



2024 > LEGAL
SYMPOSIUM

MAY 5-7 > WASHINGTON, DC



Basics Track:

Franchise-Related Mergers & Acquisitions

Speakers

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Overview

- Preparing to Sell a Franchise Company
- Valuation Considerations
- Transaction Process
- Post-Closing Considerations



Preparing to Sell a Franchise Company

- Assess System Franchise Agreements
 - Flexibility to assign?
 - M&A friendly provisions?
 - Territorial concerns?

Preparing to Sell a Franchise Company

- Organize Franchise Agreements
 - Different versions?
 - Amendments?
- Regulatory Compliance Review

Preparing to Sell a Franchise Company

- Evaluate Intellectual Property
 - Registration?
 - Proper Documentation? (TM Assignments & License Agreements)
 - Infringers?



Preparing to Sell a Franchise Company

- Resolve litigation and reduce claims
- Evaluate and update sales process
- Future value enhancement opportunities
- Consultation with M&A advisor

Assessing Valuation

- Royalty Stream
- Franchisee Profitability
- Same-Store Sales Growth
- System Stability
- Franchisee Pipeline
- Future Expansion Opportunities

Transaction Process Overview

- NDA and Letter of Intent
 - Non-Disclosure Agreement
 - Seller may limit access to information
 - Identification of deal structure (asset sale/equity sale)
 - Letters of Intent are typically non-binding
 - Exclusivity period is binding

Transaction Process Overview

- Due Diligence
 - Structure of deal affects liabilities assumed
 - Level of diligence (and length of time to complete)
 - Buyer and Seller Diligence
- Purchase Agreement
 - Negotiations
 - Simultaneous sign and close
 - Sign and close at a later date



Franchise Sales Compliance

- FDD must be amended in the event of a material change
 - Timing can be tricky
 - Prepare franchise sales compliance strategy

Due Diligence

- Establish Goals
 - Identifying "Red Flags"
 - Assess system health and stability
 - Ability to effectuate post-closing growth strategies

Due Diligence

- Stages of Due Diligence
- Due Diligence Checklist
- Preliminary Due Diligence Calls
- Virtual Data Room
- Follow Up Due Diligence Calls

Due Diligence

- Material Contracts
- Franchise Regulatory Compliance
- Franchisees and Sales Issues
- Disputes, Litigation and Regulators
- Supply and Distribution

Due Diligence

- Ad Fund
- Franchise System
 - Manuals
 - Training
 - QA and Audit Reports

Due Diligence

- IP & IT
 - Trademarks and Service Marks
 - Software
 - Websites and Social Media



Due Diligence

- Assessment of Franchise and Related Agreements
 - Review all versions
 - Quality of Drafting
 - Special Deals? Oral or Written?
 - Assignability

Due Diligence

- Assessment of Franchise and Related Agreements
 - Sufficient Flexibility Going Forward?
 - Scope of Grant/Reserved Rights
 - Encroachment Issues
 - System Changes Possible?
 - Ability to Re-Brand

Due Diligence

Regulatory Compliance Assessment

FDD Review

Consistent Disclosure

Registration State Compliance

Litigation

FPRs

Franchise Sales Practices

Pre-Sale Marketing Materials

Releases

Due Diligence

- Other Inquiries/Talking to Stakeholders
 - Franchisees
 - Landlords
 - Suppliers
 - Employees

Seller's Due Diligence

- Buyer Stability/Ability to Close?
- Is the Buyer a "Good Fit"?
 - Will employees be taken care of?
 - Values and Reputation — Do they matter?
 - Will there be an ongoing relationship post-close?

Purchase Agreement Negotiations

- Representations and Warranties
 - R&W Insurance?
 - Knowledge Qualifiers
 - Schedules
 - Survival Periods

Purchase Agreement Negotiations

- Indemnification
- Purchase Price Adjustments
- Holdbacks
- Escrow

Purchase Agreement Negotiations

- Roll-Over Equity
- Earn-Outs
- Post-Closing Employment or Consulting Agreements

Closing

- Finalization of Purchase Agreement and Schedules
- Closing Statement of Cash Flows
- Release of Signed Agreements
- Wiring of Funds

Post-Closing Considerations

- Initial Announcement
- FDD Amendment
- Operational Changes
- Post-Closing Payments; Escrow Release

Questions?