

## WHEN TO CALL THE LAWYER

Consulting with a lawyer is a very important step for a prospective franchisee before signing a franchise agreement. It is always beneficial to see a lawyer early in the process because we can direct you to issues you should be looking at. However before a prospective franchisee visits a lawyer there are a few things that you can do to ensure that you get the most out of a consultation.

### Consult with an Accountant

One of the first steps a prospective franchisee should take is to consult with an accountant. Ensuring that you are in the right financial position and have the borrowing capacity to enter into a franchise is essential before you invest further time and money into the process.



It is also important for your accountant to examine and verify the figures in the disclosure document given to you by the franchisor. They will be able to help assess the franchisor's track record in running the franchise and whether the franchise will be a profitable investment.

### Decide on a Structure

Deciding whose name will be on the franchise agreement should not be a last minute decision. It is very important to get your franchise business structure right in the beginning. There are a lot of differences between carrying on a business as an individual, company or trust, so consult with a business planning adviser. For some basics, read our [article on structures](#).

### Courses

There are online courses that prospective franchisees should take. You do not need a business degree to own a franchise, but you do need to understand the basics of business management to know how to balance your books and to have the skills to run your own business efficiently. An example is the ACCC's [Small Business Education Program](#).

Griffith University also offers a free online [Pre-Entry Franchise Education Program](#) which will benefit every franchisee.

### Apply for Finance

Consulting with a bank or broker to make a finance application should be one of the first steps that a prospective franchisee takes because there will be at least a few weeks between making an application and receiving approval (if it's given). You should be mindful of this when it comes to your timeframe.

You should always consult with your accountant before applying for finance because they will help you understand your investment, returns and the appropriate loan arrangement to suit your circumstances.



Contact : Janice Bywaters

E: [jbywaters@btlaw.com.au](mailto:jbywaters@btlaw.com.au)

Contact : Luke McKavanagh

E: [lmckavanagh@btlaw.com.au](mailto:lmckavanagh@btlaw.com.au)



or contact us using the details below

Liability limited by a scheme approved under professional standards legislation

**Warning**—this article is only meant to give you general information and should not be relied on as legal advice. If you want more information then talk to one of our lawyers.

## Read your Franchise Documents

The franchise agreement and disclosure document contain all the terms and conditions that will govern the business relationship you are entering into. We cannot stress enough the importance of a prospective franchisee reading through these documents themselves before consulting a lawyer. A client who has attempted to read the documents and visits with a list of questions to ask, however silly they may seem, is always preferable to a client not knowing anything about the contents of the documents.

When it comes to signing the franchise agreement, a franchisee will need to sign a statement acknowledging that they have in fact read all the franchise and disclosure documents. Reading these documents in the beginning is always better than in a last minute rush.

## Write down Representations

If a franchisor or their agent makes a representation about the franchise and this information is not in the franchise documents, then tell your lawyer.

When a lawyer goes through the franchise documents with a prospective franchisee, they try to identify the basis for each representation in the documents. If the basis for the representation is not in the documents, this must be disclosed before they are signed. A franchisee who has already read through their documents before visiting their lawyer will have an idea if something important has not been addressed. This will help resolve any issues a lot more efficiently.



We recommend that prospective franchisees (and franchisors) write down any representations made by the franchisor. These can then be checked off against the franchise agreement and disclosure document.

## Do your Due Diligence

The disclosure document is the starting point for a prospective franchisee to begin their research and enquiries into the viability of the franchise system. Franchisees should research as much as they can about the franchise system.

The disclosure document will list the details of the system's franchisees over the past three years. Speaking to these franchisees is important because they can give you a different perspective than what the franchisor can. A prospective franchisee can then get a feel for whether other franchisees are happy with the system, and whether there is substance to any representations made by the franchisor.

## Put down the Pen!

Always visit a lawyer before signing your franchise agreement or lease. We are sometimes approached by prospective franchisees who are about to sign their lease for the franchise premises, but have not yet organised finance or final terms of their franchise agreement. If you sign the lease, but cannot get finance or the franchise agreement negotiations fall through you could be left with a very costly problem.

At Bywaters Timms we are happy to meet with prospective franchisees before they make that big decision to sign up to a franchise. We can help explain the order in which things should occur and help franchisees fully understand the terms of their franchise agreements. By following the tips in this article before you consult with a lawyer, you can ensure you get the most out of your consultation.

**WARNING** – This article is only meant to give you general information and should not be relied on as legal advice. If you would like more information then talk to one of our solicitors.