

Franchising – What Is It and Is It for You?

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As an entrepreneur or person interested in starting a new business or growing an existing one, franchising might be an option for you to enter the market more quickly or grow more aggressively, and perhaps increase your likelihood of success.

If you are the person with a business concept and some success with an existing business, then you may be a candidate to be a "franchisor." Whereas, if you are the person with interest in starting a business but want to do so more quickly and with guidance from someone having valuable experience and expertise in your business area of interest, then you may be a "franchisee" candidate.

In a nutshell, franchising is the business of obtaining the rights to use another person's or company's business model, brands and intellectual property, technology and know-how, expertise, and experience for an established period of time (typically five years) and under set rules, requirements, procedures, and practices. Franchise fees, royalties, and other payments are made by the franchisee to the franchisor for these rights, and the franchisee incurs most of the costs and investment in obtaining the franchise rights including launching and developing the franchised business.

As a franchisor, the franchise is a way to build a family of stores or businesses to distribute goods or provide services that can avoid the substantial monetary investments and legal liability of owning and operating the businesses yourself. The success of the franchise and the franchisor depends substantially on the success of the franchisees; therefore, the franchisor is expected, and is incentivized, to provide significant assistance to the franchisee at all stages of developing and operating the franchised business.

As a franchisee, because of the past success, experience, and assistance provided by the franchisor, the franchise is a way to get into business more quickly and possibly with less risk of failure, and greater probability of success, than if the franchisee would "go it alone." Because the franchisee has a direct stake in the operation and success of the business due to their significant investment of money and time, the franchisee also has great incentive to be successful.

Franchising in the United States is essentially governed by state law, but is also regulated by federal law via federal rules and regulations enforced by the Federal Trade Commission.

The key elements of a franchise system and business include:

1. Franchise Application

This is similar to an employment application but also focuses significantly on the franchisee candidate's qualifications and experience in the applicable business industry and solid financial assets and position.

2. Franchise Disclosure Document (FDD)

This is a very detailed, comprehensive document covering 23 specific items governed by federal regulation that is intended to provide the franchisee candidate with all the relevant information needed to make a well-informed decision whether to invest in the franchise and sign a Franchise Agreement.

3. Franchise Agreement

This is a detailed legal document that covers every aspect of the franchising relationship – similar in many respects to the FDD but in an agreement setting – including the roles and responsibilities of the franchisor and franchisee, and all the terms, conditions, and obligations of both franchisor and franchisee.

4. Operations Manual

This is the nuts and bolts -- the "do's and don'ts"-- and all the relevant details of running the business day-to-day. This document is basically the franchisor's knowledge, experience, thoughts, guidelines, and suggestions provided in writing to the franchisee to help them be successful in their franchised business and "stay out of trouble" with the franchisor and perhaps the law.

5. Training Program

This is essentially an extension of the Operations Manual, providing face-to-face and voice-to-voice details to help in running the business day-to-day; the franchisor provides training to the franchisee and its managers and key staff before, during, and after the launch of the franchised business, including giving them constant feedback regarding developing, growing, and operating the business.

6. Marketing and Promotion Program

The franchisor must have a program that markets and promotes the franchised business to help support the franchisees as a group, generate greater awareness for the franchise brand, and generate new franchises in other territories.

Whether you are a franchisor or a franchisee, it is important to go into franchising with "eyes wide open" and do your homework (due diligence). Careful preparation, review and analysis of the key franchise documents will go a long way to helping you increase your odds of success. It is also important to consider seeking competent, experienced legal counsel since franchising can be very complex and legal-intensive.

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