



JJ RIBA & COMPANY  
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Franchising - Things you Should Know



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STRENGTH THROUGH KNOWLEDGE



## What law applies to you and the Franchisor?

A franchise agreement is a contract. Once you sign that agreement you are bound to fulfill your obligations under the contract. If you default under those terms you may be sued. Therefore, you should obtain legal advice relating to your obligations under the Agreement. Make sure you understand the agreement and that you know what is expected of you before you sign the agreement.

*The activities of both you and the franchisor are covered by legislation such as the Trade Practices Act and other state consumer protection laws.*

*Most franchising Activity is governed by the Franchising Code of Conduct which is developed under the Trade Practices Act section 51AE. Breaches of the Code of Conduct result in the same penalties incurred under the Trade Practices Act.*

### ***The Disclosure Document***

*Under the Code of Conduct the Franchisor is required to provide you with a Disclosure Document and a copy of the Code of Conduct at least 14 days prior to you signing a Franchise Agreement or a renewal or extension of your franchise agreement.*

*The purpose of the Disclosure Document is to provide you with enough information to make an informed decision about whether or not to enter a into a franchise agreement. The document also provides current information that is material to running the franchised business.*

*You may receive one of two types of Disclosure Documents. If the franchised business has an expected annual turn over of \$50,000 or more the Disclosure Document must be in accordance with the requirements of annexure one of the code of conduct. If the expected annual turnover is less than \$50,000, which is unlikely, the franchisor may give you a shortened version of the disclosure document.*

## Cooling Off Period Part 13

You may use the cooling off period to terminate a franchise agreement within 7 days after the earlier of:

- a. entering into the franchise; or
- b. making any payment under the agreement.

The cooling off period only applies to new franchises rather than renewals or extensions.

If you terminate the franchise agreement during the cooling off period the franchisor must within 14 days refund any money paid under the agreement less reasonable expenses if these expenses are set out in the franchise agreement.



# Things to look for in your Franchise Agreement

## *Payment Requirements and review clauses and other expenses*

- *What fees are payable? Consider royalties, promotion and advertising funds, initial fees, renewal and sale fees, legal fees, start-up costs - required equipment etc*
- *How are fees calculated - are fees fixed or percentage?*
- *When are fees Payable?*
- *How are fees paid? Eg direct debit*
- *What are fees paid for? Is the franchisor required to provide any identifiable level and quality of service in return for the payment?*
- *How are fees reviewed and are there likely to be substantial increases?*
- *What other start up costs will you incur? Uniforms, equipment, fit out, occupancy costs.*

*Many franchisors impose a sale fee which in some cases can be tens of thousands of dollars. It is important to know at the point of entering the franchise what it will cost to escape the arrangement when, in the future, that becomes necessary.*

*If you are required to contribute to a marketing or other cooperative fund the franchisor must prepare a financial statement of the fund's receipts and expenses and the amount spent on administration, production and advertising. Unless 75% of the franchisees agree otherwise, this statement must be audited within three months of the end of the financial year. The franchisor must give you a copy of the statement within 30 days of your request.*

## Default Provisions

Make sure you are aware of what constitutes default under the agreement and the consequences of any default.

The agreement should also set out which provisions in the agreement are considered essential terms. In other words, breach of which terms would be likely to result in termination of the franchise agreement.





# Ask yourself some clever questions

## The Terms and Options

If your franchise agreement expires your franchisor is not required to offer you a further term. You should therefore consider these questions.

How long does the agreement last?

Will it be possible to recover a reasonable return and recover the whole of the costs of purchasing the business and the franchise before the agreement comes to an end?

Are there any options to renew the agreement?

If there is no option to renew then there is no obligation on the franchisor to continue to allow you to run the business after the agreement expires. A new agreement may be offered however you are not able to insist on terms that are acceptable to you. Is there a risk that you will have no choice but to accept what is offered?

If there are no options it is a good idea to insist that an option be inserted into the agreement so that you may if you wish extend your agreement.

What are the requirements of exercising your option? In particular, note whether the new terms will be on the same terms as the existing franchise and diarise important dates carefully.

Note that failure to exercise your option within the time limit may result in losing your right all together.

## Minimum Standards and Quotas etc

What stock or services are you permitted to offer? What is the process for obtaining approval to offer other stock or services?

Are you expected to sell a certain amount of stock and what is the consequence if you do not?



## Territory

Are you given an exclusive territory? How big is it? The bigger the better. Make sure the details are clear within the franchise agreement

Can you, the franchisor or an associate of the franchisor change your territory?

Can the franchisor operate a substantially similar business within your territory?

Consider your territory closely - look at established competition, geographical and demographical factors. Will the franchise work well within the area? Is there sufficient clientele?

### ***Intellectual property***

*Check that the franchisor owns the intellectual property or has the right to use and licence it. Consider what rights you will have in relation to the intellectual property.*

### ***Your obligations***

*Record keeping will be an important part of your business. What information are you required to provide to the franchisor? How often? What is this information to be used for?*

*Ensure you have read the manual and are aware of responsibilities under the manual, know your systems and image compliance requirements.*

*Do you need a full time manager?*

*What control does the franchisor have over who you may employ?*

*What requirements are placed upon you in relation to Confidentiality?*

# Training

What training are you required to undertake? Initial, ongoing, conferences etc

Who is responsible for the training?

Who is to bear the costs of the training?

# Franchisors Performance

The franchiser should provide to you details of how various stores have been performing.

Have you received this information? Note the differences between the performance of other stores within the system. How does your store perform and which other stores are more like yours in terms of demographic and locality?



## You can request disclosure at any time

You may request in writing a copy of the franchisor's current Disclosure statement once every 12 months. The Franchise Code of Conduct says that the Franchisor must provide you with a copy of the Disclosure Document within 14 days of your request.





## Right to Assign the Franchise / Relocate your Franchised Premises

*Clause 20 of the Code states that the franchisor must not unreasonably withhold consent to the transfer of a franchise. Subclause 20(3) lists circumstances where it would be reasonable for the franchisor to withhold consent to the transfer of the business.*

*The franchisor can impose any reasonable requirements and restrictions. The franchisor and any court may regard as reasonable conditions which you believe are very unreasonable. You should read your Franchise Agreement carefully and ensure that you understand the requirements which must be fulfilled for you to transfer your franchise to another party. You should pay particular attention to time limits.*

*You may be required to first offer the business to the franchisor on the same terms as you are offering the business to the third party. A sale fee may be charged by the franchisor.*

*Under the code, a request to transfer the franchise must be made in writing. If the franchisor does not respond within 42 days, consent is taken to have been given.*

*It may be a good idea to ensure that certain types of transfers are permitted without the need to comply with all the requirements. In circumstances where you need to restructure or transfer in the event of death it is not appropriate for the franchisor to impose the full process and cost of a transfer as though you were transferring to a third party transfer.*

## Indemnity and Insurance Requirements

You should obtain legal advice relating to the effect of these clauses. You should provide copies of the clauses relating to insurance and indemnities to your insurer and ask them to confirm in writing that your insurance conforms to the requirements of the Franchise Agreement and provides you with adequate protection.

## Security/ Personal guarantee

Ensure you are aware of what security is required by the franchisor and the implications of this. Does the franchise agreement seek to take an interest in your home or other assets?

Take legal advice on the meaning of personal guarantees.

Be sure any restrictions, charges, bills of sale or other securities are acceptable to your accountant and to your financier.

### ***GST***

*Make sure that you are aware of your obligations in relation to GST.*

### ***Restraints***

*Make sure you are aware of the details of any restraint of trade placed upon you when your relationship with the franchisor comes to an end whether this be the result of expiration, sale, transfer or termination.*

*Restraints may also relate to the use of intellectual property, confidential information, customer lists and telephone numbers.*

*Will the restraint of trade impact on your ability to earn a living once the franchise agreement ends?*

### ***Other Agreements***

*Be aware of the requirement to execute agreements related to the franchise agreement such as licences, guarantees and indemnities, covenants against competition and confidentiality agreements.*

*Ensure you are aware of the terms of these agreements and that you are capable of fulfilling your obligations under these agreements.*







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