12 Points of Fair Franchising

AAHOA
Asian American Hotel Owners Association

An Educational Primer

Point 12

REVISED

A BEST-PRACTICE APPROACH TO DESIGNING, DEVELOPING, AND IMPLEMENTING BEST-IN-CLASS, MUTUALLY BENEFICIAL FRANCHISE SYSTEMS

REVISIONS TO POINT 12, UPDATED IN 2024

SALE OF THE FRANCHISE SYSTEM HOTEL BRAND(S)

REVISED

If a Franchisor sells one or more of its various hotel brands to another entity, the Franchisor should promptly give notice of the sale to its existing Franchisees and pledge to work with them and the new Franchisor owner to ensure the transition is as smooth as possible.

Each Franchise Agreement should also include a "Change of Control" clause to protect the Franchisees in the event of a purchase, sale, acquisition, or merger of one or more hotel brands between Franchisors.

Smooth Transition: To the extent possible, the prior Franchisor owner also should continue to honor its guest loyalty or rewards programs for the guests who stayed at the hotels it is selling to the new Franchisor owner. Alternatively, the prior Franchisor owner selling the hotels should transfer the points or rewards earned by such guests to another existing guest loyalty program of the prior Franchisor owner or a new program it establishes for the benefit of such guests.

The new Franchisor owner who purchased the hotel brand should similarly strive to ensure that the transition is a smooth one. Among other things, the new Franchisor owner should work closely with the existing Franchisee Association or Franchise Advisory Councils (FACs) for the hotel brand, or, if circumstances warrant, a newly created FAC to address all issues involving its purchase and ownership of the hotel brand. The new Franchisor owner should maintain the same or a higher level of quality and performance for the hotel brand as the prior Franchisor owner. If the new Franchisor fails to operate the hotel brand at the same or a higher quality level, the Franchisee shall have the right to exit the franchise system at no cost.

If a new Franchisor owner desires to change any system requirements for the hotel brand, it should work closely with the FACs, Franchisee Associations, and the Franchisees themselves before implementing any such changes and offer to pay or reimburse the Franchisees for the costs of making such changes. The new Franchisor owner should also honor the guest loyalty or rewards programs for the guests who stayed at the hotels it's purchasing. Alternatively, the new Franchisor owner should transfer the points or rewards earned by such guests to another existing guest loyalty program of the new Franchisor owner or a new program it establishes for the benefit of such guests.

SALE OF THE FRANCHISE SYSTEM HOTEL BRAND(S)

REVISED

Continued...

"Change of Control" Clause: In recent years, there have been several noted acquisitions and mergers of one or more hotel brands between Franchisors.

Each time a Franchisor has acquired one or more brand hotels of another Franchisor, the hotelier Franchisees have been the most impacted. The Franchisees generally have not been afforded an opportunity to exit their franchise agreements unless they pay high liquidated damages (LDs), sometimes costing hundreds of thousands of dollars or more, as mandated in their respective franchise agreements. Regrettably, for Franchisees in the hotel industry, there is no standard "change of control" clause in their franchise agreements, meaning they are not afforded a fair or equitable opportunity to decide their future options if their hotel brand is acquired by a different Franchisor – unless they pay the LDs.

Consequently, AAHOA submits that each franchise agreement should include a "change in control" clause that will permit all hotelier Franchisees to give thirty (30) days' prior written notice to voluntarily terminate their Franchise Agreements at any time within one (1) year after a "change in control" event has been finalized.

For example, a sample "Change of Control" clause that could be included in all hotel franchise agreements might read as follows (this sample is for educational purposes only*):

> "Change of Control" means (i) the direct or indirect sale or exchange, in a single or series of related transactions, by the board or shareholders of the named Franchisor of more than fifty percent (50%) of the voting stock of the company, (ii) a merger, acquisition or consolidation in which the named Franchisor is a party, (iii) the sale, exchange, or transfer of all or substantially all of the assets of the named Franchisor, or (iv) a liquidation or dissolution of the named Franchisor.

*AAHOA does not provide legal advice or representation to any individual persons or members. To the extent this resource contains information about the law that is designed to help the recipient understand or address his or her own legal needs, such information does not constitute legal advice or representation by AAHOA. AAHOA goes to great lengths to ensure the information it provides is accurate and useful but strongly recommends all persons and AAHOA members consult an outside lawyer and obtain professional advice and representation that is appropriate to their particular situation.

SALE OF THE FRANCHISE SYSTEM HOTEL BRAND(S)

REVISED

Continued...

Each Franchisor shall provide written notice to its Franchisees of the finalization of a Change of Control. Each Franchisee shall then have the right, without prejudice to its other rights or remedies, by giving 30 days' prior written notice, to voluntarily terminate this Franchise Agreement at any time within one (1) year after such Change in Control event has been finalized. Such voluntary termination by the Franchisee shall be without penalty or the payment of any damages (including liquidated damages), provided the Franchisee pays all fees and charges due under the Franchise Agreement and any other related agreement at all times until the effective termination date of the Franchise Agreement.