

Franchise Agreement

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Franchise Agreement

- 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

Franchise disclosure 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

Registration requirements

- 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

Franchise relationship laws

- 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

Main provisions (cont...)

- 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

Main provisions (cont...)

- 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

Main provisions (cont...)

- 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

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