

SOME QUESTION AND ANSWERS FOR FRANCHISING BEGINNERS

Q: *What legal costs are involved for a new franchisee entering into a franchise system?*

A: Legal costs will depend entirely on what sort of franchise is being entered into as well as the following factors:

- Are you being granted a new franchise or are you purchasing an existing franchise?
- Will the business be carried out in a premises requiring a lease?
- Will the franchise be mobile based?
- What documents are involved other than the franchise agreement – i.e. sale contract, licence agreements, employment agreements etc?

We are happy to discuss the costs which may be involved, so please give us a call.

Q: *Should I enter into a franchise agreement as an individual, partnership, company or trust?*

A: This will vary depending on your circumstances and should be decided after considering the advice of both your lawyer and accountant. For more information read our [Structures Article](#).

Be mindful that once you sign your franchise agreement or lease, any change to the entity of the franchisee will not be a straightforward process. Franchise agreements will often include an assignment provision which captures any change to the directors and shareholders of a company or the beneficiaries under a trust. If you enter into a franchise agreement and then wish to make changes, you will first likely need to apply for and obtain the consent of the franchisor, and pay the franchisor an assignment fee if applicable.

Q: *How long does the process for entering into a franchise agreement take?*

A: The most important thing is not to rush! The process should follow the below steps and again will be different for everyone according to circumstances:

1. Consulting with your accountant regarding your structure and finances.
2. Applying for and receiving finance approval from your bank. This is usually a three week minimum.
3. Approval of your franchise application by the franchisor. Some franchisors have long approval processes which could even include psychological assessments.
4. Organising a premises and lease. See below for further on this.
5. Your franchisor issuing disclosure documents and you then waiting the minimum 14 day period to sign your franchise agreement. The agreement will then need to be signed by the franchisor.
6. Waiting for the 7 day cooling off period to expire between signing your agreement and



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commencing your business.

7. Carrying out training. This could be seven to fourteen days, or for a retail system four to six weeks, and sometimes up to six months along with unpaid in-store experience.

Q: *What is a bank guarantee and why do I need one?*

A: A bank guarantee is a common requirement for a tenant, even for leases in the franchisor's name (see below for further on this). If you cannot pay your rent then the landlord will call on the bank to cover the amount owed. The guarantee is often secured against an asset you own. If the bank has to pay under the guarantee, then they will be entitled to recover their expenses from you and have recourse to that asset. You will be required to pay an upfront establishment fee and then ongoing fees for the bank guarantee which will often be a percentage of the amount guaranteed.

Another form of security which may be provided for under leases is a cash deposit, which is held by the landlord and then returned upon expiry of the lease. Cash bonds should be treated with caution. If the landlord becomes insolvent then you may experience difficulties getting them back.

Q: *Why does my franchisor want me to sign as a guarantor to the franchise agreement?*

A: If there is a breach of a franchise agreement, then the franchisee will be personally responsible. If the franchisee under the agreement is a company, a franchisor may require the directors and shareholders of the company to be personal guarantors. If the franchisee is a trustee for a trust, then the beneficiaries under the trust may also be required to sign personal guarantees. When you have a franchisee that is a company as trustee for a trust then you may have a long list of guarantors under your franchise agreement – but this is common practice.

Personal guarantees from company directors and shareholders, and beneficiaries of trusts, provide a franchisor with additional security because the company or the trust may itself have few assets. The people who essentially 'pull the strings' behind the company or trust are therefore held to an extra level of accountability.

On some occasions the spouse of a franchisee may be listed as a guarantor because most assets in a marriage are commonly held jointly.

Personal guarantors should be cautious and always seek legal advice before they sign, because under the guarantee the franchisor will often have the right to pursue the guarantors without first pursuing the franchisee. Guarantors can be jointly and severally liable, meaning that the franchisor has the option to pursue just one of the guarantors individually, all guarantors, or a selection of the guarantors jointly.



Q: *What licenses will I need?*

A: The licences required to operate a business will depend on the particular industry and the requirements of the local council for the area, and may include:

- Workplace Health and Safety
- Credit Licence
- Food Hygiene
- Liquor Licence

Q: *What insurance will I need?*

A: Again, this will depend on the industry that your business will operate in and may include:

- Public risk liability

- Property damage for fixtures, fittings, plant and equipment
- Workers compensation insurance
- Loss or theft of cash
- Plate-glass insurance
- Income protection insurance
- Comprehensive motor vehicle insurance (if franchise is mobile based)



Q: *Where can I operate my business from?*

A: Every franchise system is different. Some systems are mobile and operate from a vehicle and a premises is not required. Other systems are fixed and you must adhere to specific requirements of the franchisor and landlord.

1. **Owned by Franchisor:** If the franchisor owns the premises, you may be required to lease the premises from the franchisor, or enter into a 'licence to occupy' where you are granted a licence to occupy the premises.
2. **Leased by Franchisor:** If the franchisor is a tenant and leases the premises from somebody else, you may be required to enter into a sublease or a licence to occupy.
3. **Leased by Franchisee:** If you wish to find a premises to lease yourself, it will often first be subject to the franchisor's approval. Franchisors also often require special conditions to be inserted into your lease which give the franchisor the right to step in and take over your lease if you default under the lease or franchise agreement – all at the cost of the franchisee.
4. **Owned by Franchisee:** If you already own the premises, then your franchise agreement may contain a step in provision allowing the franchisor to take over and operate the business in the premises for the remainder of the term of your franchise agreement if you are in default.

If you are entering in a lease then it is essential that the term of your franchise agreement matches with the term of the lease, and to keep in mind your options to renew both your agreement and lease.

Q: *I want to renew my franchise agreement, but my franchisor wants me to sign a franchise agreement which is different from my current agreement, why?*

A: Franchise systems continually grow and change to adapt to the market, and so do franchise agreements. The market conditions when you signed your original franchise agreement may have been quite different to those conditions at present, and your franchisor may have made changes to their standard franchise agreement during this time to reflect this and to adhere to changes in the law.

Franchise agreements commonly contain a provision providing that on renewal of the agreement the franchisee will be required to enter into a new agreement in the form that is then currently in use by the franchisor. Remember that your new franchise agreement is a contract and contracts can always be negotiated. Always see your lawyer if you have any concerns with the terms and conditions that you are not familiar with.

Q: *I want to stock and sell specific produce in my franchised business but my franchisor won't agree to this request, why?*

A: If you read our article [Exclusive Dealing in Franchising](#) then you will gain an understanding of why and when franchisors have strict requirements on the way franchisees run their businesses and the goods they can supply.

This is only a short list of the common questions new franchisees have when entering into a franchise agreement. At Bywaters Timms our specialised Brisbane franchise lawyers have the experience to help you with any enquiries you may have about your new business.

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