



To: Clients and Friends

From: David Holmes

Subject: **Taiwan Franchise Disclosure Guidelines**

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As those of us practicing regularly in the field of international franchising know, the list of countries which regulate franchising is constantly expanding.

Although the specific provisions of each countries' laws and regulations differ (as do the policy choices and assumptions behind them) the trend is clear: Increased regulation of at least the franchise award process, generally founded on some sort of disclosure requirement, sometimes allied with express or implied regulation of the franchise relationship itself, and occasionally supported by a registration or governmental review requirement.

Taiwan is one of the more recent nations to adopt such a regulatory structure, although in this case the regulations are relatively limited, at least as compared to those of other countries.

As published in the U. S. on August 20, 2004, the Taiwan Fair Trade Commission has released amended "Standards Governing Disclosure of Information by Franchisors." (Note the non-standard spelling of Franchisor in at least the translated version of the Standards.)

The main provisions of the Standards include the following:

Disclosure

Ten days before the Franchisor and the Franchisee enter into contracts, the Franchisor must provide written information to the prospective Franchisee in the following areas:

1. Historical information on the Franchisor, including its "business items (and) operating capital." (But apparently not P & L information or other elements of GAAP reports?)



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2. Information regarding management personnel.
3. Information regarding fees to be paid and related contracts.
4. Information on intellectual property rights (“trademarks, patents, copyrights and so on”), including content and duration of those rights, and restrictions with respect to the Franchisee.
5. Contents and methods of management assistance, training, etc. to be provided to the Franchisee.
6. “The franchiser’s management program concerning the franchisee’s areas of operation with those of other franchisees or directly operated stores.” Query as to whether or not this is intended to involve a disclosure re territorial rights.
7. Lists of Franchisees and statistical information (but not contact information) regarding terminated (but, apparently, not assigned, repurchased, non-renewed, reacquired or closed) franchised units.
8. “. . . restrictions over the business relationship between the franchiser and franchisee in their operations of businesses.” Is this intended to cover, for example, restrictions on the goods and services a Franchisee may offer, restrictions on placement of similar units, restrictions on Franchisee marketing, operations matters (how long one cooks the chicken), etc.?
9. Information regarding “means to modify, terminate and/or rescind” the franchise agreement.

Review Period

Before the Franchisor signs the franchise agreement, it must give the prospective Franchisee five days to review the proposed contract.

Legal Consequences for Non-Compliance

Non-compliance with the Standards, which involves “concealment or delaying disclosure” (which appears to include non-compliance with the review period re the Franchise Agreement) and which “is clearly unfair to the trading counterparts and which is sufficient to affect the trading order of the franchising operations” is a violation of the Taiwan Fair Trade Act.

Note that this provision may introduce a “materiality” element, not expressly included in North American, or many other, franchise disclosure laws.

Conclusion

Obviously, the Standards, at least to the eye of a North American-based franchise specialist, contain a number of ambiguities, and it will be interesting to see how they are ultimately resolved. In addition, on its face, the Standards may apply to awards of Master Franchises covering all of Taiwan, as well as awards of unit franchises by Franchisors based either in Taiwan or abroad.

On the other hand, the relatively small number (compared to U.S. and Canadian practice) of areas covered in the disclosure is remarkable, and the absence of specific franchise relationship provisions is refreshing.

As always, please let us know if you need further information or have any questions.

This material is presented for discussion and general background purposes only. It should **not** be used or relied on without first consulting an attorney who is an experienced international franchise law specialist, and discussing with him/her the specific facts and applicable law, as well as any contemplated transactions or otherwise.

