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Time for a change? Buying a franchise?

By Andrew Skinner - 15 May 2020

The impact of COVID-19 may be felt for many months to come and will result in a number of people considering a change of direction or career. For some, the prospect of buying a business and being in more control of your own destiny will be appealing. Franchising will be a popular option for those who have not owned a business before and a number of franchisors have seen their levels of enquiry increase over the lockdown period.

Franchising gives people the opportunity to own their own business but also to be part of a structured system that provides mentoring and guidance. During the current crisis, it has been valuable for franchisees to be part of a wider franchise system to receive support regarding dealing with suppliers, landlords and understanding the Government assistance available. These are just some of the benefits of being part of a franchise system as opposed to being out on your own.

What is Franchising?

Franchising is a contractual arrangement where the person who owns a system for operating a business (the franchisor) grants another person (the franchisee) the right to use that system to run a business for a defined period and subject to certain conditions. In return for being able to use a proven business system, the franchisor places a number of obligations and conditions on the franchisee so as to maintain the integrity and consistency of the system and to protect the franchisor's reputation. The obligations are contained within the franchise agreement and the business system manual and these will often be comprehensive and lengthy documents.

Unlike many overseas jurisdictions, New Zealand does not have any franchise specific laws which specifically govern the behaviour of franchisors and franchisees. There are no mandatory

franchisor disclosure obligations and so the *caveat emptor* principle (buyer beware) is absolutely applicable and puts the onus on a prospective franchisee to ask the right questions and satisfy themselves as to the opportunity. If, however, the franchisor is a member of the Franchise Association of New Zealand (FANZ), then the franchisor is obliged to produce a disclosure document prescribed by FANZ that will cover some important information.

How to Choose a Franchise System?

As with any major purchase in life, there are many aspects to consider when looking at franchising and you will want to make sure you take your time and do your homework. There are over 600 franchising systems available in New Zealand and the different opportunities continue to grow. Franchising is very popular in the cleaning, food retail and residential building sectors to name a few.

The Franchise New Zealand magazine is a respected source of information (available online at www.franchise.co.nz) and you will find many tools to assist with your decision making. Buying a franchise is not an easy option and there will be a lot of hard work, especially in the early years. Each franchise system is different and, in my view, its success is a combination of many factors, including the reputation of the brand, the strength of the system and the calibre of the people involved.

New or Existing Franchise?

Once you have chosen a sector that interests you then you will need to review what opportunities are available. It may be possible to start a new franchise in your chosen area or you will need to look at existing franchises that are for sale. A new franchise provides you with a clean slate to grow your business but you need to be well financed and prepared to accept that it may take some time to generate a sustainable revenue. You will also be purchasing the franchise directly from the franchisor and will most likely need to pay an upfront franchise fee.

If you purchase an existing franchise this will probably be through a business broker and you will be acquiring the business assets of the former franchisee. This is likely to be more a more expensive option but should give you a client base on day one. The franchisor still needs to approve of you buying an existing franchise and your agreement to purchase the business will need to be conditional on obtaining franchisor approval (including approving the franchise agreement).

Get the Right Advice

Having found your preferred system and deciding you wish to proceed, before signing anything you should obtain specialist legal, accounting and banking advice.

Franchising is a contract heavy arrangement and a typical franchise agreement is usually weighted in the franchisor's favour to ensure compliance with the system and to enable the

franchisor to act quickly to protect brand reputation. However, it is important that the franchise agreement remains commercially realistic and specialist legal advice is required to advise you whether the franchise agreement has gone too far and is overly onerous. In particular, attention will need to be paid to the sections on start up costs, on-going payments, potential liability, restraint of trade and guarantee sections. With that in mind, and as with any negotiation, it is important to proceed cautiously and not to invest too much emotionally or financially prior to reviewing the franchise agreement.

One area to be particularly careful of is that a typical franchise agreement will exclude any responsibility for any statements or representations made by the franchisor during your discussions. If any of the responses from the franchisor are particularly important in terms of your decision making then you need to consider requesting the franchisor's claims are included within the agreement. If there is reluctance on the part of the franchisor, then you will need to place less reliance on those representations.

Getting specialist accounting and banking advice is equally important, especially if you need bank funding to purchase the franchise. Not all accountants and major banks are actively involved in franchising and so you need to make sure you are talking to people with experience.

Next Steps

Franchising is a great way to own your own business with the support and structure of a franchise system. However, as with any major decision, you need to thoroughly do your homework to ensure your expectations will match the reality. This article provides an overview of some of the important issues but obtaining the right advice to guide you through the process is very important. If you have any queries regarding franchising contact [Andrew Skinner](#).

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