



International Distribution Institute

IDI Annual Conference

Torino, June 2-4 2016

Workshop on:

**Franchisors' contractual remedies
before or when franchisees become
insolvent**



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**Workshop on: Franchisors' contractual remedies before or when
franchisees become insolvent,**

Torino, June 4, 2016

Speakers:

Omar Aljazy, AlJazi & Co., Amman;

IDI country expert for franchising in Jordan

Prof. Souichirou Kozuka, Gakushuin University, Tokyo;

IDI country expert for Japan

Juan Carlos Uribe, Triana, Uribe & Michelsen, Bogotá;

IDI franchising country expert for Colombia

Session chair:

Marco Hero, SGP Rechtsanwälte, Munich;

IDI franchising country expert for Germany



Introduction

- A key issue for franchisor is to obtain adequate securities for payment of fees, goods and services from (master) franchisee.
- Another issue is to maintain the goodwill acquired at franchisee's location or outlet. The franchisor may reserve the option to take over the outlet, equipment or furniture, eventually key staff.
- In master franchise agreements franchisor may take appropriate precautions in order to maintain control over the local subfranchisees' network in the target market.



A. Prior to signing a Franchising Agreement

- Adequate preselection of prospects
- Due diligence on the prospect
 - Background checks
 - Public research
- Statement and evidence of franchisee's solvency



B. Other parties involved

- Landlord
- Guarantors
- Banks
- Suppliers
- Franchisee's employees
- Subfranchisees in case of a masterfranchise



C. Aims of Franchisor vs. Franchisee

Franchisor wants to:

- preserve the location (or complete network of a masterfranchisee),
- the integrity of the brand,
- get another operator/franchisee/master in there as quickly as possible
- recover the royalty arrears.

Franchisee wants to

- either be fighting to stay open, or
- attempting to find another buyer for the location, or may have simply given up and is simply hoping to
- minimize its exposure under the guarantees
- seek damages from franchisor.



D. Recommended terms for franchise agreements

- Security interests
- Fiduciary duties
- Guarantors
- (no) Transfers of leases/licenses by franchisee
- Waivers
- Disclosure
- Events of default
- Termination
- Automatic transfers of lease/subfranchise agreements



E. Recommendations and Conclusion

A franchisor should be in a better position if it has taken the following steps:

- have proper due diligence process in place;
- check the trading of each franchisee to spot early warnings signs;
- include extensive termination rights and other appropriate terms in its franchise agreement;
- read up on the various local insolvency procedures in the target market in order to be prepared for the consequences of insolvency on the franchise arrangements;
- be prepared to be flexible and negotiate with insolvency officials;



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Thank you for “working” with us!

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