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New California Law Requires **Franchisors Terminating for Good Cause to Purchase Assets from Terminated Franchisees:** ***Requires Written Transfer Standards***

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For the first time in the United States, and most likely, anywhere in the world, after January 1, 2016, franchisors will be required to purchase from California-based franchisees that are properly terminated or not renewed in compliance with a franchise relationship law, "all inventory, supplies, equipment, fixtures and furnishings purchased or paid for under the terms of the franchise agreement or any ancillary or collateral agreement…." And franchisors will also be required to have written standards for approving or disapproving a franchisee's proposed transfer of its franchise, franchised business or ownership interest in a franchised business.

The law also amends the definition of "good cause" for termination of a franchise, and extends the notice and cure periods to at least sixty days.

Although much of the attention directed to the legislation in the California Legislature was focused on changes in the "good cause" standard for termination, the most significant impact of the new law is likely to be the post termination asset purchase obligation. [The new law applies only to franchises entered into or renewed after January 1, 2016]

The new law was advocated by a coalition of franchisee associations and a labor union, which has argued that making termination of franchises more difficult will enable franchisees to pay higher wages to their employees. The law abounds with ambiguity that will keep franchisees and franchisors in litigation for years.

For example, which items are subject to the purchase obligation, whether a former franchisee can refuse to sell some items to the franchisor, whether contractual obligations of a franchisee to pay the franchisor's lost future profits can be setoff against the franchisor's purchase obligations, and who must pay the cost of removing and shipping assets from the former franchise location are all unclear.

Franchisors are also concerned about the potential impact of the law on their financial statements. If they have received a $50,000 initial franchise fee from a franchisee, who has invested in assets in a franchised business valued at $1 million, and if the franchisor must purchase those assets for their "depreciated" value if a franchisee decides to abandon the business, when recording the $50,000 income, the franchisor may also be required to record a contingent liability reflecting the purchase obligation. "Depreciated value," whether determined under accounting standards or under income tax standards involves several possible interpretations. In most cases "depreciated value" will be higher than the "fair market value" of the assets if sold when the business is not a going concern. Therefore, franchisors may likely face a negative financial statement impact each time they grant or threaten to terminate a franchise in California in the future.

Also of concern to franchisors is another unique requirement of the law: before approving or disapproving a proposed transfer of a franchise, franchisors must deliver their standards for approving new or renewing franchisees (the law does not specify which) to the transferor before approving or disapproving the transfer. (The law does not explain how those standards apply to the sale of a minority ownership interest in a business entity that owns a franchise.) U.S. franchisors have not traditionally published standards against which transfer approvals may be evaluated. Now, franchisors doing business in California, which accounts for 20% of the U.S. population, and whose laws are often copied by other states, will also need to anticipate every possible reason why they might want to disapprove a franchise candidate and commit them to writing.

Our firm is conducting webinars and meetings with clients to explore the issues raised and to discuss which, if any strategies are available to mitigate the impact of the new law on doing business in California.

加州新法要求
因正当理由终止的授权商收购已终止经营的加盟商的资产：
规定了书面转让标准

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在2016年1月1日以后，在美国，甚至很可能是在全世界第一次，授权商须向正当终止经营或者并未依照特许经营关系法续约的以加州为基地的加盟商收购“根据特许经营协议或任何附属或抵押协议的条款已收购或支付的所有存货、供应品、设备、固定装置及家具……”而且对于批准或不批准加盟商所提议的有关其特许经营、特许经营的业务或在所特许经营的业务中的所有者权益的转让，授权商还必须有书面标准。

法律还修订了关于特许经营终止的“正当理由”的定义，并将通知期和要求补救期延长到至少60天。

尽管对加州议会立法的更多关注聚焦于终止的“正当理由”的标准变更，新法律更重大的影响可能是终止经营后的资产收购责任。[新法律仅适用于在2016年1月1日之后订立或续约的特许经营]

新法律得到加盟商协会和工会的共同拥护，他们认为，让特许经营终止更加困难能令加盟商向其雇员支付更高的工资。此项法律有很多模棱两可之处，将会导致加盟商和授权商持续诉讼多年。

例如，哪些项目需要遵守收购责任，前加盟商是否能拒绝向授权商出售某些项目，加盟商向授权商支付所损失的未来利润的合约责任是否能够根据授权商的收购责任予以抵销，以及谁必须支付从之前的特许经营地点剥离资产和运输资产的成本，这些都尚不清楚。

授权商还会担心此项法律对其财务报表的潜在影响。如果他们已经从加盟商那里收到一笔为数50, 000美元的初期特许经营费，加盟商已经在所特许经营的业务中投入的资产估值为100万美元，并且如果加盟商决定放弃该业务，授权商必须因其“折旧”的价值收购该等资产，在录得5万美元的收入时，授权商还可能须记录或然负债，以反映收购责任。“折旧价值”，无论是根据会计准则所确定的，还是根据所得税标准所确定的，均涉及多种可能的解释。在大多数情况下，如果在业务无法持续进行时出售资产，其“折旧价值”将会高于其“公允市值”。因此，今后授权商每次授出或威胁终止在加州的特许经营时可能都会面对不利的财务报表影响。

此外，此项法律的另一项独有规定也令授权商担心：在批准或不批准加盟商所提议的特许经营转让之前，授权商必须在批准或不批准该转让之前向出让人提供他们批准新的或续约加盟商的标准（此项法律并未明确是哪一种情形）。（此项法律并未说明这些标准对于出售在拥有一项特许经营的商业实体中的少数股东所有者权益的适用情况。）传统上，美国授权商并未针对可能会对何种转让批准进行评估刊发标准。目前，在加州经营的授权商占美国人口的20%，并且加州的法律常常会被其他各州仿效，他们还需要预测为什么他们可能想要否决某个特许经营申请人并予以书面记录的每一项可能的原因。

我们公司正在与客户进行网络研讨会和会议，以探讨所提出的问题，并讨论是否有任何策略能够减轻此项新法律对在加州经营业务的影响。