

Renewals, Resales, Transfers & Buybacks



Renewals, Resales, Transfers & Buybacks

- Introductory Remarks (1) JYA
- Definitions (4) JYA – 1st 2
- Essential Documents re Transfer (3) DS
- Transfer Scenario (2) DS
 - Disclosure Requirements (1)
 - Exemptions from Disclosure (1)

Renewals, Resales, Transfers & Buybacks

- Disability and Death (2) DS
- Right of First Refusal (2) DS
- Essential Documents re Renewal (1) JYA
- Renewal Scenario (2) JYA
 - Disclosure Requirements (1)
 - Exemptions from Disclosure (1)
- Conclusion and Questions (1) DS



Introductory Remarks

Definitions

- Renewals
- Resales
- Transfers
- Buybacks

Renewal

- ❑ **Not** a renewal of the franchise agreement, renewing the rights under the agreement
- ❑ The renewal of the rights granted to a franchisee under a franchise agreement, the term of which is due to expire

Resale

- A grant of franchise and sale by the franchisor of a previously franchised unit. The franchised unit is acquired by the franchisor through:
 - exercise of option to purchase upon termination
 - exercise of right of first refusal on proposed transfer by franchisee or
 - upon non-renewal of the franchise



Buybacks

Transfer

□ Includes:

- A sale or assignment of the assets of the franchised business
- A sale or assignment of the shares of a franchisee which is a corporation
- The granting of security
- Corporate re-organization

Documents Required on Transfer

- From New Franchisee
 - Assignment and Assumption of Franchise Agreement and Sublease or new Franchise Agreement, Sublease and General Security Agreement
 - Personal Guarantees from shareholders/partners
 - Confirmation of insurance
 - Acknowledgement re renovations/upgrading to be undertaken
- Payment of training fee, if any

Essential Conditions for Transfer

- approval of proposed transferee
- no existing default under the Franchise Agreement or any other agreement with the Franchisor
- settlement of all outstanding accounts with the Franchisor, landlord and trade creditors of the Franchised Business

Essential Conditions for Transfer

- ❑ full and final release by the Franchisee and its shareholders/partners
- ❑ assignment and assumption of the franchise agreement or execution of a new franchise agreement
- ❑ transfer fee and/or reimbursement of costs and expenses
- ❑ training fee

Consent to Third Party

- ❑ qualifications of the proposed transferee
- ❑ reasonableness of the purchase price and terms of purchase
- ❑ reasons for the transfer and intentions of the franchisee post sale
- ❑ protection of confidential information and enforcement of non-competition covenants

Documents Required on Transfer

- From Departing Franchisee:
 - Assignment of Franchise Agreement and Sublease or mutual termination of franchise agreement and sublease
 - Consent of Landlord
 - Confidentiality and non-competition covenants
 - Full and final release of franchisor, directors and officers
 - Payment of all amounts owing to franchisor and affiliates
 - Confirmation of payment of all suppliers and other trade creditors
 - Payment of transfer fee



Transfer Scenario

Disclosure Requirements

- *exemption from disclosure on third-party transfer*
- **“WHEN IN DOUBT, DISCLOSE”**
- disclosure of “material facts” pertaining to operating outlet which is the subject of the transfer



Exemptions from Disclosure

Disability and Death

- ❑ transfer to surviving shareholders/partners
- ❑ transfer to family member on last shareholder/partner to die/become disabled
- ❑ compliance with general transfer conditions
- ❑ can provide for waiver of transfer fee in lieu of training fee, if training required
- ❑ franchisor may be required to provide transitional assistance

Right of First Refusal

- ❑ right of the franchisor to exercise right to purchase the interest offered to be purchased by a third party
- ❑ existence of this right may discourage offers to purchase from third parties
- ❑ allows franchisor to assume successful operating unit

Right of First Refusal

- Right is exercisable again if terms of offer to purchase change or sale to third party is delayed or not completed
- is it always exercisable by the franchisor? Can it be precluded under “good faith and fair dealing” provisions of the *Wishart Act*



Renewal Scenario



Disclosure Requirements

Exemptions from Disclosure

- Ontario Act:

- “(7) This section does not apply to,...

- (f) the renewal or extension of a franchise agreement where there has been no interruption in the operation of the business operated by the franchisee under the franchise agreement and there has been no material change since the franchise agreement or latest renewal or extension of the franchise agreement was entered into.”

Exemptions from Disclosure

- Alberta Act:
- “A renewal or extension of an existing franchise agreement.”



Conclusion and Questions
