



Licensing Executives Society Arab Countries
جمعية خبراء التراخيص - الدول العربية



Introduction to Franchising

Licensing Executives Society- Arab Countries 2008

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Acknowledgement

Introduction to Franchising

The Licensing Executives Society-Arab Countries (LES-AC) has issued the *Introduction to Franchising* booklet to enlighten the business community on the importance of Franchising as a profit generating tool. The booklet sheds light on the distinction between Franchising and Licensing which are generally linked with the marketing and sales of products and services, the kind of business which can be franchised, the benefits and regulations of Franchising, in addition to a comprehensive analysis of Franchising agreements.

This booklet is a useful source for business owners, lawyers, financial and business development consultants, investors, general managers, and consultants dealing with Franchising and Licensing.

The Society extends its deep thanks to Ms. Leila Laila from Alem & Associates for preparing this booklet. We also extend our deep appreciation to the efforts of Mr. Jamal Abu-Samra, LES-AC Deputy Manager, for contributing on the preparation of this booklet.

The Licensing Executives Society – Arab Countries (LES-AC) is a non-profit organization that aims at educating the business community and governmental bodies on the economic importance of Licensing, Technology Transfer, the protection of Intellectual Property Rights (IPR's) and Research & Development (R&D) investments.

The Society was established on May 18, 1997, and joined the Licensing Executives Society International (LESI) on October 31, 1998 as per the decision of LESI Board. Based on the efforts of its founder and president, Mr. Talal Abu-Ghazaleh, LES-AC holds specialized courses, seminars and workshops aimed at upgrading the professional levels of those engaged in the field of Licensing, Franchising, Technology Transfer and IPR's protection.

Table of Contents

Background	4
Franchising, Licensing And Distribution	5
Which Businesses Can Be Franchised?	7
Benefits Of Franchising	7
Franchising Regulations	8
International Trend On Franchising Arrangements	9
1.Single Unit Franchise (Direct Franchise)	9
2. Master Franchise	10
3. Area Development	11
The Franchise Agreement	11
1. The Grant	12
2. License Of Intellectual Property Rights	13
3. Transfer Of Know How	13
4. Territory And Exclusivity	14
5. Term And Renewal	14
6. Franchise Related Fees	15
7. Confidentiality	15
8. Non- Competition	15
9. Transfer Of The Franchise	15
10. Termination	16
11. Disputes	16



1. Background

Historically, and within the context of modern commerce, franchising is considered to have originated around 1860 by Singer Sewing Machine Company (aiming at increasing the sales of its products), gaining popularity in the 1920's among gasoline stations, automobile and tire manufacturers.

At that stage, the term franchising was broadly used as a product distribution system controlled by and under the trademarks and patents of the franchisor.

During the 60's and 70's we witnessed the blooming of franchising as a business format adopted mainly by fast food and hospitality industries, aiming at the expansion of product/service market penetration.

We will not find a universal definition of franchising. Commercially, franchising is usually referred to as an "industry", a "business method" or as a "process of distributing products and services".

Franchising can be fairly defined as the granting of certain rights by one party (franchisor) to another party (franchisee), in exchange for a financial consideration, as to enable the franchisee to engage in the business of selling products and/or services under franchisor's trademark or service mark, using a specific system developed and previously tested by the Franchisor.

By acquiring a franchise, the franchisee is granted the right to access and to use a "business formula" created by the Franchisor, and undertakes the obligation to strictly adhere to the franchise system and standards.

For classification purposes, the international trend is to divide franchising in two main categories: "Product Franchising" and "Business Format Franchising".

A Product Franchise will exist when the franchisee is granted the right to manufacture and/or sell a product bearing the franchisor's trademarks. Examples of Product Franchise are: soft drink bottlers, car dealerships, and the tire and gasoline service industry.

Nowadays, the most common form of franchising (most of the times considered as the "true franchising") is the Business Format Franchising. In Business Format Franchising, the franchisee is granted the right to operate a whole business format under the franchisor's trademarks. Examples of Business Format Franchising are: fast food industry, lodging industry, and the service industry in general.

The rapid growth of franchising worldwide has been attributed to several factors. Perhaps, the fact that franchising combines the experience and knowledge (know-how) as well as the market strength of one entity (franchisor) and the motivation and will to undertake an enterprise with the freedom of being self-employed of another party (franchisee), is the most considerable factor of such growth and success.



II. Franchising, Licensing and Distribution

Franchising, licensing and distribution are three legal channels for conducting business which generally are linked with the marketing and sales of products and services.

The distinction between franchising, licensing and distribution agreements are not always clear and in fact, they are often used in an interchangeable manner.

From a legal point of view, and in cases where the applicable laws provide for the definition of one or each of said commercial relationships, it makes no difference if the related agreements are named by the parties as a franchise, license or distribution.

In these cases, the actual characterization of said relationships will be that which falls under the legal prescribed definition.

Several legal systems, for example, will not differentiate between franchising and distribution agreements due to their similarities and common economic function. Other legislations, legal doctrine and jurisprudence tend to draw the line between franchising, licensing and distribution based on the level of “control” and “assistance” by one contractual party toward the other.

In this context, when, in addition to the license or grant of a right to use a trademark/tradename in connection with the sales/ distribution of products and/or services, the granting party exercises a significant control over the operations of the other party and provides for significant assistance in relation to the conducting of that business, the commercial relationship will most probably be considered as franchising.

Such control and assistance will be based on the “know-how” of the franchisor; the practical, substantial and distinctive information which resulted from the franchisor’s experience and previous testing and applications.

The know-how, which integrates the operational system created by the franchisor, is transferred to the franchisee and used by the latter in the operation of the franchise. Most of the franchisor’s know-how will be compiled in the franchise Operation Manual, which is considered to be the “franchise bible”.

In a franchise commercial relationship, the franchisor will provide the franchisee with significant assistance in relation to the method of operation of the franchise. Said assistance may embrace the form of initial and continuous training programs, setting up of accounting systems, providing for management and or management assistance, marketing and personnel advice, selecting site locations, and by providing the Operation Manual.

In order to preserve the goodwill and uniformity of the franchise, the franchisor will exercise a continuous control over the franchisee’s operation. Failure by the franchisee to operate the franchise within the



standards and methods established by the franchisor may entitle the franchisor to withdraw the rights granted to a franchisee.

Among several examples of the franchisor's control over the franchisee's operations, we emphasize the following: approval of site, requirements for site design and furnishing, requirements for minimum operational hours, required accounting practices, the right to inspect the site and franchisee's operations, right to audit franchisee's books, and requirements for delivery of financial reports.

In most cases, a license agreement will allow a third party (through the grant of the license) to use the licensor's intellectual property rights in connection with the manufacturing or sale of goods (trademark, industrial design and patent licenses). The control exercised by the licensor (if any) is commonly restricted to the goods to be manufactured and/or sold under the license and, opposed to franchising, said control is not extended to the way in which the licensee will operate its business.



In distribution agreements, the relationship's essential element is the right to sell a product manufactured or supplied by the principal. The eventual license to use one party's trademark and the eventual provision of assistance from the principal to the distributor are mere accessories of said main element. Again, in distribution arrangements, the control, if any, will be minimum and restricted to the distribution of the goods and services and will not apply to the operation of the business itself.

In franchising, the main element of the relationship is the license to use the franchisor's trademarks and the transfer of know-how, which is expressed by the continuing assistance provided by the franchisor in relation to the methods of operation of the franchise.

In addition to the above, most of the licenses and distribution agreements will not grant the licensee/distributor the rights to use the licensor/principal's tradename in connection with their businesses. Instead, the licensee/distributor is to establish its own identity in the marketplace and will not benefit from licensor/principal's branding image and business system identity.

It is also important to note that in a distribution agreement, no royalties are payable to the manufacturer/supplier by the distributor, as the latter's profit will arise from the difference between the cost of the product and the price paid by the distributor.

In the light of the above, we may identify three main elements intrinsically related to franchising:

- (i) the grant of a right to use a trademark/trade name in connection with the operation of a business.
- (ii) the transfer of know-how from one party to the other, and
- (iii) the requirement to operate a business under a specific system, and consequently a high level of assistance and control over the business' operation.

III. Which Businesses Can Be Franchised?

Franchising has been used by a multitude of industries as it is a flexible and adaptable way of doing business. Fast food and hotel chains are the most widely known industries using franchising schemes. Further examples of franchised businesses are:

- Automotive Products & Services (automotive supplies, tires, parts, tools, engine tuning)
- Business Related Services (accountancy, bookkeeping, advertising services, job recruitment, photographic services)
- Education Services (management skill training, educational, secretarial training, language centers)
- Entertainment & Recreation (cinemas, entertainment parks)
- Hospitality (bakeries, health food, cafés, hotels)
- Health, Medical & Beauty Care (Fitness & health clubs, beauty centers, hairdressing)
- Household (carpet cleaning, domestic cleaning services).

In order to develop a franchise program, the franchisor must have in hand an effective system and a sound financial and managerial structure to support the operations of its franchisees, including but not limited to a franchisee support program, an operations manual, a training program, systems controls and an administrative program.

The business to be franchised shall be subject to one or more successful pilot outlets operated by the franchisor. One of the main aspects of franchising is the license of a “successful business formula”. Only by operating a pilot franchise can the franchisor prove the viability of its system and also perfect the system and know-how.

From a legal point of view, the franchisor should carefully ensure the protection of its intellectual property rights, especially by registering its trademarks. Moreover, the franchisor should build a legal strategy defining the franchise structures to be used (i.e. Unit Franchise, Master

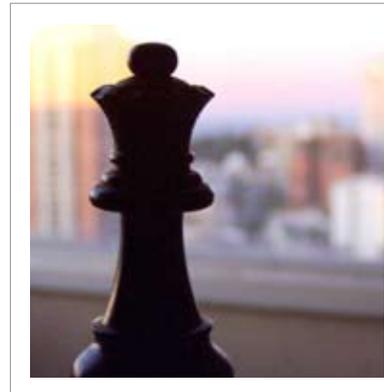
Franchise, Area development) and obtain proper legal assistance and advice in the drafting of comprehensive and enforceable franchise related agreements that comply with local franchise regulations.

Transforming an existing business operation into a franchise requires a great amount of business, management and financial strength. However, the effort can result in a very successful, cost efficient and profitable way of expanding an existing business operation.

IV. Benefits Of Franchising

Taking into consideration the franchisor, franchising has clearly become one of the best vehicles for fast, cost effective, successful business expansion and market penetration.

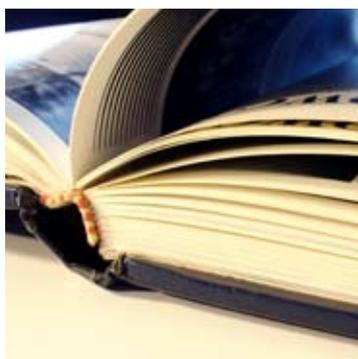
By franchising a business, the franchisor has the opportunity to expand its business, to market its products and services and to generate cash flow through utilizing the capital and human resources of the franchisees.



Franchising has also given the franchisors the opportunity to quickly overcome geographical and cultural barriers in introducing its products and services beyond the franchisor's main domicile.

On the other hand, and taking into consideration the franchisee, acquiring a franchise gives the franchisee the opportunity to operate a "successful formula" comprised of recognized products and/or services, brands and trademarks, methods of operation, regional/international advertising and ongoing assistance (know-how).

Several elements comprising the franchisor's system such as marketing, pricing, and operational procedures may reduce the risk of business failure when compared with the start-up of a non-franchised business.



Commonly, and from a legal and financial perspective, franchisor and franchisee are independent entities. However, from the perspective of the consumer, the franchisor and franchisee are seen as one single entity and this is due to the business uniformity set by the franchisor's system.

The element of business uniformity, found in franchising, will benefit the franchisee as well as the franchisor. Consumers will not differentiate between the legal entities (franchisor and franchisee) and will tend to see only the brand involved in the franchise. Thus, the franchisee will benefit from the global image and success of the franchise. The franchisor benefits from the

individual success of the franchisee's operation, which will add value and good will to the brand and the whole franchise system.

V. Franchising Regulations

Legislation specific to franchising seems to be limited worldwide. This is due to the fact that the contractual terms found in franchise related agreements are sufficiently and appropriately covered by local laws, especially by contractual, commercial, social, and tax laws.

Nevertheless, some countries have chosen to adopt specific laws and regulations governing franchising. A legal definition of franchising will vary from each jurisdiction that has adopted and enacted franchising related laws and regulations.

To date, only few countries have adopted specific franchising laws, among them: Australia, Brazil, Sweden, Venezuela, Australia, China, Indonesia, Malaysia, South Korea, Romania, Russia, Spain, Italy, Saudi Arabia, USA, the Canadian provinces of Alberta and Ontario. In addition, the UNIDROIT Study Group on Franchising has drafted the "Model Franchise Disclosure Law", which was adopted in 2002.

The majority of enacted franchising related laws, including the UNIDROIT Model Law, do not directly tackle the relationship between franchisor and franchisee. Rather, these laws regulate the pre-contractual disclosure obligations of the franchisors and the consequences of breach of said disclosure.

Franchising disclosure laws will generally impose an obligation on the franchisor to disclose certain information to a prospective franchisee before the execution of a franchise agreement. Said disclosure of information is seen as essential in order to protect investors (franchisees) against fraud and to allow such franchisee to a better assessment of the franchise business before making a decision to invest in such venture.

Disclosure obligations vary from information related to the corporate structure of the franchisor to the details of the franchise business (financial, commercial, intellectual property, legal disputes, fees, experience of franchisor, detailed description of the franchise system, details of certain provisions of the franchise agreement, etc.).

Under most franchising enacted regulations, the non-compliance by a franchisor of such disclosure obligation, as well as inaccuracies, omissions or misrepresentations may entitle the franchisee to terminate the franchise agreement and claim indemnification for damages.

Other enacted regulations will oblige a franchisor to be registered/licensed before local governmental bodies before offering franchises within local territory.

VI. International Trend On Franchising Arrangements

In essence, a typical franchise contractual relationship will include three (3) main elements: (a) the grant of the right to use the franchisor's system (license) in exchange of a financial consideration, (b) initial and continuous assistance to the franchisee in establishing, operating and promoting the acquired franchise (transfer of know-how) and (c) control over the franchisee as to ensure its compliance with the system imposed by the franchisor, thus maintaining the uniformity of the franchised network.

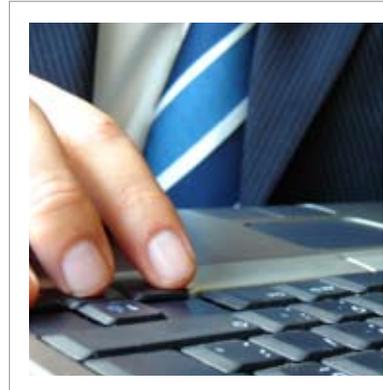
A variety of franchising related arrangements and structures can be used by a franchisor in order to expand its business. The most common franchise arrangements internationally used are:

1. Single Unit Franchise (Direct Franchise)

In this type of franchise structure, a franchisee is granted the right to open and operate a single franchise unit through a direct contractual relationship between franchisor and franchisee.

It is possible that the same franchisee opens and operates more than one franchise unit however, each unit will be covered by and subject to an individual franchise agreement.

Single Unit Franchise arrangements call for high involvement by the franchisor with the franchisees, as the training, assistance, marketing and general control over the franchised units will be performed directly by the franchisor.



Direct Franchising is commonly used within national/domestic expansions (franchisor and franchisee are situated within the same geographical area) or when the location of the franchisee does not constitute a geographical and/or cultural/language barrier to the franchisor.

Commonly, a one-time initial franchise fee is charged to the franchisee along with ongoing fees such as management or service fees, marketing and advertising fees.

2. Master Franchise

In a Master Franchise structure, the Franchisor grants to the franchisee (in this context usually referred to as the Master Franchisee) the right to develop a geographical area by opening and operating unit franchises as well as by granting sub-franchising rights to third parties, within a determined territory.



Master Franchise arrangements will usually grant to the master franchisee certain exclusive rights in a defined geographic area, and the obligation to fulfill a schedule of a certain number of franchise units during the term of the Master Franchise agreement.

In this type of franchise arrangement, we will often see a direct contractual relationship by and between the franchisor and the master franchisee which shall govern the main rights and obligations of both parties in relation to the development of a geographic area, in addition to Individual Unit Franchise agreements by and between the master franchisee and each of its sub-franchisees.

Master Franchise arrangements will require the primary involvement of the franchisor by giving initial training and support to the master franchisee however, after that, the high level of involvement on the development of the franchise will most likely shift from the franchisor to the master franchisee.

The master franchisee will assume the obligations of subsequently training its sub-franchisees, develop the market, implement advertising and marketing strategies, provide for technical assistance and generally control the franchise system within the territory covered by the Master Franchise Agreement.

Commonly, an initial fee (Master Franchise Fee) is paid by the master franchisee to the franchisor. Moreover, and usually in exchange of the obligations undertaken by a master franchisee within the territory to be developed, the master franchisee will usually share with the franchisor the franchise related fees received by the sub-franchisees (initial franchise fees and ongoing fees).

For a franchisor, the benefit of having a master franchisee lays on the fact that it lowers the administrative costs of the franchisor, as the contractual relation and obligations of the franchisor are limited to and towards the master franchisee only.

Furthermore, geographical and cultural issues that could constitute barriers to the expansion of a franchise business will be better dealt with by the master franchisee, which is familiar with all aspects of the local market.

3. Area Development

In this franchise structure, the franchisor will usually grant to the franchisee (in this context usually referred to as the Developer) the rights to develop a certain territory by opening a pre-defined number of franchise units within a certain period of time (Development Schedule). Said franchise units are usually directly owned and operated by the developer, as the developer has no sub-franchising rights.

Even though it is on a larger scale, this type of franchise arrangement can be considered a Direct Franchise relationship, as the developer, itself, will undertake the obligation of opening the franchise.

The rights and obligations of the franchisor and the developer will be set by a Development Agreement. Each franchise unit to be opened and operated by the developer under the Development Schedule will usually be subject to an individual unit franchise agreement to be executed by the franchisor and developer.

Exclusivity is usually granted for a specific geographical area and linked to the fulfillment of the Development Schedule by the developer. Failure to comply with the Development Schedule will often entitle the franchisor to terminate the Development Agreement and consequently, the developer's rights to open new franchise units in the given territory.

The level of involvement of a franchisor in such arrangements is medium, as the franchisor will generally provide the developer with initial training, which

would then be applied by the developer in all franchise units. In addition, control and audit of the franchise units operated under the Development Agreement may be performed directly by controlling and auditing the developer itself.

The developer, in exchange of the exclusive rights to develop a territory, will pay to the franchisor an initial fee (Development Fee).

Furthermore, each franchise unit will be subject to the usual initial and ongoing franchise fees. Due to the fact that the developer is undertaking the obligation to develop a multi-unit franchise operation, such related franchise fees will most likely be reduced (discounted).

VII.The Franchise Agreement

The franchise agreement will set out the rules which the franchisor and franchisee will have to abide by for the duration of the period of the franchise. It is also the vita document governing the relationship of the parties.

It is important to note that there may also be other ancillary documents which will be considered and form an integral part of the franchise arrangement, such as the franchise Operation Manual.



The Operation Manual is a document that describes the operating standards of the franchise. It is the compilation of the franchisor's know how and the system. Generally, the franchise Operations Manual will cover the following points:

- A detailed description of the Franchise System;
- Requirements for site selection;
- Layout and decorating standards and guidelines; Required furnishings, fixtures, equipment, supplies and signage;
- Information related to selection of suppliers and/or franchisor's approved suppliers;
- Instructions and guidance related to use, repair and maintenance of related equipment used in the franchise operation;
- Instructions and guidance related to manufacturing, preparation, use, preservation and manipulation of the franchise related products;
- Instructions and guidance related to method and manner to provide for the franchise services;
- Other operation standards such as staff selection and training, accounting; reporting, customer service, advertising, application and use of the trademarks, pricing and purchasing policies, appearance standards and uniforms, inventory control, insurance, etc.



Because a franchise system is in constant development (driven by the franchisor's improvement and innovation goals), a franchise

Operation Manual will often be a dynamic document and therefore will often be amended whenever improvements are brought into the system.

Compliance with the prescribed method of operation described in the Operation Manual will be one of the main obligations undertaken by the franchisee.

There is no standard format for a franchise agreement since its commercial terms and conditions will vary from franchise to franchise and industry to industry.

We have highlighted below some important and typical matters covered by related franchise agreements (usually present in Unit Franchise, Master Franchise and Area Development agreements).

1. The Grant

A typical franchise agreement will involve the franchisor's license of a multitude of rights to the franchisee. The exact rights granted, the limits of their usage, the limitation of a geographical area whereby said rights may be exercised by the franchisee, as well as the period of time during which said rights may be exercised by the franchisee are carefully specified in the agreement and subject to negotiations between the franchisor and the franchisee.

2. License of Intellectual Property Rights

The license of the franchisor's intellectual property rights (including trademarks, copyrights, trade secrets, patents, etc) is an obligation of the franchisor and a fundamental part of a franchise agreement.

It is important that the licensed intellectual property rights be precisely identified in the franchise agreement, as well as any necessary limitations related to the way the franchisee is entitled to exploit said intellectual property should be addressed therein.

Registered intellectual property rights (such as trademarks, patents and industrial designs) should be individually listed and identified together with their respective registration information.

Unregistered intellectual property rights (such as know-how and trade secrets) should be identified and generally described in the franchise agreement. Details of unregistered intellectual property are usually described in details in the franchise Operation Manual (which will be incorporated to the franchise agreement by reference, and treated as confidential information).

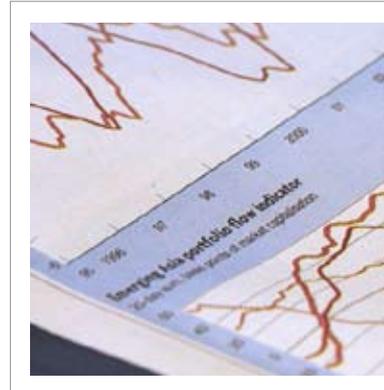
The rights and obligations of the contractual parties in relation to the maintenance and protection of the licensed intellectual property will also be covered by the franchise agreement. Thus, clauses stipulating the obligation of the franchisor to maintain the validity of related intellectual property registrations and to initiate necessary administrative or legal proceedings in order to cease infringements thereof are common in franchise agreements.

While the license (permission) to use the franchisor's intellectual property rights related to the franchise will appear as an obligation of the franchisor, the franchisee will assume the obligation to use said intellectual property rights and to conduct the franchised business in a manner consistent with the system prescribed by the franchisor and within the limits of the rights granted in the franchise agreement.

3. Transfer of Know How

A greater part of a franchise system is built on the franchisor's know how. The simple grant of a right to use said system would not alone enable the franchisee to effectively use said system. Therefore, another main element of franchising is the transfer of the franchisor's know how to the franchisee.

Transfer of know how in franchise agreements will appear under the obligations of the franchisor and are usually covered by the contractual provisions requiring that the franchisor communicate the franchise system to the franchisee. This will be usually done through initial and ongoing training, initial and continuing technical assistance/support, and through the updating of the Operations Manual whenever needed.



4. Territory and Exclusivity

Franchise Agreements will define the territory (geographical, economic, cultural or political area) for which the franchise will be granted as well as the exclusive or non-exclusive character of said grant. Territories may be defined as a street address, a neighborhood, a city, a state, country, or any other geographic, cultural or political region.

The expansion approach of the franchisor, the financial resources of the franchisee, market studies and development plans are among the several factors that contribute to the designation of the territory (and its size) for which a franchise is granted.

It is common that the rights granted to a franchisee will be granted on a certain exclusive basis. Although exclusivity will be often based on a specific territory, other degrees and types of exclusivity are seen in franchise related agreements.



In this respect, it is not uncommon to witness exclusivity clauses related to the type of customers (e.g. corporate or individuals customers), or the type of sales (e.g. from outlets or door-to-door-sales).

Exclusivity is often conditioned to certain factors. For example: (a) a limited period of time (e.g. when exclusivity is granted for a certain number of years), (b) fulfillment of a minimum development schedule (e.g. the obligation to open a certain number of outlets or achievement of a certain sales target) - usually common on Master Franchise and Area Development agreements, (c) increase of market potential and demand (e.g. when a certain occupancy rate is surpassed) – commonly seen in the hotel industry, etc.

It is important to note that under certain jurisdictions, the grant of exclusivity may be in conflict with applicable anti-trust and free competition regulations.

5. Term and Renewal

Franchise agreements are usually limited in time, (varying between 5-20 years). The term of a franchise agreement should be determined while taking into consideration, at a minimum, the possibility for the franchisee to achieve a return on its initial investment and the franchisor to recoup the expenses incurred in relation to the transfer of know how to the franchisee (training and assistance). Usually, the higher the franchisee's investment, the longer the franchise term.

Franchise agreements will usually grant the franchisee the right to renew the agreement under certain circumstances and provided certain conditions are met by the franchisee (franchisee being in compliance with the terms of the franchise agreement throughout the term and the execution by the franchisee of maintenance, renovation or refurbishment of the franchise premises, are the most common conditions for the renewal of the agreement).

It is important to note that certain jurisdictions will impose some restrictions and limitations in relation to the term of franchise agreements by either imposing the obligation to renew the agreement under certain circumstances, or limiting the maximum term of a franchise agreement.

6. Franchise Related Fees

The franchise agreement will identify the fees to be paid by the franchisee to the franchisor, the method of calculation of said fees, payment method and time/frequency of payments.

Most common franchise related fees are: Initial Franchise Fee (or Entrance Fee) paid in consideration of the franchise grant, Ongoing Fees (or Royalties or Service Fees) usually calculated as a percentage of the gross sales of the franchise and paid during the whole term of the franchise agreement, and Marketing Fee calculated as a percentage of the sales of the franchise or fixed fees.

7. Confidentiality

Several elements comprising of the franchise system, specially those related to the franchisor's trade secrets, cannot be protected by way of intellectual property registration. This includes the methods and operation standards of the franchise compiled in the Operation Manual.

Said elements of the system can only be protected by an undertaking from the franchisee and its employees to treat them as confidential information throughout the term and after the termination and expiration of the franchise agreement.

8. Non- Competition

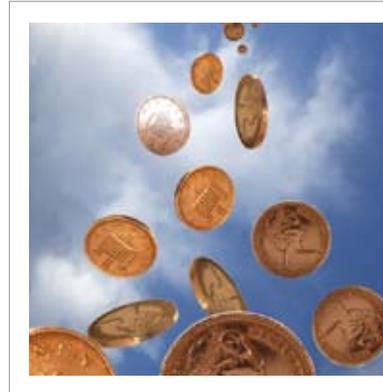
Frequently, franchisors will prevent a franchisee from engaging in a similar or competitive business during the term of the franchise agreement and for a specified length of time after its termination or expiration, within a specified area.

It is very important that said non-competition restrictions be set reasonably and limited in time, geographic area and type of competitive business, as a wide non-competition clause may be unenforceable in certain jurisdictions.

9. Transfer of the Franchise

Some franchisors will allow franchisees to sell their franchises without restrictions. However, most franchise agreements will impose restrictions on the transfer or sale of the franchises by the franchisee.

Said restrictions are usually based on the *intuitu personae* character of franchise agreements. The grant of a franchise by the franchisor is usually based on certain personal characteristics of the franchisee (financial, technical, managerial, trustworthiness, etc) which will give the franchisor a certain level of



confidence towards the capability and capacity of said franchisee to fulfill the obligations related to the conduction of the franchise business.

Thus, the franchisor will want to control any transfer or sale of the franchise to ensure that said transferee or purchaser is qualified and satisfies franchisor's criteria for being a franchisee.

Franchisor's control over the transfer of the franchise may be expressed in the franchise agreement by a clause requiring its express consent for any transfer intended by the franchisee. Said previous consent commonly also applies to the transfer of ownership of shares when the franchisee is a legal entity rather than an individual.

Another way of control over the franchise transfer is a contractual provision granting the franchisor the right of first refusal to purchase the franchise from the franchisee.



10. Termination

The franchise agreement will also contain a clause enumerating the circumstances in which the agreement may be terminated prematurely. These commonly will include events as bankruptcy and liquidation of the parties, criminal conviction of the franchisee, failure to pay money due to the franchisor and breach of other contractual obligations.

The franchise agreement will also set out the consequences of its termination. These will generally include the immediate loss of the franchisee's rights to use the licensed trademarks and other intellectual property rights, a requirement to return the Operation Manual to the franchisor and any copies made immediate payment of any amounts due to the franchisor as well as post-termination restrictions such as confidentiality and non-competition.

11. Disputes

The franchise agreement will determine the party's choice of law and jurisdiction which will govern the rights and obligations of the parties and settle any disputes arising out of or in connection with the franchise agreement.

Provision for mediation and/or arbitration as methods of resolving franchise related disputes are increasingly being adopted worldwide. These dispute resolution methods offer greater flexibility and speed, and are usually less costly when compared with court legal proceedings.

In choosing applicable law and jurisdiction to franchise related agreements, a special attention shall be taken in order to ensure said provisions are valid and enforceable in a given territory.