2018 IFA LEGAL SYMPOSIUM

May 6-8 | Washington, DC

IFA
INTERNATIONAL FRANCHISE ASSOCIATION

International Franchising Basics Track Intensive

Part of the IFA Legal Symposium and the IBA/IFA Joint Conference

Agenda

a. Introduction: Larry Weinberg
b. Greetings from IFA: Josh Merin
c. Planning for Expansion Internationally (3-4pm)
   i. Assessing Franchisor Readiness and Markets for Expansion…Mark Siebert
   ii. Deal Structure…David Oppenheim
   iii. Key Deal Terms…Kerry Olson

Agenda (continued)

d. Navigating Local Las and Using Local Counsel (4-4:50pm)
   i. Deal Flow…Kevin Maher and Gustavo Alcocer
   ii. Typical Local Legal Issues…Amy Cheng and Karsten Metzlaff
e. Break (4:50-5pm)
f. Country and Region Roundtables (2 sessions: 5-5:30pm and 5:30-6pm)

Going International: A guide to international franchise expansion

Mark Siebert, CEO

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Considerations in Making the Decision

- Will it diminish domestic market growth?
- More profitable than domestic expansion?
- Can adequate support be provided?
- Does the team have experience?
- External factors influencing the decision?
    - Competitive actions, developments in international markets, opportunities to partner with significant international players, etc.

Considerations in Making the Decision

- Capital
  - Marketing, travel, due diligence, sales commissions, trademark work, legal and market research, marketing expenses, letters of intent, initial drafts of contracts, disclosure documents
- Management
  - Experience in international, travel, ready for the role of a master franchisor (teaching how to franchise as opposed to teaching the concept), language, etc.)

Considerations in Making the Decision

- Concept Adaptations
  - Product/Service adaptations, labor, supply chain, pricing, marketing, cultural differences, legal, and economic considerations, etc.)
- Market considerations
  - Competing with home-grown competition

Where to Expand

- Regional approach vs. Top Targeted Markets
- Speed of expansion
- Factors to consider when deciding on strategy
    - Market knowledge, socio-cultural differences, political concerns, economic stability, legal climate, etc.

Financial Modeling as a Best Practice

- Financial model for both franchisee and franchisor
  - If master is used, must incorporate that role as well
  - Costs to provide support factored in to the model
  - Adequacy of returns based on risk and investment
  - Should be part of a larger strategy – not a one off market
  - Decision should be based on Strategy not Serendipity
  - Not for the faint of heart, but great returns with proper planning

DEAL STRUCTURE – WHAT TYPE OF EXPANSION MODEL WORKS BEST FOR YOUR SYSTEM

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Structure - Inbound and Outbound International Transactions

- General considerations Impacting Structure
  - Franchisor Resources
  - Partner Options
  - Franchisor Risk Tolerance
  - Name/Brand Recognition in the Territory
  - Local Intellectual Property Considerations

Inbound and Outbound International Transactions

- Most common expansion models
  - Master Franchise Agreements
  - Joint Ventures
  - International Area Development Agreements

Master Franchise Agreements

- Master Franchisor => Master Franchisee => Subfranchisee
- No privity of contract with local unit franchisee
- Master Franchisee is local intermediary
- Master Franchisee is “franchisor” in target market
- Master Franchisee has a development schedule
- Master Franchisee and Franchisor share certain fees payable under the master franchise agreement

Master Franchise Agreements

- Pros
  - Less capital required
  - Enter a foreign market easily since Master Franchisee has a presence in the territory
  - Master Franchisee has better understanding of local markets and local competition
  - Master Franchisee is responsible for local compliance
- Cons
  - Franchisor is required to share the revenue stream
  - Franchisor cedes a lot of control, including privity of contract, to Master Franchisee who may not share the same passion and commitment as Franchisor
  - Franchisor makes less money
  - Can be difficult to control quality of product or services
  - Can be very difficult to terminate the relationship

Joint Ventures

- Franchisor “partners” with local party => JV
- JV must follow any of the other franchise models
- Relationship and roles of parties can be confusing
- Unique franchise regulatory issues

Joint Venture Agreements

- Pros
  - Requires less capital to expand
  - Joint Venture Partner typically has a presence in the territory
  - Franchisor can maintain control over brand because JV will contract with the Franchisor or an affiliate
- Cons
  - Franchisor is required to make a significant capital investment
  - Structure is much more complicated
  - Franchisor bears risk as partner in the business

International Area Development Agreements

- Franchisor grants Area Developer the right to open multiple units
  - Developer has a defined Territory
  - Developer must open units in accordance with a Development Schedule
  - Each unit is opened under a separate unit franchise agreement

International Area Development Agreements

- Pros
  - Franchisor maintains privity of contract
  - Franchisor need not split fees
  - Easier to terminate than master franchise relationship (no subfranchisees)
  - Franchisor can maintain control over brand because Developer will contract with the Franchisor or an affiliate
- Cons
  - Franchisor has no presence in the territory
  - Franchisor is required to devote resources in the territory
  - Franchisor is responsible for compliance
  - Difficult to find Developers with sufficient capital and resources to develop an entire country

Area Representatives or Sales Agents

- Franchisor grants Area Representative the right to perform services on behalf of the Franchisor in a defined territory
  - Area Representative conducts sales and support activity on behalf of the Franchisor
  - Privity of contract is between the Franchisor and the Franchisee (Area rep serves as the Franchisor's agent)
  - Franchisor and Area Representative split fees
  - Area Representative will have a development schedule for its defined territory

Area Representatives or Sales Agents

- Pros
  - Area Representative has a presence in the territory
  - Franchisor needs fewer resources because Area Representative is performing pre and post contract services on its behalf
- Cons
  - Franchisors has less control over Franchisee operations (can result in harm to the brand)
  - Franchisor makes less money
  - Franchisor is liable for acts of its agent
  - Loss of Area Representative in a market can be damaging to operations in entire market

Single Unit Franchise Agreements

- Grant a single license to operate one unit in a defined location
- Franchisor performs services in exchange for a fee
- Franchisee operates the unit pursuant to the Franchisor’s standards and specifications (typically set forth in the operating manual)

Single Unit Franchise Agreements

- Pros
  - Franchisee is not highly leveraged (only operating a single unit)
  - Franchisee is likely the operator with a personal stake in the business
- Cons
  - Slower growth as compared to other models
  - Requires more franchisor resources/oversight

Key Deal Terms in an International Model?

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KEY DEAL TERMS

- Assumptions
  - Multi-Unit Deal
  - Large Territory
  - Sophisticated, Well Capitalized Franchisee

- Caveats

KEY DEAL TERMS

- Territory
  - Exclusive vs. Non-exclusive
  - Rights/Prohibitions

- Reservation of Rights
  - Expansion/Exit Strategies
  - Alternative Channels of Distribution

KEY DEAL TERMS

- Development Rights and Obligations
  - Defining the schedule
  - Addressing the expiration of the development period

- Term
  - Term of Operation vs. Term of Development

KEY DEAL TERMS

- Advertising
  - National, Theater or International Fund
  - Required/Permitted Local Expenditures

- Trademarks
  - Ownership
  - Modifications
  - Enforcement

KEY DEAL TERMS

- Innovations
  - Ownership
  - Local Law Considerations

- Guarantors and other security
  - Personal vs. Corporate
  - Letter of Credit
  - Bank Guarantee

KEY DEAL TERMS

- Applicable law/Dispute Resolution
  - Mediation vs. Arbitration vs. Litigation
  - Governing Law and Forum

- Termination
  - Development vs. Operating
  - Liquidated Damages/Termination Fee

Navigating Local Laws and Using Local Counsel, Deal Flow and Using Local Counsel – LOI's, Steps in the Deal Process

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Deal Flow and Using Local Counsel

I. Typical Steps in an International Franchise Deal

A. Market, IP and Franchisee Due Diligence

B. LOIs and Term Sheets

C. Deposits

D. Disclosure requirements and draft Agreements

E. Negotiation

Deal Flow and Using Local Counsel

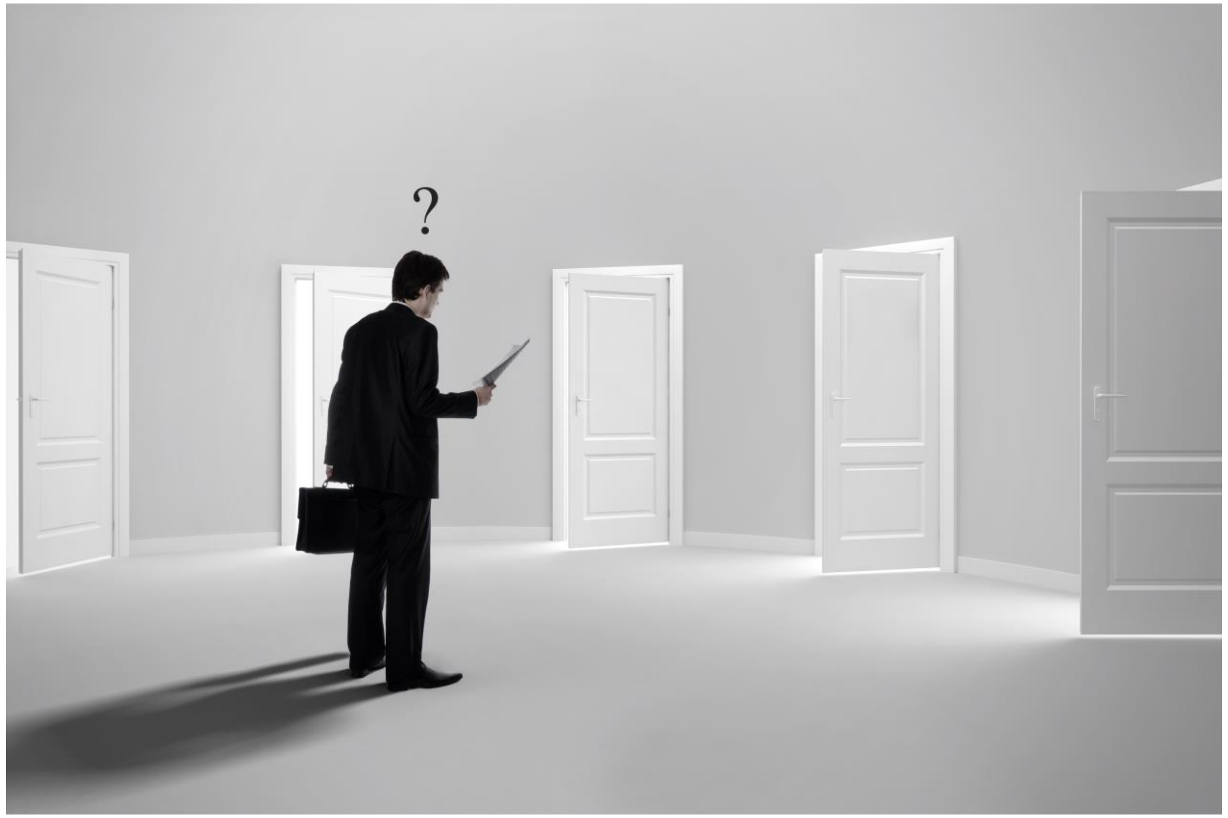
II. Using Local Counsel

A. Selecting Local Counsel

B. When to Involve Local Counsel

C. How to Effectively Utilize Local Counsel

1. Preliminary Advice and Due Diligence
2. Agreement Review
3. Negotiation



Deal Flow and Using Local Counsel

III. Other Local Considerations

A. Concepts that don’t exist or are limited under foreign jurisdictions.

B. Translations.

C. Execution Formalities.

Typical Local Legal Issues

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Registration Requirements

- Franchise registration
- IP Registration

Franchise Disclosure Laws

- Pre-contractual disclosure
- Time period ranges from 5 to 30 days
- Cooling off period

Applicability of Non-Franchise Law

- Civil codes (e.g. Poland)
- Intellectual property laws
- Registration may be required

Other Considerations

- Mandatory Provisions
- Code of Ethics
- Relationship laws

Local Laws and Considerations

- Restrictions on Termination/Renewals
- Pricing
- Taxes

Roundtables

1. Canada – Larry Weinberg	8. Europe – Silvia Bortolotti and Olivia Gast
2. U.K. – John Pratt	9. Middle East – Melissa Murray
3. China – Dominic Hui	10. Africa – Kendal H. Tyre
4. Australia – Iain Irvine	11. Korea – Terry Kim
5. Brazil – Luciana Bassani	12. New Zealand – Stewart Germann
6. US – Tao Xu	13. Chile – Cristobal Porzio
7. Mexico – Gustavo Alcocer	