

If franchisors are reluctant to negotiate the terms of their franchise agreements, what is the point of having it reviewed by a franchise lawyer before signing?

Many franchisors advise their prospective franchisees that any attempt to negotiate the franchise agreement will be futile and ultimately resisted. The reason often given by franchisors is that any changes to the franchise agreement will undermine the uniformity of the system. Wide variations in franchise agreements are often viewed as a threat to the integrity and viability of the system.

Of course, there are certain terms and conditions of a franchise agreement that will lend themselves to negotiation and amendment, such as the size of the franchisee's territory, for example. Franchisees should, however, be judicious in their attempt to negotiate other less important terms and conditions of the agreement. They should recognize that the franchisor will not be amenable to negotiating the entire franchise agreement, and they should therefore focus on attempting to address the most problematic provisions and significant concerns.

Franchisors are generally reluctant to make amendments to their franchise documents due to the following reasons:

1. Modifications to the standard agreement could cause administrative difficulties for the franchisor since it would be required to manage, diarize and monitor several versions of the franchise document. To do so in an effective manner would necessarily increase the operating costs of the franchisor.
2. Allowing variations in the franchise agreement may create dissension among the franchisees should they discover that the franchisor has offered different deals to all or some of its franchisees. Franchisors will wish to avoid claims of favouritism.
3. Consistency is one of the hallmarks of a successful franchise system, and franchisors will most certainly insist on that consistency when negotiating their franchise documentation.

In reality, however, the degrees to which franchisors do in fact negotiate vary from system to system. This general rule of "no negotiation" may not apply, for example, in a startup franchise system where franchisors are more likely open to negotiating the franchise agreement in the interests of selling their first number of franchises. It may also not apply when the prospective franchisee is bringing much-needed expertise or capital to the table. Yet, even in such circumstances, significant modifications to the standard form of the agreement would likely bring short-term benefits and long-term difficulties to the franchisor and the franchise system. A deeper appreciation of the constraints faced by the franchisor in this regard could only assist franchisees and sharpen their approach to negotiating with the franchisor.

At the very least, even if a franchisor is not willing to negotiate any of the terms and conditions of its franchise agreement, it is incumbent upon prospective franchisees to review their franchise agreements (and disclosure documents) with legal counsel so that they fully understand their legal rights and obligations. Failure to do so could be a costly mistake, particularly when a franchisee is not capable or willing to live up to certain obligations. Franchisors are also better off when they are informed of the concerns of the prospective franchisee regarding the documentation, even if no changes are ultimately permitted. Such concerns may be indicative of other more significant issues pertaining to the prospective relationship. ❁



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POINTS TO CONSIDER:

- As with any relationship, communication is key.
- Identify only the most critical points for discussion when negotiating with the franchisor.
- Understand your rights and obligations and make the franchisor aware of any concerns that you may have before entering into your franchise agreement.