Maintaining control over the franchised locations, in case of termination of the franchise agreement

About the Panelist

Mercedes Clavell
Arco Abogados
(Barcelona)

Christophe Héry
Altaïr Avocats
(Paris)

George Alexandris
Bahas Gramatidis & Partners
(Athens)

Beata Krakus
UB Greensfelder
(Chicago)

The Topic

In franchise agreements, it can be very important for the franchisor, in the event of termination of the contractual relationship with the franchisee, to be able to maintain control over the points of sale, so as not to lose goodwill, image and reputation. To this end, franchisors must develop appropriate contractual strategies, that necessarily also involve the owner of the store (or shopping mall), which must be managed with care and caution during the phase preceding and following the termination of the franchise agreement. The speakers will discuss the best contractual solutions and the relevant risks and experiences.

The Agenda

- **Controlling the lease itself** - as a means to control the point of sale (subleasing to the franchisee and lease step-in rights).
- **Rights to acquire the franchisee** - as a means to control the point of sale.
- **The impact of a non-competition (or similar) clauses** on the franchisor’s ability to control the point of sale.

Controlling the Lease: Lease Step-In Rights

- Best practice: negotiate with the landlord upfront
- Spain: statutory restrictions on transfer
- France : 3 issues to deal with
  - express consent of landlord is required by the lease (and by civil code)
  - Nature of the Step-in right : option right to have the lease assigned vs right of 1st refusal
  - with or without financial consideration
- Business reality: landlord using franchise agreement termination as an opportunity to negotiate better lease terms?

Example: Lease Step-In Rights

ADDENDUM TO LEASE

This Addendum to Lease (“**Addendum**”) is entered into June 5, 2026, by and between Perfect Franchisee, Inc. (“**Franchisee**”) and Best RE Co. (“**Landlord**”) for the premises located at Rua Castilho 11, Lisbon, Portugal;

WHEREAS, Franchisee has executed a Franchise Agreement (“**Franchise Agreement**”) with Dreamy Franchise, LLC (“**Franchisor**”), and as part of said Franchise Agreement, the lease (“Lease”) for the franchised Dreamy store (“**Location**”) must contain certain provisions; and

NOW, therefore, Landlord and Franchisee hereby agree as follows:

1. Upon default, expiration or termination of the Franchise Agreement or the Lease, and upon notice to Landlord, Franchisor or its designee will have the option, without however any obligation, to assume the Franchisee’s obligations under the Lease, on the same terms and conditions available to the Franchisee. Further, if Franchisee or any other party with an interest in Franchisee transfers to Franchisor or another party all of its or their interest in the Franchise Agreement, the Franchisee or the Location, the transferee will have the right to assume the Lease on the same terms and conditions as are contained in the Lease.

Controlling the Lease: Subleasing

- Franchisor subleasing to franchisee
- Outdated model?
- Risks to the franchisor
- Situations when subleasing may work well
- Needs to be negotiated with the landlord upfront

Acquiring the Franchisee

- Landlord may need to consent.
- Valuation issues are complicated.
- “Key Money” payments – payment for right to lease the space

Example: Purchase Option

Upon termination or expiration of this Agreement for any reason after Opening, Franchisor will have the option, exercisable by giving written notice to Franchisee within thirty (30) days from the effective date of termination or expiration, to purchase the Franchised Business and assume any or all of Franchisee's agreements relating to the Franchised Business. Assets of the Franchised Business will include without limitation, leases, leasehold improvements, equipment, fixtures, furniture, furnishings, signs, inventory and assignable licenses. Franchisor will have the right to assign this option. Franchisor or its assignee will be entitled to all customary warranties, representations and pro rations in connection with its asset purchase. Franchisee shall cooperate with Franchisor in obtaining any necessary lessor or other consents.

The purchase price for the assets of the Franchised Business shall be determined as follows: each party shall appoint one appraiser within fifteen (15) days of Franchisor's notice, and each of the two appraisers shall independently of the other determine the purchase price. If the higher of the two prices does not exceed the lower by more than 10% of the lower price, the purchase price shall be 105% of the lower purchase price. If the higher of the two prices exceeds the lower by more than 10% of the lower price, the two appraisers shall select a third appraiser, who shall determine the purchase price. Each appraiser shall determine the purchase price within thirty (30) days of his or her appointment. All the appraisers must be members of the Appraisal Institute. If the purchase price is not acceptable to Franchisor, it may withdraw its offer to purchase by written notice to the Franchisee. Franchisor shall have ten (10) days from the determination of the final purchase price, to determine whether to purchase the Franchised Business assets.

Non-Competition and Similar Clauses

- May incentivize the franchisee to help transfer lease to franchisor
- Length of permitted post-term non-compete (1 year Europe, 2 years US)
- “Tolling” of the term in the US
- France : art. L341-2 Com. C. : Any clause having the effect of restricting the freedom of the operator who previously entered into this contract, to carry on their business, is deemed non-existing:
  - No more distinction between non-competition and non-affiliation clauses / Other clauses : clause of neutralization of franchise concept ? (colors …)
  - Validity if compliant with same criteria of the VBER (lex contractus)