

Why Are Franchise Agreements Non-Negotiable?

All good Franchise systems will require that Franchise agreements are the same for all Franchisees and generally, the Franchise agreement is a non-negotiable instrument. If a Franchise system allows for the negotiation of the various clauses contained within its agreement, that should be an indication their own belief in their system is not as strong as you might think. Yet the system is what a Franchisee will be investing in, so ...

That's not to say that Franchise agreements don't evolve over time to consider current business practices and opportunities. However, in any short-term window, the agreement will be the same for all Franchisees joining the system. If you think about that premise, that's what Franchising is all about.

The Franchisor offers a consistent system of value to all its Franchisees, including uniform support, operating and administration systems, along with branding strategies. That's a primary reason for Franchisees to invest in the system – because those things all deliver a great value as opposed to starting from scratch.

Therefore, it is imperative the agreement between a Franchisor and each Franchisee is the same to keep the playing field even. The agreement is really a description of the business systems and the rules of engagement. Each Franchisee should review the agreement to ensure those systems and rules of operation make sense for them. Each Franchise candidate should make the decision that, "Yes, this makes sense to me and I can prosper in this relationship, control my own outcomes, and build an asset for the future."

However, as stated in a prior discussion about Franchise fees, the relationship is not one of parity. As mentioned, "If it were a relationship of parity, the Franchisee would take on a great deal more responsibility, and of course, liability and risk as well. The relationship is not one of actual partnership in the legal sense. However, good Franchise systems will generally recognize their Franchisees as strategic-partners, meaning they are in a partnership of sorts aimed at achieving unified goals, but not one of legal partnership or equity."

Consequently, the Franchise Agreement will describe the details of operation and the methods of protecting the system. After all, each Franchisee wants to be sure the Franchisor has the right – and the clout – to deal with any Franchisee who causes detriment to the system, the very system in which they are investing. Each Franchisee should want to know the Franchisor has the ability to protect their investment and evolve the business to increase in value on their behalf. In order to provide for those protections, the agreement will seem to be slanted in the favor of the Franchisor. Actually, it's slanted in the favor of the system.

One of the more expensive errors a Franchise candidate can make is to simply take the agreement to an advisor who is not familiar with Franchising. I have seen legal bills for thousands of dollars where the lawyer wanted to negotiate every clause of the agreement as if it were a normal partnership agreement. Those dollars end up being wasted because the agreement is not negotiable, regardless of the basic business tenet that everything is negotiable. In this case, the lawyer should be trying to help the Franchisee understand the system operates in a certain way, and to determine if the Franchisee is comfortable operating the Franchisor's system in their own market under the terms outlined in the agreement.

It's akin to going into McDonald's and ordering three Big Macs and a hot dog. McDonald's doesn't sell hot dogs. They have a proven formula that works for their Franchisees, and in their case, that doesn't include hot dogs. If someone wants to sell Big Macs, they can become a McDonald's Franchisee. If they want to sell burgers and dogs, they will have to start "Joe's Burgers & Dogs".

In a more general sense, the Franchisor has certain disclosure requirements in both Canada and the United States. In certain states, the Franchise Disclosure Document (FDD) must be registered before Franchises can be offered. It is incumbent upon the Franchisor to ensure the agreement that is signed with its Franchisees is consistent with the agreement included in disclosure documents. Therefore, if the Franchisor negotiates various clauses of its agreements, then they will be inconsistent with their disclosure documents.

In summary, the main reasons that Franchise agreements are non-negotiable include:

- 1) The requirement and desire for consistency among all Franchisees
- 2) The need for a strong agreement that can consistently deal with any problems that may arise in order to protect the system for all Franchisees on an ongoing basis
- 3) The strong belief in the value of the system, which makes that system so valuable to each participant, extends to the agreements among all parties
- 4) The need for consistency with disclosure documents