



Considerations for the Prospective Franchisee

Franchising in New Zealand continues to grow strongly and there are many examples of successful franchised systems. A Massey University Study in 2017 demonstrated the growing popularity of franchising in New Zealand:

1. the number of business format franchise systems operating in New Zealand increased from 446 in 2012 to 631 in 2017
2. there are estimated to be 37,000 business format franchises, employing more than 124,000 people
3. the annual sales turnover for the entire franchising sector was estimated at \$46.1 billion

It is clear from the survey that business format franchising remains popular in New Zealand. Whilst there may be many positive aspects of becoming a franchisee (such as brand awareness, sophisticated business systems and group buying power), entering into a franchise agreement is still a significant step as it often represents a long term commitment for the franchisee. It is therefore very important that before you sign any franchise agreement you conduct your own due diligence and obtain independent legal advice.

Unlike Australia which is heavily regulated, New Zealand does not have any franchise specific legislation requiring franchisors to disclose any financial or historical information about the franchise to prospective franchisees. However, some franchisors in New Zealand choose to become members of the Franchise Association of New Zealand ("FANZ"). If the franchisor is a member of FANZ, the franchisor must comply with the FANZ Code of Practice and Code of Ethics. The FANZ Code of Practice requires the franchisor to provide a disclosure document to prospective franchisees that provides details such as the financial standing of the franchise system, details of any disputes with franchisees and the expected payments from a franchisee. If the franchisor is not a part of FANZ, you should still request these basic details as part of your due diligence.

The best source of information on a franchise is the current franchisees and you should ask the franchisor for contact details of current franchisees. When you speak to the other franchisees you should ask about the earnings potential as advised by the franchisor and the robustness of the franchisor/franchisee relationship.

The franchisor will usually provide a draft Franchise Agreement for you to review. You should review this agreement carefully with your legal adviser but in particular focus on the rights granted, your payment obligations, your rights to renew or sell the franchised business, and any restraint provisions. Franchise Agreements are usually lengthy documents and so it is important that you engage a lawyer that specialises in this area.

Of equal importance is to engage an accountant to review the financial information provided by the franchisor and indeed some franchisors may require that your accountant provides a certificate confirming you have been provided with independent financial advice. Almost all Franchise Agreements will exclude reliance on any financial projections as the franchisee's own efforts are a key part of the success of the franchise which is outside of the franchisor's control.

The success of franchising in New Zealand continues to grow but prospective franchisees still need to carry out their own due diligence when choosing a franchise system to ensure they make the right decision.

This resource was provided by:

The logo consists of the letters 'SGL' in a large, bold, black serif font. The 'S' and 'G' are connected at the top, and the 'L' is positioned to the right of the 'G'.

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