

INTRODUCTION

Christina Noyes and Leonard Vines

Since the first edition of this book was published in 1996, mergers and acquisitions have proliferated. In particular, private equity firms have become firmly established as major players in franchising, and their activity continues to abound. For example, as this manuscript was submitted to the publisher, private equity firm, Roark Capital Group, which also owns, among other brands, Arby's, Cinnabon, Auntie Anne's, and Massage Envy, acquired CKE Inc., the parent of the Hardee's and Carl's Jr. fast food chains, from Apollo Global Management.

The issues surrounding franchise mergers and acquisitions uniquely affect not only the selling and target companies, but also the third-party community of sub-franchisors, area representatives, and franchisees. Although this book contains general information regarding mergers and acquisitions and franchise regulation, it is intended to focus on franchise-specific issues and serves as a primer to both franchise practitioners as well as those who are not versed in the area. Many complex practical and legal issues may not be recognized by an attorney who lacks expertise in franchise law. The team of attorneys handling the transaction for either party should include a seasoned franchise lawyer.

This edition has been greatly expanded and now includes entirely new chapters on negotiating the purchase and sale agreement, bankruptcy, valuation, and international issues. Other topics include practical problems associated with buying or selling a franchise company, due diligence in the acquisition of a franchising company, real estate and trademark considerations, and tax issues affecting mergers and acquisitions in franchising. The appendices contain helpful checklists and sample forms. The forms are intended as guides to alert the practitioner to issues he or she should deal with in the transaction. As with any form, lawyers should adapt each form to the particular client's situation. In addition, applicable state and federal law must be examined and forms modified accordingly.

Many issues involving mergers and acquisitions of a franchising company are specific to franchising, while many other issues are the same as or similar to those involving mergers, acquisitions, and leveraged buyouts of other types of businesses. For example, a transaction may involve securities, antitrust, banking,

tender offer and investment laws, corporate, labor, environmental, bankruptcy, and tax laws. Although some of the chapters touch on issues present in traditional, non-franchise transactions, the main thrust is on franchise-specific topics, both legal and practical. Obviously, a detailed discussion of all of these topics, along with the franchise-specific issues, would require a multi-volume treatise. Furthermore, there are numerous articles, texts, and treatises that address both franchise and non-franchise issues. Many such resources are noted in the footnotes to the chapters and the appendices.

Much of the information contained in this book should be valuable to all franchise practitioners, even those not specifically dealing with a merger or acquisition. To our knowledge, this is the only publication that covers the franchise-specific issues of mergers and acquisitions in a single, up-to-date volume.

We give our deep and sincere thanks to the many prominent practitioners who devoted their time and expertise to bringing this long-awaited project to fruition. Special thanks go to John Baer and Jeffrey Brimer, the only two authors who contributed to both the first edition and to this edition. We also appreciate the time spent by our ABA editors, Jamila Granger and Karen Satterlee, on ensuring the work product was exceptional. Finally, we hope that this book serves to honor the memory of Charles Cannon, the deceased author of “Practical Problems Associated with Buying and Selling a Franchise Company,” an excellent, insightful chapter in the first edition.