

## Beginner's Guide To Buying A Franchise





# Franchise

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# Benefits And Risks

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There are many benefits and risks that you must consider before you buy a franchise. No prospective franchisee should find this surprising. There are benefits and risks to starting any new business and buying a franchise is a way of starting your own business. There are however particular risks to buying a franchise business. These 'franchise specific' risks of buying a franchise do not apply to starting your own business or buying a business that is not a franchise.

**There are benefits and risks to starting any new business**



The level of this risk will depend on the nature of the franchise business, the size and characteristics of the franchise group offering the franchise and whether the franchise business is an established franchise business operated by a previous franchisee or a new (greenfield) franchise.

These specific franchise risks do not mean that you should not buy a franchise business, or that other ways of doing business or business structures are preferable to franchise businesses. As a way of conducting business, franchises are for the most part effective and successful.



It is important that you recognise and take into account specific franchise risks before buying a franchise. This should not deter you from purchasing a franchise business but alert you to the need to make a fully informed decision that takes into account specific franchise risks. If you do this and decide to buy a franchise then you will be more confident about your decision and will be able to make plans and projections that take into account these franchise risks.

# Professional Advice

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Franchisors will expect you to obtain independent legal, accounting and business advice before you sign a franchise agreement. The Franchising Code of Conduct addresses a concern that prospective franchisees obtain this professional advice before they sign a franchise agreement.

## The Disclosure Document

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The franchisor is required to give you a disclosure document. The Franchising Code of Conduct makes it clear that the purpose of a disclosure document is to allow prospective franchisees to make a fully informed decision about whether or not to buy the proposed franchise. The disclosure document must set out certain information that the franchisor is required to disclose to you to assist you to make a fully informed decision.



# Further Investigations

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Obtaining from the franchisor and reading the disclosure document should not be the end of the investigations you undertake about the franchisor and the franchise business you are considering to buy. It is merely the first step, or a first step, you should undertake as part of your further investigations. This investigation process is often described by lawyers as a due diligence.

A crucial part of this investigation process will be obtaining legal advice about the terms of the proposed franchise agreement and about the matters referred to in the disclosure document. At Morgan Mac Lawyers we provide separate letters of advice concerning the franchise agreement and the disclosure document.

One reason we provide separate advices is because we wish you to consider the proposed franchise agreement and the disclosure document separately before you consider them together. This is because the disclosure document and the proposed franchise agreement have a different purpose. While the purpose of the disclosure document is to give you relevant information about the franchisor and the franchise business, it does not spell out and explain commercial risks specific to the franchisor or the franchise business. However, an experienced franchise lawyer can often identify specific commercial risks from the information contained in the disclosure document.

The purpose of a franchise agreement is to state the specific rights and obligations of the franchisor and the franchisee that will govern their relationship should they sign the franchise agreement. The terms of the franchise agreement will reveal on their face certain legal risks a franchisee must consider. For example, there will be terms specifying what the franchisor may do if the franchisee breaches a term of the franchise agreement. However, in our experience, certain terms in franchise agreements carry more subtle commercial risks that are not easy to identify for persons who are considering making a decision to buy a franchise for the first time.

Some of these risks are identified in our brochure “7 Must Do Checks for Franchise Agreements”.

The brochure outlines a selection of seven essential checks that prospective franchisors should complete. The examples in the brochure are not meant to be exhaustive. There are many other checks you should do, and legal advice should be sought and acted upon.

**Morgan Mac Lawyers offers a fixed-fee arrangement for work connected to the decision of a prospective franchisee to purchase a franchise including legal advice on the disclosure document and on the proposed franchise agreement.**

**For an obligation-free discussion about making a decision to purchase a franchise or about any other legal matter please do not hesitate to contact Bill Morgan on 0473 667 426.**