

“HOW TO FRANCHISE YOUR BUSINESS”

A SUMMARY PREPARED FOR

The Irish Franchise Association

BY

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INDEX

<u>Page</u>	<u>Subject</u>
 <u>Part I</u>	
4	<i>Franchising as a Legal Concept</i>
5	<i>Developing the franchise</i>
5	<i>Intellectual property rights</i>
6	<i>The Get Up</i>
6	<i>Trade Secrets, Know-How etc.</i>
7	<i>The Operating Manual</i>
8	<i>Supply of Initial Equipment</i>
8	<i>Franchisee Premises</i>
 <u>Part II</u>	
9	<i>Advantages and Disadvantages of Franchising to the Franchisor and the Franchisee</i>
9	<i>Advantages to the Franchisor</i>
10	<i>Disadvantages to the Franchisor</i>
12	<i>Advantages and Disadvantages of Franchising to a Franchisee</i>
12	<i>Advantages to the Franchisee</i>
14	<i>Disadvantages to the Franchisee</i>
 <u>Part III</u>	
15	<i>Setting up the Franchise .</i>
15	<i>The Business Concept</i>
16	<i>The Pilot Operation</i>
16	<i>Money Back Guarantee</i>
17	<i>Franchisee/Staff Training etc.</i>
17	<i>Developing the Franchise Package</i>
18	<i>Developing the Operations Manual</i>
19	<i>Format of the Manual</i>
 <u>Part IV</u>	
22	<i>Marketing a Franchise Package</i>
23	<i>The Pattern of Recruitment</i>
24	<i>The Selection Process</i>

2	<i>Accounting Systems</i>
26	<i>Initial Marketing</i>

Part V

27	<i>The Franchise Fee Structure</i>
27	<i>Continuing Fees</i>
27	<i>Advertising Funds</i>

Part VI

28	<i>Advisory Committee/Franchisee Council</i>
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30	<i>PROFILE OF BILL HOLOHAN</i>
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PART 1

Franchising as a legal Concept

1.1 *If you mention franchising, generally what you are talking about is business format franchising. Franchising is generally described as a system where a parent company or business referred to as the Franchisor allows someone else referred to as the Franchisee, to run a similar type of business using the Franchisor's business systems, know how, trade marks, intellectual property and other business secrets in return for an initial fee and in return for ongoing fees based on a percentage of the franchisee's gross turnover. The Franchisor who has developed the method or system of doing business, then grants a form of legal licence or contractual permission to the Franchisee to operate that type of business as developed by the Franchisor in accordance with the practices, systems, methods etc., developed by the franchisor using the franchisor's know-how, trade marks, trade names, patents, copy rights and business secrets etc.*

1.2 *A definition of a franchise is provided by the Irish Franchise Association. One of the essential feature, is the element of ongoing and continuing control by the Franchisor over the way in which the Franchisee operates the business. From a legal point of view, this is probably the most significant feature in the arrangement. The objective of this is to achieve strict uniformity between outlets and thereby preserve and enhance the goodwill associated with the name, trademarks etc. As one can see from the definition of a franchise as provided by the Irish Franchise Association (which would be similar to the definition provided by the British Franchise Association), the Franchise Agreement would require the Franchisee to pay periodic payments in consideration of goods and/or services provided by the Franchisor to the Franchisee.*

1.3 *The two basic ingredients of the franchise are the licence to the Franchisee to operate under a trade name using trade or service marks, associated with the Franchisor and the Franchisor's continuing control over the Franchisee's operations. The result is then designed to be uniformity between outlets calculated to lead the public into believing that they are dealing with a single business group rather than many different businesses. The reality is that the majority of the public do not in general distinguish between franchise chains and integrated businesses, but that is rapidly changing. Goodwill attaching to a name, trade mark or a distinctive get up which serves to distinguish the chain as a whole from competing businesses, is still not really understood in a franchise context by the public at large though there is a greater awareness of franchising as a way of doing business, among those who would be interested in doing business in that way or establishing themselves in business. The reality as disclosed by surveys is that while the public may be aware that a particular outlet is operating as a franchise they do not generally realise that outlets are separately owned and operated only under licence from a franchisor.*

1.4 *To a large extent, from a lay person's point of view the relationship between a Franchisor and a Franchisee is in the nature of a partnership, though it is quite clearly not a legal partnership.*

Developing the Franchise

2.1 *It is probably unnecessary to say so, but if one is setting up a new franchise, one must actually have a business to franchise. An idea in itself is not enough. The idea must have been developed into an operating business and have been tried, tested and modified as necessary, before*

franchising has commenced. What the franchisee is looking for, and which is central to the nature of franchise, is a licence to carry on the business under what can be demonstrated as a successful business method.

2.2 *The first element is the name of the franchised business. An important element is that the business name should be distinctive and easily remembered. Also, the name should be registered as a trade/service mark in respect of the goods and services which one supplies. In this regard the assistance of a registered Trade Mark Agent would be advisable. Bill Holohan is a Registered Trademark Agent and Registered E.U. Trademark Practitioner.*

2.3 *A good way to prepare for franchising one's business is to obtain I.S.O. standard certification or an equivalent quality certification. The process involved in this, to a great extent parallels what one would, objectively, need to do in order to prepare one's business to a point where one is ready to franchise. As well as being able to confirm to franchisees that one's business is up to the quality standard, the process simplifies the preparation of a Franchise Manual which should ideally be "an idiot's guide to how to operate the business".*

Intellectual Property Rights

3.1 Before proceeding to grant any kind of franchise in respect of intellectual property rights, it is necessary to ensure that you have those rights available to a Franchisor. Once the Franchisor has the trade/service mark registered, they are then afforded certain statutory protections. However, if they do not have a registered trade/service mark, they then have to rely on what is known as a "passing off" action in order to prevent others from using their business name, marks or get up. Passing off is where somebody passes themselves off as, or misrepresents themselves, in the course of trade, to prospective customer's or purchasers, as being another trader or supplier to the extent that the true owner of the business suffers damage as a result. Essentially they are trying to piggyback onto the reputation, goodwill of another successful trader for the purpose of promoting their own goods or services or marketing them as if they were those of the successful business.

3.2 *The principal drawback with the passing off action is the expense which is involved in litigation. Evidence of the goodwill would have to be established first and you then have to show that that goodwill has been damaged. By contrast, an action for infringement of a trade/service mark simply begs the question of whether or not the defendant has used the mark in any one of a number of specified ways in relation to the goods and services in respect of which the mark is registered. The register itself then becomes your main weapon.*

The Get Up

4.1 *Another essential element of the Franchise is a distinctive "get up" or style of fit out of business premises and/or the marketing image of the premises. This can often form an important part of any successful business operation. It is important, to the extent that it would affect or involve buildings, to remember that planning laws would have to be complied with. For example, as part of their policy to restrict the "neon sign" type of development on O'Connell Street in Dublin, a number of years ago Dublin Corporation restricted Rocket Restaurants on 'Connell street from erecting their standard type of "rocket" outside their premises.*

4.2 *To the extent that the get up would form part of the distinctive style or identity of a business then the goodwill attaching to it could be protected in the same way as the trade name, primarily through the law of passing off. Certain elements of the "get up" may also be registerable as trade/service marks or as registered designs.*

4.3 *Copyright can also be of assistance in relation to the franchise manual, slogans, publicity material and the like, or indeed packaging.*

Trade Secrets, Know-How etc

5.1 The operation of any franchised business is likely to involve the imparting of confidential information to franchisees. This type of information is not such that you could generally get a patent in respect of it, or that you can protect it in any particular way other than through the use of confidentiality agreements. However the accumulation of this information is an important element in the package which the Franchisor has to offer the Franchisee. Accordingly preservation of confidentiality would be a very important element of the Franchise Agreement itself. The extent to which the Franchisee can be stopped from using information outside the terms of the Franchise Agreement, to a large extent depends on the law relating to the restraint of trade and competition. Subject to the validity of any restraints that are imposed, then third parties who knowingly procure the Franchisee to disclose information to them, commit a tort (or civil wrong) of inducing a breach of contract and can be restrained from using the information or made liable to pay damages.

5.2 *The types of confidential information which in general would be subject to valid restraints on trade are:-*

- (a) patentable inventions or processes;*
- (b) other novel ideas reduced to practical technical procedures;*
- (c) know how i.e. the fund of technical knowledge and experience acquired by a highly specialised process. It may be and it usually is noted down in documents, drawings etc.;*
- (d) ideas such as advertising schemes,*

The Operations Manual

6.1 *This is a crucial part of the whole package and should contain details of:*

- (a) the intellectual property rights i.e. trade marks etc.,*
- (b) the equipment, procedures etc., covered in the training programme which are needed to operate the business,*
- (c) accounting systems,*
- (d) sales and service report forms,*
- (e) VAT returns,*
- (f) equipment maintenance procedures,*
- (g) preparation of products,*
- (h) storage of products,*
- (i) procedures for dealing with staff,*
- (j) customer service systems,*

(k) customer complaints procedures,

(l) advertising and promotions at a local level,

to name but a few.

6.2 *It would be useful to insert a provision requiring the Franchisee not to disclose the contents of the manual other than is necessary to people actually involved in the running of the business and providing that the manual remains the property of the Franchisor and must be returned in the event of the Franchisee terminating the agreement and not proceeding.*

6.3 *As previously mentioned a good stepping stone or preparatory step to the preparation of a Manual is the acquisition of I.S.O. or quality accreditation or certification.*

Supply of Initial Equipment

7.1 *Sometimes the Franchisee acquires initial equipment and items needed to start the business from the Franchisor. Sometimes the Franchisor charges "a mark up" or fee for this, thereby generating an additional source of profit.*

Franchisee Premises

8.1 *An important consideration is the premises within which or out of which the Franchise would operate. Generally speaking you will hear tell of Franchise Territories where somebody who is granted a Franchise is granted the rights to exploit that Franchise within a certain territory. This for example would be suitable for a type of business where the Franchisee would offer services or goods which are delivered to customers off site. The Franchisee would then be granted rights to exploit the potential of the client base within a specific territory.*

8.2 *Some Franchises, for example O'Brien's Sandwich Bars, operate on the basis that they grant the right to develop a particular territory, with the Franchisee free to develop as many outlets as they want, within that territory.*

8.3 *Where you are operating a service which is provided at a particular premises, such as a retail outlet or, say, a restaurant service, then the concept of a territory is not really relevant. What is relevant is the site of the premises. A Franchisor may, in any particular urban area, want to grant more than one Franchise and you would not want Franchisees conflicting with each other in terms of location. This is where a Franchisor would have to give consideration to where they would grant Franchises. One could spend a lot of time and energy studying the demographic details of towns etc., and the likelihood of success and one would have to provide in the agreement for controls over choice of premises etc.*

PART II

Advantages and Disadvantages of Franchising to the Franchisee

9.1 *One of the central questions you must ask yourself is why you would want to franchise your business. What is the net benefit to be derived, when weighing up the advantages on the one hand and the disadvantages on the other. Some of the advantages which have been perceived are as follows.*

Advantages to the Franchisor

10.1 (a) *You can have a smaller central management system with a few highly skilled experts in the various aspects of the business with which you are concerned and they can generate a reasonable profit without becoming involved in high risk capital investment or the day to day detail and problems which would arise in the management of a number of scattered retail or business outlets.*

(b) *You don't have the need for injection of additional capital in order to achieve a rapid growth rate. Each outlet which is opened utilises the capital investment and financial resources of the Franchisees, with you getting a return by way of a share on the profit.*

(c) *Logically, your expansion rate can be much more rapid than on an organic growth basis, without the attendant risks or problems attached to rapid organic growth or expansion.*

(d) *It will be easier to exploit areas which are not already within your scope. For example, a Dublin based franchisor could grant a franchise in the Donegal area, whereas they might not, on a managerial basis, be able to manage an additional outlet in that area. They could have franchisees with local knowledge and experience, who would be more likely to succeed than if they were trying to establish a unit themselves. Also a local person could have an established business reputation and might be better placed to promote the business locally. (Equally, a potential franchisee's bad reputation could affect the Franchise network and its reputation so the franchisee should be "checked out" carefully as part of the franchisee selection process).*

(e) *You have less staff problems to cope with because you are not involved in the staff issues in each individual outlet, these being the responsibility of the Franchisee.*

(f) *Because they are managing their own business and, to the greater extent, the profits are attaching to or accruing to the Franchisee, the Franchisee will be keen, well motivated and extremely alert to the need to minimise costs and maximise sales, more so than would be the case if you were employing a manager in another sales outlet.*

(g) *A Franchisor can achieve secure distribution outlets for services and products. If however you would market a set of products as "Your" products, even if it was only a repackaging of existing trade products, then this could be of advantage to you. For example every Wimpy franchisee has to buy their Wimpy hamburger and certain other items from the Franchisor. No other product can be described as a Wimpy product. If you are supplying certain unique products, then you could secure a return on these also. The products you are using may be products generally available in the trade and there is a provision under EU Regulations, relating to franchises, which allows franchisees to source products of equivalent standard elsewhere.*

However if the products you are supplying can be described as unique ,and cannot be obtained elsewhere, then they would not be entitled to source these products elsewhere.

(h) Finally you could negotiate certain preferential supply terms for franchisees, and could charge a management fee for this purpose.

The Disadvantages to the Franchisor

11.1 The disadvantages to the Franchisor are numerous and varied.

(a) The Franchisees very often develop a feeling of independence. If they are successful and the business is running well, they might well be earning more than what they were told to expect. They then begin to wonder why they ever needed the Franchisor at all. They become convinced that the reason for their success is their own initiative, as distinct from the secret of the business which they acquired from the franchisor and in respect of which they agreed contractually to pay the franchisor. This is a big problem for the Franchisor if it arises and is one which has to be the subject of detailed discussion with the Franchisee beforehand if the problem is to be avoided. The Franchisor more often than not might be doing their job very well and helping the Franchisee to achieve success, only then to find that the Franchisee thinks that they solely are the person who is then responsible for the success, without realising that they could never have been a success without the benefit .of the Franchisor's Franchise and "know how" and "secret of success" in the first place. This is why it is important to select franchisees carefully in the first instance and to build up a relationship with the Franchisee on an ongoing basis, and not to rely on the scenario where there is a front end fee only.

(b) A Franchisor has to exercise constant vigilance in order to ensure that the standards of quality, service, goods etc. are maintained throughout the franchise chain and throughout the term of the Franchise Agreement. You do not want one of the outlets "slipping" in terms of their standards and as a result the goodwill and reputation of the franchise chain as a whole being affected. This can be overcome by having somebody who, essentially, acts as a trouble shooter who goes around identifying problems, keeping franchisees on their toes, but doing it in a constructive way by helping them to identify these problems and overcome the difficulties which they are encountering.

(c) You might have a franchisee who might not be fully alive to the opportunities which the business presents. This again is a matter for careful handling by the Franchisor because at the end of the day the Franchisee does own their own business. One has to educate the Franchisee and lead them into accepting the Franchisor's suggestions rather than forcing grudging acceptance because of contractual obligations.

(d) One of the most important decisions in franchising is really the First Franchisee and one has to be "150% sure" that that Franchisee is the right person. It is important to make sure that the first Franchisee does not fail as that will almost certainly ensure that one cannot get one's Franchise Network off the ground thereafter. For this reason, many Franchisors establish a Company Owned Franchise as a Pilot Operation.

(e) There is often a difficulty in obtaining the co-operation of the Franchisee in relation to maintaining the style and decor of the premises and enforcing other operational standards so that the public is always given the highest standard of service, in accordance with the terms specified in the Franchise Agreement and in a manner consistent with the brand image of the Franchisor.

(f) A further difficulty is that if the Franchisee is paying Franchise Fees based on a

percentage of gross income, there is a temptation in the case of some franchisees not to disclose their true gross income, in order to minimise the amount that they are paying to franchisors. This again can be a problem and has to form the basis of trust and co-operation between the Franchisor and the Franchisee.

(g) Furthermore, the Franchisor must be prepared to accept that the Franchisee may become a future competitor. The Franchisor must be prepared to accept that all the work and effort put into training the Franchisee, may ultimately be used to set up a rival franchise network. One can incorporate certain restrictions on future competition, but Irish competition law is so strict that one can in reality only limit a Franchisee to a non competition clause for a period of up to only one year after the Franchise has come to an end. Accordingly one has to accept that one may face a situation where one year after the expiry of the Franchise Term, the Franchisee sets up a similar but rival network.

Advantages and Disadvantages of Franchising to a Franchisee

12.1 You must also keep in the back of your mind the potential advantages or disadvantages of franchising, from the potential Franchisee's point of view, which would influence them in their decision whether or not to take a Franchise from you. The Franchisee has to decide whether or not they want to go into business through the Franchise System or medium, and then, if there are a number of alternative franchise packages available, they have to decide on the advantages and disadvantages of yours as compared with any other franchise package.

Advantages to the Franchisee

13.1 (a) *The Franchisee may have a lack of basic knowledge or experience. This can be overcome by the training programme provided by the Franchisor. The Franchisee then has the incentive of becoming the owner of a business, which has the backup and support of the Franchisor. While the Franchisee remains an independent business person within the Franchise Network, building on the experience and success of the Franchisor, they can maximise the value of their investment. Essentially, they are eliminating the "learning curve" by buying in the experience of the Franchisor.*

(b) *The Franchisee will open their business with the benefit of an established name And reputation and goodwill. They will not therefore be trying to establish such goodwill in the eyes of the public.*

(c) *The Franchisee invariably will need less capital in a Franchise situation than Mightbe otherwise required if they were starting a new business venture. Also, because of the guidance provided by the Franchisor and gaining the benefit of the Franchisor's learning curve, they will not waste valuable resources in the set up of the business. They should be able to gauge the required level of investment, and will not be either under or over capitalised.*

(d) *In any individual franchise package they will receive assistance in one or other or more of the following:-*

(i) *site selection;*

(ii) *preparation of plans for remodelling of the premises including layout, and advice in relation to obtaining town planning or building regulation approvals.*

(iii) *obtaining finance for the franchise business;*

(iv) *the training of staff;*

(v) *purchase of equipment;*

(vi) *selection and purchase of stock;*

(vii) *general business management;*

(viii) *getting the business open and running it smoothly.*

(e) *The Franchisee might receive the benefit of the Franchisor's advertising and*

promotional activities on a national basis.

(f) The Franchisee might receive the benefit of bulk purchasing and negotiating capacity of the franchisor on behalf of the Franchise Network.

(g) The Franchisee will probably have available to them all the expertise and knowledge of the Franchisor's head office management staff who would be versed in all aspects of the business.

(h) The Franchisee's business risk is reduced. While the risk factor can never be eliminated, a certain element of it will be reduced.

(h) A Franchisee may have the services of trouble shooters or field back up staff provided by the Franchisor, available to the Franchisee to help them when they have rough spots.

(i) The Franchisee will have the benefit of the use of the Franchisor's patents, trade marks, trade names, service marks, trade secrets, know how, secret processes etc.

(j) Where there is ongoing development of the Franchise package and the Franchisor is continually researching and developing programmes designed to improve the business and/or products, the Franchisee will get the benefit of this without having to incur the development costs themselves.

(k) The Franchisee will obtain the maximum amount of market information and experience which has been accumulated by the Franchisor and which is made available to the Franchisees. This might in certain circumstances allow the Franchisee access to information which they might not otherwise have.

Disadvantages to the Franchisee

- 14.1(a) *Inevitably there are going to be some disadvantages to the Franchisee, the primary the one being the question of the imposition of controls. These controls will be necessary to regulate the quality of the service or goods to be provided or sold by the Franchisee and to maintain uniformity throughout the Franchise Network. The Franchisee must accept these controls as being necessary for their own ultimate benefit and the benefit of the Franchise Network in general. It will not stifle initiative to its future development by the Franchisee, but they must seek the prior approval of the Franchisor before introducing any alterations or amendments or improvements.*
- (b) *The Franchisee will have to pay the Franchisor for the Franchisor's services, Partly by way of initial fee and partly by way of ongoing fees.*
- (c) *A difficulty may exist in assessing the value of the Franchise and the quality of The Franchisor. A franchise package may not be "all it is cracked up to be" or appears to be at first instance and secondly the Franchisor may not be able to maintain ongoing services or in fact may not be providing ongoing services at all. It really is a question then of the Franchisee deciding whether they are getting or are likely to get value for money.*
- (d) *Inevitably the Franchise Agreement will contain some restrictions on the subsequent sale or transfer of the business. This would be a clear inhibition on the Franchisee's ability to deal with his own business and sell it when and to whom they like, but as with most restrictions there would be a good reason for this. The reason is that the Franchisor will have been most meticulous in their choice of the original Franchisee and they would want to apply the same criteria to any potential transferee of the business.*
- (e) *The Franchisee may find themselves becoming too dependent on the Franchisor. They find then that they are not sufficiently motivated to build their business properly.*
- (f) *The Franchisor's policies may affect the franchisee's profitability. If the Franchisor took a policy decision not to carry certain goods or services and the Franchisee derived a certain element of their profit from this, it could have an adverse affect on the Franchisee's returns.*
- (g) *The Franchisor may make mistakes of policy and might make decisions relating to innovations in the business which would be unsuccessful and then operate to the financial detriment of the Franchisee.*
- (h) *The good name of the Franchise business or its brand image. may become disreputable for reasons beyond the control of the Franchisee.*

PART III

Setting Up the Franchise

15.1 *There are a number of elements to be considered in setting up a franchise, and I will mention a number of these including the business concept, the pilot operation, the development of the franchise package, the development of the operational manual, the marketing of the franchise package, the selection of franchisees and then developing the franchisor's organisation.*

The Business Concept

The move into franchising can arise in a number of circumstances. Some franchisors make a positive decision to expand the business by means of franchising rather than expanding additional outlets. Another, which is more rare, is to try and set up and establish a business by way of franchising, from the very beginning. More often than not the franchising develops from a situation where somebody has a successful business and is approached by others who want to know how to replicate that success.

In attracting potential franchisee one has to be conscious of a number of elements including:-

- 1. Franchisees with finance. Will the franchisor be able to attract franchisees with sufficient finance or capable of acquiring sufficient finance?*
- 2. Staff skills. Will the franchisor and the franchisee be able to attract the appropriate staff with the adequate skills or can the skills be taught to potential franchisees?*
- 3. Property. Can sufficient or suitable property be found or afforded?*
- 4. Consumer demand. Is there or will there be a sufficient market demand for the product or service?*
- 5. Will the business have staying power or is it merely pandering to some temporary fad or fashion?*
- 6. Is the business distinctive in its image. If one does have competitors then one has to consider what makes people chose one particular business over another.*

The Pilot Operation

It is usually essential to the development of a franchise network that there be at least one and probably more pilot operations established. A pilot operation can be essential to ensure that franchisees or potential franchisees can be satisfied that the success of the business is not dependent on what might be considered a unique or a typical location. In other words you will have to be able to satisfy people that the success of your business is not dependent upon the fact that you are based, say, in the City Centre of Dublin. A list of customers addresses might be helpful in this regard. This would show that the attraction of your business is not limited geographically.

Money Back Guarantee?

Sometimes potential franchisors feel that a pilot operation is not either necessary or relevant and that they could overcome any difficulties or queries which might arise as a result of the absence of the lack of a proven pilot system, by giving to the franchisee a guarantee of their money back in the event of failure. This is generally regarded as being an extremely dangerous approach and it negates the entire principles on which business format franchising would be established. Essentially a franchisor is selling a sophisticated package of know how and information. If the franchisor has not proved the ability to use that information with success, having put their own money at risk, then the value of the franchise package is negated. Also, in such circumstances, they cannot have established the goodwill, the reputation and the identity of the franchise package, which would be a necessary ingredient for success in the eyes of a franchisee.

You have to remember that many franchisees could be investing a greater part of their life savings, and changing their entire way of life, when taking on a franchise package. Nothing could be more compelling to them than a proven success story. This then demonstrates the value of the pilot operation.

Also a pilot operation will help you to identify and sort out problem areas in relation to:-

- (a) marketing;*
- (b) acceptability of the product or service;*
- (c) local planning requirements, building regulations, bye laws etc.;*
- (d) fire regulations;*
- (e) health and safety requirements;*
- (f) local union requirements;*

and other similar problems relating to the type of business.

It will enable the Franchisor to experiment with layout and design in order to discover the best combination of equipment and decor and design of interior and exterior premises. To a certain extent, your premises layout and or design/decor may have been necessitated by your present premises whereas a more desirable layout or decor might be possible.

It might allow you to experiment with different types of opening hours in order to discover what the optimum hours during which the business should be operating are, it may be that you are operating during certain hours but a more flexible regime of trading hours might be more effective.

Franchisee/Staff Training etc.

It will also allow you to develop your training package. Training in the operational side of the business will be essential, as will training in the business management and accounting aspects. In developing the pilot operation, you can gain valuable experience in relation to the introduction of simple and effective methods of accounting, stocktaking and controls.

Bearing in mind the need for an operations manual, you can refine (if you have not already developed) detailed job descriptions outlining specific duties of each staff member and the manner in which they are to be performed. If the layout of the premises is such or if the operational systems are such that time is lost, then the addition of all that time over the period, can either lead-to lost sales opportunities, or additional staff costs. That would then reduce the profitability of the operation.

Presuming you have succeeded with a pilot operation this do not mean that you have to then "sit on your laurels". A Franchisor has to remain ahead of the game, particular where there is opposition and must be constantly experimenting with and developing the process. You will need to know what can be shown to franchisees and have been proved and tested.

Developing the Franchise Package

The experience gained in establishing your initial business outlet or in a pilot operation will then provide the basis on which all the elements in the package are to be structured. The overall package will bring together the accumulation of the total experience in a form which can be reduced to writing and transmitted to other people.

A good way to prepare for franchising one's business is to obtain I.S.O. standard certification. The process involved in this, to a great extent parallel what one would, objectively, need to do in order to prepare one's business to a point where one is ready to franchise. As well as being able to confirm to franchisees that one's business is up to the I.S.O. standard, the process simplifies the preparation of a Franchise Manual which should ideally be "an idiots guide to how to operate the business".

You may indeed find that if you are already so busy that you do not have any great period of time available to devote to the franchising question, you may have to employ somebody to deal with that in particular, and that you will suffer a nett loss in the first couple years of franchising as a result. There will also be the expenses of trade/service mark registration, brochure production, staff salaries, office expenditure, travel expenses, etc., while becoming established. While some franchisors consider the possibility of looking for an initial front end fee only with a view to recovering their outlay quickly, it is not in fact a good idea to charge unrealistically high franchise fees at the outset. Such a practice is associated with past abuses in other cases and this has tended to damage the image of franchising. The general consensus would be that the franchisor would take a significant part of their profit income from the ongoing and successful operation of the business by the franchisee. There is an important element in selling the package that the franchisee pays for what they get i.e. if they succeed the franchisor also succeeds.

Developing the Operations Manual

Probably the most important part of the Franchise package in terms of what one can physically hand to a Franchisee will be the Operations Manual. The manual should provide a Franchisee with all the information they require in connection with the operation of the Franchise business. It will also invariably be used in training and there should be a lot of reference to the manual in the course of training. Also the idea would be that the Franchisee would have the manual available when running their business so that they can refresh their memory and obtain guidance from it on a ongoing basis. Many manuals contain very detailed guidance on every task. to be performed by each individual staff member. It is an essential part of the process whereby the Franchisor gives the Franchisee the know how in relation to running the Franchise business. It can also incorporate advice in relation to product sources, supplies, the volume of supplies needed etc., advice can be incorporated in to the manual for the benefit of franchisees. Very often the franchise manual will also incorporate point of sales material, promotional material, suggested advertisements etc.

It is usual also to prepare accounting procedures and business systems which can be operated by the franchisee. Your accountant may be able to give you assistance in relation to developing these. The franchisee will then have to be trained in these systems and methods which will fulfil two purposes, firstly to ensure that the Franchisee has the maximum amount of information available to them to see whether the operation is a financial success and secondly will provide the Franchisor with the maximum amount of information to enable them to keep control of the business in so far as it may be necessary for the purpose of carrying out troubleshooting or following up service. For example if you know the volume of goods being used by a Franchisee in the course of the business, you should be able to calculate the volume of customer sales. If then the figures as being reported by the Franchisee to you are below those levels, it may be that the Franchisee is not disclosing the full details or true value of turnover. It will also provide a valuable source of information for you for promoting further franchise packages to other potential franchisees. You can, in all truth, then tell potential franchisees about the potential level of turnover they could expect and it is not in the realms of "general business projections" but is based on the practical experiences of other Franchisees.

You could also come to some arrangement with a bank whereby you can give some kind of financial information/package/loan structure information to potential Franchisees who will need loans either for the acquisition of premises or equipment or general business financing.

It would be important that the manual would be extremely comprehensive and cover in detail all aspects of the day to day running of the Franchisor's business for example, starting with how one would deal with phone calls coming in from potential customers, right down to the form of greeting or salutation that would be given to a customer when they are entering or leaving the premises. It should cover every single detail of the day to day running of the business.

Format of the Manual

Generally speaking manuals would incorporate details such as the following:-

An Introduction.

There should be some introductory remarks to explain the basic nature of the operation of the business and the philosophy which is underlying it, which spells out in broad terms what the Franchisor would expect from the Franchisee or what the Franchisee should expect from the Franchisor. It might also explain for example that the franchise seeks to provide not just a product or a service, but a "feel good experience for the customer".

Operational System.

You should then have a description about the operational system explaining how the operation is set up and how and why the various constituent elements will dovetail each other.

Detailed Operational Methods.

This should then deal with the equipment which is required for the operation of the business and provide a detailed explanation of what the equipment is, what its function is and how to operate it etc. It also should give guidance on how to "trouble shoot" basic and common faults or problems. There should be a directory of telephone numbers in the manual which would include telephone numbers of supply and service centres for equipment etc.

Operating Instructions.

These are usually broken down into a number of different subsections and will include for example:

- *Opening hours/days.*
- *Trading patterns.*
- *Staff schedules and rotas.*
- *Use of standard forms of procedures and agreements.*
- *Requirements as to staff appearance (example use of uniforms/dress codes etc.)*
- *Staff training procedures.*

- *Procedures for employing staff and guidance on the statutory obligations of an employer towards staff.*
- *Procedures for disciplining staff and statutory obligations employed on a Franchisee as an employer.*
- *Procedures for dismissing staff bearing in mind the statutory protections for employees.*
- *Pricing policies.*
- *Purchasing policies.*
- *Product standards as to quality and quantity etc.*
- *Service standards.*
- *Staff duties, incorporating a detailed job description for every staff member setting out not only what they have to do and the extent of their duties but also the how and the why of the methods and procedures to be adopted in performing them.*
- *Payment of Franchise fees, i.e. the detailed operation for both calculating the account of a franchise fee with specimens of the appropriate return forms.*
- *Accountancy provisions with detailed accounting methods to employed by the Franchisee and a flow of information to be provided to the Franchisor to enable the Franchisor to provide information and assistance to the Franchisee, advice on V.A.T. requirements and P.A.Y.E. requirements and how to fill in these returns, examples of the forms to be used in the operation of the accounting system etc.*
- *Advertising and Marketing with basic guidance on standard point of sale advertising and marketing techniques, a list of do's and don'ts etc.*
- *Trade Names/Trade/Service Mark Control.*
- *Insurance, with details of insurance recommended and details of what insurance schemes can be provided by insurers and who to contact etc.*

Standard Forms

You should also have a section devoted to the type of standard forms which would include all those I have already referred to and also could incorporate things such as:

- *Contracts of employment.*
- *Agreements with managers and/or staff by way of confidentiality agreements requiring them to keep the trade secret methods, products etc. secret and not to use or disclose any of the information except in the discharge of their employment duties.*
- *Contract forms used for orders from customers.*
- *Standard work sheets by way of operating check lists or for customer information.*

Technical Supplement

This could then contain more detailed information byway of technical nature about the equipment, maintenance, service etc. It is not uncommon to see manufacturers explanatory literature supplemented by those prepared by the technical management of the Franchisor's organisation. For example if you are recommending a particular type of equipment as the standard equipment which should be used because of its simplicity, reliability etc., you might incorporate a standard form of manual from the supplier or manufacturer of the equipment.

PART IV

Marketing a Franchise

It may seem an obvious statement to make but the best way of marketing a franchise package is to demonstrate proven success. The best franchisee never need to market themselves. They sell themselves. McDonalds is a prime example. Many Franchisors deliberately maintain a low profile in the marketing of an initial Franchise and they wait until such time as they are approached by potential Franchisees. The careful use of information given to the Press can also be very effective. Teasers issued to the "gossip" columns can be very useful. For example, if the Press were to suggest that you were considering franchising your extremely successful business, this could generate a flow of enquiries from potential franchisees. Usually Franchisees make contact with Franchisors in one of the following ways:-

- 1. The Franchisee might be attracted by a friend who has taken up a Franchise or by talking to an existing Franchisee.*
- 2. The Franchisee might respond to some newspaper feature or magazine article mentioning the Franchise.*
- 3. The Franchisee might see an advertisement in one of the Trade Publications such as Business Franchise Magazine or Franchise World Magazine or the business opportunities column of a newspaper.*
- 4. It is not unusual to find the owners or operators of a successful business being approached by people who would like to know if a Franchise was available. This can sometimes be the first time a business operator considers franchising.*
- 5. A potential franchisee might obtain information from the Irish Franchise Association or the Small Firms Association or be referred by one of the banks.*

One of the cheapest ways of generating media interest is to have some kind of a gala opening with the trade national or local press being invited, the customers being attracted by means of discount offers/small gifts. You could, for example, organise a celebrity line up of people who would use the goods or services provided. The main aim would be to create a public event and that can be achieved at a relatively modest cost, but it might take some time to organise. Attention to detail would be essential. Very little credit is given when the only news worthy feature of a launch is the failure of it to "come together". It is also helpful if the potential Franchisee is news worthy in their own right so that there is a "human interest" angle to the story apart at all from the business opportunity angle.

You must be conscious of the need to have a "quality image" in terms of your marketing and promotional material. This is all important. It can destroy all ones efforts if you produce a "tatty" piece of paper in response to enquiries about Franchises. It pays dividends, to prepare a set of literature by way of promotional material which explains who the people involved in the Franchise are and what their relevant experience is. This history of the business which is being Franchised should also be given and an description included of the services which would be provided in the Franchise package. Pictures of the business and people are a good idea for presentation purposes. You would need to be conscious of the fact that of say every 100 enquiries, 80 will probably never go beyond the initial contact stage, 10 on submission of personal details will probably be judged to be unsuitable or unacceptable to you, another 10 may be worth meeting and might be worthy of further discussion, and ultimately, only 1 or 2 might sign up.

Marketing the franchise will require patience. Even then, where you have a Franchisee who is prepared to sign up, it is all important that you be happy with the potential Franchisee. You need to ensure that "the vibes are right". At the end of the day, it does not matter how tight a legal agreement you have with somebody, the facts of the matter are that you do not want to have to rely on the terms of a legal agreement. In particular you should strive to avoid litigation where, many times the only winners are the lawyers. I often say to Franchisors and Franchisees that the most useful thing that you can do with a franchise agreement once it has been signed is to use it to prop up the leg of an uneven table or keep the door open to allow the customers in. The day you have to consult the wording of the agreement, you are in trouble and you should hope that you would never have to find yourself in that situation.

The Pattern of Recruitment

Very often the sequence of events in recruitment is something like the following:-

- 1 The Franchisor would normally receive some kind of an enquiry either by way of letter or telephone call from the prospective Franchisee. The Franchisor then responds by sending out a glossy presentation with details in relation to the Franchise company and its particular success story. Very often this is presented in a question and answer form and some brochures will include an indication of what franchising is as some potential Franchisees will not really have an understanding of the nature of Franchising. It might also be necessary to send some prospects a copy of one or more publications or articles on Franchising generally or newspaper articles on the franchise package or the personalities operating it.*
- 2. The package is sometimes accompanied by a explanation of what the Franchisor does for Franchisees in terms of setting them up and continuing to service their needs afterwards.*
- 3. Financial projections are usually also dispatched with the initial material. These are presented as an indication of what is possible, as distinct from what one will actually achieve and it is very important to include suitable caveats or reservations to ensure that the potential Franchisee understands that these are in the realms of possibility and not certainty.*
- 4. The Franchisee will then be invited to complete an information sheet which will provide the Franchisor with details about the Franchisee in order that they can assess the Franchisee as a potential Franchisee.*
- 5. This will then be accompanied by a letter inviting the Franchisee to contact the Franchisor to discuss the matter.*

The Selection Process

This is not an easy matter on which to give advice. The most important .and fundamental thing which can be said is that the selection of potential Franchisees is crucial, particularly in the early days of the Franchise. However the skill of choosing the right people is, of necessity, only developed with experience but you should have regard to certain fundamental matters.

1. No special deals.

It is very often a mistake made by Franchisors who are anxious to get up and running that they will offer the first Franchisee a special package. This is a mistake and general experience has shown that it builds up problems later in exercising control over the Franchisee who regards themselves as a "special case" and are entitled to "special treatment or considerations"; also,

Franchisees will talk to each other and the fact that one Franchisee got a special deal will cause resentment with others later on.

2. Franchise Profiles.

Many Franchisors develop what they call a franchise profile in terms of the type of person they would like to see as a potential Franchisee. A lot of Franchisees tend either to be sole operator Franchisee or what are known as "Mama and Papa Franchises". This means that they could be operated by a husband and wife team or a male/female partnership. You need to develop criteria as to the type of person or persons you would like to see as Franchisees.

3. Financial Resources.

It is obviously important that a potential Franchisee would have the adequate financial resources to get started. It is usual for Franchisors to provide information as to possible funding sources etc.

4. Business Experience.

Most franchise companies do require their potential Franchisees to have some prior experience of the particular trade as training alone will not overcome the ignorance of franchisees or their inexperience. On the other hand some Franchisors believe that a previously trained person will be more difficult to train in the particular business because they will have certain preconceived ideas or ways of doing things.

5. Age.

Obviously the Franchisee must be old enough to be responsible and mature but young enough to be vigorous and hard working.

6. Marital Status.

When someone is thinking of taking on a Franchise, it is important that they have the support and backup of their spouse or partner. It is surprising that in many cases, potential Franchisees do not go through the details of their proposed venture with their partner before signing up. It is in the Franchisor's interest to ensure that while the spouse or partner may not be a party to the agreement, they are as fully committed to the concept as the Franchisee themselves. Some Franchisors consider it important to have at least one meeting with the potential Franchisee and their spouse/partner in their home. Seeing them together and the way in which they live can tell a lot about them.

7. Independence/Motivation.

The potential Franchisee must be independent enough or motivated enough to be able to run their own business, but not so independent that they want to break away from the Franchisor.

8. Trust.

This is essential. A good Franchise relationship is based on initial and ongoing mutual trust and respect. It is important that there be honesty in the relationship as the Franchisor will to a large extent be relying on the Franchisees honesty in relation to the Franchise returns.

9. Organising ability.

A Franchisor should satisfy themselves that the Franchisee does have organising ability and will be able to run the business, semi-independently. They must also be open to training, guidance and ideas.

10. Compatibility/Friendliness.

Certain people may be able to run businesses quite effectively, but they may not be into or capable of handling issues of customer service/care. While they might be very good on technical matters, they may not be able to relate to customers and that might be their downfall.

11. Developing the Franchisor's Network or Organisation

As the franchise business grows you may find that you need to take people on to handle the Franchise operations alone. It is important that the need for such personnel is recognised in advance and that you are not reactive but rather are proactive and that you have people in place in advance to respond to whatever need arises. This is a matter of timing and judgment on the part of the Franchisor to ensure that they are going to have sufficient staff resources available as the need arises. This is to be analysed very carefully as obviously it is going to have a financial impact. There will be expenses incurred in both establishing and running any Franchising activity, sometimes before there is a commensurate income stream to compensate for it.

Generally speaking it is felt that the initial franchise fee should be a relatively modest capital sum and be sufficient to cover the expenses incurred by the franchisor on franchisee evaluation training supervision etc., and also incorporating a certain profit element by way of return to the franchisor.

After that each franchisee should represent a secure source of income for the franchisor. In return the franchisor should be in a position to offer services to the franchisees to cover areas of financial accounting, marketing, business organisation and innovation etc.

Accounting Systems

The franchisor will usually develop and keep and maintain a simple book keeping system for the franchisee and give advice in relation to it. The idea is to simplify the accounting procedure and the financial reports to be made to the franchisor. Also, you as a franchisor may be expected to be able to provide advice and brief guidance on matters such as the payment of wages, employment laws and regulation, VAT returns, the need for auditors, how to go about raising finance etc. All of that can be assembled and put in the manual. Obviously at a certain point the franchisee will have to rely on their own advisors whether it be accountants, lawyers, bankers etc.

Initial Marketing.

It is also usual in a franchise situation to find that the franchisor will get involved in the initial promotion of the franchisee's business, marketing etc., and will give the franchisee on hands assistance for a limited period of time. This is so that you can take the franchisee through the initial learning period until they feel comfortable and confident. It would be normal to find somebody in situ for a week or so after the franchisee has "set up shop". This is really a hand holding exercise, so to speak, and is perceived to be part of the back up and assistance that the franchisor is providing in return for the franchise fee.

If you are serious about getting involved in franchising, then it is important to have the resources available in terms of man or woman power, to provide the service.

PART V

The Franchise Fee Structure

Very often one will find that packages are being offered and being described as franchise packages when in essence what they are is a disguised sale of equipment with some additional training. If what you are going to offer to potential clients is advice on how to establish a business, in return for a fee, and there is no ongoing relationship, then that is not a franchise. That is a fee being paid in return for business advice in relation to a business opportunity.

Continuing Fees

More often than not, the franchisor, as I mentioned, will charge a percentage fee based on the gross sales of the franchisee. Sometimes this is done on the basis of there being a minimum amount payable per month but this is somewhat unusual and the Irish Franchise Association and British Franchise Association do not recommend minimum fees. The general feeling is felt that the percentage fee is the best way forward as the franchisee will then know precisely how much they have to pay up, they know how to calculate it, and they know that the franchisor will not be taking any hidden profit in any way. The difficulty of course is the growing feeling of independence on the part of the franchisee which may develop over a period of time, particularly if there is no great ongoing advice or assistance. That however can be overcome by ensuring that the franchisee understands that the total cost to the franchisee is not being paid by way of a front end fee and that they are paying over a period of time. People are used to the idea of buying goods by instalment payments, the total cost using that method being greater than the straightforward purchase system.

Advertising Funds

Many franchise schemes provide for expenditure on advertising and promotion by both the franchisor and the franchisee. Where the franchisor takes on the obligation to advertise and promote there are a number of alternative methods of dealing with this.

Firstly, the franchisor could charge the franchisee a fee based as an additional percentage of the franchisee's gross income, calculated in the same way as the franchise fee itself. These advertising levies or funds are then placed in a separate advertising or promotions fund which is dispersed by the Franchisor in advertising and promotion, with the fund being separately audited. Most Franchisors want to have complete control over advertising and promotional events over which the funds are spent. This would be in relation to national campaigns as distinct from local campaigns and it would be usual to allow the Franchisees to conduct local promotions, with the consent of the Franchisor.

Secondly, the Franchisor could include the advertising expense within the continuing Franchise fee and undertake to spend not less than a certain percentage of the fees on advertising and promotion. Again, Franchisors like to retain control over how this is done.

Thirdly, the Franchisor could undertake to do such advertising and promotion as they think fit, without collecting a contribution from the Franchisee or allocating a fixed sum for that purpose. This approach is often used by a Franchisor where they are already a substantial advertiser on their own account and the Franchisee will inevitably benefit by spin-offs.

PART VI

Advisory Committee/Franchisee Council

Assuming for the moment that you do enter into franchising and establishes network, an important matter thereafter is communication between you as a Franchisor and your Franchisees. This is a two way exercise and there are recommended methods for Maintaining good communications. Any Franchisee who feels cut off or ignored or neglected is an embryonic trouble spot. The advantage of having some kind of Franchisee advisory committee where all the Franchisees would come together on a regular basis to exchange ideas and have discussions and agree on advertising promotions etc, is that people are:-

- *Involved and feel part of a progressive network.*
- *Are fully informed and therefore "buy in" to any decisions that are made.*
- *Feel that their ideas as being taken on board by the Franchisor.*
- *Feel that they are being supported.*
- *Maintain and develop a feeling of mutual trust and inter-dependence which strengthens the credibility of the Franchise network.*
- *Suggestions might be made for the improvement or simplification of the operating manuals if it is felt that the explanations are not adequate or are unclear. Additional material might also be suggested.*
- *Training or retraining procedures can be discussed.*
- *Operational difficulties or techniques for handling staff can be discussed and solutions suggested.*
- *Difficulties with regard to accounting and reporting systems can be discussed and overcome.*
- *Ongoing market research and surveys can be investigated and discussed.*
- *Franchisees may have a contribution to make and provide information for such researches and surveys. This may in turn lead to the development of new services. (For example, Ronald McDonald was invented by a McDonalds franchisee).*

An ongoing process of discussion with the Franchisees in this way will help to maintain a sense of trust and confidence. I cannot emphasise enough the need to be fully frank and open and honest with potential Franchisees. There is no harm in telling someone that you are going to make a fortune based on their success, only if they are a success, then they can have no difficulty. Difficulties with Franchise networks which I have seen were based on allegations that Franchisees were not told relevant matters, which would have influenced their decision. A well know Print Franchise network disbanded within recent years. It has been suggested that this might have been due to difficulties between the master Franchisor and the Franchisees. Also there is another franchise network in Ireland of which I am aware, which was a service based franchise, which has fallen apart within recent years as well, for similar reasons.

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*The foregoing information is intended as a general commentary only. If you want to discuss any further aspects of this matter in greater detail then I would be happy to do so.*

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*Bill Holohan  
B. C. L., L L. B., F.C.I.L.S.,F.C.I. Arb.,  
Solicitor and Trade Mark Agent.*

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## ***Profile : Bill Holohan***

*As Per the website : [www.holohanlaw.com](http://www.holohanlaw.com)*

The Principal of the firm is Bill Holohan, B.C.L., LL.B., F.C.I.L.S., F.C.I.Arb. He is a Solicitor, a Notary Public, an Arbitrator, a Trade Mark Agent / Community Trade Mark Practitioner and is a Commissioner for Oaths.

He is one of the few Irish Solicitors who has appeared (without barristers) in the High Court and in the Supreme Court when arguing cases on behalf of clients. He has been described by the Sunday Business Post, (the leading weekly business newspaper in Ireland), as a "groundbreaker" and as "innovative".

In 1995, the Sunday Business Post featured him as one of the top 40 entrepreneurs / senior managers in the country under 40 years of age. He has made legal history on a number of occasions, most recently in 2000 when he was appointed by The Chief Justice in Ireland as a Notary Public for the two areas of Dublin and Cork, (the norm being appointment for only one area) and secondly when he was requested by the International Arbitration forum to become the first Irish solicitor on their International Arbitration Forum Panel of Arbitrators.

In 1986 he was appointed by the President of the High Court as a Commissioner for Oaths, and in April 2000 was appointed as a Notary Public.

Mr. Holohan is the co-author of a number of books on Bankruptcy, Leasing, Civil Procedures and the Rescue of Companies. (A full list of his Books and other papers can be found on our Publications page). he is also the Honorary Legal Advisor to the Irish Franchise Association, a member of the Executive Committee of the Irish Maritime Law Association since 1985, having acted as Honorary Secretary to that Association for a number of years, and is a Consultant to the Law School of the Law Society of Ireland.

In his private capacity, he has been involved in youth work in Ireland for a number of years having served six years as National Secretary of Scouting Ireland C.S.I., two years as Chairman of the Federation of Irish Scout Associations, six years as the Chairman of the Northern Ireland Scout Foundation, and also was a National Youth Council of Ireland Representative on a Department of Enterprise Trade and Employment Committee reviewing Youth Employment Legislation. As a result he has considerable knowledge and insight into the workings of Government Agencies.

Mr. Holohan's business knowledge is not confined solely to an advisory role. In addition to acting as solicitor and advisor to private clients and business clients he is the company secretary and/or company director of a number of companies carrying on different types of business.

In April 2000, he made legal history when he was appointed as a Notary Public for the Cities and Counties of both Dublin and Cork. Traditionally, a Notary Public was appointed for one area only and Bill Holohan is the first person to be appointed for both Dublin and

Cork. The Chief Justice, Mr. Justice Ronan Keane, in appointing Mr. Holohan described him as "pre-eminently qualified".