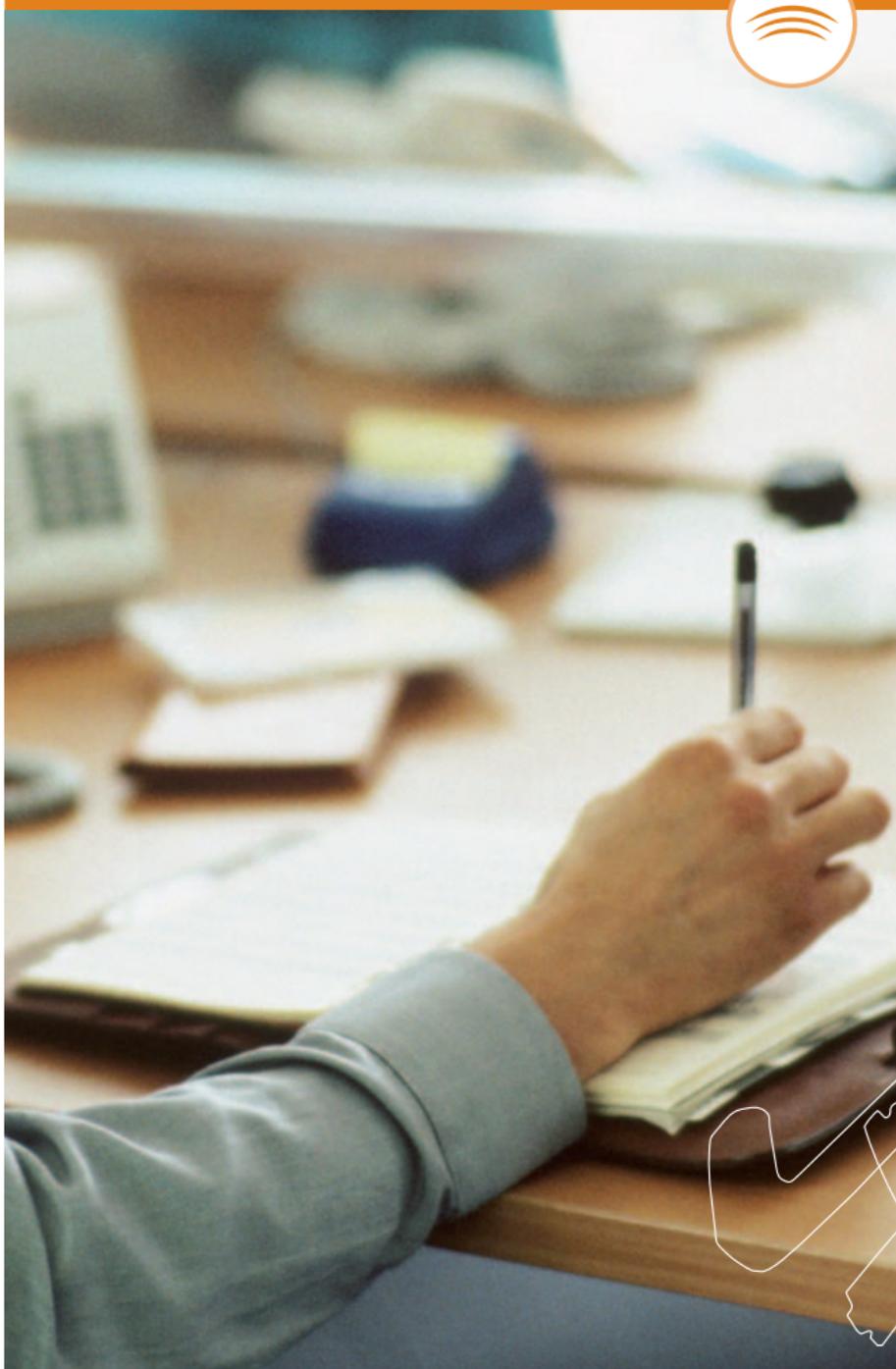




Australian
Competition &
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Commission

Franchisee start-up checklist



Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory 2601

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Franchising start-up checklist

Are you thinking about buying, extending or renewing a franchise? If so, you will have to make some important business decisions. To make the right decisions, you will need information about the franchisor and the franchise operations.

This checklist will help you think about information you should obtain before you enter into a franchise agreement. There are some minimum requirements under law for a franchisor to provide specific information to you; however, you should not stop at that. We recommend that you make your own inquiries to ensure you make an informed decision that is right for you.

The Australian Competition and Consumer Commission (ACCC) is responsible for promoting compliance with the Franchising Code of Conduct, which forms a part of the *Competition and Consumer Act 2010*. The code requires a franchisor to give you specific information which is briefly outlined in this checklist.

Getting the right information in order to make the right decision for you is extremely important. While the code and the Act contain some protection, such as a seven-day cooling-off period for new franchise agreements and protections from misleading information, you need to be aware that there is no protection for simply making a bad decision or negotiating a poor deal.

This checklist can help you assess a business opportunity **BEFORE** you make the investment decision.



Disclosure under the franchising code

As a prospective franchisee, you are entitled to receive a copy of the code, a disclosure document and a copy of the franchise agreement in the form in which it is to be executed at least 14 days before entering into a franchise agreement. This also applies if you are seeking to renew, extend, or extend the scope of, a franchise agreement.

New franchise agreements (those not involving a renewal, extension or transfer) allow a seven-day cooling-off period after signing.

To make an informed decision about the viability of the business, make sure you have all the information required under law before you sign the franchise agreement.

- Did you get a copy of the code? Make sure you read and understand your rights and obligations.
- Did you get a copy of the franchisor's disclosure document? Carefully read the information and ask questions if you are unsure about anything.
- Make sure you verify the information in the disclosure document. You should provide a copy to a lawyer, accountant or business adviser who has experience in franchising.
- Does the disclosure document contain all the information required under the code? The disclosure document usually contains the following information:
 - the franchisor's business name, name(s) of company director(s), ABN, ACN or ARBN, contact details, business experience
 - current proceedings against the franchisor of the kind listed under clauses 4.1(a) and (b)
 - a list of existing franchisees and some previous franchises, including location and contact details
 - trademarks or other intellectual property
 - details of the franchise site or territory
 - marketing or other cooperative funds

- prepayments and establishment costs
- other payments that are reasonably foreseeable by the franchisor
- whether unforeseen capital expenditure will be required
- whether the franchisor will attribute the franchisor's costs, including legal costs, incurred in dispute resolution to you
- arrangements for the supply of goods or services
- the franchisor's and franchisee's obligations
- details of unilateral (one-sided) variations that the franchisor has made to franchise agreements in the past, and the circumstances in which your franchise agreement may be unilaterally varied in the future
- details of any confidentiality obligations that will be imposed on you
- arrangements that will apply at the end of the agreement (e.g. Will you have an option to renew the agreement? Will you have the right to sell the business? Will you be entitled to an exit payment? What will happen to unsold stock and equipment?)
- details of whether the franchisor has, during the past three financial years, considered any significant capital expenditure undertaken by franchisees in determining the arrangements to apply at the end of their agreements
- whether the franchisor will amend your franchise agreement on or before the time it is transferred or novated
- financial details, which may include earnings information
- the date and content of any court enforceable undertakings given by the franchisor to the ACCC under section 87B of the Act.



Take your time, read all the documents carefully and talk to other franchisees. Assess your own financial resources and capabilities to deal with the requirements of the franchised business. Make your own inquiries about the franchise and franchising in general.



Before you sign

It is far easier to prevent a problem than to try to fix the damage afterwards. Before buying a franchise, you should consider the following:

- Is it the right opportunity for you? Assess your skills, strengths and weaknesses thoroughly when deciding to buy a franchise.
- Consider completing a pre-entry franchise education program to help you assess franchise opportunities before making a decision.
- Get professional advice from an accountant, lawyer or other business expert who has experience in franchising before making any commitment.
- Get and verify as much information about the financial details of the business as possible. For example, analyse the profit and loss statements and any annual reports that may be available. If you do not have the expertise to do this, ask your accountant or business adviser to do it for you.
- Read the disclosure document and franchise agreement carefully—**do not** sign anything without reading and understanding it first. If you do not understand the disclosure document or the franchise agreement, seek independent advice before signing.
- Insist on written representations from the franchisor. If the franchisor is unwilling to back up in writing any oral representations, take that as a warning sign.
- Make sure you fully understand all the fees payable under the agreement, including what they are for, how they are calculated and when they are due. Find out as much information as you can about the franchise. For example, has the company ever been the subject of a court action? This information may need to be included in your disclosure document.

- You may wish to check company details on the Australian Securities and Investments Commission website (www.asic.gov.au). You may also like to visit the ACCC website (www.accc.gov.au) to find out whether the ACCC has taken any action against the trader for a breach of the Act or has a section 87B court enforceable undertaking listed on the ACCC public register. It is also recommended that you check whether any action has been taken by state or territory consumer affairs agencies against the franchisor or franchisee.
- Ask the franchisor for a list of current and previous franchisees (this information should be included in your disclosure document) so that you can speak to as many franchisees as possible about the franchise. You should ask each franchisee about franchise earnings and profitability, franchisor support and daily operations. It is especially important to ask previous franchisees about their experience, including why they are no longer in the franchise system.
- Make sure you have everything you need to run the franchise. Ask the franchisor what specific requirements are needed to operate the business—for example, you may need a particular type of licence or skill. Check with the franchisor about training and the level of support the franchisor will provide to you in the early stages.
- If there is a lease involved in the transaction, make sure you understand the terms of, and your rights and obligations under, the lease agreement. In some instances, the lease will be in the franchisor's name, not in the franchisee's name. Understand your options or your position when the lease expires. Do you have a renewal option? Is that option yours to exercise? Ensure you are provided with a copy of the lease.

- Is the franchise granted for a specified time? What arrangements will apply at the end of the franchise agreement? Will you have any options of renewal or extension? Who will own the goodwill in the business? Will you get an exit payment? What will happen to your equipment and unsold stock? Will you have the right to sell the business?
- Ensure you have an exit strategy should the franchise agreement not be renewed.
- Check clauses on termination, renewal and transfer of the franchise, and make sure you are willing to accept them.
- If the deal is not acceptable, try to negotiate a better offer or find a better deal. Remember there will be plenty of other opportunities.

Remember

Plan well and obtain good advice before entering into a franchise. For example, if the franchise is successful, it may be imitated by other businesses and this may affect your profitability projections. Find out whether the franchisor has considered how its product or service can be differentiated from those of new market entrants so that you can maintain sales volumes.

Take time to research the franchise carefully so that you can make an informed decision. The code requires you to provide a signed statement to the franchisor detailing whether you have received advice from an independent legal adviser, business adviser or accountant before signing the franchise agreement. If you choose not to seek advice, you will have to provide a signed statement to that effect.





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More information

For more information about the *Competition and Consumer Act 2010* and the Franchising Code of Conduct:

ACCC small business helpline: 1300 302 021

ACCC website: www.accc.gov.au

Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service, www.relayservice.com.au.

Voice-only (speak and listen) users—phone 1300 555 727 and ask for 1300 302 502.