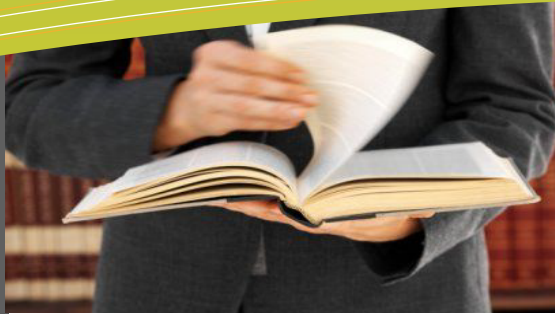


Buying or starting a franchise is a very important financial decision. It is important to ensure that the person who is advising you and handling your matter is a fully qualified solicitor.

Baldock Stacy & Niven

Solicitors and Notaries



Baldocks Bulletin

Buying a Franchise

In this Bulletin

- ☑ Introduction
- ☑ How will Baldock Stacy & Niven help
- ☑ What are steps before buying a franchise
- ☑ What are the steps in a purchase of a franchise
- ☑ What structure should my business take
- ☑ What will be in the Disclosure Statement
- ☑ What will be in the Franchise Agreement
- ☑ Buying or leasing premises

Introduction

Purchasing a franchise is a large legal and financial commitment and it is important that you are properly advised in order to avoid the pitfalls. You should consider the following:

- Do you have the appropriate qualifications and/or experience to run the franchise?
- Are there any competitors or new developments that will affect the future financial viability of the business?
- Is the franchise model sound?
- Is the purchase is a good investment?
- Do I have enough funds available to purchase the franchise and to run the business until it starts generating money.



Baldock Stacy & Niven has been assisting business clients for over 115 years and we look forward to assisting you in your purchase of a franchise. ☐

How will Baldock Stacy & Niven help?

Baldock Stacy & Niven will analyse the franchise agreement provided by the franchisor's solicitor together with the disclosure statement. We will fully explain the agreement and statement to you and negotiate any amendments to the agreement. ☐

What are the steps before buying a franchise?

- You should determine the structure you would like your franchise to take – whether it is sole trader, partnership or company.
- Get advice from Baldock Stacy & Niven and your accountant and any other key people you can identify that might help you to make an informed decision about your purchase;
- Once you have decided to buy a franchise, ask the seller to put all details in writing. ☐

What are the steps in a purchase of franchise?

1. Initial negotiations between the franchisor and the franchisee.
2. Review of the Disclosure Statement and Franchise Agreement. Most franchisees are mistakenly under the impression that they have limited negotiating power.
3. Requesting amendments to the Franchise Agreement.
4. Signing Franchise Agreement and any lease of premises. ☐

Contact Us

Parramatta Office

Suite 2, Level 4
91 George Street
Parramatta NSW 2150
Ph: (02) 9891 6444
Fax: (02) 9891 6507

www.bsnlaw.com.au

bsn@bsnlaw.com.au

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What structure should my business take?

The best thing to do is to get accounting and legal advice, but as a guide, you should think about:

- The expected income of the franchise.
- The sort of personal liability you will have or are prepared to have.
- The value of the assets of the franchise.
- Taxation issues. For example, capital gains tax, GST and income tax payable.
- Who the owners of the franchise will be and their shared rights and obligations. □

What will be in the Disclosure Statement?

One of the key elements of the Australian Franchising Code of Conduct is the requirement for franchisors to provide disclosure information to new and renewing franchisees. Franchisors are required to comply with the following under the Code:

- The franchise disclosure document must be signed by a director or other officer of the franchisor
- Franchise disclosure documents must be updated annually within four months of the end of the financial year (ie. by the end of October each year)
- Franchise disclosure documents must be given to potential new franchisees and to existing franchisees proposing to renew their agreements, or to an existing franchisee on request
- The franchise disclosure document must be provided at least 14 days before the potential franchisee signs their franchisee agreement
- The franchise disclosure document must be accompanied by the franchise agreement in the form in which it is to be signed, as well as a copy of the Franchising Code of Conduct itself
- The franchisor must receive a written statement or receipt from a franchisee to say that they have received, read and had the chance to understand the franchise disclosure document before the franchisee can sign a franchise agreement
- The franchisor must also receive signed statements that the franchisee has had advice from any or all of a lawyer, accountant or business advisor, or provides a statement that they have received that type of advice or have decided not to seek such advice. □

What will be in the Franchise Agreement?

The franchising code of conduct does not in any way prescribe the contents of the franchise agreement itself. It does however cover issues relevant to the franchise agreement and the franchise, including:

- Compulsory cooling off periods;
- Clauses relating to termination and dispute resolution.

These provisions in the Franchising Code of Conduct apply irrespective of what is set out in the franchise agreement itself. □



Buying or leasing premises?

If you are buying freehold premises with the franchise, the standard conveyancing process will be followed. Usually the premises will be leased, and if so, it must be determined whether a new lease will have to be negotiated (if it has expired or will shortly expire) or a transfer of lease needs to be arranged. If the leased premises are subject to a mortgage, the mortgagee must consent to the transfer of lease. □

*The material in this bulletin is not a substitute for legal advice and is only of general informational value. No person should act or refrain from acting solely on the basis of this bulletin. It does not constitute legal advice and your possession of this bulletin does not create a client/lawyer relationship. If you would like to discuss your particular circumstances please contact **Baldock Stacy & Niven** and we would be pleased to be of assistance to you.*

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