THINKING ABOUT BECOMING A FRANCHISEE IN THIS "DOWN" ECONOMY? THINK AGAIN: THE RULES REMAIN THE SAME

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If your place of employment has recently down-sized and you have lost your position, or if you want to make a pre-emptive strike before that happens, you may have toyed with the notion of owning your own franchised business. Most prospective franchisees have the notion that, by owning a franchised business, they will, in fact, be their own boss. While owning a franchise can be rewarding and profitable, the prospective franchisee needs to understand that he or she is accountable to a new boss or supervisor – the franchisor. In order to determine whether or not your new "boss" is a good fit, the prospective franchisee needs to conduct some "due diligence" before entering the world of franchising.

A good start is to talk to other franchisees to determine how the franchisor operates and how supportive it is of its franchisees. Talking to franchisees from a number of different franchise organizations will assist in making those determinations. It will also assist in gaining perspective as to what the level of name recognition is in the marketplace for each such organization. The essence of all franchise law is the value given to the trademarks and service marks owned or licensed by the franchisor and name recognition is critical to the success of your business. Talking to other franchisees will assist you in determining if the franchisor's "image" is one that you will want to project.

Another prerequisite is to ask the franchisor to provide you with a copy of its franchise "disclosure document," formerly called the franchise "offering circular." The franchise disclosure document, or FDD, is required to be provided to a prospective franchisee under the guidelines of the Federal Trade Commission and may need to be filed in certain states that require franchisors to register them. A total of 15 states have laws requiring disclosure and 12 of those require the franchisor to register or file the FDD with a state agency. Registration states include: Wisconsin, Illinois, Indiana, Michigan and Minnesota.

The FDD, though extensive in its disclosures about the franchised business and its owners, is only the beginning of the due diligence process. It should not be considered to be the answer to all questions that a franchisee may have. But the FDD is a great start particularly because FDDs are required to follow a particular format. This means that information that is relevant to one franchise opportunity is easily compared with the same information for another franchise opportunity. In particular, the FDD will contain a

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list of other franchisees. This is the list that provides a good starting point for contacting existing franchisees as mentioned above.

The FDD will also include a copy of the form Franchise Agreement that is used with the franchise opportunity. This Agreement should be reviewed by a lawyer so that relevant provisions such as royalty rates, royalty payment schedules, late payment charges, contributions to advertising funds, and rights and obligations of termination are clearly understood. In fact, the prospective franchisee is required to acknowledge that he or she has read the FDD, including the Agreement, and that its contents are understood. This can cause problems later on where the new franchisee later claims that an important term or condition was not understood.

The FDD is also a good resource of financial information about the franchisor. This information typically includes audited financial statements for the three years prior to the effective date of the FDD. These statements should be reviewed by an accountant for interpretation and guidance concerning the financial well-being of the franchisor. They provide an indicator of whether or not the prospective franchisee's total proposed investment is excessive. The franchisee will need to consider the level of initial franchise fee to be paid as well as other investments including the costs of premises, equipment, inventory, security deposits, insurance payments, licenses, grand opening expenses and the necessary working capital to keep the franchised business going until it reaches a financial break-even point.

These are some of the considerations that should be given when evaluating a franchise opportunity. Owning and operating a franchised business can be a rewarding endeavor, but choosing the correct business opportunity for you is critical to the success of that business. You need to do your homework. Most importantly, if there are any questions or doubts concerning any business opportunity that you are considering, you need to address them prior to signing on the dotted line of the Franchise Agreement.

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