



David Foster,  
Harris Tate Lawyers, Tauranga

# What questions will your lawyer ask you?

## *New franchisees first visit to a lawyer*

When you first visit your lawyer it is probable that you will have told him or her what the name of the franchise system you wish to buy into is called. Your lawyer will, by the time of your first visit have found out as much as they can about the system, if they are not already familiar with it.

### The questions.

#### 1. *What do you know about franchising?*

There is a wealth of knowledge available to prospective franchisees and it is important that new franchisees are aware of how franchising works, whether it will suit them and how to ascertain the strength of the system they wish to buy into.

#### 2. *Have you read the Franchisee's Guide published by the Franchise Association of New Zealand?*

This is an incredibly valuable publication and very reasonably priced (\$59.95). Order online at [www.franchiseassociation.org.nz](http://www.franchiseassociation.org.nz). This should be your starting point for research. Then check what information about franchising that your bank has. Some of the banks have very, very good franchising departments and publish some very informative booklets. Such

banks will also have a great deal of knowledge about particular systems and, hopefully, the one you are looking into. Use that knowledge.

#### 3. *Is the franchisor a member of the Franchise Association of New Zealand (FANZ)?*

This query, to me, provides part of the answer to the question: "Is the franchisor committed to you and the system?" If the franchisor is not a member of FANZ then you must ask why not? The advantages a franchisor can obtain from being a member of FANZ are significant – particularly education and 'member benefits'. The member benefits are available to you as a franchisee of a member franchisor. The more your franchisor knows about how to run a franchise properly then, quite simply, the better it has to be for you, your co-franchisees and the system generally.

#### 4. *Who is your accountant?*

An accountant with specialist knowledge about franchising is a real bonus. An accountant who is committed to franchising will, like a lawyer who undertakes franchising work as a significant part of their business have a good knowledge of franchising in general, the franchise industry and

possibly knowledge about the franchise system you are looking at buying into. Your accountant's knowledge will help give you comfort that the system and opportunity should be successful for you - or tell you not to proceed with it! Sometimes the numbers just do not add up. There are some extremely good and knowledgeable accountant members of FANZ - they should be used. Your solicitor, provided he or she has an expert knowledge of franchising, is a member of FANZ and specialises in franchise law, will know which accountant to refer you to.

#### 5. *Who is going to be the person most involved in the franchise? (if husband and wife/spouse turn up to the initial visit)*

The reason for this question is to ascertain how a company (if a company is going to be the franchisee) is established.

#### 6. *What asset protection measures do you have in place?*

It is an appropriate moment to consider how to protect your personal assets when entering into a venture that may have significant business risks that may threaten the ownership of all you have worked hard for over the years. It is also a time to consider your insurances on life and income protection.

*“There are many smooth talking franchisors out there who should quite simply be sellers of snake oil.”*

**7. What is the franchisor’s commitment to the system? (assuming the franchise agreement has been read)**

There are many smooth talking franchisors out there who should quite simply be sellers of snake oil. All talk and no commitment. The franchise agreement should show that there is a continued return to the franchisor based on your success. A ‘win/win’ situation is the best – it keeps both the franchisor and the franchisee motivated. If there is no ongoing income to the franchisor then why would the franchisor bother with you, the system or anything to do with it after he has received his initial franchise fee? I have seen these types of agreements. Alarm bells should ring.

**8. Where is your husband/wife/partner?**

This is an appropriate question, if only one person of a couple or partnership comes to the appointment. Going into a new business especially for the first time is a big decision and one that can have a major impact on a relationship and indeed on a life. Not infrequently will people make significant sacrifices to purchase a franchise – give up steady employment, mortgage the family home, move town and sometimes even work together with a spouse/partner. If the business doesn’t work then there is so much to be lost. Houses can be sold by your financier if you fail to pay your debt and your relationship could fail due to the

stress of a failing business. Both spouses/partners need to know and understand the obligations and liabilities under a franchise agreement, and business risks generally.

**9. What have you signed?**

It is important to know what, if anything, the prospective franchisee has signed. A confidentiality agreement is most likely to have been signed before the appointment. It is most important that any further documents are not signed without legal advice having been given. The prospective franchisee will be warned of this.

**10. Who established the franchise?**

By this I mean, who were the franchise consultants that set up the system? It is well established that a system that has been set up by suitably qualified and experienced franchise consultants have a significantly greater chance of success. Qualified franchise consultants work through the numbers, and everything else, to ensure that the franchise is feasible, to establish what the ‘numbers’ should be and how the system is to work. The franchise consultant will ensure amongst other things that each party – franchisor and franchisee – is adequately rewarded for their efforts. It is likely that more ‘evidence of commitment’ can be established here. It is well known who the suitably qualified and experienced franchise consultants in New Zealand are and also those who are not. There are

many who try to pass themselves off as franchise consultants. Regrettably such consultants have caused much misery. The franchise consultant is critical to the success or failure of the system you invest in. A lawyer well experienced in franchising will be able to provide you with some assistance on this.

**11. What research have you done? (A due diligence type question)**

There are lists and lists of ‘100/200 questions to ask when buying a franchise’. Whilst some times confusing (having to ask so many questions) it is absolutely critical that a ‘due diligence investigation’ is undertaken. An investigation based on one of those lists and in conjunction with your specialised franchise lawyer and accountant should later be prepared.

**12. This is more of a statement than a question to finish off with.**

It is a lot easier to enter into a contractual relationship than it is to get out of one. By all means keep the passion and enthusiasm you have for the franchise proposition that excites you, but do go in with your eyes open and after having received (and acted upon) the appropriate advice received from your franchising professionals.

**David Foster is a lawyer and Notary Public with Harris Tate, Lawyers & Notaries, Tauranga, New Zealand. Phone (07) 571 3668 or visit [www.harristate.co.nz](http://www.harristate.co.nz).**