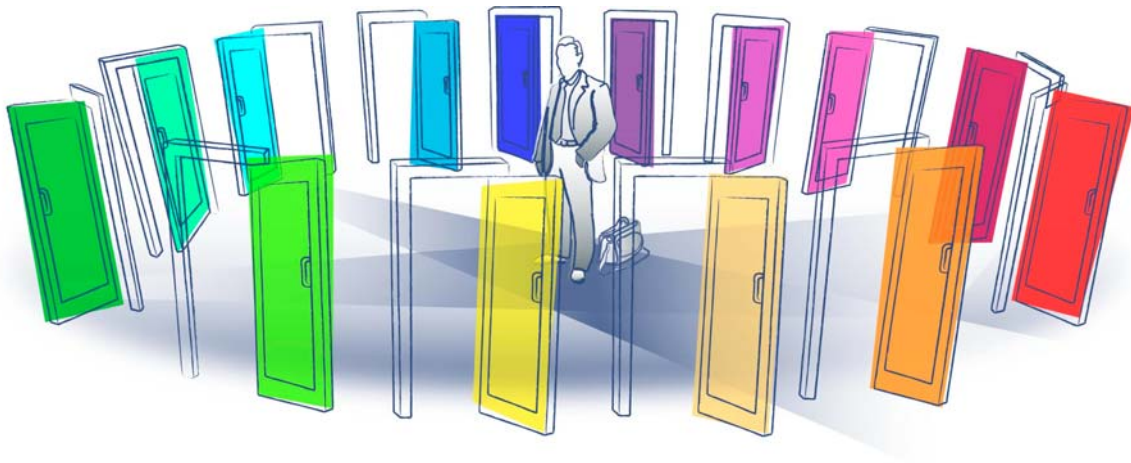


# Franchising: Key Questions to ask a Franchisor



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## 1. General Background

- 1.1 Is the franchisor or its holding company a member of the British Franchise Association ("BFA") or the International Franchise Association?
- 1.2 If the franchisor is a member of the BFA, please confirm that it complies with the code of ethical franchising promoted by the BFA.
- 1.3 Has the franchise agreement been disclosed to the BFA? If not, please set all deviations from the agreement actually disclosed to the BFA.

## 2. Projected Earnings

2. If the franchisor has provided a statement of the projected earnings of the business to be franchised, what is the source of information on which that information was based? In particular, please state:-
  - 2.1.1 have those figures been calculated with reference to the actual performance of company-owned businesses?
  - 2.1.2 over what period
  - 2.1.3 of similar size and location (both in terms of size and demographic characteristics) as the proposed location of the proposed business of the franchisee?
  - 2.1.4 whether those figures represent trading once the business has achieved maturity or take into account start-up and development time?
  - 2.1.5 how accurate have the projections of the franchisor been in the past?
  - 2.1.6 has the franchisor any evidence of performance by company-owned business after the period covered by the projections? If so, please confirm:-
    - (a) in no case, has any reduction in performance occurred?
    - (b) that any changes in management have had no adverse effect upon performance; and
    - (c) that no actual company-owned business is trading unprofitably or below its current targets; and
    - (d) the risk factors which the franchisor and its advisors would consider appropriate to draw to the attention of potential investors as if the projections formed part of a prospectus.
- 2.2 Will the franchisor provide an audited set of his latest accounts relating to the franchise business?
- 2.3 Have there been any material changes since those accounts were prepared? If so, give details.
- 2.4 What amount was spent on advertising the franchise business and its outlets (exclude from this figure any sums spent advertising for new franchisees)?

## 3. Management

- 3.1 Who are the directors of the franchisor company and what business experience have they had?
- 3.2 Who are the senior management responsible for the day to day running of the franchise operation, and if different from the persons mentioned in 3.1 above, what is their business experience?

- 3.3 How long has the franchisor conducted a business of the type to be operated by the franchisee?
- 3.4 Does or has the franchisor or its participators directors or managers ever operated any other franchise business? If so, give particulars.
- 3.5 Have any of the persons mentioned in 3.1 and 3.2 above, been convicted of an offence involving dishonesty during the last ten years?
- 3.6 Have any of the persons mentioned in 3.1 and 3.2 above, ever been declared bankrupt?
- 3.7 Have any of the persons mentioned in 3.1 and 3.2 above, ever been parties to a civil action in which allegations of fraud or misrepresentation have been made against them?
- 3.8 Have any of the persons mentioned in 3.1 and 3.2 above, ever been involved in carrying on a business, in whatever capacity, which has ceased trading by reason of insolvency?
- 3.9 Have any of the persons mentioned in 3.1 and 3.2 above, ever been disqualified from holding office as a director or other officer of a company for any reason?
- 3.10 The information and advice provided by the franchisor contains many representations which will materially influence the judgement of the franchisee in his decision whether or not to proceed with his proposed arrangement. Presumably, that information and advice will have been compiled by some of those persons mentioned in 3.1 and 3.2 above? Please provide the names of those persons who are, were or will be responsible for:-
- 3.10.1 the projections;
- 3.10.2 site selection;
- 3.10.3 size of territory.
- 3.11 Please confirm that, notwithstanding the corporate veil, if it is proved subsequently that any material misrepresentations or omissions shall have been made by the franchisor in its projections or information and advice to the franchisee, those persons actually responsible for making those misrepresentations or for compiling the information upon which those misrepresentations were based shall hold themselves personally liable to the franchisee for all loss or damage and expense suffered by him as a result of those misrepresentations or omissions. If not, why not?
- 3.12 Has the franchisor been convicted of any offence during the last ten years ?
- 3.13 Has the franchisor ever been a party to a civil action in which allegations or fraud or misrepresentation have been made against it?

#### 4. **Development and Operation of the Franchise Business**

- 4.1 Provide a full factual description of the franchise business including:-
- 4.1.1 the historical development of the business; and
- 4.1.2 as it is a new franchise business, please provide full details of pilot schemes operated by the franchisor.
- 4.2 What advertising policy does the franchisor pursue:-
- 4.2.1 with regard to the business as a whole?
- 4.2.2 with regard to the opening of new outlets?
- 4.3 In what way will the franchisee be protected against competition from either or both of the following:-
- 4.3.1 business operating under the same trade name and/or marks whether in the same or in different fields of activity?

- 4.3.2 and/or business operating in the same or similar fields of activity which are connected with or affiliated to the franchisor or wholly or partly controlled by the franchisor?
- 4.4 If the franchisee is not granted an exclusive area, will there be a maximum number of franchisees within an area specified by the franchise agreement? If so, please give details.
- 4.5 If the franchisee is permitted or obliged to undertake its own local advertising, what is the attitude of the franchisor to advertising by a franchisee in one territory in media which cover not only his territory but adjoining territories as well (e.g. local press or radio)? Does the franchisor permit joint local advertising by adjoining franchisees ?
- 4.6 If the franchisor has company-owned outlets:-
- 4.6.1 are they profitable?
- 4.6.2 do they pay:-
- (a) the standard franchise fee?
- (b) the normal advertising contribution?
- 4.6.3 are their managers freely permitted to attend any meetings of the franchisees to discuss business or problems?
- 4.7 Who owns the Operations Manual?
- 4.8 Has the franchisor effected an insurance in respect of employers' and public liability?

## 5. **Intellectual Property**

- 5.1 Give details of all the intellectual property which will form the subject matter of the licence to the franchisee.
- 5.2 Does the franchisor own all such rights? If any are used by the franchisor under licence , who is / are the licensors?
- 5.3 if those rights are used under licence , please state what will happen if the licence is terminated or expires.
- 5.4 What will be the result (in respect of that licence or any other document, agreement or arrangement ) of the insolvency of the licensor of the franchisor?
- 5.5 If that licence contains provisions whereby the rights of the franchisor under the franchise agreement, to which it is a party, shall automatically revert to the licensor, upon termination or expiry of the licence, please obtain replies separately to these enquiries from the licensor.
- 5.6 Which, if any, of the intellectual property mentioned in the reply to 5.1 is protected by registration? Give details including date and place of registration.
- 5.7 Has any opposition been lodged or proceeding being taken against the registration or use of any of the intellectual property mentioned in reply to 5.2?
- 5.8 Is the franchisor aware of any actual or potential claims or proceedings involving other entities in which allegations of invalidity or infringement of the intellectual property are or might be made?
- 5.9 Is the intellectual property mentioned in reply to 5.2 subject to any agreement or arrangement with any other party which in any way limits or controls their use other than by any licence?

## 6. **Initial and Ongoing fees**



- 6.1 What payments of any kind are required to be made by the franchisee in order to obtain and commence the franchise operation (including initial fees, deposit, price or rental of equipment)?
- 6.2 Under what conditions are any such payments due under 6.1 returnable?
- 6.3 What recurring payments of whatever kind will the franchisee have to make in order to continue to operate the franchise business?
- 6.4 Will the franchisee need to purchase any services from the franchisor or any other person affiliated or wholly or partly owned by the franchisee? If so, please give details.
- 6.5 Is the franchisee required to acquire any specialist equipment from the franchisor in respect of the franchise business? If so, what are the terms of such acquisition? In the event that such equipment is hired or rented to the franchisee during the term of the franchise, what happens on expiry or earlier termination of the franchise agreement?
- 6.6 Is the franchisee required or advised to hire or purchase any other equipment or supplies needed to operate the franchise business from the franchisor or other specified supplier? If so, please specify the nature of the supplies and provide a list of the names and addresses of any specified suppliers.
- 6.7 Are any such suppliers affiliated or owned wholly or partly by the franchisor?
- 6.8 Will the franchisor or any person connected with the franchisor receive any payments or other consideration in respect of goods, services, property or finance supplied to the franchisee by the persons other than the franchisor itself? If so, please give details including the basis on which such payments will be calculated.

## 7. **Premises**

- 7.1 Will the franchisee need to acquire any leasehold property from the franchisor or any other person affiliated or wholly or partly owned by the franchisor? If so, please give details and, in particular:
  - 7.1.1 Will any lease of such premises expire or terminate on expiry or termination of the franchise agreement?
  - 7.1.2 What will be the permitted use of the premises under such lease?
  - 7.1.3 What rent review provisions are included in that lease?
  - 7.1.4 Is the valuation for rent review purposes limited to any restriction on the use of the premises, or is that restriction specifically excluded from consideration in such valuation?
  - 7.1.5 What is proposed in respect of any fixtures and fittings installed in the premises as part of the franchise package?

## 8. **Operation of the franchisee's business**

- 8.1 Will the franchisee be required personally to participate in the franchised business, and to what extent?
- 8.2 What are the usual business hours of a franchise business?
- 8.3 Is the franchisee obliged by the franchisor or by practical considerations to work longer than the hours mentioned in the above?
- 8.4 May the franchisee use the premises from which he undertakes the franchise business for any other business venture?

8.5 Does the franchisor have a particular relationship with any bankers or finance houses which may assist the franchisee with loans or other financing for the proposed franchise business?

If so:

8.5.1 Which banks or finance houses?

8.5.2 Upon what terms are loans usually made as to percentage of total funds required; security; interest rates; duration; capital repayments?

8.5.3 Do those banks or finance houses usually require the personal guarantees of directors of company franchisees?

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**For further advice please feel free to contact Wright Johnston & Mackenzie LLP's specialist franchise team. We would be delighted to help you assess your chosen franchising opportunity.**

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