

## **Annexure 2—Information statement for prospective franchisee**

Note: See subclause 11(1).

### **THINKING OF BECOMING A FRANCHISEE? IT IS IMPORTANT TO CONSIDER THE RISKS AND THE REWARDS**

This document is not a complete guide to franchising, it is a starting point.

It should be combined with your own independent legal, accounting or business advice and the disclosure document provided by the franchisor.

Entering a franchise is a big decision. Before you do so, you should:

**Conduct due diligence** – this means researching the franchise system and talking to current and former franchisees.

- **Get advice** - get legal, accounting and/or business advice from professionals with expertise in franchising.
- **Read all the documents** - carefully study the disclosure document, franchise agreement and any other documents provided by the franchisor.
  - **Know your rights** - make your own enquiries to ensure that it is the right decision for you. The Franchising Code of Conduct sets out the rights and obligations of the people involved in a franchising relationship. It can be found at <http://www.legislation.gov.au>.

You should also consider taking a specialist franchising or business course before making a decision to enter a franchise agreement. There are **free, online education courses** available for prospective franchisees. Some courses can be found here <https://www.accc.gov.au/about-us/tools-resources/cca-education-programs>.

### **What is franchising?**

Franchising is a model for doing business. When you enter a franchise agreement, the franchisor controls the name, brand and business system you are going to use. The franchisor grants you the right to operate a business in line with its system, usually for a set period of time. There is no guarantee you will be able to keep your franchise business after the initial period of the agreement ends.

Franchisors and franchisees must comply with the Franchising Code of Conduct, which exists under the *Competition and Consumer Act 2010*, as well as consumer and company laws. The Franchising Code sets out minimum requirements for a franchisor to provide specific information to you. A franchise agreement, once entered into, is a legally binding contract that sets out the terms of the franchise.

### **Why consider franchising?**

A franchise can offer particular benefits over other types of businesses. For example, franchises may have an established product or service and an existing reputation and image. It may also give you access to the franchisor's experience and knowledge in the industry, planning, marketing skills and operating procedures. Some franchise systems provide support, some do not.

You should carefully think about whether the franchise system you are considering suits your business experience, skills and needs.

### **Understanding the franchising relationship**

Two important features of franchising are that the franchisor has established the business system you are using and that most franchise systems rely on each franchise maintaining consistency. For those reasons, franchisees are usually required to strictly comply with the operating procedures set down by the franchisor. As a result, you may be limited in the changes you can make to the franchise system without the agreement of the franchisor.

You will usually also be bound by confidentiality obligations. This includes limits on your rights to use the franchisor's intellectual property or business system outside the franchise.

Most businesses adjust to meet changes in the market. The franchisor might make changes to the franchise system at any time but does not have to discuss them with all franchisees.

### **Unexpected expenses**

In franchising, as in any business, unexpected expenses may arise. Events such as a natural disaster or a change in the law or Australian standards can impact your business. You need to have a business plan that takes this into account when working out the funds you will need for the future. You should also make sure you have the type of insurance which is right for your situation.

During the life of your franchise agreement, a franchisor might also decide to update computer systems or introduce new uniforms or change the appearance of the franchise system. These changes might not have been thought about when you entered the agreement. Those costs would normally be paid by the franchisee under the agreement.

### **The risks of franchising**

Statistics suggest franchises have a lower failure rate than other businesses, but franchising is not risk free. Franchising is a business and, like any business, there is the potential for a franchisor or franchisee to become **insolvent**. If this occurs this may have significant impacts on your business, for instance, you may no longer be able to use the franchise system's branding.

Some of the things you should think about are:

- How much **working capital** or **extra funds** you need for the first year or two while the business is getting established.
- Consumer demand for products or services is not the same in every **geographical area** and a franchise system might not be successful in every area.

- As a franchisee, you may not have an **exclusive territory**.
- Your franchisor may have the ability to compete with you **online**.
- As a franchisee, you won't necessarily have the **choice of where you buy the products** you need to run the business, even if you believe you can get those products for a lesser price somewhere else.
- An agreement may allow the franchisor to **terminate the agreement** even if there hasn't been a breach by a franchisee.
- Some **locations** are better for some businesses than others (i.e. consider a shopping centre versus a main street).
- The **economy** has its ups and downs.
- Whether the business is a **fad** or should it pass the test of time.

You may not have an automatic right to renew your agreement once the initial term is over. You should think about what happens at the end of the agreement:

- Will you be able to recover your outlay and make a profit during the term of the agreement?
- What are your rights and responsibilities around renewing your franchise agreement?
- What are the rules about you selling your business?
- Are there any restrictions on you starting a similar business if you want to?

The **Australian Competition and Consumer Commission (ACCC)** administer and enforce the Franchising Code. For example, the ACCC can provide information on how supply arrangements work in a franchising relationship.

#### **Further information**

Further information on franchising can be found at <http://www.accc.gov.au> or by calling the ACCC Small Business Helpline on 1300 302 021.