

## **Negotiating a Franchise Agreement-30 Questions You Need To Ask**

**By: Terry Gorry <http://BusinessAndLegal.ie>**

Franchising can be a great way to start your own business. And the failure rate for franchises is much less than for non franchise start-ups.

But you still need to do your homework and ask and be satisfied about many questions which you might not think about in your enthusiasm to start your own business.

The franchise agreement from a major franchisor will generally be on a take it or leave it basis.

That is the franchise agreement will not be negotiable as the franchisor can't afford to negotiate individual franchise agreements with each franchisee.

But that does not mean that you should not ask the right questions and satisfy yourself that the situation that arises when there is a dispute or the franchisee is incapacitated or dies is provided for.

1. What law governs the franchise agreement?

Many successful franchises in Ireland are not Irish companies.....the law applicable for an international franchise may well be another jurisdiction.

2. What happens if the franchisee dies?

Is there provision in the franchise agreement for the franchisor to provide staff to run the business to keep the show on the road?

3. Is there a renewal option when the franchise agreement ends?

If there is are you happy to commit to sign a franchise agreement in say, 10 years time, having no opportunity to see the new agreement? What are the terms?

4. Can you sell the business? Can the franchisor veto your purchaser?

5. When the franchise agreement is terminated is there a non compete clause? For how long?

6. If the franchise agreement is terminated and the premises is yours, how much will it cost to debrand?

7. *Is* the training and system manual up to date? When was it last updated?

8. Is there an advertising fee payable? Can it be justified? Is there marketing spend on the brand?

9. Is there a management services fee? How is it calculated?

10. Does the franchisee have to inform the franchisor of any improvements he has made to the system?

11. *Is* the franchisor the owner of the trademark? And if not will he provide a licence to the franchisee for the use of any trademarks and intellectual property?

12. Who will own the premises? Will the franchisor provide any advice in relation to location and premises? Is this provided for in

the franchise agreement?

13. How long has the franchisor been carrying on business? How many company owned outlets?

14. If the franchisor is supplying goods is there a credit limit? Will a minimum stock of products be imposed? Is a vehicle required? Will it have to be branded?

15. What books and records will the franchisee have to supply to franchisor?

16. Will a confidentiality agreement be required?

17. Who will pay for initial and ongoing training?

18. Is there a territory? Is it exclusive? Is it stipulated in the franchise agreement?

19. How long will the franchise agreement last? Is it compliant with competition law requirements?

20. Is training provided for staff? Is it ongoing?

21. Is more than 10% of the initial fee for use of the name and trademark? Can this be justified?

22. What initial stock will be needed? Will the franchisee have to purchase equipment, stationery from the franchisor?

23. What ongoing obligations has the franchisor as per the franchise agreement in relation to problem solving, management, finance and marketing, provision of staff in an emergency, research and development and maintaining and improving the manual?

24. Will franchisee be required to advertise locally?

25. Does the franchisor have the right to communicate with the franchisee's customers?

26. Has the franchisor the legal right to purchase the franchise from the franchisee? On what terms? Is that in the franchise agreement?

27. Is the franchisor entitled to appoint a manager if the franchisee

dies or is incapacitated?

28. Who is entitled to terminate the franchise agreement? On what terms? What events will bring this about?

29. What will happen when a dispute arises? Is arbitration provided for in the franchise agreement? Litigation?

30. Does the franchisee have to enter into any restrictive covenants in the franchise agreement?

When looking at a franchise agreement with a view to buying either a new franchise or an existing franchise, a close perusal of the franchise agreement with these questions foremost in your mind is a good starting point.

But only a starting point. You will need to engage a solicitor before signing any franchise agreement but these questions may assist you in deciding whether to go that far or not.



[Http://BusinessAndLegal.ie](http://BusinessAndLegal.ie)

Terry Gorry & Co. Solicitors  
086/ 81 21 797