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UNIDROIT

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A
MODEL FRANCHISE DISCLOSURE LAW

First session
(Rome, 25 - 29 June 2001)

Comments on the Draft Model Law and Draft Explanatory Report thereto
submitted by the International Chamber of Commerce (ICC)

Rome, May 2001

The draft Model Franchise Disclosure Law as proposed by UNIDROIT is an interesting attempt to harmonise the protection of the franchisees and the master-franchisees in their relationship with the franchisor. This draft is in line with some existing national legislation on franchise, such as the United States or France, although different in its formulation.

- **Article 2 (Definitions)**

It does not seem pertinent to assimilate the “master franchise” to the “franchise”. The master franchise is another type of franchise agreements, for which several contractual vehicles, governed by different sets of rules, could be used (i.e. mandate or distributorship).

- **Article 3 (Delivery of Disclosure Document)**

Should the prospective franchisee wish to examine the activities of the franchisees, who belong to the network, then the time limit of 14 days may seem insufficient.

- **Article 5 (Exemptions from obligations to disclose)**

Why the financial interests at stake between the franchisor and the franchisee (D to G) would justify an exemption from obligation to disclose?

- **Article 6 (Information to be disclosed)**

The obligations imposed upon the franchisor to disclose the names, business addresses and business phone numbers of “50” franchisees seems unjustified (1-I).

One could question the opportunity to develop in the disclosure document the information, which must actually be mentioned in the contract itself (1 L to N and 2).

It would be sufficient to authorise the prospective franchisee to collect any useful information from a limited number of franchisees selected on the list of the members of the network.

- **Article 10 (Remedies)**

If there were duress, it would be better to foresee the “cancellation” of the contract rather than its “termination”.

It is not pertinent to limit the deadline of action of the franchisee since he must be able to protect his rights when he finds out the consequences of the omission or the erroneous information.

Should he lack due diligence, by reacting tardily, then the judge would take into account his attitude against him. He could have reacted more rapidly if the consequences of the omission or the erroneous information had been really prejudicial to his interests.