

DB/CA

2008

PRIVATE & CONFIDENTIAL

Dear []

Master Franchise for []

I am writing as requested to set out the main heads for discussion in relation to negotiating the terms of a Master Franchise Agreement ("MFA").

1. Sub-Licensing:

An MFA is basically an arrangement whereby the person appointed ("the Master Licensee" or "Master Franchisee") by you (as Master Franchisor) grants individual franchises to Franchisees in the target country, in this case [].

2. Initial Fee and Financial Arrangements:

The Master Franchisee should pay an Initial Fee of whatever amount is economically appropriate for the grant of the MFA. As the Master Franchisor you might also receive a share of each initial fee received from Franchisees.

You should also be paid a part of the Continuing Management Fees payable to the Master Franchisee by its Franchisees. This will be the Master Franchise Service Fee (i.e. for continuing support by you). If appropriate, you will also need to make arrangements as to the price to the Master Franchisee for products and materials (if you are supplying the goods).

The Master Franchisee will also need to make arrangements with the Franchisees for an Advertising Levy. It is also sometimes the case that the Master Franchisee would make a recurring payment to you for international advertising (e.g. in-flight magazines on planes).

3. Franchise Agreement ("FA"):

The MFA should stipulate the form of FA to be used. You should use the English standard form as adapted. The FA should be governed by the law in the target country for obvious reasons. It will be necessary therefore for a local lawyer to confirm that the FA conforms with local law and will be fully enforceable in the target country. You should also speak with the Master Franchisee to see if any changes are necessary to accommodate local practices and/or customs.

4. Manuals:

It will presumably be necessary to translate the Franchisee's Manual. The Master Franchisee should advise whether any amendments or refinements are necessary to conform with local laws, practices and/or customs. Some Franchisors develop Master Franchise Manuals setting out how the Master Franchise is to be conducted by the Master Franchisee (e.g. how to run the business as a Franchisor, profile required of Franchisees, conducting of interviews, liaison with yourself etc.).

5. Term and Renewal:

The usual term for a Master Franchise is longer than a Franchise Agreement. Typically it may be ten or twenty years with a right of renewal. If you are concerned with the possible failure of the Master Franchisee you might make the length 5 years with 2 or 3 renewals. The wording of the right to renew will be on similar terms to your standard Franchise Agreement.

6. Exclusivity:

It is usual to grant exclusivity within the target Territory. Exclusivity may be lost or the MFA may be terminated if the Minimum Performance targets are not met (as to which see below). Exclusivity may also be lost in other defined circumstances (e.g. breach, if you decide not to terminate). I would only grant one Territory at a time to see how the Master Franchisee performs. Other territories can be dealt with by an option (on payment of an option fee) with a further Master Licence Fee becoming payable on the option being exercised. A further Master Franchise Agreement will also need to be entered into in respect of each additional territory.

7. Minimum Performance Targets:

So that you can keep the Master Franchisee on its toes it is usual to provide Minimum Performance targets. They should be both annual and cumulative targets. They should be realistic but should also provide for the proper development of the Franchise in the Territory. Failure to meet Minimum Performance Targets should result in either a) termination; b) loss of exclusivity or c) minimum payments to you (i.e. as if the targets had been met).

8. Consequences of Termination:

If the MFA is terminated there should be provision for what is to happen to the unit Franchise Agreements thereafter. It is usual for the Master Franchisor to have an option to take an assignment of those (or some of them) to itself or its nominee (e.g. a new Master Franchisee).

9. Granting Franchisees:

You may wish to provide in the MFA (or else in the Manual: see above) exactly how the Master Franchisee should attract and recruit franchisees and deal with them during the Term and other matters relevant to the conduct of the Business by the Master Franchisee.

10. Choice of Law:

The MFA may need to be governed by the law in the target country with disputes settled in the Courts of that country or by arbitration. Alternatively English law and the English Courts may be used. If English law and English Courts are chosen we will need to check that judgments will be fully enforceable in the target country under the relevant legislation. The MFA should also be checked out by a local lawyer before it is signed off to ensure that there is nothing in it which poses difficulties under local law (e.g. formalities for signing).

11. MFA/FA Interface:

The MFA and FA should interface completely in so far as is possible and necessary. Certain of the provisions in the MFA will be virtually identical to the standard Franchise Agreement, *mutatis mutandis*. I have a standard template which will need to be customised but which reflects the present terms of my standard Franchise Agreement. These will include accounts, records and report provisions, provisions for termination, certain of the intellectual property provisions, consequences of termination, non-competition clauses, secrecy clauses and the boiler plate clauses.

12. Intellectual Property:

You should make sure that your trade marks are registered in the target country. We will also need to check out what licensing formalities are applicable in the target country for trade marks.

We will also need to check what is the current system for protection of copyright in the target country. This is obviously of prime importance for the protection of your written materials and the Manual.

13. Currency:

You should stipulate in what currency payments should be made and, since this is a long term agreement, also provide exchange control provisions. You will also need tax provisions in respect of any withholding or other taxes.

14. **Sale of MFA:**

You will have an unfettered right of sale. The Master Franchisee will have similar rights of sale to those set out in your standard Franchise Agreement (e.g. You will have a pre-emption right and no sale can take place without your consent).

15. **Guarantee:**

You will probably wish to require a personal guarantee from the person who is the majority shareholder in Master Franchisee.

16. **Training and Opening Assistance:**

The Master Franchisee will need a) training as a Master Franchisee and b) direction as to how to train franchisees (unless you are going to do that).

You may also wish to make provision for assistance by you at the Master Franchisee's expense at the launch of the Master Franchise.

17. **Internet and Intranet:**

You will need to consider use of the internet by the Master Franchisee and its connection to your Website.

18. **Software:**

Are the Master Franchisee and its Franchisees going to use your System software? If so, we will need to prepare an appropriate licence.

19. **Ongoing Support:**

You will need to decide what you will provide by way of ongoing support for the Master Franchisee and at whose expense such support will be (e.g. telephone support for the Master Franchisee, air fares, daily rates for UK Executives in the target country, periodic inspections, further training etc).

I have endeavoured to identify the main heads. There will be other legal considerations and, no doubt, practical considerations. If you wish to discuss the project further before you meet with the Master Franchisee, do telephone me.

Best wishes

Yours sincerely

David Bigmore