

UNIDROIT
INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
=====

STUDY GROUP ON FRANCHISING

Model Franchise Disclosure Law

Comments and Proposal submitted by Mr Albrecht Schulz,
CMS Hasche Sigle Eschenlohr Peltzer (Stuttgart)

Dear Lena

Unfortunately, I shall probably not be able to attend the next session of the Study Group on 7-9 December 2000, and I could certainly not attend the session before 8 December. I therefore transmit you hereafter some observations which could also be handed out to the other delegates.

I have for quite some time, like other members of the Study Group, not seen a necessity for drafting a model franchise disclosure law or a similar instrument. My experience in national and international franchising over the last few years changed my mind, in particular in view of developments taking place in numerous countries, including the legislative efforts in some European countries. I am now strongly in favour of this UNIDROIT project, however with the following observations to the latest draft proposed for the Model Franchise Disclosure Law:

The present text should not be elaborated or even distorted, in particular not with the aim to render it unattractive and/or impractical. It should rather be cut down and simplified, in particular with respect to the following provisions:

ARTICLE 2

The two definitions of "franchisee" and "franchisor" should be deleted.

ARTICLE 3

The text of this Article as Article 5 should be put after present Articles 4 and 5.

From my point of view, all exceptions except the one exception in (F) should be deleted.

I do not see a need or a justification for all these exceptions since the franchisor normally has at its disposal a disclosure document, in particular not with respect to (A) and (B). Even the persons mentioned in these paragraphs are not necessarily in possession of all the information to be disclosed under Article 6.

ARTICLE 5

This Article as Article 3 should be put before present Article 4.

ARTICLE 6

I suggest putting a first more general sentence at the beginning of this Article which could read as follow:

"The franchisor shall provide all appropriate information to the franchisee in order to allow him a reasonable appreciation of the franchise proposed, in particular ..."

ARTICLE 6 (1) (A)

It should read "the legal name, address and form of the franchisor". Consequently, (B) should be deleted.

ARTICLE 6 (1) (F)

(ii) should be deleted.

ARTICLE 6 (1) (K)

I suggest modifying it as follows:

"Information about the franchisees that have ceased to be franchisees of the franchisor during the three fiscal years before the one during which the franchise agreement is entered into, with an indication of the reasons for which the franchisees have ceased to be franchisees of the franchisor, such as: refused renewal by the franchisor; terminated by the franchisor; not renewed or terminated by the franchisee; reacquired by purchase by the franchisor; otherwise reacquired by the franchisor;"

ARTICLE 6 (1) (L) (I)

should read as follows:

"The registration and/or the application for registration, if any, and"

ARTICLE 6 (1) (N) (II) (BB)

I suggest deleting this sub-paragraph.

ARTICLE 9

I suggest deleting the last words "or in the mother tongue of the franchisee".

ARTICLE 10 (3) (A)

I suggest shortening the two-year period to a one-year period.

I would also like to add some remarks to the other observations you have received and distributed:

STUDY LXVIII – Doc. 22

I do in principle agree with the observations made by Prof. Kozuka, in particular with his general remark under 1.

STUDY LXVIII – Doc. 24

I personally also agree with the position taken and presented by the European Franchise Federation. I think it would be useful to say that potential legislator should take into account whether there are self-regulations made by the profession which are effectively applied and which have therefore helped to prevent any significant abuses.

STUDY LXVIII – Doc. 23

I do not agree with the observations presented by Philip Zeidman, in particular not with the first paragraph of his "Proposed Insert".

I hope the session on 7-9 December 2000 is productive.

Yours sincerely

Albrecht Schulz
Rechtsanwalt

----- Internet Header -----

Date: Thu, 30 Nov 2000 17:05:59 +0100

From: "Carola Wezel" <Carola.Wezel@cmslegal.de>

To: <106127.256@compuserve.com>

Subject: Study Group on Franchising - Model Franchise Disclosure Law