &
Consumer
Commission

Franchisee **start-up checklist**



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Franchisee start-up checklist

Are you thinking about buying, extending or renewing a franchise? If so, you will have to make some important business decisions. To make the right decisions, you will need information about the franchisor and the franchise operations.

This checklist will help you think about information you should obtain before you enter into a franchise agreement. There are some minimum requirements under law for a franchisor to provide specific information to you; however, you should not stop at that. We recommend that you make your own inquiries to ensure you make an informed decision that is right for you.

The Australian Competition and Consumer Commission (ACCC) is responsible for ensuring compliance with the Franchising Code of Conduct, which forms a part of the *Trade Practices Act 1974*. As such, the code is law and requires a franchisor to give you specific information about themselves and their business. These requirements are briefly outlined on the next page.

Getting the right information in order to make the right decision for you is extremely important. While the code and the Act contain some protection, such as a 7-day cooling off period for new franchise agreements and protections from misleading information, you need to be aware that there is no protection for simply making a poor deal.

This checklist can help you assess business opportunities **BEFORE** you make the investment decision.



Warning signs

Most franchisors are likely to be open and honest with you. However, you should be wary of those franchisors (or master franchisees) who:

- ✗ are reluctant to provide any information in writing
- ✗ are reluctant to give details of the other franchisees within their system (required by the code)
- ✗ require full up-front payment for the business to be made before any information is released
- ✗ claim that you can make large amounts of money quickly and with little effort—that is, it looks too good to be true.

Disclosure under the code

As a prospective franchisee you are entitled to receive a copy of the code, a disclosure document and a copy of the franchise agreement in the form in which it is to be executed not less than 14 days before entering a franchise agreement (this also applies if you are looking to renew or extend a franchise agreement).

New franchise agreements (not a renewal, extension or transfer) allow a 7-day cooling off period after signing the agreement.

To make an informed decision about the viability of the business, make sure that you have all the information required under law before you sign the franchise agreement.

- Did you get a copy of the code? Make sure you read and understand your rights and obligations.
- Did you get a copy of the franchisor's disclosure document? Carefully read the information and ask questions if you are unsure about anything.
- Make sure you verify the information in the disclosure document. You should provide a copy to a lawyer, accountant or business adviser who has experience in franchising.
- Does the disclosure document contain all the information required under the code?
The disclosure document should usually contain the following information about the franchisor:
 - business name, name(s) of company director(s), ABN, ACN or ARBN, contact details, business experience
 - current proceedings against the franchisor of the kind listed under clauses 4.1 (a) and (b)
 - a list of existing franchises, including contact details
 - trademarks or other intellectual property
 - details of the franchise site or territory
 - marketing or other cooperative funds
 - prepayments and establishment costs

- arrangements for supply of goods or services
- the franchisor's and franchisee's obligations
- financial details, which may include earnings information.
- the date and content of any court enforceable undertakings given by the franchisor to the ACCC under s. 87B of the Act.

Take your time, read all the documents carefully and talk to other franchisees. Assess your own financial resources and capabilities to deal with the requirements of the franchised business. Make your own inquiries about the franchise and franchising in general.

Before you sign

It is far easier to prevent a problem than to try to fix the damage afterwards. Before buying a franchise, you should consider the following:

- Is it the right opportunity for you? Assess your skills, strengths and weaknesses thoroughly when deciding to buy a franchise.
- Get professional advice from an accountant, lawyer or other business expert who has experience in franchising before making any commitment.
- Get and verify as much information about the financial details of the business as possible. For example, analyse the profit and loss statements and any annual reports that may be available. If you do not have the expertise to do this, ask your accountant or business adviser to do it for you.
- Read the disclosure document and franchise agreement carefully—**do not** sign anything without reading and understanding it first. If you don't understand the disclosure document or the franchise agreement, seek independent advice before signing.
- Insist on written representations from the franchisor. If the franchisor is unwilling to back up in writing any oral representations, take that as a warning sign.

- Make sure you fully understand all the fees payable under the agreement, including what they are, how they are calculated and when they are due.
- Find out as much information as you can about the franchise. For example, has the company ever been the subject of a court action?

This information may need to be included in your disclosure document. You may wish to check the Australian Securities and Investments Commission website (www.asic.gov.au) for company details. You may also like to visit the ACCC website (www.accc.gov.au) to check if the ACCC has taken any action against the trader for a breach of the Act or has a s. 87B court enforceable undertaking listed on the ACCC public register. It is also recommended that you check whether any action has been taken by state/territory consumer affairs agencies against the franchisor/franchise.

- Ask the franchisor for a list of existing franchisees (this should be included in your disclosure document) so that you can speak to at least three to four existing franchisees relevant to the franchise you are contemplating. You may need to test such matters as the accuracy of the disclosure document, earnings predictions and profitability, franchisor support and daily operational requirements.
- Make sure you have everything you need to run the franchise. Ask the franchisor what specific requirements are needed to operate the business—for example, you may need a particular type of license or skill. Check with the franchisor about training and the level of support the franchisor will provide to you at the early stages.
- If there is a lease involved in the transaction, make sure you understand the terms and your rights and obligations under that lease agreement. In some instances, the lease will be in the franchisor's name, not in the name of the franchisee. Understand your options or your position when the lease expires. Do you have a renewal option? Is that option yours to exercise? Ensure you are provided with a copy of the lease.

- Is the franchise granted for a specified period of time? What is your position at the conclusion of the franchise period? Are you able to negotiate an extension? Who will own the goodwill in the business?
- Ensure you have an exit strategy should the franchise agreement not be renewed.
- Check clauses regarding termination, renewal and transfer of the franchise, and make sure you are willing to accept them.
- If the deal is not acceptable, try to negotiate a better offer or find a better deal.

Remember ...

Plan well and obtain good advice before entering a franchise. For example, if the franchise is successful, it may be imitated by other businesses and this may affect your profitability projections. Find out whether the franchisor has considered how its product or service can be differentiated from new market entrants so that you can maintain sales volumes.

Take time to research the franchise carefully so that you can make an informed decision. The code requires you to provide a signed statement to the franchisor about whether you have received advice from an independent legal adviser, business adviser or accountant before signing the franchise agreement. If you choose not to seek advice, you will have to provide a signed statement to that effect.





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More information

For more information about the *Trade Practices Act 1974* and the Franchising Code of Conduct:

ACCC small business helpline : 1300 302 021
ACCC website: www.accc.gov.au

Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service, www.relayservice.com.au.

TTY or modem users—phone 133 677
and ask for 1300 302 502.

Voice-only (speak and listen) users—phone
1300 555 727 and ask for 1300 302 502.