

Unidroit

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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INTERNATIONAL FRANCHISING

Further consideration of the areas amenable
to treatment at international level

(Secretariat memorandum)

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INTRODUCTION

1. HISTORY OF THE UNIDROIT PROJECT

Unidroit first began to examine the possibility of working on franchising in 1985 when, following a proposal from its Canadian member, the Governing Council of the Institute requested the Secretariat to draw up a preliminary report with a view to deciding whether franchising should be included in the Work Programme of the Institute. This preliminary study was presented to the Governing Council at its 65th session.⁽¹⁾

At the request of the Governing Council this report, together with a questionnaire designed to elicit further information, was submitted to Governments, professional circles and recognised experts in the field. At its 67th session the Governing Council was seized of a survey of the answers to the questionnaire.⁽²⁾

In view of the answers received and of the developments expected both nationally and internationally, particularly the envisaged adoption of the (then) draft Regulation of the EEC Commission, the Governing Council decided to postpone any decision on future work on franchising contracts. The Secretariat was asked to submit a paper to the 68th session of the Council, which would primarily examine the actual terms used in franchising agreements.

The Governing Council was duly seized of a report examining the terms of the franchise agreements received,⁽³⁾ following an examination of which it decided that franchising should remain on the Work Programme, and that the Secretariat should continue collecting documentation and follow developments in the field.

At the time, the work carried out by Unidroit examining the feasibility and the need for uniform regulation of international franchising contracts in particular met with widely differing reactions from the franchising community. While a positive response came from lawyers mainly from civil law jurisdictions, lawyers from common law countries expressed the view that there was no need for any specific regulation of franchise agreements. They stressed that the United States' experience of such regulation had been negative and that this had in fact brought about a move towards deregulation. Furthermore, this move towards deregulation, which was not limited to the United States, had led to the Australian Franchise Agreements Bill being withdrawn.⁽⁴⁾ The fear was also expressed that a regulation of the phenomenon would increase litigation instead of limiting it.

(1) See C.D. 65 - Doc. 12, also published as Study LXVIII - Doc. 1, UNIDROIT 1986.

(2) See C.D. 67 - Doc. 9, also published as Study LXVIII - Doc. 2, UNIDROIT 1988.

(3) See C.D. 68 - Doc. 11, also published as Study LXVIII - Doc. 3, UNIDROIT 1989.

(4) Subsequently the Australian Minister for Small Business and Customs appointed a *Franchising Task Force* to examine and propose mechanisms for the reduction of barriers and impediments to the efficiency and growth of the franchising sector. The report of the Task Force was published in December 1991. It recommended the development of a self-regulatory Code of Practice (See *Report by the Franchising Task Force To the Minister for Small Business and Customs The Hon. DAVID BEDDALL M.P.*, December 1991, Recommendation 6). The Code was released on 1 February 1993. It is voluntary and self-regulatory, meaning that franchisors and others who are regulated by the Code can choose whether or not to comply with it. The Code of Practice will apply to franchisors (including sub-franchisors), franchisees, service providers (including banking and financial institutions that provide franchise-related financial support to franchisors and franchisees and publishers or advertising media providers who accept work and publish advertising for the purpose of

While taking the fears expressed into the most serious consideration, it was not felt that they warranted the abandoning of the project. On the contrary, the serious concern for an equitable balance between the parties to the franchise agreement which had led to the proposal of the subject as one indicated for international action argued for the continuing of work, even if a clear delimitation of the area in which action would be taken was necessary.

2. AREAS AMENABLE TO TREATMENT AT INTERNATIONAL LEVEL

The great number of areas which franchise agreements touch upon was confirmed in the analysis of the areas most amenable to treatment at international level,⁽⁵⁾ to wit: general contract law; commercial law; agency law and the law regulating other distribution contracts; leasing; securities; financial investments; intellectual and industrial property law; competition law, including also fair trade practices laws; corporate law; taxation; ordinary property law; legislation on consumer protection and products liability; insurance law; labour law; the law regulating the transfer of technology; legislation regulating foreign investments; currency control regulations; import restrictions and/or quotas; taxation. In view of the fact that the areas franchise agreements touch upon are areas where national, and at times also international, regulation already exists, it was considered to be doubtful whether it would be justified or realistic to consider adopting special uniform legislation for franchising in these areas.

It was instead felt that what should be stressed was the importance of disclosure, i.e. of the franchisor providing adequate prior information to permit a prospective franchisee to decide whether or not to enter into a franchise relationship, even if admittedly this was an aspect which had hitherto been considered mostly, if not exclusively, in relation to domestic franchise relationships. It was recalled that the majority of cases dealing with franchising in the United States dealt with misrepresentation, in particular in relation to the prospects for development of the business, to the effective size of the investment necessary and to the income that the franchisee might expect. The importance attached to this prior information was confirmed also by German and French cases, which had provided for an obligation on the part of the franchisor to compensate the franchisee in cases of misrepresentation.⁽⁶⁾ It was further submitted that disclosure was an area which lent itself to the adoption of uniform standards at international level as a consensus on the information needed by a prospective franchisee to arrive at a reasoned decision on whether or not to enter into the franchise relationship in as full a consciousness as possible of the risks involved and of the implications of the relationship, should not be too difficult to reach. Moreover, disclosure is one item which is invariably considered when proposals are made for the adoption of national legislation. It would then appear to be good common sense to adopt the same rules in as many different countries as possible and the obvious way to do that is to prepare an instrument at international level.

selling or promoting franchise systems) and advisers (i.e. persons, firms or associations such as lawyers, accountants, marketing or management consultants, and business brokers who provide advice to franchisors and franchisees) and State Small Business Corporations. The Code provides for and regulates prior disclosure, the certification by franchisees of receipt of the disclosure document, of a *Guide for Franchisees* and of a copy of the Code of Practice, cooling off periods for franchisees within which they may terminate the franchise agreement, unconscionable conduct, alternate dispute resolution, and the requirement that the franchisee be identified as being a franchisee.

(5) See Study LXVIII - Doc. 5.

(6) See OLG München, decision of 13.11.1987 - 8 U 2207/87, in *BB* 1988, p. 865; *Cour d'appel de Colmar*, 9 March 1990 in *Recueil Dalloz Sirey* 1990, *Jurisprudence*, p. 232, with the comment by J.-J. BURST.

A second area identified as being amenable to treatment at international level was choice of law and jurisdiction. The fact that franchisors had been known to impose their own law as the law applicable to the contract to the detriment of the franchisee had often been seen as an abuse which would require regulation at international level.⁽⁷⁾ It was however observed that international cases relating to this point had not as yet come to court, and that as the experience and awareness of franchisors increased clauses like these increasingly gave way to clauses providing for the law of the franchisee as the law applicable. An increase in the number of contracts which provided for arbitration was further noted. It was suggested that the role played by existing international conventions, such as the 1968 Brussels and 1988 Lugano Civil Jurisdiction and Judgments Conventions and the 1980 Rome Convention on the Law Applicable to Contractual Obligations, as well as that of the international instruments relating to international arbitration, should be considered in greater detail in relation to international franchise agreements. In view of the existence of, and the area covered by, international instruments in this field, the conclusion was reached that any consideration of choice of law and jurisdiction as areas to be covered by an international instrument on franchising would have to be carefully circumscribed so as to be effective and useful.

A third area worth considering in the context of a possible international regulation of franchising was identified as that of the tripartite relationship of master franchise agreements, particularly in relation to the problems which arise in connection with their termination (the fate of sub-franchise agreements, questions of ownership of the good will of the clients, the possibility of compensation for any loss suffered in connection with the termination of the agreement, etc.).

In consideration of the above, the conclusion was finally reached that the area most amenable to treatment at international level was in the first instance that of disclosure. Furthermore, questions relating to the tripartite nature of master franchise agreements, in particular to their termination, as well as questions of choice of law and jurisdiction, should be considered at a subsequent stage.

I. DISCLOSURE

1. GENERAL REMARKS

In general, when one speaks of disclosure one refers to information on all those aspects of the franchise in question which a prospective franchisee might need when evaluating the possibility of entering into a franchise agreement.

Disclosure is clearly very important where prospective franchisees in a domestic situation are concerned, but its importance when one considers the situation of sub-franchisors in international franchising, many of which are large companies, is disputed.

One view is that if disclosure is important for a prospective franchisee in a normal domestic relationship, it is even more so in international franchising, the reason being the increased difficulty

(7) This tendency of franchisors to impose their own law as the law applicable to the contract was confirmed in the survey conducted in the context of the cooperation between Unidroit and the Committee on International Franchising (Committee X) of the International Bar Association Section on Business Law (see Study LXVIII - Doc. 6). The experience of the United States with respect to inter-state franchise contracts has been analysed by G.F. CARPINELLO, in *Testing the Limits of Choice of Law Clauses: Franchise Contracts as a Case Study*, in *Marquette Law Review*, 74, 1990, p. 57 ff.

for a prospective sub-franchisor in a foreign country to acquire the information needed to evaluate the solidity of the franchisor, both financially and as regards its relations with other sub-franchisors or (sub-)franchisees, and therefore to make a realistic evaluation of the franchise. Such difficulties might lead to misjudgments on the part of the sub-franchisor which will inevitably reflect on the sub-franchisees. If a sub-franchisor suddenly finds that it cannot furnish the assistance needed by the sub-franchisees this can lead to a break-down of the system and to the consequent bankruptcy of all concerned. The difficulties inherent in an international situation clearly also relate to the possibility a sub-franchisor or franchisee might have in proceeding against a franchisor located in a foreign country.

The contrary argument is that the sub-franchisor is experienced in business and makes a business decision: a sub-franchisor who makes a decision of this importance without having adequate information would be rash in the extreme. It is a calculated risk which the prospective sub-franchisor takes and protection such as that which might be required for domestic franchisees, often seen as small family-owned enterprises, is therefore not necessary and might even hamper the development of cross-border franchising.

Whether it is appropriate for the same rules to apply to sub-franchisors and to sub-franchisees should therefore be considered. Once the need for disclosure in an international setting is accepted, what should be considered is whether the same information is necessary for both sub-franchisor and sub-franchisee, and whether this information should be passed first from franchisor to sub-franchisor and then from sub-franchisor to sub-franchisee, or whether it might not be more appropriate to allow for certain differences, at least as regards the amount of detail of the information given. Considering that in a master franchise relationship the relations of the sub-franchisee are with the sub-franchisor and not with the franchisor, it could be argued that the information which should be given to prospective sub-franchisees should be that which relates to the sub-franchisor and not that which relates to the franchisor. The sub-franchisee does, however, have an undeniable interest in receiving a minimum of information on the franchisor, but the form any such communication of information should take is debatable.

If the conclusion is reached that some form of international regulation of disclosure is required, either only for franchisees or also for sub-franchisors, then information of the type required by existing domestic instruments might feasibly be considered to be the most useful. Clearly the degree of detail must be considered, as a franchisor has an undeniably legitimate interest in keeping certain information confidential. On the other hand, prospective sub-franchisors and/or sub-franchisees must be given the possibility of properly evaluating the prospects of the business they are interested in entering into and of guarding themselves to the greatest extent possible against fraud: they must in other words have the means to take action if they come up against fraudulent behaviour on the part of franchisors, or of those who claim to be franchisors. A balance must therefore be achieved between the interests of the franchisor and the interests of prospective sub-franchisors and/or sub-franchisees.

It might further be argued that having specific provisions on disclosure in fact protects the franchisor who cannot be held liable for the lack of success of the franchisees or of the sub-franchisor if it is able to show that all the relevant information had been disclosed to the sub-franchisor or franchisee prior to their concluding the agreement.

In the context of disclosure consideration of an additional, and almost totally neglected, issue would appear to be justified, namely the opportuneness of providing for a duty of disclosure on the part of the prospective franchisee or sub-franchisor vis-à-vis the franchisor. The franchisor has invested large sums of money in the development of the business and of its good name. By granting

the prospective franchisee the right to conduct a business under his trademark or trade name the franchisor is taking a risk, as below standard performance on the part of the franchisee will inevitably reflect on the franchisor and on the whole franchise chain. The trade name might, in fact, suffer severe, if not permanent, damage. It would therefore appear to be justified to provide the franchisor with an instrument enabling him to acquire the information necessary to assess the qualities of the prospective franchisee, thereby permitting him to make an informed choice of business partner. A bankruptcy history of the franchisee or sub-franchisor could, for example, be of importance in making an assessment of the capabilities of the franchisee. If it is considered that such a duty of disclosure on the part of the franchisee is appropriate, then the nature and detail of any such information would need to be carefully considered so as not to introduce a mechanism permitting a dishonest franchisor to abuse this right. It is of course possible that the disclosure of any information of importance might be considered to be a normal application of the principle of good faith (which would then also apply to the disclosure of information on the part of the franchisor), but here one comes up against the non-recognition of the applicability of good faith in precontractual relations in the common law.⁽⁸⁾

2. INSTRUMENTS DEALING WITH DISCLOSURE

a. Disclosure Laws

As is well-known only a few countries have legislation on or relating to franchising.

In the United States legislation regulating franchising is to be found at both federal and state level.⁽⁹⁾ In this paper only federal regulation of disclosure will be considered.

At federal level the *United States Federal Trade Commission* in 1979 adopted a trade regulation rule on franchising entitled *Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures*.⁽¹⁰⁾ This Rule requires franchisors to "disclose" information to prospective franchisees, i.e. to provide them with a document with detailed information regarding: the franchisor; the directors and executive officers of the franchisor; litigation and bankruptcy histories; the franchise to be purchased; initial and recurring payments; obligations to purchase; financing; required personal participation; termination, cancellation and renewal provisions and statistics on the number of franchisees; training; site selection; and financial reporting, including audited financial statements.⁽¹¹⁾

(8) See, however, recent developments in Australia, where there is a growing tendency to accept the principle of good faith also for pre-contractual relations.

(9) A valuable source of information regarding legislation on or affecting franchising in 24 different countries of the world is the *Survey of Foreign Laws and Regulations Affecting International Franchising* prepared by the Franchising Committee of the American Bar Association Section of Antitrust Law, 2nd ed., 1989. As regards the United States, the Commerce Clearing House (CCH) publish the *Business Franchise Guide*, a loose-leaf service containing the text of both federal and state legislation, decisions by US courts and reports.

(10) 16 C.F.R. § 436.

(11) See P. ZEIDMAN, *United States*, p. 2, in *Survey of Foreign Laws and Regulations Affecting International Franchising*, cit. For the text of the FTC Rule and interpretative guides thereto, see CCH, *Business Franchise Guide*, at ¶ 6080 ff.

The North American Securities Administrators Association (NASAA)⁽¹²⁾ has also adopted a *Uniform Franchise Offering Circular (UFOC)* which indicates what information should be furnished to prospective franchisees. The format prescribed varies from that in the FTC Rule, but the substance is essentially the same. The FTC permits the use of the UFOC as an alternative to the basic document it has prescribed in its Rule. The UFOC has been accepted for use, with minor modifications, in all states which regulate the offer and sale of franchises by registration and/or disclosure.⁽¹³⁾ In August 1990 the NASAA adopted a *Model Franchise Act* to be offered to states and provinces for enactment. The Model Act requires franchisors to provide a disclosure document containing detailed information as above, and in addition requires state administrative agencies to review and approve the disclosure information and other information prior to all franchise offerings.⁽¹⁴⁾

To be noted are also the bills for federal legislation introduced into Congress on 11 March 1993. Of interest in the context of disclosure is the *Fair Franchise Disclosure and Consumer Protection Act*,⁽¹⁵⁾ which intends to codify the current Federal Trade Commission franchise disclosure rule, add mandatory disclosures of actual operating data relating to sales, costs, and earnings, prohibit fraud in franchise sales, and furnish a private civil action for injunctive relief and damages. The law would preempt state laws only to the extent that they provide less protection to prospective franchisees than the federal law.⁽¹⁶⁾

In Canada only the province of Alberta has legislation on franchising.⁽¹⁷⁾ Until 1983, when a new Securities Act was adopted, the Quebec Securities Act covered franchising by defining "securities" to mean, among other things, "a contract of concession or of franchising under which the concessionary or the franchisee obtains certain special rights respecting the operation of an undertaking". The new Securities Act does not contain any specific reference to franchising, although it does cover what it calls "investment contracts", i.e. contracts "whereby a person, having been led to expect profits undertakes to participate in the risk of a venture by a contribution of capital or loan, without having the required knowledge to carry on the venture or without obtaining the right to participate directly in decisions concerning the carrying on of the venture".⁽¹⁸⁾

Brazil has also introduced a legislative bill relating to franchising contracts.⁽¹⁹⁾ This Bill contains provisions also on other aspects of franchise agreements, such as royalties and fees, but deals mainly with disclosure.

(12) The North American Securities Administrators Association includes among its members both US state and Canadian provincial administrators. For the text of the Uniform Franchise Offering Circular, see CCH, *Business Franchise Guide*, at ¶ 5750. The UFOC was recently revised. The revised edition was adopted by NASAA on 25 April 1993 and approved by the FTC on 30 December 1993. It is reproduced in CCH, Extra Edition of the *Business Franchise Guide Report*, No. 161, 25 May 1993.

(13) P. ZEIDMAN, *United States*, p. 2, in *Survey of Foreign Laws and Regulations Affecting International Franchising*, cit.

(14) Report from America by P. ZEIDMAN/A. LOEWINGER/J. GILBERT, in *The Journal of International Franchising and Distribution Law*, 1991, p. 147 f.

(15) H.R. 1315, reproduced in CCH, Extra Edition of the *Business Franchise Guide Report* No. 159, 24 March 1993. The two other bills are for a *Federal Fair Franchise Practices Act* (H.R. 1316) and for a *Federal Franchise Data and Public Information Act* (H.R. 1317), both of which are also reproduced in CCH, Extra Edition of the *Business Franchise Guide Report* No. 159.

(16) Summary of contents in CCH, Extra Edition of the *Business Franchise Guide Report* No. 159, 24 March 1993.

(17) *The Franchises Act, Revised Statutes of Alberta (1980 C.F.-17), as amended*. The text of the Alberta Franchises Act is reproduced in CCH, *Business Franchise Guide*, at ¶ 7010 ff.

(18) See CCH, *Business Franchise Guide*, at ¶ 7040.

(19) Federal Senate, Legislative Bill No. 2/92 and House of Representatives, Legislative Bill No. 318/91.

One country which has enacted legislation regulating franchising in its law on industrial property is Mexico.⁽²⁰⁾ Presale disclosure of information to prospective franchisees is required, as is the filing of information about the franchisor and registration of the transmission of trademark rights to the franchisee.

In Europe, the only country with legislation related to franchising is France: on 31 December 1989 Law No. 89-1008, concerning the development of commercial and artisanal enterprises and the improvement of their economic, legal and social environment⁽²¹⁾ was adopted, the first article of which is relevant for franchising. It is a disclosure law, the details of which were subsequently laid down in government Decree No. 91-337 of 4 April 1991.⁽²²⁾

As is the case with the American legislation, the laws adopted in other countries require information to be furnished on the franchisor and the directors of the enterprise, on the history of the enterprise, on its legal constitution, on the intellectual property concerned, financial statements for the two preceding years, lists of other franchisees in the chain, information on the franchise agreement, such as the duration of the contract, conditions for renewal, for termination and assignment of the contract, as well as on any exclusivities. What varies is the degree of detail which is considered to be necessary.

b. Codes of Ethics

The Codes of Ethics adopted by the franchise associations provide that prospective franchisees have to be provided with accurate and full disclosure, but in general do not contain detailed provisions as to what is to be understood thereby.

The *European Code of Ethics for Franchising* adopted by the *European Franchise Federation (EFF)*, a federation of the national franchise associations of Austria, Belgium, Denmark, Germany, France, Italy, the Netherlands, Portugal and the United Kingdom, provides that "[i]n order to allow prospective Individual Franchisees to enter into any binding document with full knowledge, they shall be given a copy of the present *Code of Ethics* as well as full and accurate written disclosure of all information material to the franchise relationship, within a reasonable time prior to the execution of these binding documents".⁽²³⁾ The EFF is in the process of laying down guidelines on how this reference to disclosure should be interpreted. The *Code* further provides for a general obligation that "[a]dvertising for the recruitment of Individual Franchisees shall be free of ambiguity and misleading statements",⁽²⁴⁾ specifying that "[a]ny publicly available recruitment, advertising and publicity material, containing direct or indirect references to future possible results, figures or earnings to be

(20) *Law on Industrial Property*, published in the *Diario Oficial*, 27 June 1991, effective as of 28 June 1991. The relevant sections of this law are reproduced in the CCH, *Business Franchise Guide*, at ¶ 7210, in an English translation by CCH staff and the Monterrey Office of the law firm of Brownstein Zeidman and Schomer, Washington, D.C. See also Study LXVIII - Doc. 4.

(21) *Loi n° 89-1008 du 31 décembre 1989 relative au développement des entreprises commerciales et artisanales et à l'amélioration de leur environnement économique, juridique et social*, published in the *Journal Officiel* of 2 January 1990. The original text of the law is reproduced in Study LXVIII - Doc. 8.

(22) *Décret n° 91-337 du 4 avril 1991 portant application de l'article 1^{er} de la loi n° 89-1008 du 31 décembre 1989 relative au développement des entreprises commerciales et artisanales et à l'amélioration de leur environnement économique, juridique et social*, published in the *Journal Officiel* of 6 April 1991 (a correction to the Decree was published in the *Journal Officiel* of 4 May 1991). The original text of the decree is reproduced in Study LXVIII - Doc. 8.

(23) Clause 3.3.

(24) Clause 3.1.

expected by Individual Franchisees, shall be objective and shall not be misleading".⁽²⁵⁾ The European Code is applicable to the members of the national associations which are members of the EFF.

In addition to the European Code which it has adopted as a member of the EFF, the *British Franchise Association (BFA)* has adopted an *Extension and Interpretation* of the Code that contains further indications on its application and on how some of its terms should be understood. As regards disclosure, this *Extension and Interpretation* states that "[t]he objectivity of recruitment literature (Clause 3.2) refers specifically to publicly available material. It is recognised that in discussing individual business projections with Franchisees, Franchisors are invariably involved in making assumptions which can only be tested by the passage of time".⁽²⁶⁾

The *Code of Principles and Standards of Conduct* of the *American International Franchise Association* provides that "[f]ranchise relationships should be established by a clear and unambiguous franchise agreement, and by prior delivery of clear and complete disclosure documents as required by law".⁽²⁷⁾ This general obligation is reiterated further on in the *Code*, where it is stated that "[...] in the advertisement and grant of franchises, a franchisor shall comply with all applicable laws and regulations. Disclosure documents shall comply with all applicable legal requirements"⁽²⁸⁾ and "[a]ll matters material to the granting of a franchise shall be contained in or referred to in one or more written documents, which shall clearly set forth the terms of the relationship and the respective rights and obligations of the parties. [...] Disclosure documents shall be provided to a prospective franchisee on a timely basis as required by law".⁽²⁹⁾ In this case it is therefore to the franchise legislation that one must turn to have a clearer idea of what is required as to disclosure.

3. SPECIFIC DISCLOSURE REQUIREMENTS

As indicated above, the type of information which the different instruments require to be disclosed does not essentially differ from one instrument to another. The main difference lies in the amount of information to be furnished. The following table is intended to provide a comparative survey of the different items indicated in the legislative texts referred to in Section 2, lit. a above. In view of the fact that a few of the texts consulted are very detailed, the information is provided in summary form.⁽³⁰⁾ It should be borne in mind that the instruments concerned were created for domestic franchising and not for international franchising. Thus, when these requirements are examined for the purposes of this paper, consideration should be given also to the appropriateness of adopting similar requirements for an international setting.

⁽²⁵⁾ Clause 3.2.

⁽²⁶⁾ Clause 2.

⁽²⁷⁾ Section III, Clause 1 para. 2.

⁽²⁸⁾ Section IV, Clause 1 para. 1.

⁽²⁹⁾ Section IV, Clause 1 para. 2.

⁽³⁰⁾ For the text of the instruments consulted, see Study LXVIII - Doc. 8. For a comparison of disclosure requirements, see P.F. ZEIDMAN/A.P. LOEWINGER/R. MADDEN/F. ZAID/F.M. ABELMAN, *Pre-sale franchise disclosure: a review and comparison of disclosure requirements in France, the United States and Canada*, in *Journal of International Franchising and Distribution Law*, 1993, p. 21 ff.

COMPARATIVE		TABLE		OF		PROVISIONS		ON		DISCLOSURE	
Item	Instrument	United States - FTC Rule	United States - Federal Disclosure Bill	NASAA - UFOC	Canada - Alberta Franchises Act	France - Decree No. 91-337	Brazil - Leg. Bill No. 2192 (318/91)	Australia - Franchising Code of Practice Attachment A			
Information on the franchisor and the franchisor's executives		Official name, address and principal place of business of franchisor and of the parent firm or holding company of franchisor if any (Sec. 1(a)(1)(i)) Business experience of franchisor and the franchisor's parent firm if any (Sec. 1(a)(3)) Name under which the franchisor is doing or intends to do business (Sec. 1(a)(1)(ii)) Business experience during the last 5 years of each of the franchisor's current directors and executive officers (Sec. 1(a)(2))	Name and principal place of business of the franchisor, its predecessor, parent firm, holding company or other controlling entity of the franchisor, if any, and the name under which the franchisor is doing or intends to do business (Sec. 4(a)(1)); Statement identifying any parent or affiliate of franchisor or other related entity engaged in franchising or providing services or assistance to franchisees, and the name and position held of each of the franchisor's general partners or principal officers, other executives or sub-franchisors who have management responsibility (Sec. 4(a)(2))	The name of the franchisor, its predecessors and affiliates, which the franchisor does or intends to do business, the principal business address of the franchisor, its predecessors and affiliates, and the franchisor's agent for service of process; the business form of the franchisor; the franchisor's business and the franchisees to be offered in the state concerned; the prior business experience of the franchisor, its predecessors and affiliates (Item 1) List by name and position of the directors, trustees and/or general partners, the principal officers and other executives or subfranchisors who will have management responsibility relating to the franchisees offered by the franchisor; list of all franchise brokers; indication of each person's principal occupations and employers during the past five years (Item 2)	Name of the franchisor, the name under which the franchisor is doing or intends to do business and the name of any associate that will engage in business transactions with the franchisor; the franchisor's principal business address and the name and address of his agent for service in Alberta; the business form of the franchisor, whether corporate, partnership or otherwise; the business experience of the franchisor (Sec. 5(2)(a)-(d))	Address of the registered office of the enterprise, the nature of its activities with an indication of its legal form, the name of the manager(s) of the enterprise if it is unincorporated or of the directors if it is a legal entity; the total share capital, if applicable (Art. 1(1)) The number of registration in the Register of Commerce and Companies or the number of registration in the Register of Independent Entrepreneurs (Art. 1(2)) The name and address of the bank or banks used by the enterprise. This information may be limited to the five main banks of the enterprise (Art. 1(3)) The date of the creation of the enterprise with an indication of the main stages of its development, including that of the network of operators if applicable, as well as all information which will permit an assessment of the professional experience acquired by the operator or the directors of the enterprise (Art. 1(4)(1)) The information required to be given by Art. 1(4)(1) may be limited to the five last years preceding the transmission of the document (Art. 1(4)(2))	Summary of the background, corporate form and full or corporate name of franchisor and all enterprises that it is connected with (Art. 3(f))	Name and registered office of the franchisor; membership in the Franchisors Association of Australia and New Zealand Limited or in any other relevant trade or industry association (Sec. (i)) Names, job descriptions, qualifications (if any) of the franchisor's directors/executive officers/principals (Sec. (ii)) Detailed resume of the business experience of the franchisor (and any related entities) and its directors/sec-relay/executive officers/principals (Sec. (iii))			
	Intellectual property	The trademarks, trade names, service marks, advertising or other commercial symbols which identify the goods, commodities or services to be offered, sold or distributed by the prospective franchisee, or under which the prospective franchisee will be operating (Sec. 1(a)(1)(iii))	Statement describing the trade names, trademarks, service marks, logotypes, advertising or other commercial symbols which are to be licensed to the prospective franchisee, or which are owned or used by the franchisor to identify the goods or services to be offered, sold, or distributed by the prospective franchisee indicating whether such	The principal trademarks to be licensed to the franchisee, and whether the principal trademarks are registered with the United States Patent and Trademark Office; for each registration the registration date and number and whether the registration is on the principal or supplemental register (Item 13A); currently effective material determinations of		The number of registration or deposit of the trademark and, if the trademark which is the subject-matter of the contract has been acquired by assignment or licence, the dates and registration numbers registered in the National Trademark Registry with, in the case of licences, an indication of the term for which the licence has been granted (Art. 1(2)).	The trademark names and addresses of the franchisor and all enterprises that it is connected with (Art. 3(f)) The status at the Brazilian Institute of Industrial Property of trademarks or patents the use of which is authorised by the franchisor (Art. 3(XIII))	Examples of any trademark, logo, symbol, etc. used to market the franchisor's goods or services and steps taken to protect these (Sec. (vi)(b)).			

Item Instrument Intellectual property confid.	United States - FTC Rule	United States - Federal Disclosure Bill	NASAA - UFOC	Canada - Alberta Franchises Act	France - Decree No. 91-337	Brazil - Leg. Bill No. 2792 (31891)	Australia - Franchising Code of Practice Attachment A
		trade names or trademarks have been registered with the United States Patent and Trademark Office or registered with the state in which the franchise business is located or is to be located and the date and number of any such registration; whether there are any material restrictions on the franchisor's right to license, or the franchisee's right to use, such trade names or trademarks; any pending interference, opposition or cancellation proceeding or litigation involving such trade names or trademarks of relevance to the state in which a franchise is located or will be located; whether the franchisor is obliged to protect the franchisee's right to use such trade names or trademarks and to protect the franchisee against claims of infringement or unfair competition (Sec. 4(a)(8)).	the Patent and Trademark Office, Trademark Trial and Appeal Board, the Trademark Administrators of the state or any court; pending material litigation involving the principal trademarks (Item 13B) Agreements currently in effect which significantly limit the rights of the franchisor to use or license the use of trademarks listed in item 13 in a manner material to the franchise (Item 13C) Whether the franchisor must protect the franchisee's right to use the principal trademarks listed in item 13, and must protect the franchisee against claims of infringement or unfair competition arising out of the franchisee's use of them (Item 13D) Whether the franchisor actually knows of either superior prior rights or infringing uses that could materially affect the franchisee's use of the principal trademarks in the franchisor's state or the state in which the franchised business is to be located (Item 13E) If the franchisor owns rights in patents or copyrights that are material to the franchise, a description of these patents and copyrights and their relationship to the franchise, including their duration and whether the franchisor can and intends to renew the copyrights. To the extent relevant, the information required by item 13 concerning these patents and copyrights. If the franchisor claims proprietary rights in confidential information or trade secrets, their general subject matter and the terms and conditions for use by the franchisee (Item 14)				

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Litigation and bankruptcy history		Statement disclosing whether the franchisor or any of the directors or executive officers of the franchisor has, at any time during the previous 7 fiscal years, been convicted of a felony or pleaded nolo contendere to a felony charge (including violation of any franchise law, or any unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade; has, at any time during the previous 7 fiscal years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action involving allegations of fraud (including violation of any franchise law, or any unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade or which was brought by a present or former franchisee or franchisees and which involves or involved the franchise relationship; is subject to any currently effective state or federal agency or court injunctive or restrictive order, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting franchise activities or the franchisor-franchisee relationship, or involving fraud (including violation of any franchise law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade (Sec. 1(a)(4))	Statement disclosing whether franchisor or any parent or affiliate of franchisor or any of franchisor's current general partners or principal officers or other executives or sub-franchisors with management responsibilities has, at any time during the previous 10 fiscal years: been convicted of a felony or pleaded nolo contendere to a felony charge if the felony involved fraud, embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade, violation of a federal or state law or violation of a state franchise statute; been held liable in a civil action resulting in a final judgment, or has settled out of court any claim, incl. complaints, cross claims, counterclaims and third party complaints in a judicial proceeding and their equivalents in an arbitral proceeding involving allegations of fraud, embezzlement, fraudulent conversion, misappropriation of property, restraint or trade or comparable allegations, or involving a present or former franchisee and which involved or involves the franchisor-franchisee relationship, or for the above allegations is subject to any currently effective state or federal agency or court injunctive or restrictive order or has been subject to any such order during the previous 10 years (Sec. 4(a)(3))	Pending material litigation involving the principal trademarks (Item 13B) Whether the franchisor, its predecessor, its directors, trustees and/or general partners, the principal officers and other executives or subfranchisors with management responsibility relating to the franchises or an affiliate offering franchises under the franchisor's principal trademark has an administrative, criminal or material civil action pending alleging a violation of a franchise, antitrust or securities law, fraud, unfair or deceptive practices of comparable allegations; or has during the 10 year period immediately before the date of the Offering Circular been convicted of such a charge; or is subject to a currently effective injunctive or restrictive order or decree relating to the franchise or under a federal state or Canadian franchise, securities, antitrust, trade regulation or trade practice law resulting from a concluded or pending action or proceeding brought by a public agency (Item 3) Statement whether the franchisor, its affiliate, its predecessor, officers or general partner during the ten year period immediately before the date of the Offering Circular filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code, obtained a discharge of its debts under the Bankruptcy Code or was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the Bankruptcy Code or that obtained a discharge of its debts under the Bankruptcy Code during or within one year after the			Clear indication of all the judicial disputes in which the franchisor, the controlling companies and holders of the trademarks, patents and copyrights for the transaction, and the subfranchisor thereof, are involved, specifically questioning the franchise system or that may render operation of the franchise unfeasible (Art. 3(III))	Details of any materially relevant debt, criminal, civil or administrative proceedings (past or pending) concerning the franchisor (and any related entities) or any of its directors/executive officers/principals (Sec. (v)) Details of any threatened or pending litigation in relation to any trademark, logo, symbol, etc. used to market the franchisor's goods or services (Sec. (vi)(b)) Details of any current unresolved litigation with any existing or former franchisees (Sec. (ix))

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Litigation and bankruptcy history confid.	principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganised during or within 1 year after the period that such person held such a position (Sec. 1(a)(5))	insolvency or been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganised during or within 1 year after the period that such person held such a position (Sec. 4(g)(5))	officer or general partner concerned held this position (Item 4)				
Franchising history of franchisor	Statement disclosing total number of franchises operating at end of preceding fiscal year, total number of company-owned outlets at end of preceding fiscal year, the names, addresses and telephone numbers of the 10 franchised outlets of the franchise business nearest the prospective franchisee's intended location or all if less than 10, the number of franchises voluntarily terminated or not renewed by franchisees, and of those reacquired by the franchisor by purchase, within, or at the conclusion of, the term of the franchise agreement during the preceding fiscal year, the number of franchises otherwise reacquired by the franchisor during the term of the franchise agreement and upon the conclusion of the term of the franchise agreement during the preceding fiscal year, the number of franchises refused renewal or cancelled or terminated by the franchisor during the term of the franchise agreement and upon conclusion of the term of the franchise agreement during the preceding fiscal year. Reasons should also be given for the reacquisitions, refusals to renew and cancellations or terminations (Sec. 1(a)(16))	Statement disclosing the names, addresses and telephone numbers of all franchisees in the state in which the proposed franchise is to be located, provided there are at least 25, of all franchisees in the state in which the proposed franchise is to be located and all franchisees in states geographically contiguous to such state, provided there are at least 25, or all franchisees of the franchisor, the number of franchisees with outlets that, within the three-year period immediately before the close of the franchisor's most recent fiscal year have been cancelled or terminated by the franchisor, have not been renewed by the franchisor, have been reacquired through purchase by the franchisor, have been otherwise reacquired by the franchisor and have left the system or ceased to do business under the franchise agreement; the name, last known address and location of franchisee(s) of every franchisee who voluntarily or involuntarily left the franchise system or ceased doing business under the franchise agreement during the five-year period immediately before the close of the franchisor's most recent fiscal year; the number of all previous owners of a specific outlet to be resold, or the number of previous owners of franchise	The number of franchisees of a type substantially similar to those offered and the number of franchisor owned or operated outlets as of the close of each of the franchisor's last 3 fiscal years, separating franchisees that are operational from franchisees not yet operational, separating disclosure by state and totalling each category; the names of all franchisees and the addresses and telephone numbers of all of their outlets - the franchisor may limit disclosure to all franchisee outlets in the state, but if these franchisee outlets total fewer than 100, franchise outlets from all contiguous states should be disclosed and then the next closest state(s) until at least 100 franchise outlets are listed; the estimated number of franchisees to be sold during the one year period after the close of the franchisor's most recent fiscal year; the number of franchise outlets that for the 3-year period immediately before the close of the franchisor's most recent fiscal year have transferred controlling ownership, have been cancelled or terminated by the franchisor, have not been renewed by the franchisor, have been reacquired by the franchisor or have been reasonably known by the franchisor to have otherwise ceased to do business in the system; the name and last known home address and telephone	List of other franchisees operating in Alberta if a list is available and if no such franchisees exist, a list of the franchisees operating in the next closest jurisdiction (Sec. 5(2)(w))	Description of the network of operators, including a list of the enterprises which are part of it with an indication for each one of the form in which it operates; the addresses of the enterprises established in France with which the person proposing the contract is bound by contracts of the same type as the one proposed, indicating for each the date of the conclusion or renewal of the contract - where there are more than 50 such enterprises, the list may be limited to the 50 enterprises which are located closest to the envisaged place of operation; the number of enterprises of the network with contracts of the same type which have ceased to be part of the network in the course of the year preceding that of the transmission of the document, with an indication of whether the contract expired or was terminated or avoided; and, if applicable, with an indication of the presence in the trade area of the outlet envisaged in the proposed contract of every establishment offering the goods or services which are the subject-matter of the contract with the express agreement of the party proposing the contract (Art. 1(5))	Complete list of all franchisees, sub-franchisees and the network sub-franchisors, as well as of those who have discontinued businesses in the last twelve months, with their names, addresses and telephone numbers (Art. 3(X))	Nature and period of existence of the franchise system and how it has developed (Sec. (vi)(a)) Number of existing franchisees and company or principal's outlets. A list of existing franchisees (including address and phone number of each and year commenced business) should be available for reference purposes. Should a full list be impractical, then a list of all franchisees in the state, metropolitan area etc., as appropriate to the circumstances, should be provided. Number of franchisees terminated or not renewed, over the past year. (Sec. (ix))

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Franchising history of franchisor contd.			businesses or outlets of the same franchise system who conducted business during the previous 7 years in the protected market area to be granted to a franchise, or within the same market area in which a franchise is to be located; the identity of any association(s), advisory councils or other organisations of franchise owners of the business being offered that are organised to promote the interests of franchisees in their relationship with the franchisor, with the name, current address and telephone number of any officer or designated contact person (Sec. 4(a)(12)).	number of every franchisee who has had an outlet terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement using the most recently completed fiscal year or who has not communicated with the franchisor within 10 weeks of the application date (Item 20).				
Balance sheets and income statements		Balance sheet (statement of financial position for the franchisor for the most recent fiscal year and an income statement (statement of results of operations) and statement of changes in financial position for the three most recent fiscal years, all of which statements are required to have been audited. Unaudited statements shall be used only to the extent that audited statements have not been made (Sec. 1(a)(20))	Audited balance sheet for the franchisor for the most recent fiscal year, and an income statement and statement of changes in financial position for the franchisor for the most recent three fiscal years. Unaudited statements may be used only to the extent that audited statements cannot be prepared under generally accepted auditing standards, are prepared by an independent certified or licensed public accountant, and are accompanied by a clear and conspicuous disclosure that they are unaudited. Summary prepared by an independent certified or licensed public accountant of the sources of revenues of the franchisor for each of the franchisor's most recent three fiscal years, stated in terms of the percentage of total annual revenues of such franchisor attributed to pre-opening fees, royalty payments, pre-opening purchases by franchisees of equipment, inventory or supplies, net rental income	Financial statements prepared in accordance with generally accepted accounting principles audited by an independent certified public accountant - unaudited statements may be used for interim periods - including the franchisor's balance sheets for the last two fiscal year ends before the application date, statements of operations, of stockholders equity and of cash flows for each of the franchisor's last three fiscal years; instead of above listed documents affiliated company statements if the affiliated company's financial statements satisfy the above requirements and the affiliated company absolutely and unconditionally guarantees to assume the duties and obligations of the franchisor under the franchise agreement; when a franchisor owns a direct or beneficial controlling interest in another corporation its financial statements should reflect the financial condition of the franchisor and its		The annual financial statements for the two most recent fiscal years as provided in Art. 34(1)(3) of the Companies Act No. 66-537 of 24 July 1966 (Art. 1(4)(3))	Balance sheets and financial statements of the franchise enterprise for the two most recent tax periods (Art. 3(II))	Viability statement with key financial information in respect of the franchisor from the franchisor's directors/ principals in terms of Appendix 1 to the Code, i.e. key financial data extracted from accounts prepared in accordance with normal accounting standards (Sec. (iv))

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Balance sheets and income statements contd.			from real estate leases or rental of real estate, fixtures or equipment, post-opening purchases by franchisees of equipment, inventory of supplies, including goods and services sold to franchisees for resale and payments to the franchisor by suppliers with whom franchisees are required to purchase goods or services, non-franchised or company-owned outlets and sales of goods and services to the public through means of distribution other than franchise and non-franchised outlets, whether under the same, similar or different trade name or trademark (Sec. 4(a)(13)).	subsidiaries; if the applicant is a sub-franchisor separate financial statements for the franchisor and sub-franchisor related entity should be provided (Item 21)				
Qualifications of franchisee				The principal obligations of the franchisee under the franchise and other agreements after the signing of these agreements (Item 9)			Profile of the "ideal franchisee" with regard to previous experience, educational background and other desirable or mandatory characteristics (Art. 3(V))	
Description of franchise							Detailed description of the franchise, general description of the transaction and activities that will be performed by the franchisee (Art. 3(V))	Statement as to whether the territory or site to be franchised has been subject to any trading activity, particularly a previous franchise, and if so, the history and details including the circumstances of any cessation of the franchise. (Sec. (vi))
Franchise payments	Statement of the total funds to be paid by the franchisee to the franchisor or to a person affiliated with the franchisor (Sec. 1(a)(7)) Statement describing any recurring funds to be paid by the franchisee to the franchisor or to a person affiliated with the franchisor, including royalty, lease, advertising, training, and sign rental fees, and equipment or inventory purchases (Sec. 1(a)(8))	Statement of the total funds to be paid by the franchisee to the franchisor or to any person affiliated with the franchisor, including franchise fees, deposits, down payments, prepaid rent and equipment and inventory purchases required to obtain or commence franchise operations, and royalties, lease, advertising, training, insurance, sign rental fees and equipment or inventory purchases required to carry on the franchise business (Sec. 4(a)(6)(A)) Description of the basis for calculating, and actual amounts, where available, of	The initial franchise fee and the conditions when this fee is refundable (Item 5). Other recurring or isolated fees or payments that the franchisee must pay to the franchisor or its affiliates or that the franchisor or its affiliates impose or collect in whole or in part on behalf of a third party, including the formula used to compute these other fees and payments. If any fee is refundable, the conditions when each fee or payment is refundable should be stated (Item 6).	Statement of the franchise fee charged, the proposed application of the proceeds of the fee by the franchisor and the formula by which the amount of the fee is determined if the fee is not the same in all cases, together with a notation concerning the existence of any continuing royalties (Sec. 5(2)(i)). Statement describing any payments or fees other than franchise fees that the franchisee or subfranchisor is required to pay to the franchisor, including royalties and payments or fees which the franchisor collects in			Specifications as to cost of initial fee for association, or franchise or bond fee (Art. 3(V)(b)) Clear information as to periodic fees and other expenses to be paid by the franchisee to the franchisor or to third parties indicated by the franchisor, detailing the respective basis for the calculation and what payment is made or the allocation thereof, specifying periodic payments for use of the system or the trademark, or in exchange for goods and services rendered by the franchisor to the franchisees (royalties), rental of	Details of payments to be made by the franchisee to the franchisor (including method of calculation if applicable). Amount refunded by franchisor if franchise terminates agreement within cooling off period (Sec. (vi)(c)) Indication of the franchise fee to be included in the tabulated list of components making up the franchise purchase (Sec. (vii))

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Franchise payments contd.			any revenue or other consideration to be received by the franchisor, the franchisor's parent firm, if any, or any person affiliated with the franchisor, from each such person with whom the franchisee is required to make the purchases, leases or rentals indicated in Secs. 4(a)(6)(A) and (B) (Sec. 4(a)(6)(C)).		whole or in part on behalf of a third party or parties, together with the names of the third party or parties (Sec. 5(2)(g))		equipment or commercial site, advertising fee or similar, minimum insurance and other expenses owed the franchisor or the third party connected with it (Art. 3(VIII))	
Investment of franchisee			Estimate of the total investment to be paid by the franchisee, irrespective of the type of expenditure and of whether payment is to be made to the franchisor, to any person affiliated with the franchisor, or to any third party, to obtain and commence operations of the franchise business and to carry on the franchise business during the initial twelve-month period following the opening of the franchise business (Sec. 4(a)(6)(D)).	Disclosure of the following expenditures indicating to whom the payments are made, when payments are due, whether each payment is refundable, the conditions when each payment is refundable and, if part of the franchisee's initial investment in the franchise, may be financed, an estimate of loan repayments, including interest: real property, whether purchased or leased, equipment, fixtures, other fixed assets, construction, remodeling, leasehold improvements and decorating costs, whether purchased or leased; inventory required to begin operation; security deposits, utility deposits, business licenses, other prepaid expenses; additional funds required by the franchisee before operations begin and during the initial phase of the franchise; other payments that the franchisee must make to begin operations (Item 7).	Statement indicating whether the cash investment required for the franchise covers payment for fixtures and equipment (Sec. 5(2)(h)).	Indication of the nature and the amount of expenses and investments specific to the sign or trademark which the person to whom the draft contract is addressed must make before beginning to operate (Art. 1(6)(2)).	Specifications as to the total initial investment necessary for acquisition, implementation and start-up of the franchise (Art. 3(VII)(a)). Specifications as to the estimated cost of plant, equipment and start-up stock and payment conditions (Art. 3(VI)(c)).	A tabulated list of components making up the franchise purchase, e.g., franchise fee, stock, fixtures/fittings, working capital, etc. with (estimated) individual cost then totalled to reflect the full outlay. A summary of those items which could be leased and (estimated) costs involved being part of the full outlay (Sec. (vii))
Requirements to do business with franchisor and other suppliers		Statement with the name of each person, franchisor included, that the franchisee is required to do business with (Sec. 1(a)(9))		Franchisee obligations to purchase or lease from the franchisor its designee or from suppliers approved by the franchisor or under the franchisor's specifications, disclosing whether, and for what categories of goods and services, the franchisor or its affiliates are approved suppliers or the only approved suppliers (Item 8C), the estimated proportion of these required purchases and leases to all purchases			Clear and detailed information regarding the obligation of the franchisee to acquire any assets, services or inputs necessary for the implementation, operation or administration of the franchise only from the suppliers indicated and approved by the franchisor with a complete listing of such suppliers (Art. 3(XI))	

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Requirements to do business with franchisor and other suppliers cont'd.			and leases by the franchisee of goods and services in establishing and operating the franchised business (Item 8E) and the existence of purchasing or distribution cooperatives (Item 8F)				
Requirements of franchisee purchase or lease	Statement describing any real estate, services, supplies, inventories, signs, fixtures or equipment relating to the establishment of the franchise business which the franchisee is directly or indirectly required by the franchisor to purchase, lease or rent (Sec. 1(a)(10))	Description of any real estate, services, supplies, products, inventories, signs, fixtures, or equipment relating to the establishment of the franchise business which the franchisee is directly or indirectly required by the franchisor to purchase, lease or rent (Sec. 4(a)(6)(B))	Franchisee obligations to purchase or lease from the franchisor its designed or from suppliers approved by the franchisor or under the franchisor's specifications, disclosing the goods, services, supplies, fixtures, equipment, inventory, computer hardware and software or real estate relating to establishing or operating the franchised business (Item 8A); the manner in which the franchisor issues and modifies specifications or grants and revokes approval to suppliers (Item 8B); whether, and if so, the precise basis by which the franchisor or its affiliates will or may derive revenue or other material consideration as a result of required purchases or leases (Item 8D).	Statement as to whether the franchisee or subfranchisor is required to purchase from the franchisor or his designee, services, supplies, products, fixtures or other goods relating to the establishment or operation of the franchise business together with a description of them (Sec. 5(2)(k)) Statement as to whether the franchisee or subfranchisor is required to purchase from the franchisor or his designee, services, supplies, products, fixtures or other goods relating to the establishment or operation of the franchise business are available from sources other than the franchisor (Sec. 5(2)(l))			Summary of the terms and conditions for purchase of services, goods, fixtures, property, etc. from the franchisor and the situation pertaining if source of goods/products supplied by franchisor falls. Relevant comments/conditions in respect to rebates etc. from suppliers (Sec. (v)(e))
Financing arrangements and terms	Statement of all material terms and conditions of any financing arrangement offered directly or indirectly by the franchisor or by a person affiliated with the franchisor and a description of the terms by which any payment is to be received by the franchisor from any person offering financing to a prospective franchisee and any from any person arranging for financing for a prospective franchisee (Sec. 1(a)(12))		The terms and conditions of each financing arrangement that the franchisor, its agent or affiliates offers directly or indirectly to the franchisee, including a waiver of defences or similar provisions in a document (Item 10A); the franchisor's practice or its intent to self, assign, or discount to a third party all or part of the financing arrangement (Item 10B); payments to the franchisor or an affiliate(s) for the placement of financing with the lender (Item 10C).	Statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or his associate (Sec. 5(2)(o))			
Assistance of franchisor to franchisee		Statement describing the services and assistance which the franchisor, persons	The obligations that the franchisor will perform before the franchise business opens	Statement as to whether the franchisor has agreed with a third party or parties that the		Indication of what is offered the franchisee by the franchisor in terms of network	Basis of franchisor's involvement/approval for site selection (Sec. (v)(f))

Item	Instrument	United States - FTC Rule	United States - Federal Disclosure Bill	NASAA - UFOC	Canada - Alberta Franchises Act	France - Decree No. 91-337	Brazil - Leg. Bill No. 2/92 (318/91)	Australia - Franchising Code of Practice Attachment A
Assistance of franchisor to franchisee contd.			affiliated with the franchisor or third persons designated by the franchisor are obliged to provide to the franchisee to obtain or commence the franchise operation and to carry on the franchise business (Sec. 4(a)(6)(7))	(Item 11A): The obligations to be met by the franchisor during the operation of the franchise business (Item 11B); the methods used by the franchisor to select the location of the franchisee's business (Item 11C).	products or services of the third party or parties will be made available to the franchisee or subfranchisor on a discount or bonus basis (Sec. 5(2)(n)) Statement as to whether the franchisor provides continuing assistance in any form to the franchisee and if so, the nature, extent and cost of the assistance (Sec. 5(2)(v))		supervision, orientation and other services rendered to the franchisee, franchise manuals, assistance with analysis and choice as to where the franchise will be set up, layout and architectural specifications for the franchise premises (Art. 3(XII)(a)-(b) and (e)-(g))	Summary of the main obligations of the franchisor (Sec. (vi)(h))
Limitations and exclusivities		Statement describing the material facts of whether the franchisee is limited in goods or services he/she may offer for sale, limited in customers to whom such goods or services may be sold, limited in geographic area, granted territorial protection by the franchisor (Sec. 1(a)(13))	Statement disclosing whether the franchisee is to be limited in the goods or services he/she may offer for sale, in the customers to whom such goods may be sold or in the geographic area in which the goods or services may be offered for sale or sold; and whether the franchisee is granted territorial protection by the franchisor with respect to the territory or area; whether the franchisor is marketing, intends to market, reserves the right to market or is precluded from marketing, through arrangements other than a franchise or a company-owned outlet, the same or similar products or services in the area in which the franchisee is expected to draw 80% of its business or in the area defined in the agreement for the purposes of a non-competition clause (Sec. 4(a)(9))	Description of any exclusive territory granted the franchisee; (Item 12) indication of whether the franchisor has established or may establish another franchisee who may also use the franchisor's trademark (Item 12A); indication of whether the franchisor has established or may establish a company-owned outlet or other channels of distribution using the franchisor's trademark (Item 12B); indication of whether the franchisor or its affiliate has established or may establish other franchises or company-owned outlets or another channel of distribution selling or leasing similar products or services under a different trademark (Item 12C); indication of whether the continuation of the franchisee's territorial exclusivity depends on achievement of a certain sales volume, market penetration or other contingency and under what circumstances the franchisee's territory may be altered (Item 12D). Restrictions or conditions imposed by the franchisor on the goods or services that the franchisee may sell or that limit the customers to whom the franchisee may sell goods or services (Item 16).	Statement as to whether the franchisee is limited in the goods or services which may be offered by him to his customers (Sec. 5(2)(m)) Statement as to whether franchisees or subfranchisors receive any exclusive rights or territory and if so, the extent thereof (Sec. 5(2)(r))	Indication of any exclusive rights (Art. 1(6)(1))	Indication of whether the franchisee is guaranteed exclusivity or preference for a given business territory and if so what conditions apply (Art. 3(X)(a)) Indications of the possibilities for the franchisee to make sales or render services outside his/her territory, or to export (Art. 3(X)(b))	Particulars of any restrictions, e.g. territorial, or offer on competing franchisees, imposed on the franchisee (Sec. (vi)(d))

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Training programmes	Statement disclosing the type and nature of any training programme offered by the franchisor, if any, and any cost which should be borne by the franchisee (Sec. 1(a)(18))		Statement disclosing existence of any written agreement or commitment, or any public expression of intention, made by the franchisor, any officer of the franchisor, or the franchisor's parent firm or ultimate controlling person, if any, to dispose of the corporation or partnership, or the majority (controlling) interest of such corporation or partnership which is identified as the franchisor (Sec. 4(a)(10)).	The training programme of the franchisor as of the end of the last fiscal year and of a more recent date, including, <i>inter alia</i> the charges to be made to the franchisee and who must pay travel and living expenses of the enrollees in the training programme (Item 11E).	Statement as to whether the franchisee is able to sell the franchise and if so, what conditions, if any, attach to the sale (Sec. 5(2)(j)). Statement of any past or present practice of or any intent of the franchisor to sell, assign or discount to a third party any note, contract or other obligation of the franchisee or subfranchisor in whole or in part (Sec. 5(2)(p)).		Indication of what is offered the franchisee by the franchisor in terms of training of the franchisee, specifying the duration, content and costs of such training, and in terms of training of the employees of the franchisee (Art. 3(XII)(c)-(d)).	Indication of initial and ongoing training to be provided (Sec. (vi)(h))
Agreements or covenants to dispose of corporation								
Levels of earnings		Statement of a specific level, average or range of sales, earnings, profit or loss for franchises of the franchisor with a factual basis in operating data for sales, earnings, profits or losses from franchise or non-franchise outlets of the franchisor and/or its affiliates derived from the most current information available to the franchisor and/or its affiliates, and with a reasonable basis for all claims or representations (Sec. 4(a)(11)).	An earnings claim made in connection with an offer of a franchise must be included in full in the Offering Circular and must have a reasonable basis at the time it is made; if no earnings claim is made, the Offering Circular must contain the negative disclosure prescribed in the instruction to UFOC Item 19 (Item 19A). An earnings claim shall include a description of its factual basis and the material assumptions underlying its preparation and presentation (Item 19B).	If any statement of estimated or projected franchisee earnings is used, the data on which it is based (Sec. 5(2)(q)).				Where written projections are provided in respect to levels of potential sales, income, gross/net profits or other financial projections etc., from the franchise or franchises of a similar nature, particulars of the basis/assumptions upon which the representations are made shall be provided (Sec. (x)(a)). Each page of the projections should be qualified in respect of such basis/assumptions (Sec. (x)(b)). A clear statement whether or not depreciation and any salary/wages for the franchisee and the cost of service loans are included (Sec. (x)(c)).
Study of the market concerned						Description of the situation of the market in general and of the local market in particular for the goods or services which are the subject-matter of the contract, as well as of the prospects for development of this market (Art. 1(4)(2)).		

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Franchisee participation				Indication of the franchisee's obligation to participate personally in the direct operation of the franchise business and whether the franchisor recommends participation (Item 15).	Statement indicating whether the franchisee is required to participate in a franchisor sponsored promotion or publicity campaign (Sec. 5(2)(s))			
Insurance					Statement as to whether the benefit of any patent or liability insurance protection of the franchisor is extended to the franchisee (Sec. 5(2)(l))			
Settlement of disputes				Summary of the provisions of the franchise and other agreements dealing with dispute resolution (Item 17)	Statement as to whether any procedure has been adopted by the franchisor for the settlement of disputes between the franchisor and franchisee (Sec. 5(2)(u))			
Duration, renewal modification or termination.	Statement disclosing the term of the agreement and whether such term is or may be affected by any agreement (including leases or subleases) other than the one from which such term arises; conditions of renewal or extension by franchisee and under which franchisor may refuse to renew or extend; conditions under which franchisee and franchisor may terminate; obligations of franchisee after termination and after expiration; conditions under which franchisor may repurchase the franchise; conditions under which the franchisee and the franchisor may assign or sell all or any ownership of the franchise or of its assets, conditions under which the franchisee and the franchisor may modify; the rights of the franchisee's heirs or personal representative upon the death or incapacity of the franchisee; the provisions of any covenant not to compete (Sec. 1(a)(15))			Summary of the provisions of the franchise and other agreements dealing with termination, renewal, transfer and other important aspects of the franchise relationship (Item 17).	Statement of the conditions under which the franchise agreement may be terminated or renewed, refused, or repurchased at the option of the franchisor (Sec. 5(2)(i)) The provisions governing withdrawal from the franchise agreement (Sec. 5(2)(x)) The provisions relating to the right to rescind the franchise agreement (Sec. 5(2)(y))	Indication of the duration of the contract proposed, of the conditions for renewal, termination and assignment of the contract (Art. 1(5)(1))		Summary of terms and conditions relating to termination, renewal, goodwill and assignment of the franchise (Sec. (v)(g))

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Post-termination						Franchisee's situation after expiry of the franchise contract as to know-how or industrial secrets which the franchisee has had access to under the franchise and involvement in activities which would compete with the franchisor's activities (Art. 3(XIV))	
Model contract			A copy of all agreements proposed for use or in use in the state regarding the offering of a franchise, including the franchise agreement, leases, options and purchase agreements (Item 22)	A copy of the typical franchise contract or agreement proposed for use or in use in Alberta (Sec. 5(2)(e))		A model of the standard franchise contract and, if applicable, the standard franchise precontract adopted by the franchisor, in full and including the respective annexes and terms of validity of the contract (Art. 3(XV))	

Most of the items included in the above table are items which could be of relevance to a prospective franchisee in the evaluation of the franchise offered. It is, however, submitted that what is important is not so much the sheer quantity of information furnished as its quality: too much information might even be confusing, particularly to someone who is new to business, even if admittedly the amount of information necessary for a prospective franchisee with no business experience might well be very different from the amount of information that a prospective sub-franchisor, who often has considerable experience, would judge to be necessary. Any instrument that is intended to cover both situations would have to create a balance between these different needs. Furthermore, the right of the franchisor to keep certain information confidential must not be infringed.

II. CHOICE OF LAW AND JURISDICTION

In the context of the preparation of a uniform instrument for franchising consideration must be given to the extent to which the problems which arise in relation to choice of law and jurisdiction are specific to franchising. From a brief examination of the issues which arise it would appear that they are not specific to franchising, but exist also in relation to other types of agreement. One of the issues commonly identified as a source of abuse in franchise relationships is that of choice of law and jurisdiction. The reason for this is that in the majority of cases franchisors will impose their own law and this places franchisors at an advantage vis-à-vis the franchisees or sub-franchisors who in most cases will have little or no knowledge of that law.

The choice of the franchisor's law as the law applicable to the contract could be seen as an expression of the will of the parties. In view of the different bargaining position of the parties to a franchise agreement, such an assertion could however be questioned. It could, in fact, be argued that the agreement is more in the nature of an adhesion contract and that the franchisee is therefore in the position of having to either take it or leave it. The situation will no doubt vary from case to case, some franchisors being more willing than others to have a law other than their own apply to the contracts. There are, however, those that are reluctant, not the least because having franchise outlets or sub-franchisors in a series of different countries would then mean having just as many different laws applying to their contracts.

Taking this point one step further, a situation might be envisaged where more than one law is applicable to the same contractual relationship. This question is related to that of the nature of the franchise agreement. Is it an agreement of a type which will fit into any one of the already established categories, or is it a new type of agreement which it is not possible to include in any such category? Is it a single agreement or is it a series of separate agreements, each of which could in theory have a different law applicable to it? Is it a divisible contract with the consequence that even if it is a single contract different parts of it could be governed by different laws? What is the situation when the parties do not provide for an applicable law? Could also in this case more than one law be applicable to the contract?⁽³¹⁾

(31) For a discussion of this point, see M. HIESTAND, *Die international-privatrechtliche Beurteilung von Franchiseverträge ohne Rechtswahlklausel*, in *Recht der internationalen Wirtschaft* 1993, p. 173 ff. The author discusses the question of which law should be considered to be the law of closest approximation in franchising contracts, particularly as regards trademark licences. He arrives at the conclusion that it should be the franchisor's law which should be applicable, as otherwise there is a risk that franchisees of the same franchisor located in different countries could be ruled by different laws, which is a situation the author feels could be detrimental to the unity of the franchise system. See also Ch. WILDHABER, *Franchising im Internationalen Privatrecht*, St. Gallen 1991, p. 70 ff. and M.G. WITTHAUS/S.M. WIERZBA, *Mercosur: Conflictos de leyes que*

There is, in fact, nothing to prevent parties from agreeing to have more than one law apply to their contract, such as when parties agree that the contract should be governed by one law and special questions under the contract should be governed by another law. If the parties have referred to more than one law, the validity of such an agreement will depend upon the type of contract to which it applies and upon the interest underlying such a choice.⁽³²⁾ Article 3(1) of the 1980 *Rome Convention on the Law Applicable to Contractual Obligations* covers this case by providing that "[...] By their choice the parties can select the law applicable to the whole or a part only of the contract", as does Article 7(1) of the *Draft Inter-American Convention on the Law applicable to International Contractual Arrangements* currently being prepared by the Organization of American States. Clearly what the parties are allowed to do and the extent to which any choice made by the parties will be accepted will depend on the proper law of the contract.

The question of choice of law and jurisdiction was addressed in the survey conducted in cooperation between the *Committee on International Franchising of the International Bar Association Section on Business law (Committee X)* and Unidroit with a view to the preparation of a legal guide to master franchise agreements. This survey did not examine the situation where more than one law is applicable to a franchise agreement, but instead covered more common issues such as the willingness of courts in the countries considered to accept the choice of law made by the parties, which law is in general that chosen, how the courts are likely to proceed in the application of a foreign law, and problems associated with the enforcement both of decisions rendered by courts and of arbitral awards.⁽³³⁾

The picture that emerged did not vary greatly from one country to the other. There was a general acceptance of the freedom of the parties to choose the law they wanted to apply to the contract,⁽³⁴⁾ and in general respondents felt that national courts were not reluctant to apply a foreign law. The means by which courts obtain information as to the content of foreign laws varied, a majority of countries however admitting expert evidence. One point which would merit consideration in this connection is whether the cost or difficulty of obtaining information on the law of a particular nation is likely to influence the court, and also what effect the expense incurred in obtaining that information, which can be considerable, has on the possibility actually to apply the law chosen by the parties.

An interesting question in the context of master franchise agreements is whether the same law should apply to both the master-franchise agreement and sub-franchise agreements. The IBA/Unidroit survey indicated that it was both possible and usual to have different laws apply to the master franchise agreement and to the sub-franchise agreements, even if doubts were expressed by some respondents as to the advisability of having such an arrangement. If the situation referred to above, where more than one law is applicable to the same contract, were to be admitted also in the case of master franchise agreements, a very complicated spectrum of laws could result.

comprometen elementos de los contratos, con especial referencia al contrato de franchising, in *Revista de derecho Privado y Comunitario*, 3. *Contratos modernos*, Buenos Aires 1993, p. 477 ff.

(32) See O. LANDO, *The Conflict of Laws of Contracts - General Principles*, in *Recueil des Cours*, 1984, VI, p. 304 f. On the question of choice of law and mandatory rules of law in the case of franchise agreements, see E. JAYME, *Rechtswahlklausel und zwingendes ausländisches Recht beim Franchise-Vertrag*, in *IPRax* 1983, p. 105 ff.

(33) For the results of the survey as at 1 May 1993, see Study LXVIII - Doc. 6, which examined the answers from Argentina, Austria, Brazil, Canada, Hong Kong, Indonesia, Ireland, Italy, Korea, Mexico, Norway, New Zealand, Portugal, Singapore, Sweden, Switzerland, the United Kingdom, the United States of America and Yugoslavia.

(34) With the exception of certain areas of law for which the local law would always be applicable, such as real estate law, criminal law, competition law, intellectual and industrial property law and in general any law which could be considered to be a law of public policy.

In general where no law had been chosen by the parties the survey indicated that courts would be most likely to apply their national law, even if in certain cases the application of one law rather than another would depend on factors such as where the contract was to be performed or where it had been concluded, or on which law was the law of closest approximation.

Courts in practically all the countries examined were seen as being likely to accept jurisdiction when no law had been chosen by the parties, although again in some cases conditions were attached to the acceptance, such as the defendant being domiciled in the country, the suit being brought by a foreign franchisor against a local sub-franchisor or one of the parties or the contract having connections with the country concerned. Such conditions are, however, clearly not specific to franchising.

The role of arbitration in franchising, and in international franchising in particular, would need to be considered further, although again it is the proper law of the contract which determines what rules should apply. According to lawyers practising in the field of franchising arbitration is gaining favour with the franchising community, as are other means of dispute resolution such as mediation. Whether or not there is such a tendency might, however, vary from country to country depending on the court system and the expense involved. In certain cases arbitration might even be more time-consuming and more expensive than the national courts. What also should be considered is the relative freedom of arbitrators as against judges in applying the law chosen by the parties. Arbitrators are not necessarily bound by a particular domestic law. There is, in fact, a growing tendency to permit arbitrators to base their decisions on principles and rules different from those adopted by State courts.⁽³⁵⁾ The *UNCITRAL Model Law on International Commercial Arbitration* even states expressly that "[t]he arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute".⁽³⁶⁾ This tendency would appear to be confirmed also by the IBA/Unidroit survey which indicated that courts would be more likely to recognise the validity and enforceability of a choice of law and forum clause in an arbitration provision.

The conclusion one can draw from the above brief considerations is that choice of law and jurisdiction is not a problem particular to franchising. It is true that it is an area which can be particularly complicated in franchise relationships, but it is much less certain that it is feasible to elaborate solutions of a more general nature specifically for franchising in any detail. It is instead suggested that choice of law and jurisdiction is more appropriately considered in relation to the other areas of investigation.

III. THE TRIPARTITE RELATIONSHIP OF MASTER FRANCHISE AGREEMENTS

Tripartite relationships such as that which exists between the franchisor, the sub-franchisor and the sub-franchisees in a master franchise arrangement give rise to problems which derive from the nature of the relationship itself.

⁽³⁵⁾ See M.J. BONELL, *Unification of Law by Non-Legislative Means: the Unidroit Draft Principles for International Commercial Contracts*, in *The American Journal of Comparative Law*, Vol. 40, 1992, p. 617 ff. (630 f.).

⁽³⁶⁾ Article 28(1).

The first of these problems concerns the use of trademarks, as in some jurisdictions restrictions or conditions are imposed by legislation, court decisions or customs upon the ability of the owner of the trademark (the franchisor) to grant the right to another (the sub-franchisor) to sub-licence the use of its trademark. This is particularly the case in common law jurisdictions such as the UK, Canada and Ireland, where sub-licensing could put the trademark in jeopardy. In some countries, such as Canada, it is possible for sub-franchisors and sub-franchisees to be registered as registered users, but they would not be permitted to transfer the right to use the trademarks. As regards the trademark there would in other words need to be a relationship between the franchisor and the sub-franchisees. The situation is different in the USA where there appear to be no such restrictions, but the master franchise agreement would have to grant the sub-franchisor the right to sub-licence. The question of whether sub-franchisors and sub-franchisees are entitled to institute proceedings for infringement or passing off against third parties is another issue which must also be considered in this context.

The franchisor as the owner of the intellectual and industrial property is normally seen as the owner also of the improvements made by franchisees, although this is a point of potential controversy. What instead appears to be less potentially controversial is whether a franchisor could enforce its rights and force the sub-franchisor or a sub-franchisee to stop using its trademark after the termination, expiry or assignment of the master franchise agreement. The IBA/Unidroit survey revealed that this would be possible in the countries surveyed. Similarly, as the owner of the mark the franchisor would be able to prevent a sub-franchisee from using the trademark as a result of the sub-franchisee misusing it, despite the fact that the franchisor is not a party to the sub-franchise agreement.

An important issue concerns the existence of liability on the part of the franchisor for acts of the sub-franchisor and sub-franchisees simply as a result of the relationship which exists between them and of the control exercised by the franchisor, or as a result of their use of the trademark of the franchisor. It is, however, an issue to which approaches vary greatly, depending on how the franchise agreement is viewed. If, as has happened, it is considered to be comparable to consumer contracts the chances are that the liability imposed will be far greater than would be the case if it is seen as an agreement between independent entrepreneurs, each of which assumes liability for his actions. If the franchisee or sub-franchisor is seen as the agent of the franchisor the franchisor might again be found liable, as would undoubtedly also be the case if the franchise agreement were to be equated with an employment contract.

An issue raised is whether it should be possible for the franchisor to become a party to the sub-franchise agreements, albeit only in relation to specific issues such as the enforcement of obligations deriving from the sub-franchise agreement. The question is, however, whether the independence of both the sub-franchisor and the sub-franchisees might not be jeopardised if this were possible. The nature of the agreement might in fact be modified by the inclusion of a provision to this effect, even if such an inclusion were to be to the advantage of the sub-franchisees.

It is perhaps above all in relation to termination that difficult issues have to be resolved between franchisor, sub-franchisor and sub-franchisee.

The word "termination" is often used to cover what in reality is more than one situation, namely expiry of the contract, non-renewal, termination for breach and termination for good cause. The problems which arise in connection with these different situations are to a certain extent similar, although distinctions must be made between the different types of franchise agreement. As indicated above, intellectual and industrial property issues can be particularly complicated in master franchise agreements, depending on the provisions of the applicable law, and these issues will naturally be

brought forward into the termination situation: the rights, if any, of the franchisee to any improvements he has made to the franchise is a case in point.

The question of the ownership of the goodwill of the franchise is of great importance but is often not clearly regulated in franchise agreements, with the consequence that a large number of the disputes which arise in relation to franchise agreements concern precisely this.⁽³⁷⁾

Perhaps the most fundamental question relates to the legal effects of the expiry or non-renewal of the master franchise agreement, not only on the activity of the sub-franchisor, who would lose the rights granted by the agreement (e.g. the right to grant franchises to sub-franchisees, the rights to use the trademarks of the franchisor, etc.), but also on the sub-franchise agreements.

As the sub-franchise agreements derive from the master franchise agreement the question is whether they would automatically terminate as a result of the ending of the master franchise agreement. There does not appear to be any clear answer to this question. One view is that as the rights granted in the sub-franchise agreements were derived from the master franchise agreement the ending of the latter must inevitably result in the ending of the former as those rights no longer exist. Another view is that the sub-franchise agreements are not automatically terminated as the franchisor and the sub-franchisees have no contractual relationships as the sub-franchise agreement was concluded between the sub-franchisor and the sub-franchisees and not between the franchisor and the sub-franchisees.

In this context consideration should be given to possible differences between the normal expiry of the master franchise agreement, for which case it might be argued that sub-franchise agreements would in any case never be permitted to extend beyond the duration of the master franchise agreement, and termination as a result of breach on the part of the sub-franchisor. In the latter case it would be inordinately hard on the sub-franchisee to find that his contract is automatically terminated. The possibility to solve this problem by the incorporation of assignment of rights clauses or third party beneficiary clauses in the master franchise agreement, or by the incorporation of clauses in both the sub-franchise agreement and the master franchise agreement stating that the franchisor assumes all rights and obligations of the sub-franchisor, would need to be further considered.

The consequences of the development of a second network of sub-franchisees by a new sub-franchisor on the sub-franchisees of the first sub-franchisor should also be carefully considered. Complications in this respect would include possibly conflicting territorial exclusivity and problems for the franchisor in maintaining the quality standards of the performances of the sub-franchisees of the first sub-franchisor, and indeed of the first sub-franchisor as well if he were still to be operating in an interim period.

One question which has not been examined as closely as it would merit is that of good cause for the termination of a franchise. This refers to the situation where, as a result of a change in economic policy of the franchisor, franchises are terminated despite the fact that no breach of any contractual obligation is involved. This issue has been tried in the United States, but there would not appear to be any uniform policy on the part of the courts.⁽³⁸⁾ To a certain extent differences in evaluating whether the market withdrawal of the franchisor constitutes good cause might be due to

(37) For a discussion on this point, see R.A. DAVIS-COATES, *Goodwill and the termination or expiry of franchise agreements*, in *Journal of International Franchising and Distribution Law*, 1993, p. 150 ff.

(38) On this point see R.M. REYNOLDS, *Good Cause for Franchise Termination: An Irreconcilable Difference between Franchisee Fault and Franchisor Market Withdrawal?*, in *Brigham Young University Law Review*, 1992, p. 785 ff.

differences in legislation between the states, but the importance of the evaluation of the individual judge should not be underestimated.

The issues indicated above are a selection of those which are the most likely to lead to controversy in the tripartite relationship of master franchise agreements, but are not the only ones. At this stage it is difficult to estimate whether or not it would be possible to regulate these issues at international level, or indeed whether or not it would be appropriate to do so. Further consideration of these issues is necessary before any conclusion can be arrived at in this respect.

CONCLUSION

The purpose of this paper was to present in greater detail the areas which previous investigations had identified as those most amenable to treatment at international level. The conclusions which may be drawn from this brief exposé confirm the conclusions already reached, namely that the area most suitable is that of disclosure, that choice of law and jurisdiction is more appropriately dealt with only where necessary and not as a possible topic for separate treatment, and that certain problems which may arise in connection with the tripartite relationship of master franchise agreements need to be more carefully considered before any final decision is taken as to whether any, or all, of them could and should be solved at international level.

Prior to the preparation of any instrument on disclosure there are a number of questions which should be decided, such as the nature of the instrument to be prepared (international convention, uniform law or model law) and who the intended addressees of the instrument are. Would it be a model law which would apply only to the domestic scene, or would it also apply to international relations? The interest of an instrument might also depend on what decision is taken in this respect. While a model law catering only for domestic agreements would not be interesting to, for instance, the United States where domestic franchising is already heavily regulated, a model law catering for international relations might be of more interest.⁽³⁹⁾ Once these questions have been solved, it will be possible to decide the exact contents of the instrument, what items should be included and in what detail.

(39) H.B. LOWELL, W.A. SCOTT and L.J. PLAVE state in their article *Extra-territorial application of US franchise registration and disclosure laws in international franchise transactions* (*Journal of International Franchising and Distribution Law*, 1993, p. 8 ff.) that "[u]nder the current system, US franchisors are faced with a set of federal and state disclosure standards that were never meant to apply to international transactions; thus, the US franchisor trying to comply is faced with an impossible task of trying to divine the actual obligations that a government agency or court may later apply. Therefore, the US franchisor may never be certain that despite its best efforts, liability does not lurk just around the corner" (at p. 14).