IFA® | Franchising
Building local businesses, one opportunity at a time.
Best Practices in Legal Services for your International Expansion
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Planning/Pre-Sale

Feasibility Plan, International Sales Process Procedure & Due Diligence,
Feasibility Plan

The Market

- Target markets based on existing infrastructure and consumer receptivity to product as well as franchising
- Economic factors – Short term profitability and return on investment
- Trademark registration/suitability
- Sourcing abilities/limitations
- Human resource availability and operational capacity
- Receptive or unreceptive legal, tax, foreign trade environment
Feasibility Plan
Franchise Party Selection

- Impact of franchise sales laws where party lives
- Financial capacity
- Reputation
- FCPA and Patriot Act compliance
International Sales Process Procedure

- Organizing deal flow before a deal begins
- Identifying persons responsible for intake, identification of prospects, preparation and negotiation of documents and decision-making authority among internal business and legal and external legal
Due Diligence

- Organizational Structure
- Office of Foreign Asset Controls (OFAC)
- Background Checks
- Financial Underwriting/Credit Worthiness
Organizational Structure

- Franchisee Entity
- Upstream Organizational Structure
- Principals
Office of Foreign Assets Control

Background and Policy

• The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") periodically administers economic sanctions against selected foreign countries. The regulations are intended to further U.S. foreign policy and national security objectives.
Office of Foreign Assets Control

Currently OFAC administers sanctions against the following foreign countries:

- Cuba
- North Korea
- Libya
- Iraq
- Iran
- Syria (Government in support of terrorism)
- Burma (Myanmar)
- Sudan
- Taliban (Afghanistan)
- Sierra Leone
- Liberia
- The Balkans (Persons who threaten stabilization)
- Zimbabwe
Office of Foreign Assets Control

The OFAC regulations for each country generally cover the following:

- Blocking certain assets (government controlled banks and other corporations)
- Blocking imports or exports of goods or services to the foreign government
- Blocking transportation to or from the foreign country
- Blocking funds transfers of all kinds to or from entities in the foreign country
- Blocking credit transactions
- Blocking or tightly controlling payments to individuals
- Licensing special exceptions to the assets control program
- Terrorists
Anti-Terrorism & Anti-Corruption Laws

- Operator and each Operator’s Principal must represent and warrant to Licensor that they are not on the lists of “Specially Designated Nationals” or “Blocked Persons” maintained by the U.S. Treasury Department’s Office of Foreign Assets Control (see list at www.treas.gov/offices/enforcement/ofac/).

- This is a continuing representation and warranty, and Operator and each Operator’s Principal shall immediately notify Licensor in writing of the occurrence of any event or the development of any circumstance that might render the foregoing representation and warranty false, inaccurate or misleading.
Anti-Terrorism & Anti-Corruption Laws

• Operator and each Operator’s Principal agrees not to violate any law prohibiting corrupt business practices, money laundering or the aid or support of Persons who conspire to commit acts of terror against any Person or government, including acts prohibited by the U.S. Patriot Act (see text at www.epic.org/privacy/_terrorism/hr3162.html), U.S. Executive Order 13224 (www.treas.gov/offices/enforcement/ofac/legal/eo/13224.pdf), or any similar law.
Background Check

- Criminal
- Civil
- Business Reputation
- Local Sources and International Services
Financial Underwriting

- Financial Statements
- Equity/Debt Structure
- Credit Worthiness
- Letter of Credit or Bank Guaranty
Offering and Selling
Developing Routine Forms and Routine Local Law Assessment
Routinizing Forms

Develop forms of:

• Letter of Intent
• Form Agreements (e.g., International Franchise Agreement, Area Development Agreement and Ancillary Agreements)
• Organizational Checklists
• Letter of Credit / Bank Guaranty Terms
• Pre-Closing and Post-Closing Checklists
Legal Issues Memoranda

• Legal Issues Memoranda for country-specific issues
• Memoranda help identify issues before they become an issue
• Use to evaluate countries and for negotiation points and proposed resolutions when told that “x” does not work in this country.
• Avoids re-inventing the wheel for each transaction.
International Disclosure Laws

• Consider whether a base International Disclosure Document makes sense (covers most if not all pertinent points called for in country-specific laws and can be modified or alternatively used with country addenda).

• Compare to cost of case-by-case disclosure where required and practicality of delivering business information through other means.

• Assess translation requirements, cost and timing and any administrative review.
International Disclosure Laws

- International Disclosure Laws
  - Country-Specific Disclosure Laws
    - Timing and Language
    - Format and Substantive Requirements
  - Proposed Disclosure Laws
  - Civil Law Implied Disclosure Duties, (e.g., Germany, Quebec, Canada)
  - International Disclosure Document
    - Updating and Timing for Delivery
  - Country-specific Addenda
International Registrations and Filings

- Confirm whether a franchisor registration is required in the country
- Foreign Investment Filings (e.g., China, India)
- Foreign Payment Filings (e.g., India, Russia, South Africa)
- Franchisor Filings (e.g., Malaysia, Spain)
- Offering Filing (e.g., Malaysia)
- Trademark License (e.g., Mexico, Ireland)
International Franchise Sales Issues

- Earnings Claims/Financial Performance Representations
- Geographic Relevance
- Proformas and Worksheets
- Franchisee Reliance
Sales by Master Franchisees

- Form of Agreements to be used
- Negotiations of agreements
- Franchise approval of:
  - Amendments to forms
  - Unit franchisees
  - Initial franchise fees
Sales by Master Franchisees

• Franchise sales policies and procedures
  • Training
    Compliance with local laws
  • Manuals
    Franchise sales advertising
    Earnings claims
• Disclosures
  Preparation
  Review
  Updating
  Filing
Operations

• Create International version of standards, manuals, training and advertising programs
  • Create Master Franchise manuals and training program if none exist
  • Modify for country use
  • Copyright of manuals and materials
Operations

• Pre-opening
  
  Manuals, Standards and Criteria – Translations if applicable

  Site Selection/Approval

  Design Review and Facilities Inspection

  Pre-opening training

  Supplier and Product Approval

  Advertising and Marketing Approval
Operations

- Opening
  - Advertising and Marketing
  - Staff Training
  - Supplies
  - Inspections
  - Insurance and Certificates (including worldwide coverage)
  - Authority to open
Operations

- On-going

  Communication of modifications to Manuals, Standards and Criteria – Translations if applicable
  Supplier and Product Approval
  Quality Assurance and Facilities Inspection
  On-going training
  Advertising and Marketing Approval
  Reporting and Auditing
Operations
Master Franchising

- Monitoring compliance by unit franchisees
- Privacy
- Right to review business information:
  - Collected by master franchisee
  - At unit franchisee’s business
- Right to inspect or audit unit franchisees for compliance
Relationship and Enforcement
Relationship and Enforcement

- Assessment of potential treatment under country’s legal system is critical and may require alternative methods of security, such as a Letter of Credit, bank guaranty, escrow or lien on assets outside of the country in which the franchisee units are located.
Relationship and Enforcement

• If the country’s legal system is problematic, additional security provides leverage which is needed if enforcement proceedings are likely unsuccessful, too expensive or unenforceable.

• Track relationship developments/milestones online in a shared secure network accessible by field and departments with routine steps for spotting red flags, inspections, defaults and termination process.
International Relationship Laws

• Introduction

• Existence and Scope Of Franchise Relationship Law and Regulation

• Franchise Specific Laws and Agency Laws

• Other Laws Affecting the Franchise Relationship

• Government or Franchise Association Policies
International Relationship Laws

- Specific Areas Of Coverage Interest
  - Termination of Franchise Agreements
  - Renewal of Franchise Agreements
  - Transfer
  - Term of the Franchise Agreement
  - Nature, Amount or Payment of Fees
  - Development schedules

Establishment

Default remedies

Renewal
International Relationship Laws
Master Franchise Issues

• Protection of Trademarks
• Effect of Remedies against Master Franchise on unit franchisees
• Disclosure of Franchisor rights and remedies following Master Franchise termination / nonrenewal
International Relationship Laws

- Specific Areas Of Coverage
  - Interest on Overdue Amounts
  - Currency, including choice, controls on export, and conversion of funds
  - Imposition of Non-Competition Covenants
  - Imposition of Confidentiality Covenants
- Good faith and fair dealing
International Relationship Laws

- Specific Areas Of Coverage
  - Free Association of Franchisees
  - Choice of Law and Forum
- Master Franchise Issues
  - Choice of Language
  - Waiver
  - Discrimination Restrictions
Post Termination

• System removal

• De-identification of facility

  Inspection/confirmation of compliance

• Return/destruction of Confidential Information

• Final Audit and payment

• Cancelation of trademark licenses and fictitious name registrations

• Duties to unit franchisees of master franchisees
Remarketing Programs

- Pipeline of international prospects
- Multi-country developers and operators