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*What does the franchise agreement reveal about the Franchisor?*
**By Edward (Ned) Levitt***

A franchise agreement is a "Franchisor's document", which is to say that its principle intent is to protect the interests of the franchisor and the system. While there are important elements for franchisees in the franchise agreement, like the term, renewal rights, the territory, exclusivity, etc., the bulk of the franchise agreement deals with what franchisees must do, cannot do or how they will suffer if they breach the agreement.

Unquestionably, a franchise agreement is a lopsided document, which is to be expected, as the franchisor needs to protect the important elements of the system for all concerned, including other franchisees in the system. Having said that, there are industry norms and standards to measure such "lopsidedness". To the extent and how a franchise agreement deviates from these norms and standards, can speak volumes about a franchisor, its intentions and what it will be like being a franchisee of such a franchisor.

A poorly worded and disorganized franchise agreement, means the franchisor has not made the commitment of time and money to learn the basics of franchising and hire a legal advisor who has expertise in franchising. As promising as the business being franchised may be and as knowledgeable as the franchisor may be in that business, for franchisees to be successful and for the system to flourish, the franchisor must become expert in franchising as well and surround themselves with the right professionals.

While defaults by the franchisee and their consequences will and should be dealt with in the franchise agreement, lack of adequate notice to cure the defaults and consequences that are too severe, speak to a franchisor who is too tough minded and/or insecure. The best franchisors are ones that handle such matters firmly but fairly.

Too many provisions that call for excessive payments from franchisees for such things as support services, renewal fees, transfer fees, training fees, approval fees, etc. point to a franchisor who may be more interested in its bottom-line than the franchisees. Similarly, provisions that transfer all of the benefits of volume purchases of inventory and supplies by franchisees to the franchisor are indicative of a franchisor who may be simply greedy.

In healthy franchise systems, the resale of franchises by franchisees, to capitalize on success or because of life changes, is seen as a normal part of the growth and functioning of the system. Provisions in a franchise agreement which make such resales difficult, such as the approval of the franchisor not only being required but also being in the sole discretion of the franchisor may indicate that the franchisor is overly controlling.

Consistency in a franchise system is important and necessary. So, one would expect that franchisees would not be permitted to easily deviate from the system standards. On the other hand, extensive provisions in a franchise agreement, particularly a new system, requiring the franchisee to implement substantial changes to how the business is operated at the whim of the franchisor may be indicative of a franchisor who lacks confidence in what they have created.

Where franchisors have multiple corporations owning or controlling various aspects of the system, there is a concern that the franchisor is too insecure and is putting too much emphasis on protecting its assets from the possible failure of the system. This occurs when the system trade marks, premises leases, patents, etc. are owned by separate but related corporations. If the franchisor does not have faith in the system, what does that say about its commitment to the success and welfare of its franchisees?

There are many, many other areas of franchise agreements which help paint a picture of the thinking and attitudes of the franchisors who created them. To bring that picture into focus, prospective franchisees need to have the franchise agreement reviewed by lawyers who really know franchising. The effort and expense will be well worth it and will allow the prospective franchisee to gain insight into the franchisor that is hard to come by otherwise.

Once that insight is obtained, then the prospective franchisee has several options. The most obvious one is to pass on that franchise and look to another one to buy. To be certain, the most unsatisfactory agreements are usually produced by the most inexperienced franchisors, which is a dangerous category of franchisor from the prospective franchisee's perspective. However, these franchisors are the most likely to agree to changes in their agreements. The right changes to a franchise agreement, no matter what the franchisor's character, motives and resources are, can go a long way to minimizing the negative consequences for the franchisee down the road.

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