International Franchising

There are basically three main ways of carrying out international Franchising: a Master Franchise, an Area Development Agreement and a Joint Venture.

1. Master Franchise Agreement ("MFA"):

A master franchise relationship is where a Franchisor from Territory B (e.g. USA) grants to a Master Franchisee the right to grant Franchises to Franchisees within Territory A (e.g. Ireland) (i.e. the right to sub-license). In this event the Master Franchisee is itself a Franchisor for Territory A rather than a Franchisee.

The Franchisor will train the Master Franchisee how to carry on the Franchis**ing** business (e.g. how to recruit Franchisees). The Franchisor itself may train the Franchisees recruited in Territory A by the Master Franchisee to carry on the Franchis**ed** business (e.g. selling hamburgers). Alternatively the Franchisor may train the Master Franchisee how to train its own Franchisees to carry on the Franchised business.

The financial and business structure of a Master Franchise will typically involve the following:

1) An Initial Master Franchise Fee: The amount is for negotiation. The amount is however for negotiation. Initial Master Franchise Fees range from £1m to £1.00.

2) Monthly Master Franchise Fees: Typically these might involve a sharing with the Franchisor of the Initial Fees paid by Franchisees to the Master Franchisee and of the Monthly Service Fees (e.g. 5% of Gross Turnover) paid by Franchisees to the Master Franchisee. Again the amounts are for negotiation (and may depend on the size of the Initial Master Franchise Fee) and I have seen everything from 50/50 to nil.

3) There will be a Development Schedule in the usual way. The same considerations as to termination or loss of exclusivity arise if the Development Schedule is not reached.

4) The term is likely to be 10 or 20 years with renewals.

5) The Franchisor is supporting the Master Franchisee in the Master Franchisee's operations as a Franchisor. It is up to the Master Franchisee to support his Franchisees in respect of the Franchised business.

2. Area Developer Agreement ("ADA")

An ADA is a facilitating agreement for a developer to become a Franchisee of multiple units. He has no right to sub-license and all units must be opened by the Developer himself as Franchisee. A separate Franchise Agreement ("FA") is entered into in respect of each outlet.

The FA's should survive independently from the ADA. Certainly on the expiration of the ADA the FA's will continue. From the Developer's aspect it is preferable not to have cross-termination rights either between ADA and FA's or between each FA (although some events (e.g. insolvency) will give a right to terminate each Agreement).

As to comparison with the Master Franchise relationship:

1) The Initial Development Fee is for negotiation. It is not unusual for the Initial Development Fee to be calculated at the rate of half of the standard Initial Franchise Fee for an FA times the number of outlets being opened in the first few years with the balance of the Initial Franchise Fee being paid on the opening of each outlet or the signing of each FA. These should however be subject to the Initial Development Fee being a reasonable amount.

2) The royalties payable are governed by each FA.

3) There is invariably a Development Schedule.

4) The term is not usually less than 10 years for a national ADA for a large country.

5) The Franchisor is supporting the Area Developer in the Developer's operations as a Franchisee. This can lead to problems with logistics in respect of support from one country to another. That is why where long distances are involved it is more usual, certainly in Europe, to grant Master Franchises. A Master Franchise will also more usually reflect the nature and profile of the person in Territory A (who is likely to be an entrepreneur). The principal obligation under every FA is that the Franchisor must religiously follow the System as dictated by the Franchisor which can be uncomfortable for seasoned, experienced businessmen. Having said that there are a number of major companies especially in USA which are operators of multiple Franchised operations.

3. Joint Venture ("JV"):

JV's are quite rare. A JV is entered into when the Franchisor wants a stake in the Master Franchisee or the Area Developer in Territory A or when the prospective Master Franchisee or Area Developer needs financial assistance to buy or carry on the business.

It is not usual for the ownership of any of the intellectual property rights (trade mark, know-how, copyright) to be transferred to the JV company.

Invariably the JV company will enter into either an MFA or an ADA with the Franchisor (both of which are licences).

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