FCA

FRANCHISE COUNCIL OF AUSTRALIA

NATIONAL FRANCHISE CONVENTION 2015

11-13 OCTOBER GOLD COAST

growth & expansion

Structuring of Franchise Systems

Options, choices available and issues

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11 October 2015

AGENDA

- Structuring Options
- Documenting the relationship
- Key provisions to consider
- Avoiding mistakes

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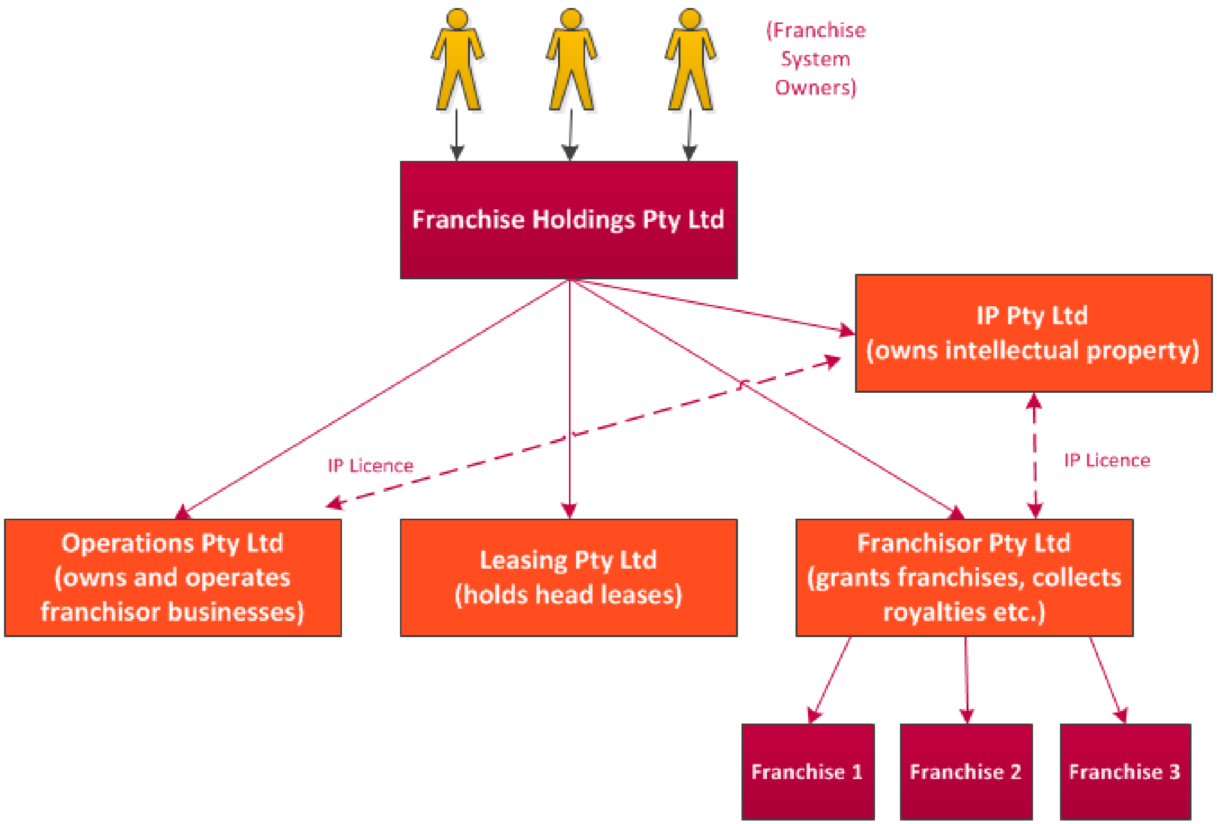
Traditional Franchise Structure



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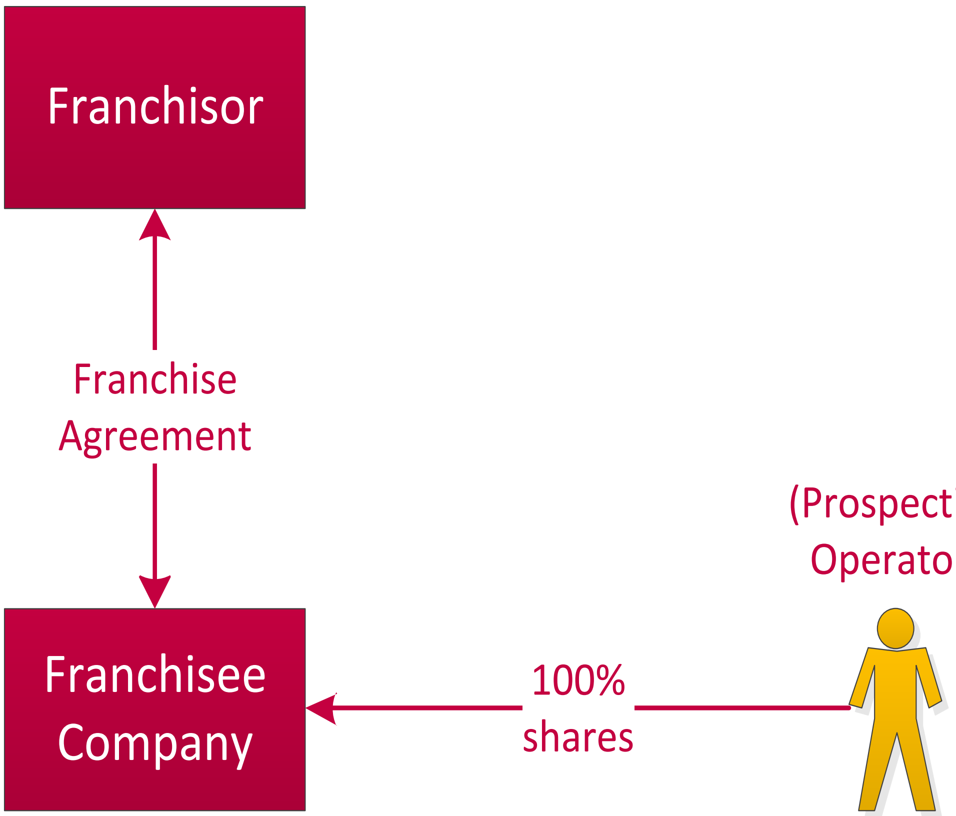
Traditional Business Format



Traditional Business Format

Pros	Cons
Take advantage of franchisee's capital for growth of the network	High finance barrier to entry for many prospective franchisees
Limits financial risk for the franchisor	Miss out on talented individuals

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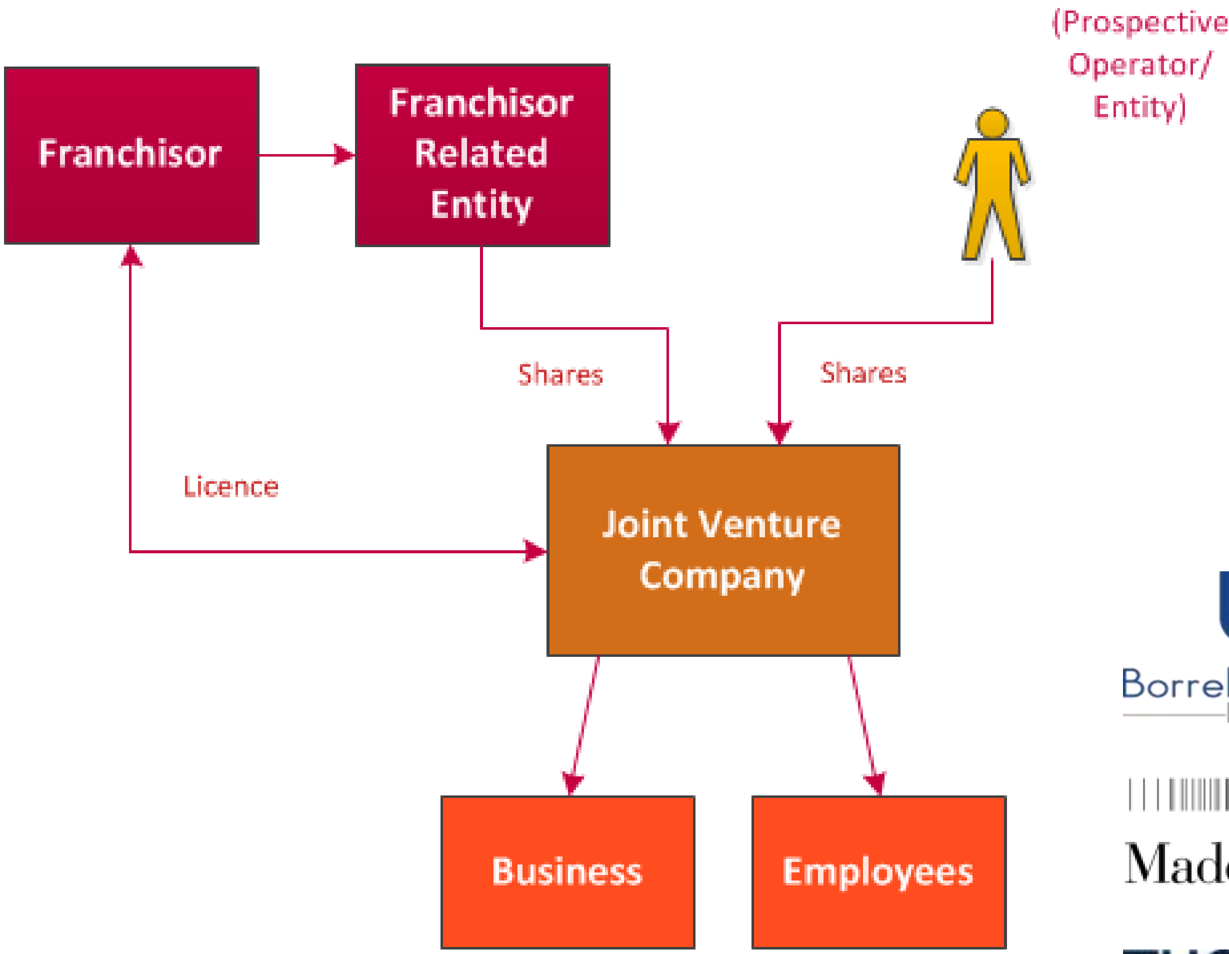
Incorporated Joint Venture



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Incorporated Joint Venture

Pros	Cons
Flexibility for the parties to contribute capital and receive shares reflective of its contribution	Relationship would be governed by the *Corporations Act*
Gives the prospective franchisee a sense of ownership in the business	Administrative considerations – the joint venture company won't form part of the franchisor's consolidated tax group

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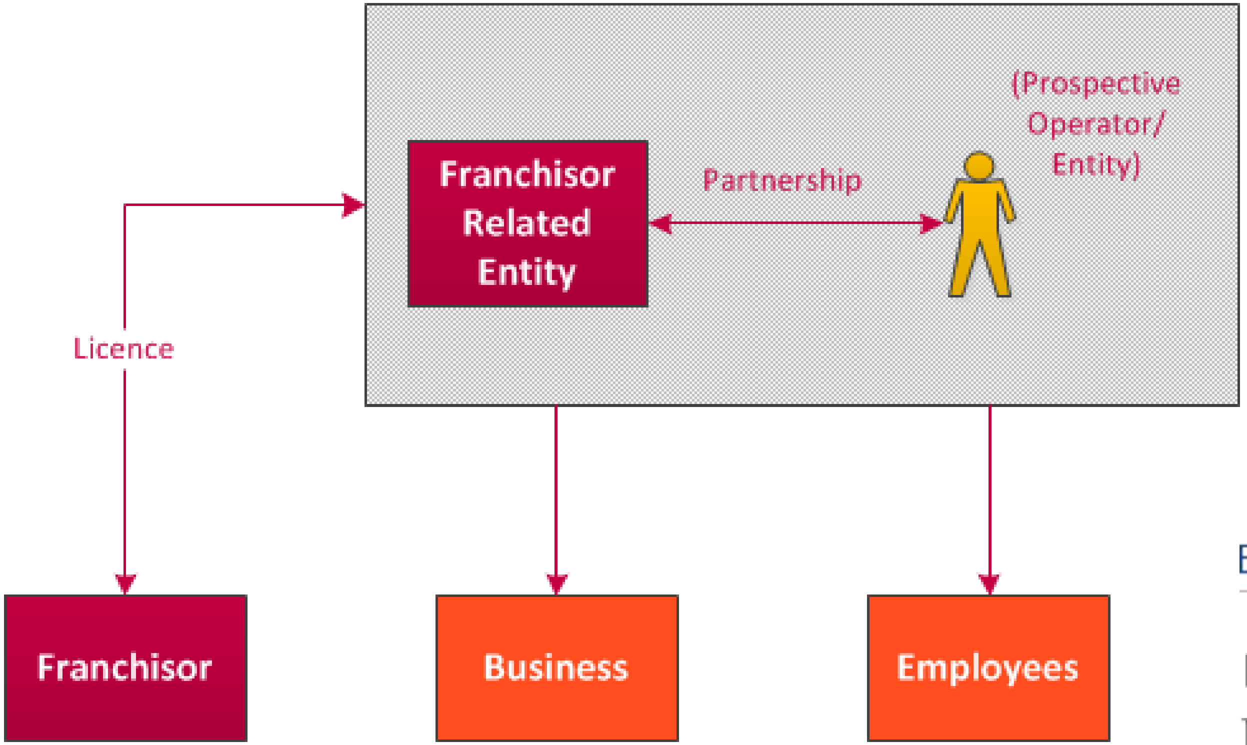
Partnership



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Partnership

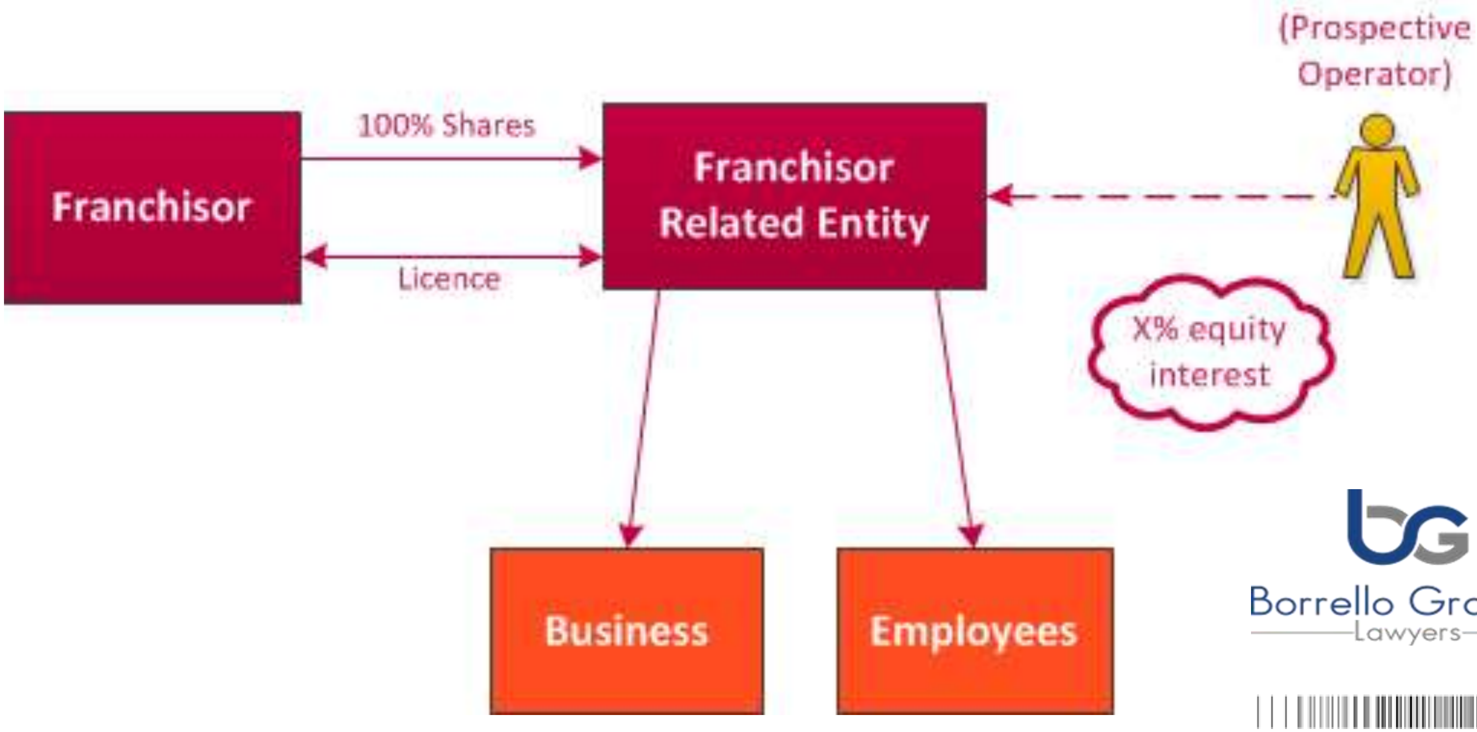
Pros

- Good tax outcome for the franchisee
- Unlike an incorporated joint venture, the relationship would not be governed by the *Corporations Act*
- Can structure the partnership so that the franchisor's interest forms a part of its consolidated tax group

Cons

- More difficult for prospective franchisees to understand concept
- Franchisees may not feel the same sense of ownership as they would if they hold shares in a company

Non-Share Equity Interest



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Non-Share Equity Interest

Pros

- Good tax outcome for franchisee and the subsidiary entity would form a part of the franchise's consolidated tax group
- Works well if the franchisor wants to grant small interests to prospective franchisees

Cons

- Franchisees may not feel the same sense of ownership as they would if they hold shares in a company

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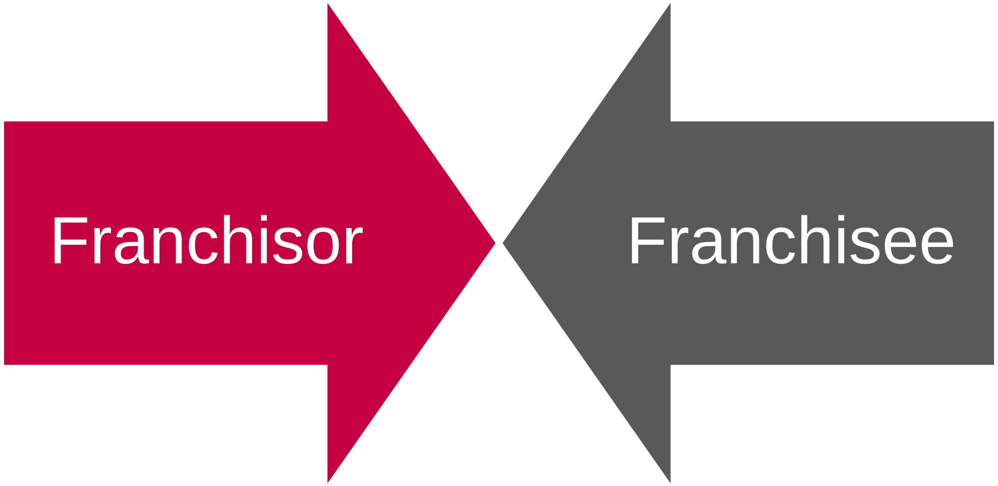
Documenting relationships



Consider the horizontal relationship between the franchisor and the franchisee.

- Does the relationship need to be documented?
- Shareholders Agreement?
- Partnership Agreement?
- Constitution?
- Other?

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Documenting relationship

Consider the vertical relationship between the franchisor and the franchise business.

How will the franchisor grant rights to allow the operation of the franchise business?

Code compliance?
Franchise agreement?
Licence agreement?

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Key provisions - horizontal relationship

Ongoing funding and risk

Who will contribute capital if the business requires ongoing funding? What is the long term goal/plan?

Decision making

How will decisions be made? This should be reflective of the capital contributions made by each party. The franchisee needs the ability to make day to day decisions in relation to the business.

Exit

Mechanisms to discourage franchisees from an early exit. Mechanisms to allow the franchisor to buy back or sell the business.

Key provisions - vertical relationship

Enforceability

Given the typical length of these relationships, you must ensure your agreement is legally enforceable.

Code compliance

Does the Code apply to your relationship? If so, your agreement needs to be Code compliant.

Territories

Exclusive vs. non-exclusive territories.

Internet sales.

Key provisions - vertical relationship

Product supply

Pricing, third line forcing, full line forcing and competition issues.

Revenue

Royalty, product margin, online sales, rebates and company stores.

Exit

Does the agreement contemplate what will happen if the franchisor wishes to sell, merge or acquire a competing network?

Avoiding mistakes

Please refer to your handouts.

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Top three drafting tips

1

Get the fundamentals rights from the outset.

2

Do not simply recycle precedents.

Tailor each agreement to reflect the uniqueness of each relationship.

3

Draft with foresight.

Agreements should be flexible enough to allow the relationship and franchise system to change, develop and evolve over time.

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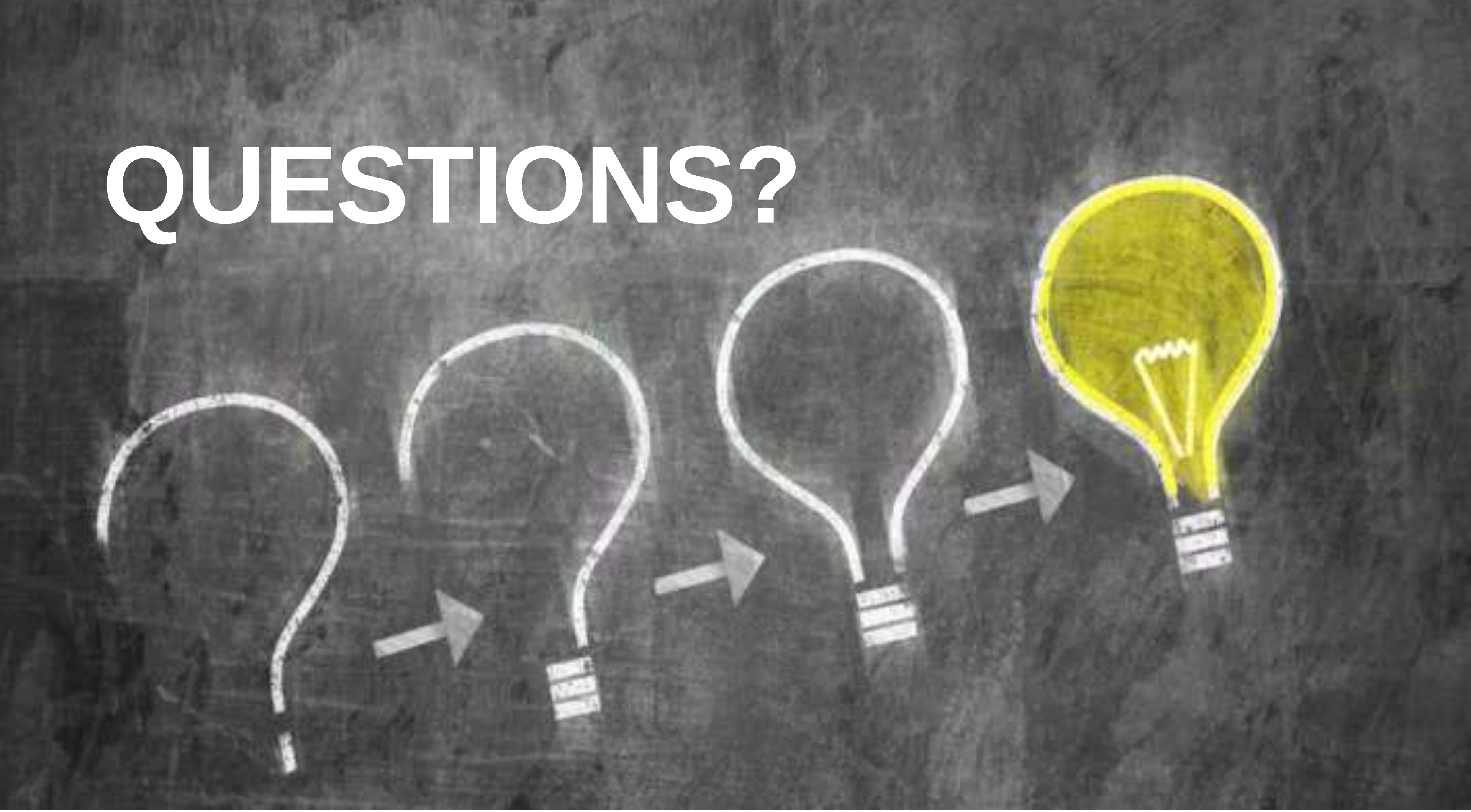
QUESTIONS?



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