

# Dokumentation

## Model Franchise Disclosure Law

Rome, September 2002

### Preamble

*The International Institute for the Unification of Private Law (UNIDROIT),*

*Recognising* that franchising is playing an ever greater role in a wide range of national economies,

*Being mindful* of the fact that in the legislative process, State legislators may wish to consider a number of different elements, including

- whether it is clear that there is a problem, what its nature is, and what action, if any, is necessary;
- whether prospective investors are more likely to protect themselves against fraud if they have access to truthful, important information in advance of their assent to any franchise agreement;
- whether the nation's economic and social interests are best served by legally requiring a balance of information between the parties to a franchise agreement;
- whether there is a pattern of abusive conduct, or whether this conduct is isolated or limited to particular industries;
- the nature of the evidence of abuse;
- whether existing laws address the concerns and whether they are adequately applied;
- whether an effective system of self-regulation exists;
- the financial burden the new legislation will place upon franchisors and investors as compared to the benefits of legally required disclosure;
- whether the proposed legislation inhibits or facilitates entry to franchisors, and its effect on job-creation and investment; and
- the views of interested organisations, including national franchise associations;

*Recalling* that State legislators may want to adapt suggested provisions, especially with regard to the enumerated disclosure items, in response to specific circumstances of, or established methods of legislation in, each State;

*Recalling* that the text of the Model Law is accompanied by an Explanatory Report which, with a view to assisting legislators, explains the purpose of the provisions;

*Finding* that experiences with disclosure legislation has on the whole been positive;

is pleased to place the *Model Franchise Disclosure Law* and the Explanatory Report thereto presented in this document and prepared by a Committee of Governmental Experts convened by UNIDROIT at the disposal of the international community

as an example that is not compulsory for States legislators and

as an instrument intended to be a recommendation for States that have decided to adopt franchise specific legislation.

### Model Franchise Disclosure Law

#### Article 1

##### (Scope of Application)

(1) This law applies to franchises to be granted or renewed for the operation of one or more franchised businesses within the [State adopting this law].

(2) Except as otherwise expressly provided in this law it is not concerned with the validity of the franchise agreement or any of its provisions.

#### Article 2

##### (Definitions)

For the purposes of this law:

**affiliate of the franchisee** means a natural or legal person who directly or indirectly controls or is controlled by the franchisee, or is controlled by another party who controls the franchisee;

**affiliate of the franchisor** means a natural or legal person who directly or indirectly controls or is controlled by the franchisor, or is controlled by another party who controls the franchisor;

**development agreement** means an agreement under which a franchisor in exchange for direct or indirect financial compensation grants to another party the right to acquire more than one franchise of the same franchise system;

**disclosure document** means a document containing the information required under this law;

**franchise** means the rights granted by a party (the franchisor) authorising and requiring another party (the franchisee), in exchange for direct or indirect financial compensation, to engage in the business of selling goods or services on its own behalf under a system designated by the franchisor which includes know-how and assistance, prescribes in substantial part the manner in which the franchised business is to be operated, includes significant and continuing operational control by the franchisor, and is substantially associated with a trademark, service mark, trade name or logotype designated by the franchisor. It includes:

(A) the rights granted by a franchisor to a sub-franchisor under a master franchise agreement;

(B) the rights granted by a sub-franchisor to a sub-franchisee under a sub-franchise agreement;

(C) the rights granted by a franchisor to a party under a development agreement.

For the purposes of this definition "direct or indirect financial compensation" shall not include the payment of a bona fide wholesale price for goods intended for resale;

**franchise agreement** means the agreement under which a franchise is granted;

**franchised business** means the business conducted by the franchisee under a franchise agreement;