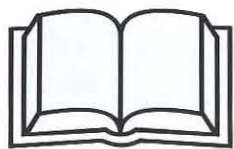


# Legal Brief



## A framework for master franchising

**There are many different elements to consider when negotiating the terms of a Master Franchise Agreement. Solicitors David Bigmore and Matthew Wanford give a brief overview of some of the key points**

A Master Franchise Agreement (MFA) is basically an arrangement whereby a Master Franchisee is appointed by the franchisor to grant individual franchises to franchisees in the target country. The franchisor will require the Master Franchisee to pay an initial fee of an appropriate amount for the grant of the MFA. In addition, the franchisor is likely to receive a share of each initial fee received by the Master Franchisee from individual franchisees. The franchisor will also wish to be paid some of the continuing management fees payable to the Master Franchisee by its franchisees. This becomes the Master Franchise Service Fee (i.e. for continuing support by the franchisor).

The MFA should stipulate the form of Franchise Agreement (FA) to be used. The FA should be governed by the law in the target country for obvious reasons. It will assist the

development of the franchise if a local form of FA is used. Adapted forms of overseas FAs are not usually very good sales tools.

The usual term for a Master Franchise is longer than a franchise. Typically it may be 10 or 20 years with a right of renewal. If the franchisor is concerned about the possible failure of the Master Franchisee, he might make the length five years with two or three renewals.

The Master Franchisee should advise whether any amendments or refinements are necessary to the franchise manual to conform with local laws, practices and/or customs. The franchise manual may need to be translated.

It is usual to grant exclusivity within the target territory. Exclusivity may be lost or the MFA may be terminated if the minimum performance targets are not met (as to which see below). Exclusivity may also be lost in other defined circumstances. It is wise only to grant one territory at a time to see how the Master Franchisee performs.

In order that the franchisor can keep the Master Franchisee on his toes, the franchisor usually sets minimum performance targets. These targets should be both annual and cumulative targets. They should be realistic but should also provide for the proper development of the franchise in the territory. Failure to meet these targets should result in termination, loss of exclusivity or minimum payments to the franchisor (as if the targets had been met).

There are other legal considerations including: dealing with intellectual

property and trademark rights; addressing the applicable currency; use of the franchisor's website; and rights of sale of the master franchise. Consideration should be given to seeking personal guarantees from the major shareholder in the company that holds the Master Franchise and addressing what should happen on termination. This is not an exhaustive list and therefore, as always, specialist advice should be sought. **FC**

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David Bigmore and Matthew Wanford represent David Bigmore & Co in association with **GOODMANDERRICK**, based in London and the North West. David sat on the British Franchise Association's Legal Committee and was the association's Special Adviser on the Trading Schemes Act.

Call David Bigmore on **01978 855 058**  
Or call Matthew Wanford on **020 7404 0606**