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Dear Commissioners,

I am the President & CEO of the International Franchise Association (IFA), the world's oldest and largest organization representing franchising worldwide. Celebrating over 50 years of excellence, education and advocacy, IFA works to protect, enhance and promote franchising. IFA members in the United States and around the world include franchise companies in over 300 different business format categories, individual franchisees and companies that support the industry in marketing, law and business development. Most of our members are already engaged in or are seriously considering engaging in international expansion. At least 40 of IFA's franchisor members are already active in South Korea and we know first-hand that your market is clearly appealing to additional franchisors considering international growth.

I write in with the intent to offer information important to the South Korean economy. We understand that the South Korean government is considering new regulations on franchising, which would be of serious concern to our members and, we fear, to the South Korean franchise industry. We have therefore followed with interest the recent developments, including the revisions to the Fair Franchise Transactions Act, actions by the Korea Fair Trade Commission, and the National Commission for Corporate Partnership, as well as related matters. We have, of course, given particular attention to the KFTC's public notice of the proposed Presidential Degree to enforce the relevant statutory changes.

We understand and truly appreciate the concerns which have motivated these actions, and we share your hope that there will be a steadily improving climate for franchising in South Korea, to the benefit of franchisors and franchisees alike, and to the many people employed by the many businesses engaged in supplying goods and services to the franchising industry. We are concerned however, that some of these changes to the law may have the opposite effect, harming franchising companies without a commensurate benefit to franchisees, to competition, or to the public.

Accordingly, we will focus here on some observations regarding an issue we believe is distinctively, if not uniquely, detrimental to franchise companies not based in South Korea. We refer to the requirement that all franchisors over a certain size must disclose to prospective franchisees projected sales revenue, and the methodology behind such projection.

This mandatory revenue projection requirement will be very difficult to comply with for our members, given that: (a) they typically have no experience in operating a business in South Korea before they grant a franchise; (b) they typically only grant the rights to a single multi-unit franchisee or a master franchisee (which is usually a substantial, sophisticated company and not an individual), and thus have no other franchisees in South Korea; (c) they typically are relying

on the South Korean franchisee or master franchisee's local knowledge and expertise to develop the market, thus the franchisors lack the necessary information and expertise to make such projections.

We also believe that such a requirement could lead to more, rather than less, issues in cross-border franchise transactions, because any projection provided by a foreign franchisor will likely rely on its experience outside of South Korea, which could make such a projection irrelevant or, even worse, unintentionally misleading.

While we recognize the very substantial differences between the legal systems of the two countries, we share the United States' experience on this very issue in case it might be useful. After years of deliberation and many rounds of providing public comments, the Federal Trade Commission (FTC) carefully concluded that mandatory financial performance representations (which is information about the historical or projected performance of the franchised units) should remain as a voluntary, rather than a mandatory requirement.

As such, we would like to respectfully suggest that foreign franchisors (along with, as already proposed, small franchisors) be exempted from this mandatory revenue projection requirement. We believe such an exemption would strongly encourage foreign franchisors to continue their expansion into the South Korean market, provide South Korean investors with more investment opportunities, thereby creating jobs, and ultimately benefit the South Korean and local consumers and overall economy.

We also wish to share the following general concerns about other provisions and proposed actions-

The requirement to share remodeling costs.

Franchisors are obligated to preserve the brand's image, and this frequently entails the imposition of a requirement that units be remodeled. Failure to do so will inevitably degrade the brand in the eyes of the consumer, and thus the value of the franchisee's own investment.

This proposal would require the franchisor under certain circumstances to bear a significant portion of the cost of enhancing the franchisee's assets. Franchisors are understandably troubled by the many uncertainties (how will such terms as "voluntary" and "just cause" be interpreted?) More fundamentally, however, this requirement could thoroughly alter the expected financial returns, in some cases rendering the project simply non-viable.

We have every reason to believe that if this provision were to be implemented as envisioned, those of our member companies contemplating entering the South Korean market would seriously re-consider their plans and in many cases shift their investments to other, more welcoming markets. And those of our members already operating there would in many cases consider withdrawing from the market, since it appears that the requirement would apply equally to those who entered the market in good faith with no reason to think that such a draconian requirement would later be imposed upon them.

These are not, of course, the only matters which concern franchisors. Others include –

The territorial provisions (again, because of uncertainty about “just cause”, and our doubt that a governmental body can determine when there is need for a change more accurately than those engaged in the business itself);

Limits on the ability to determine operating hours (because the long or medium-term benefits to the business and to the system may well outweigh any short-term burden which may be imposed); and

Restrictions on opening new outlets generally (because we believe those actively engaged in the business are in a better position to judge the present and future demand than a governmental official or body).

We emphasize the very real misgivings of our member companies about these and other proposed actions, and of the prospect that, if implemented as envisioned, they could cause franchisors to reconsider plans to enter the South Korean market or persuade those already active in the market to retrench. But we are also cognizant that South Korea-based franchisors, closer to the scene – economically, culturally and geographically – may be better positioned to engage in the exchange of views that will now take place than are we. And a respect for the workings of an economy, a society and a government compels us to a reluctance to seek to intervene deeply into every aspect of that process.

We are grateful to you for this opportunity to express our concerns, and we would like to request a dialogue in whatever manner or venue is most convenient with you at your earliest convenience.

Respectfully submitted,

Stephen J. Caldeira, CFE  
President & CEO