



Social Franchisor Structuring, Strategy and Legal Planning

Who Should Use This Document

This outline was designed with input from MSA Worldwide, PlaveKoch and members of the International Franchising Association's Social Sector Franchising Task Force for the use of organizations and their attorneys and consultants whose goals are to provide health care and other products and services to people at the Base of the Pyramid consistently and sustainably through the use of social franchising.

An Overview of the Areas Included for Consideration

We have segmented this outline into three main sections:

1. **Assessment Areas:** The high level areas to examine in considering the replication of a social program through franchising.
2. **Planning Topics:** Topics that the potential social franchisor, its consultants and legal counsel should consider in designing a social franchise system.
3. **Franchise Readiness Checklist:** A checklist of issues that should be considered in developing a social franchise strategy, legal documents and infrastructure.

Applicability and Limitations

This outline does not purport to cover all questions that may be relevant to your program and you should skip over those issues that do not apply to your system.

You should always consult a trusted legal and business advisor before moving forward with any transaction, including one as complex as a franchise system. Consider whether disclosures that describe the franchise program, the franchisor, costs and investment criteria, termination and non-renewal, etc. may be required by law or whether you consider such certain practices important for your franchise program. In some countries a local franchise association may also require you to address aspects concerning good faith and fair dealing under local common law principles.

Included in this outline are topics related to potential areas of control a franchisor may want to exercise including those related to retail pricing, human resource policies, etc. These should be evaluated based on the law in each country, culture and other factors.

SECTION 1: ASSESSMENT AREAS

The Assessment Areas below define the high level topics to examine in considering the replication of the social program.

Assessment Areas

- Determine the Brand Promise to consumers
- Determine the products or services the program will offer to consumers
- Determine the consumer profile
- Establish goals and objectives of the franchisor including any double bottom line goals
- Evaluate present concept
- Evaluate management ability/depth
- Assess the competition
- Determine current potential markets
- Assess strengths/weaknesses and alternative strategies
- Franchisor/Franchisee potential conflicts
- Franchisor management's commitment to protecting the system and enforcing standards required for consistent, sustainable replication
- Franchise system's commitment to furthering the social good the franchise system is designed to address
- Determine levels of corruption in market including for specific industry or business
- Other factors that could discourage establishing business in market

SECTION 2: PLANNING TOPICS

The following are categories of topics that the potential social sector franchisor, its consultant and its legal counsel should consider in designing the franchise strategy.

Financial Planning and Analytics

- Franchisee capital requirements
- Franchisor capital requirements
- Earnings, and cash flow projections to assess return on investment for franchisor and franchisee
- Determine additional financing requirements for franchisees/franchisor
- Structure appropriate financing programs
- Will the financial results be sustainable for the franchisor and franchisee
- Does any profit motive by franchisor and franchisee create impediments to a non-profit organization structure?

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Market Strategy

- Country in which the franchise will operate
- Market area criteria – urban, suburban, rural
- Market approach
- Prioritize target markets
- Site selection criteria and methodology

Franchisee Recruitment

- Franchisee Profile
- Skills, business experience, education, literacy required
- Capabilities with mobile or other technology
- Gender focus in market
- Anticipated financial and other goals for the franchisee
- Is there a sufficient pool of potential franchisees in market to meet the franchisor's growth requirements
- Search, screen, approval process
- Recruitment and marketing approach and system development
- Does franchising fit within the country's employment and labor laws
- Competing opportunities attracting people fitting franchisee profile

Operations and Brand Standards Monitoring

- Location Selection, Development and Approval
- Brand Standards – Operational Quality
- Financial Performance and Metrics
- Local Sales and Marketing Analysis
- Competitive Analysis

Franchisee Support

- Initial and Continuing Support Required
- Marketing and Local Sales Support
- Accounting and Statistical Support and Metrics
- Operational Support
- Human Resources
- Supply Chain and Volume Purchasing
- Day-to-Day Procedures
- Research and Development
- Communication programs
- Franchisee advisory council

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Policy Formulation

- Franchisor Real Estate Participation
- Initial and Continuing Franchise Fees including consideration of any user fees
- Supply Chain Revenue
- Local and System Marketing and Advertising
- Territorial Exclusivity and Encroachment
- Supply Chain and Distribution
- Term of Franchise and Successor Terms
- Default and Termination
- Management Obligations
- Franchise Structure – direct, indirect, joint venture

Training

- Initial, Continual, Mandatory Training and Fees
- Who Will Be Trained
- Location(s) of Training
- Topics and Duration of Trainings
- Development of Training Materials
- Training Staff, Qualifications and Experience
- Field Consultants as Trainers
- Methods of Training – Classroom, OJT, Electronic, Third Party Providers

Field Support

- Role and Responsibilities
- Profile of Field Consultants
- Communications
- Field Support Manuals, Action Plans, Reports
- Opening and Continual Support

Legal Documentation and Requirements

- Corporate Structure and Selection of Legal Forum
- Intellectual Property Ownership and Protection
- Country of the franchisor and location of headquarters support organization
- Franchise and Other Agreements in writing or by other means
- Complexity of franchise agreement – protection of franchisor or non-threatening for franchisees
- Franchisee Advisory Council By-Laws
- Franchisee Advertising Cooperatives
- Existence of franchise or other laws that may impact the program
- Assessment of Local Laws and Regulations

SECTION 3: FRANCHISE READINESS CHECKLIST

The following is a detailed checklist that the potential social sector franchisor, its consultant and legal counsel should consider in designing and developing the franchise strategy, legal documents and infrastructure for successful replication of a social franchise system.

Accounting, Financial Control and Reporting

- Determine the economic viability and sustainability of the underlying franchise system at the unit level
- Determine the economic viability and sustainability of the underlying franchise system at the franchisor level
- Determine and define the assistance to be provided to franchisees with respect to accounting, control, reporting systems
- Identify the requirements of franchisor and franchisee accounting and control systems including volumes of transactions, records, controls, audit requirement, reports required, audited statements, etc.
- Develop point of sale, patient or consumer records IT requirements and hardware requirements
- Develop Chart of Accounts, Financial Reporting and other Reporting Formats
- Determine Record Retention Policy
- Develop Audit Policies
- Develop Patient and Consumer Information Ownership and Use Policies
- Determine any performance metrics the franchisee will be required to meet including impact on failure to meet including default, termination, territorial rights, successor rights, minimum royalties, etc.
- Determine inventory control and reporting Policies
- Determine the investment required to design, develop and implement the franchise system
- Determine the continuing costs of managing and supporting the franchise system
- Determine the cost of recruiting each franchisee
- Determine the variable costs for the franchisor in establishing each franchisee

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- Identify the total investment of each franchisee, with breakdown of components
- Determine if any financial programs will be made available to franchisee – directly or indirectly
- Determine the delivered cost of inventory items for franchisees in various geographic areas and revenue participation by franchisor
- Develop consumer pricing policy or strategy for franchisees
- Determine the initial investment for the franchisee with detailed estimates by category of investment
- Develop financial projections for unit franchisees and the franchise system and anticipated rates of return
- Develop methods of monitoring the financial condition of franchisees
- Determine projection of franchise openings
- Determine fee structure for franchise system – initial, continuing royalty, marketing, supply chain, training fees, equipment or real estate leasing, a la carte services
- Determine if continuing fees are fixed, a percentage of gross sales, etc.
- Requirements for franchisee to reimburse franchisor for any allocated costs
- Are there any reverse royalties or commissions paid to the franchisee by the franchisor
- Determine to whom and where payments will be made.
- Determine the currency and conversion rates required for payments
- Determine how payments will be made - in cash, check, electronic funds transfer, etc.
- Determine frequency of payments to franchisor
- Determine late payment penalties and interest
- Determine the tax implication for the franchisor and franchisee

Marketing, Advertising, Publicity, Promotion

- Determine and define the assistance to be provided to franchisees with respect to marketing, advertising, publicity, and promotions
- Review the need for market research to aid in the formation of advertising, publicity, promotional strategies, programs and budgets

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- Develop national, regional, local advertising strategies, programs and budgets
- Develop pricing policies
- Develop Market Introduction Program
- Develop Restrictions and Requirements on Trademark Usage
- Develop methods to evaluate marketing effectiveness and cost
- Develop system, local and cooperative marketing fee structure

Field and Headquarters Support

- Define the scope of services to be provided to franchisee
- Define the qualifications and training for field consultants
- Determine role and responsibility of field staff (i.e. training, span of control, methods of communications, meetings, etc.)
- Develop Field Support Manuals including forms, procedures, and mechanisms necessary to deliver field support
- Develop startup and operations manuals and other methods to communicate standards to the franchisee

Franchisee Operations

- Develop format/content of the franchisee startup and operations manual
- Determine and define the assistance to be provided to franchisees
- Determine methods to ensure franchisee compliance with all laws and regulations
- Develop daily procedures for local unit operations
- Establish any human resource standards and requirements including job descriptions and qualifications for franchisee management and staff
- Develop procedures and guidelines for local staff recruiting
- Develop procedures and guidelines for staff performance reviews
- Develop procedures and guidelines for monitoring waste and shrinkage
- Determine the franchise system's POS and IT requirements and whether the software is proprietary and the rights of the franchisor to access information on the franchisee system or in the cloud

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- Develop procedures and guidelines for housekeeping and maintenance requirements
- Develop procedures and guidelines for supply chain including ordering, recording delivery, inventory, etc.
- Develop systems, procedures, controls and guidelines to minimize losses due to customer and staff fraud and theft
- Develop procedures and guidelines for recording and resolving customer complaints, refunds, replacement etc.
- Develop procedures and guidelines for energy conservation and environmental issues
- Develop procedures, guidelines and forms to use in making operational reports to franchisor
- Develop methods of monitoring franchisee adherence to brand standards including customer/patient satisfaction
- Define any proprietary material provided to the franchisee including training materials, marketing materials, manuals, etc.
- Define the ownership or transactional rights for the franchisee to use consumer/patient data during and at the end of the term and the franchisor's rights regarding consumer or other data developed by franchisee in the operation of their businesses.
- Define how the franchisee will use the franchisor's brand including signage, uniforms, vehicle markings, marketing materials, forms, contracts, web sites, social media, etc.
- Determine if the franchisee may or must identify the independent ownership of the business and those requirements including signage, business cards, vehicle markings, forms, contracts, patient records, web sites, social media, etc.
- Define whether the franchisee will be permitted to "co-brand" with any pre-existing activities on signage, marketing materials, advertising, etc.?

Franchisee Recruitment and Relations

- Identify the profile of the franchisee
- Develop timetables and strategy for franchisee recruitment
- Determine most prominent competition for people of this profile and benefits thereof
- Develop promotional and information for franchisee recruitment
- Develop procedures for evaluating and approving potential franchisees
- Define franchise recruitment, sales and closure strategy

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- Determine structure of franchisee approval committee
- Determine any legal requirements for franchise sales and develop any legal compliance manual required
- Identify and train franchise sales staff
- Develop policies for maintaining a favorable ongoing relationship with franchisees
- Determine structure of franchisee advisory council and by-laws
- Determine field support and methods of communication
- Determine the structure of any franchisee cooperatives and by laws
- Determine what categories of inspectors and regulators will be visiting the franchised location, what their visits will entail, how transparent/standardized/reliable their work is versus actually being a channel for corruption/bribes/delays.
- Identify generally foreseeable delays that are only known informally (e.g. 6-12 months to gain a license when the issuing authority will claim 6 weeks), and ensure systems and financing are tailored to reality, not to what is formally claimed.

Franchisee Staffing and Training

- Identify the skills and professional licenses required of franchisees and staff
- Develop job descriptions and human resource policies
- Determine the management and staffing requirements for the franchisee's business
- Determine and define the assistance to be provided to franchisees with respect to franchisee staffing and training
- Develop training program and training materials for franchisees
- Develop recruitment guidelines for franchisee management and staff
- Develop training program and training materials for franchisee staff
- Select franchisor staff and facilities for conducting training programs
- Define the role of field consultants in training
- Integrate training materials to be used by franchisees into the franchisee operations manual
- Determine if under local law the franchisee will be an employee or commercial agent of the franchisor including any compensation or other remedies due under local employment law upon termination.

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Franchisor Organization and Staffing

- Define the organization required for managing the franchise system
- Identify the skills, knowledge, experience and personal qualities required for franchisor management and staff
- Develop job descriptions and human resource policies
- Define any requirements or restrictions by the franchisor over the selection of the legal entity by the franchisee including internal governance (entity structure, bylaws, board seats, transfer rights, etc.)

Insurance

- Identify insurance requirements for franchisor and franchisee
- Develop controls to ensure the franchisee maintain adequate insurance coverage
- Integrate required insurance information into the franchise operations manual

Legal

- Determine the identify and corporate structure of the franchisor
- Define the owner of the trademark, servicemark, etc. and define relationship and license fees if any between licensor and franchisor
- Determine where the franchisor will be headquartered – country
- Determine the franchisor's priority with respect to the Franchise Agreement – protect the franchisor or keep the agreement as short and non-threatening for franchisees as possible?
- Determine the franchisor's ownership or control over its intellectual property
- Determine if protection of intellectual property is secured in each country that franchises will be offered and operated.
- Define the territorial exclusivity granted to franchisees, if any
- Define the rights and limitations of the franchisor to market goods and services in competition with franchisees
- Define the rights and limitations of the franchisee to be involved with marketing goods and services of others
- Define the tradename, trademarks, licenses, systems etc. which the franchisee will be permitted to use

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- Develop provisions to protect confidential trade secrets, systems etc.
- Determine system initial and continuing fees
- Determine the length of the term of the franchise agreement, successor terms, conditions and fees
- Determine if successor agreements are automatic or conditioned on franchisee performance or other factors
- Determine if the franchisee will sign the then current franchise agreement upon renewal of the franchise relationship at the end of the term
- Determine if there are any restriction on the franchisor regarding termination, cancellation or non-renewal of the franchise agreement
- Define the obligations of the franchisor to the franchisee during the term
- Define default and termination provisions
- Define termination, transfer, inheritance, and assignment rights of the franchisee including their ability to bring additional investors into the franchise.
- Define dispute resolution requirements and whether there is a local custom of informal dispute resolution in the market.
- Determine if other franchisees should play an advisory or binding role in dispute resolution.
- Determine if the size of the business and the sophistication of the franchisee are sufficient to support a requirement to resolve disputes in the franchisor's country or at a neutral site.
- Determine if the franchise agreement will assign responsibilities as to costs incurred in resolving a dispute.
- Determine if the court system is transparent and reliable in the franchisee's country. If not, is there a reliable alternative to the court system (for example, a recognized arbitration center)?
- Define in term and post term non-compete obligations and determine any restrictions or limitations under local law
- Develop franchise and other required legal documents
- Integrate required legal information into operations manuals etc.
- Define supplier relationships and whether supply chain requirements will be included in franchise agreement or in a separate agreement.

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- Determine if a separate supply chain company for the franchisor is required or recommended
- Define marketing requirements and options (fund/cooperatives)
- Define training and certification requirements
- Determine if franchisee will sign a personal guarantee and are they enforceable in the market
- Determine if franchisee will be required to sign any acknowledgements related to the franchise relationship, investment required, etc.
- Will the franchisor have the right or be required to purchase any of the franchisee's assets at the termination or expiration of the franchise agreement and under what terms and conditions

Site Selection and Development

- Determine and define the assistance to be provided to franchisee for site selection and development
- Identify the site selection requirements and approval process
- Determine if the franchisee will operate in a fixed or mobile location
- Develop dimensional, layout and environmental requirements for locations
- Determine and define the assistance provided to the franchisee with respect to the construction, renovation, equipment, signage, trade dress, utilities, etc.
- Develop standards for sourcing of materials, fixtures, decor items and equipment
- Develop interior and exterior design, layout, signage, utilities, architectural and construction requirements
- Develop pre-opening requirements for new franchisees
- Determine critical mass requirements
- Develop site selection reports to be provided to franchisor by franchisee for site evaluation
- Define the territorial rights of the franchisee – location, exclusive or protected market
- Define any market carve outs or alternative distribution strategies for franchisor
- Determine if franchisor will retain any rights to the location upon expiration or termination
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- Determine if location must be exclusive to the franchisor or can the franchisee share the location or use the location for any other activity

Market Research

- Define the business, at the retail level (product, service, niche, pricing strategy etc.)
- Define the Brand Position and Brand Promise
- Identify the objectives regarding market share, market positioning, rate of growth, geographic expansion, ROI, etc.
- Define consumer profile
- Identify strengths, weaknesses, threats to the company
- Determine appropriateness of conversion franchising
- Develop timetables for geographic expansion
- Identify potential barriers to geographic expansion of the franchise system (i.e. tribal, government regulations, supply chain limitations, etc.)
- Define retail-pricing strategy and immediate and adjacent categories of revenue (out of pocket patient payments, health insurance contracts, corporate contracts, government contracts, etc.) and pathway to each
- Determine management's goals and objectives
- Determine timing of franchise development
- Identify local or national financial / development trends that may materially affect the business in the short, medium, and long term

Merchandising

- Develop products to be offered and any standards for product display by franchisee
- Determine and define the assistance to be provided to franchisee with respect to merchandising
- Design displays and point of sale for locations
- Ensure that any packaging and labeling meets legal requirements
- Determine if franchisor will set pricing for products and services sold to consumers, whether pricing guidelines will be established and the requirements under local law, and how franchisor will enforce any applicable pricing standards

Pre-Opening Support

- Define pre-opening services to franchisee
 - Training
 - Site selection and Development
 - Furniture, fixture and equipment acquisition
 - Opening inventory and supplies
 - Financing programs
 - Accounting, legal, regulatory, etc.
 - Field support
 - IT installation
 - Grand opening advertising and promotions
 - Services related to securing non-patient payers

Supply Chain

- Develop supply chain policies for the system
- Determine the assistance to be provided to franchisees
- Determine if the franchisor will be an exclusive or authorized supplier of equipment, small wares, merchandise, supplies and other items to the franchisee
- Determine the terms of the sale or leases to franchisee – cash, credit, consignment, personal guarantees, deposits, etc.
- Develop lists of merchandise, supplies and services authorized and identify sources and whether sourcing will be local.
- Determine, if sourcing is not local, what are the custom duties or other barriers to importing products, equipment, etc.
- Determine standards for merchandise, equipment, signage and suppliers purchased locally by franchisees and are there any any local labeling requirements for any products sold by the franchisee
- Establish quality standards for merchandise and services purchased independently by franchisees

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- Negotiate purchase agreement with suppliers including terms and last mile delivery
- Integrate required purchasing information into the franchisee operations manual and IT system
- Determine adequacy of supply chain including last mile requirements and the cost of distribution (critical mass requirements)
- Determine revenue for franchisor from supply chain and whether that revenue is allowed under local law
- Tailor mechanics of supply chain (frequency, ordering process, etc.) to out-compete alternative suppliers