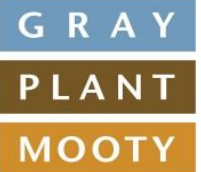


British Franchise Association
International Franchise Association
EFF International Franchising Symposium
London, March 17, 2017

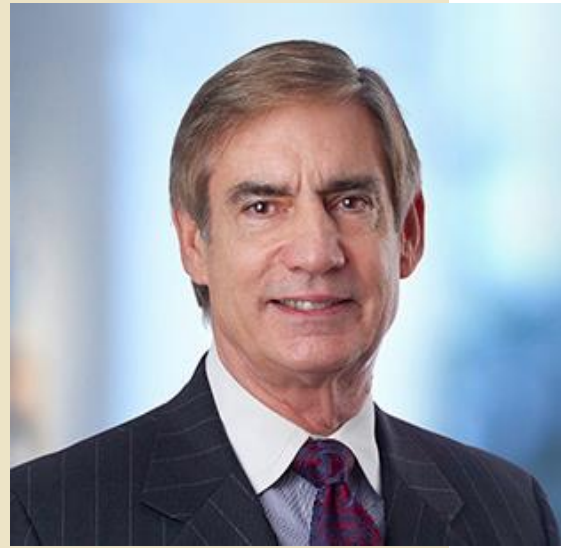


Master Franchising:

Is It Right For You?

How Can You Minimize Time And Legal Expenses?

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Carl Zwisler

Carl Zwisler, an international franchising lawyer, works from the Washington, DC office of Gray Plant Mooty.

- ❖ Advises franchisors and master franchisees throughout the world in structuring, drafting and negotiating international agreements.
- ❖ Authored book on international master franchising.
- ❖ Developed and moderated symposia on international master franchising at International Franchise Expo for 15 years.
- ❖ Recognized by U.S. Commerce Department and State Department as a leading authority on the legal and business aspects of structuring and negotiating international franchise agreements.
- ❖ Regularly updates IFA International Committee on international regulatory developments affecting franchising.
- ❖ Prepared and delivered more than 200 presentations and articles on all aspects of international franchising.
- ❖ Authored more than 20 presentations and articles on exporting a franchise to the U.S.
- ❖ Served as IFA General Counsel, Chair of the IFA Supplier Forum, Chair of IFA's SBA Franchise Registry Task Force, and as U.S. Franchise Law Expert for the International Distribution Institute.

Franchising Formats Used In International Franchising

- Unit
- Area Development
- Master

Franchising Formats

Unit Franchising

Franchisor grants



Unit franchisee

Right to conduct business using franchisor's
trademark and operating systems



Payment of Fee

Franchising Formats

Area Development Franchising (multi-unit franchising)

Franchisor
grants



Area Developer
territory

Franchise Unit 1
By January 1,
2018

Franchise Unit 2
By July 1,
2018

Franchise Unit 3
By January 1,
2019

Area Development Agreement Provides:

- Develop three units during next 12 months
- Sign a unit franchise agreement for each
- Pay area development fee
- Pay unit franchise fee when each franchise agreement is signed

Franchising Formats

Master Franchising

Franchisor grants



Master Franchisee (subfranchisor)

Right to sell unit franchises (subfranchises)

within a defined territory



usually at a rate set by a development schedule

during a defined period of time



Master Franchising

Master Franchisee

pays



Franchisor



a master franchise fee and
a portion of initial and ongoing fees derived
from each Unit Franchisee

Comparison of International Franchising Strategies

	Relative Cost	Relative Speed	Relative Return
Unit	Cheapest	Slowest	Lowest
Area Development	Mid	Mid-high*	Mid-high*
Master**	Highest	Highest*	Highest*

* Depends on number of units developed and franchisor's share of fees

** Objective of master franchising is fastest growth with fewer resources than Area Development requires

Time Needed To Break Even



* Assumes same rate of growth

How Franchising Format Selected Affects Legal, Training And Translation Expenses

	Number of:				
	Agreements	FDDs	Manuals	Training Programs	Filings*
Unit	1	1	1	1	1
Area Development	2	1	2 Unit & AD	1 or 2	1
Master	2	2	2 Unit & Franchisor	2	2

* in country where franchise or license agreements must be filed

Franchisor Share Of Revenue Using Different Franchising Strategies

	Initial Fee (Primary Franchisee)	Initial Fee (Operating Unit)	Royalty	Other Fees
Unit	100%	100%	100%	100%
Area Development	100%	100%	100%	100%
Master	100%	Shared*	Shared*	Shared*

* The portion shared sometimes differs for a Master Franchisee's company-owned outlets

How To Avoid Key Problems In International Master Franchising

1. Define expectations for

- Franchisor
- Territory
- Master Franchisee



2. Develop expansion plans that define what is needed for the franchisor to meet its expectations and a master's reasonable expectation

3. Confirm that Master Franchisee candidates understand Franchisor's expectations and have the experience, resources, passion and leadership needed to succeed
4. Require Master Franchisee candidates to prepare business plans defining the resources that will be required, when they will be required, and demonstrating their availability

5. Confirm that the Master Franchisee candidate understands likely potential problems arising from execution of the plan and understands consequences if requirements are not met



Legal Requirements

1. Master Franchise Agreement
2. Subfranchise Agreement
3. Area Development Agreement
 - a. In countries with franchise disclosure laws, Master Franchise Disclosure Document
 - b. Subfranchise Disclosure Document
 - c. Audited financial statements
 - i. Franchisor
 - ii. Master
4. Registrations e.g., U.S., Spain, Russia, Brazil, China, South Korea
5. Trademark registrations or applications

Time & Costs of Master Franchising

1. Preparation of international franchising plan
2. Development of standard international franchise agreements
3. Localization of standard franchise agreements
4. Preparation of international franchise disclosure documents (FDD)
5. Preparation of country- (or state-) specific FDDs

6. Translating all agreements, FDDs, manuals, advertisements, menus to comply with local requirements or best practices
7. Obtaining franchise registrations
8. Obtaining other permits required for master to remit funds from the country
9. Retaining staff or consultants familiar with international franchising to assist in development of international marketing plan

10. Recruiting and vetting master franchise candidates
11. Reviewing candidates' business plans
12. Negotiating master franchise and subfranchise agreements
13. Completing any requirements to collect fees from Master and for Master to comply with withholding tax and currency repatriation and currency conversion requirements

14. Completing any requirements to collect fees from Master and for Master to comply with withholding tax and currency repatriation and currency conversion requirements
15. Establishing supply chain in master franchise territory (MFT)

16. Establishing and delivering training program for Masters

- a. Recruiting, training and supporting Subfranchisees in the MFT
 - i. Developing Master Franchise Training Manuals and Programs for operations
 - ii. Developing Master Franchise Training Programs for recruiting/training/supporting Subfranchisees in the MFT

17. Working with Master to adapt franchise to local market's legal, business, and cultural norms
18. Providing onsite support to Master when opening pilot units and when recruiting and training initial subfranchisees

How to Minimize the Time and Expense of Achieving International Master Franchising Profitability—Legal Issues

1. Plan: research markets; establish priorities, budgets and realistic cash flow projections
2. Obtain full support from CEO and Board
3. Register trademarks and domain names in targeted countries before beginning recruiting

4. Develop standard international agreements and LOI forms
5. Work with experienced international franchise development professionals, international franchise counsel and experienced local franchise counsel
6. Develop international FDDs that include standard terms and information about the franchise to reduce negotiation time and expense and comply with good faith requirements

7. Develop integrated documents, using identical terminology and include standard definitions in one agreement which is cross-referenced in related agreements to reduce translation costs
8. Obtain good faith deposits with LOIs where permitted by law
9. Perform due diligence on candidates no later than when LOI is executed

Thank You



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