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Information and Transparency – Legal requirements for franchise disclosure document

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In general terms, a franchise agreement creates a collaborative business venture, in which the franchisor transfers knowledge and structures the sale of products and services to a network of franchisees.

One of the mainstays of franchises, and a feature that differentiates them from other types of business ventures, is full transparency, especially when it comes to disclosure of information of the business opportunity offered to potential franchisees, prior to the signing of the franchise agreement.

This concern with transparency and the need to align the contracting parties' expectations was present in the first Franchising Law adopted in Brazil, Federal Law No. 8.955/1994, which established a list of information that had to be disclosed by the franchisor to potential franchisees at least ten days prior to the signing of the franchise agreement.

A little more than two decades after the first franchising legislation was passed, it was replaced by the new Franchising Law, Federal Law No. 13.966/2019.

The new legislation did not introduce big changes. Instead, in view of the growth of the franchises in Brazil and the potential for expansion in the sector, the legislator has fine-tuned some concepts and resolved certain questions that repeatedly ended up in the courts and represented points of uncertainty for franchisors and franchisees.

As for the Franchise Disclosure Document (FDD) specifically, Federal Law No. 13.966/2019 increases the amount of information that must be contained in the Document (23 items under article 2). If the franchisor fails to provide all the information, the franchisee can seek to void any agreement made on the basis of the FDD, and demand reimbursement of amounts paid to the franchisor.

Federal Law No. 13.966/2019 thus reinforces the central role played by informational transparency in franchising, and the courts apply equal rigor, treating disclosure of the information as a requirement for the validity of franchising agreements.[1]

Without detracting from the importance of transparency and information sharing in franchising arrangements, Brazilian courts nonetheless are firm in rejecting opportunistic conduct. The Court of Appeal of the State of São Paulo, for instance, has taken the position that defects will be considered to be cured, and the franchise agreement will remain in effect, when the franchisee does not raise the deficiency in the FDD at the earliest opportunity, but instead argues the defect much later, in an attempt to undo a mature contract.[2]

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[1] TJSP, Civil Appeal AC 1002149-08.2017.8.26.0114, Civil Appeal AC 1006648-44.2018.8.26.0132, Civil Appeal AC 1015267-18.2020.8.26.0576.

[2] TJSP, Civil Appeal AC 0015191-16.2017.8.26.0576, Civil Appeal AC 1006265-58.2019.8.26.0576, Civil Appeal AC 1037391-29.2019.8.26.0576, Civil Appeal AC 1023473-28.2018.8.26.0564, Civil Appeal AC 1071671-33.2018.8.26.0100.

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