



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,

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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

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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

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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

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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
- Cancellation 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

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