

# New disclosure law to aid French franchisees

By MARK ABELL and MARTIN WILSON, Field Fisher Waterhouse

COMPANIES considering setting up a franchise operation in France will be tempted by the size of the potential market.

However, franchisors should be aware that in response to the ever-increasing number of franchise operations in France, its government has recently passed legislation to ensure that franchisees are more informed during the pre-contractual period and better equipped to make a sound judgement about the franchise they are contemplating buying.

The so-called *Loi Doubin* drafted by the well-known French lawyer, Olivier Gast, became law at the end of last year.

The new law imposes a series of obligations upon the franchisor towards the prospective franchisee (whom we shall refer to as 'the franchisee' for the sake of brevity). These obligations can be summarised as an obligation to provide the franchisee with sufficient information, prior to the contract being signed, to enable him to contract in the full knowledge of the facts.

The franchisor is obliged to provide the franchisee with two dossiers, the contents of which are strictly regulated by statutory decree.

The first dossier contains all information relating to the status, nature and extent of the franchisor's business, along with details of the operation in which the franchisee will be involved.

The second dossier is a financial dossier with details of the franchisor's expected profits and the grounds for those expectations.

The two dossiers must be given to the franchisee at least 10 days before the contract is signed, or alternatively before any part payment is made in exchange for a promise to contract. (Such a promise must be in writing,



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clearly stating the parties' obligations).

It must be stressed that these obligations rest entirely upon the franchisor. The franchisee is under no comparable obligation.

Where the franchisor does not provide all the required information, or does not do so within the time-limit, the consequences may be serious, ranging from liability for any losses incurred to rendering the contract null and void.

The legislative decree clearly designates the categories of information to be included within the dossiers. No category must be omitted and where the information is not available, the franchisor must expressly state this to be the case.

All documents contained in the dossier must be up-to-date and based upon the last financial year. Any material changes since that date must be brought to the franchisee's attention within three months of the change taking place. The contents of the dossiers are as follows.

## 1. Disclosure dossier

**1.1 Identity** - The franchisor must reveal its identity by giving details of its legal status, its head office, its trading name, the amount of authorised share capital, its nationality and company number.

**1.2 Trade marks** - The franchisor will state the registration number of any trade marks, logos or labels of which it is the owner or licensed to use. Where the latter is the case, the unexpired term of the licence must be given.

**1.3 Professional experience** - Details of the professional experience of both the franchisor and its management team must be given.

**1.4 Legal history** - Details of the legal history of the franchisor and its management team over the past five years.

**1.5 Commercial objectives and market** - A summary of the franchisor's objectives and the markets which it hopes to enter.

### 1.6 Initial investment

a) *Assets* - a full description of all assets required by the franchisee in order to begin trading.

b) *Initial stock* - the value of the initial stock to be ordered.

c) *Initial payments* - any initial payment or fees.

**1.7 Regular payments** - The nature, amount and beneficiary of any regular payments which the franchisee will be obliged to make in the course of business under the terms of the contract including fees, revenue, advertising fees, training fees and property rental.

**1.8 Suppliers** - A full list of the principal suppliers under the contract.

**1.9 Exclusivity agreements** - Where an exclusivity agreement is to be included in the contract, the area to which the exclusivity is limited must be clearly defined.

**1.10 Degree of involvement** - An indication must be given of the degree

## ONCE UPON A TIME IN AMERICA

Extracts from the  
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■ A New York judge has ruled that franchisors can negotiate deals that vary from their general prospectuses to franchisees. The New York Attorney General's office had threatened to halt a multi-million dollar deal in which the franchisor had offered a potential multi-unit franchisee more favourable terms than those it offered to other franchisees.

■ *The franchisee of a restaurant chain has been taken to task by his franchisor for printing a religious message on his till receipts, instead of promotional ads for the restaurants. The franchisor feels that the message, "Witnessing The King of Kings" may be harming the business.*

■ A U.S. judge told a pizza franchisor that it would have an uphill battle proving its former president used confidential information when he launched a rival chicken restaurant chain. The judge said that many of the marketing techniques and franchise systems used by the pizza chain were now sufficiently well known to be considered generic. The judge denied the pizza chain's request for an injunction barring the chicken firm from further expansion.

■ Franchises recently noted in America include U.S. Rooter Corp. (drain and pipework cleaning), The Artist Studio (oil paintings on canvas from photographs, etc.), Hollywood Connection Video Productions (wedding videos, training videos, etc.), Box Bros Corp. (discount box and packaging store, packers and shippers), and in Switzerland, Lobster Village (lobster restaurants serving lobsters from live lobster tanks).

▶ *Info Press Inc. publishes the Info Franchise Newsletter, the leading North American monthly franchise newsletter, and the Franchise Annual Directory. Subscription details from: Info Press Inc., 728 Center Street, P.O. Box 550, Lewiston, New York 14092, U.S.A. Tel. from the UK: 0101 716 754 4669.*

# French legislation fuels UK disclosure debate

THE controversial issue of franchise disclosure was hotly debated at a recent seminar arranged by Field Fisher Waterhouse, the City legal firm.

The meeting was chaired by Mark Abell, a partner of Field Fisher Waterhouse, and the other main speakers were the French franchise lawyer, Olivier Gast, and BFA director, Brian Smart.

Gast is the chairman of the franchise commission of the International Lawyers Association and the draftsman of the new French disclosure law.

The specially-invited audience included members of the BFA membership committee and representatives of the banks, accountancy firms and consultancies with interests in franchising.

Abell opened the seminar by outlining the main issues involved in the issue of whether franchise disclosure should be regulated, and if so whether it should be a voluntary or legal requirement.

## Heavy burden

He pointed out that U.S. franchisors faced a heavy burden in compiling and keeping up-to-date their Uniform Franchise Offering Circulars (UFOC), and he stressed the difficulties experienced in the financial community in the UK as a result of the Financial Services Act which endeavoured to regulate financial services.

"On the other hand, it is difficult to imagine how the BFA can possibly hope to regulate franchising when its membership represents only a proportion of the total number of UK franchisors," said Abell.

He warned that any law which focused solely on franchising would have "a jam sandwich effect". If pressure was put on the franchise sandwich, much of the filling would be squeezed out along the edges.

"The result would be that many companies involved in franchising would merely change the description of their activities and become, for

example, selective distributors or agencies, rather than franchisors," said Abell. "This would weaken the franchise industry significantly and impose a regulatory burden only on those franchisors who were probably already in the habit of providing sufficient disclosure without any statutory regulations."

Olivier Gast explained to his UK audience the French disclosure law, the so-called Loi Doubin, and the reasoning behind its adoption.

He said that the law was in the interests of all parties who were legitimately involved in franchising as its aim was to provide proper regulation and prevent exploitation by unscrupulous individuals or companies.

"As only 150 of the 700 franchisors in France are members of their trade association, the French Franchising Federation, it was impossible to expect the FFF to properly regulate any disclosure requirements," said Gast.

Brian Smart presented the views of the BFA on disclosure. It appeared that there had been some change in the association's stance as he stated that the BFA was no longer necessarily opposed to legislation.

He said that the BFA's role was to encourage high standards and thus achieve a better profile for the franchising community.

Smart explained that sound franchisors had no need to be defensive about proposals for a disclosure code.

"A fixed legal code may have a role to play, but it can never do as much as a dynamic voluntary code," said Smart. "Legislation and voluntary regulation are not mutually exclusive."

He reported that the BFA was currently drafting a voluntary disclosure code and had taken as its starting point proposals made by Mark Abell in an article in the May issue of *Franchise World*.

The three talks were followed by a discussion which lasted well over two hours. Members of the audience offered many opposing views and the debate was one of the most stimulating for some time on the franchising scene.