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• Essentially a legal document between a franchisor and franchisee
• Legal binding agreement
• Explains in details what a franchisor expects from a franchisee
• No standard form of agreement, as terms and conditions and method of operations vary widely based on nature of business
• Every franchisee has to sign franchise agreement and as well franchisor signs it
Franchise Agreement

• Franchise covers two aspects:
  – Laws that apply to franchising
  – Main provision of the agreement
Laws that apply to franchising

a) Franchise disclosure laws
b) Registration requirements
c) Franchise relationship laws
d) Anti-competitive laws
Many countries have disclosure laws that require information to be provided to franchisees before committing.

Full and accurate disclosure would include:

- Description of business format, details of pilot operation, length of time of franchisor in business, people involved, details of other franchisees, franchisor’s likely competition, special license etc.
- Problems faced by franchisor
- Costs involved in starting and operating a franchise
- Intellectual property owned by franchisor, financial statements, settlement of disputes
• Many countries require franchisors or their agreements to be registered with govt.
• Civil law countries impose general duty of good faith on all commercial transactions
• Some countries also require disclosure statements along with agreement to be registered, thereby providing protection to franchisee
Once parties enter into formal agreement, franchise relationship laws regulate various aspects of relationship like franchisor's right to terminate, right of renewal, right of transfer etc.
Anticompetitive laws

• In many countries, laws for controlling anticompetitive behavior of franchisors exist

• Anticompetitive practices that limit, distort or prevent competition are often prohibited by national laws

• Franchise agreement are subject to provisions of various competition laws
Main provisions of the Agreement

• Parties
  – Identification of the parties to the contract
  – Party granting right is called *franchisor* and party receiving the right is *franchisee*

• Preamble
  – Beginning of the agreement, spells out detailed elements of activities of franchisor’s business intending to franchise

• Definitions
  – Terms used in agreement is defined so that each time they are used they are understood
Main provisions (cont...)

• Rights Granted
  – Set out what exactly is being granted to franchisee
  – Indicate:
    • Whether franchisee is an exclusive, sole or nonexclusive franchisee
    • Territory in which he is competent to operate
    • Intellectual property rights which he has right to use

• Fees
  – Three kinds of fees payable:
    • Initial fee: an upfront lump sum fee /franchisee fee
    • Ongoing fees: royalties are based on percentage
    • Renewal fees, administrative fees
Main provisions (cont...)

• Term:
  – Term of agreement would be for limited period of time, usually an initial period of 5 years with right to renew

• Non-agency:
  – Clause stipulating that franchisee is not an agent of franchisor but is rather an independent contractor and that the parties are not partners or associates
Main provisions (cont...)

• Franchisor’s Obligations:
  – Advice on finding premises
  – Advise on equipments, fixtures and fittings
  – General advise on how to set up franchise
  – Undertake PR launch
  – Provide a copy of Operational Manual
  – Provide initial training
  – Identify support the franchisee in defending any third party claims of IPR infringement by franchisee
Main provisions (cont...)

• Franchisee’s Obligations:
  – Lease or own premises as approved by franchisor
  – Operate business according to Manual
  – Equip the premises as required by franchisor
  – Use only signs and packaging in connection with business
  – Maintain premises to highest standards and not carryout alterations without prior consent
  – Staff well dressed, clean and polite
  – Protect franchisor’s trade secrets, inform him of any potential infringements of its IP and its claims
  – Timely payment of fees
Main provisions (cont...)

• Accounting Records:
  – Required to keep records and make regular reports to franchisor
  – Required to follow a certain record keeping system
  – Allow franchisor access to and audit these records

• Advertising:
  – Regular contribution to a fund held separately which franchisor will use for advertising the system
• Insurance:
  – Franchisors concerned that their franchisees are adequately insured because of possibility of claims being made against franchisor for the act of franchisee
  – Franchisee are under obligation to take out insurance for the business and furnish to franchisor copies of policies and evidence of payment of premiums
Main provisions (cont...)

• Sale of business:
  – Franchisee has no right to transfer the franchise without franchisor’s consent and franchisor has first right to refusal

• Non-competition:
  – Franchisee is restrained from conducting similar business during the term of franchise

• Intellectual property:
  – Grant clause will specify that franchisee will be granted right to use IP properly
Termination:

- Franchisor may terminate the Agreement if the franchisee
  - Fails to commence business within 3 months of execution of Agreement
  - Is in breach of specific terms of the agreement which should be listed
  - Persistently defaults in payments of any amount due to the franchisor
  - Is found to have supplied materially false or misleading information in
  - Goes into liquidity/bankruptcy or is insolvent
– Following termination of franchise agreement, franchisee

• Must cease to use franchisor’s trademarks and other IP and must not thereafter hold itself out as being franchisee of franchisor

• Must pay to the franchisor all sums payable to franchisor whether or not then due

• Shall return to the franchisor all manuals, literature, promotional material, letter heads, invoices or anything which shows association with franchisor

• Shall provide franchisor with list of all customers and potential customers

• Shall not make use of or disclose confidential information
Main provisions (cont...)

- Settlement of disputes
  - Spells out jurisdiction details as to where disputes, if arise be settled
  - Generally franchisor’s place of business is the one indicated
*THANK YOU*