

Franchise Advisory Council

White Paper

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Executive Summary

The following document covers a range of factors in relation to the general structure and purpose of Franchisee Advisory Councils. It is important to understand the structure can easily expand to cover other markets as appropriate.

Many Franchisors have a strong historical preference for 'personality management' and this needs to be carefully considered if trying to effect an equitable performance based Council. This factor more than any other will determine whether the licensees will proactively adopt this as a trusted vehicle for the greater good.

Almost equally as important is that a franchisor must ensure that it is not just creating the opportunity for a gripe session and incurring costs and expectations for items that are non-negotiable.

It is not a High Court, but it needs to be recognised that it is also a good venue for nipping potentially large issues in the bud.

It is critical that the purpose of the Council is clearly communicated. If the franchisor does not want ideas from licensees about a certain topic i.e. products used, then these rules need to be very clearly communicated at the start. So, what the council does not stand for is just as important as communicating what it does.

The document makes some recommendations about the selection process, terms of engagement and Council size which will hopefully assist in a clear and fairly detailed communication with licensees, which will be vital to garner interested parties to nominate themselves (or others) accordingly.

It might also be advantageous to partner or engage with other franchise organisations or associations in the medium to long term:



Ultimately the ability for all parties (including the franchisor executive) to put aside personal agendas and focus on the greater good of the franchise system will be the acid test.

Introduction

The Psychology

It is human nature to want to be recognised, heard and have one's views considered. As franchise organisations grow, the ability to fulfill this human need through one-on-one personal relationships between the executives of the franchising company and franchisees diminishes. The personal relationships, which often are the "glue" that keeps a small franchise organisation together, dilute with growth, and franchise organisations must explore other means of meeting this human need.

Responsible franchisors will recognise this and establish a more formal channel of communications (i.e. an Advisory Council). A franchisor who does not recognise this human need is not spared the inevitable challenges of listening to and dealing with its franchisees and their ongoing needs as customers and contributors.

In fact, franchisors who are not pro-active in establishing these lines of communications will likely have it thrust upon them. As a franchise organisation grows, franchisees will want to continue to be heard through some representative group, whatever form that may take. The franchisor who waits until its franchisees initiate such steps, risks facing a cold wake-up call when confronted for the first time by franchisee representatives. These representatives will likely be vocal due to the frustration and dissatisfaction from a lack of effective communications. As with other aspects of the franchise relationship, franchisees will fill the void where there has been a lack of leadership by the franchisor. Under these circumstances, the initial communications and workings with such an organisation can be contentious because of pent-up frustrations. Moreover, human nature being what it is, those who are most dissatisfied will be most vocal, and the initial representatives of a franchisee-initiated council may consist of the most disgruntled franchisees. It makes for a difficult start.

Foremost, an Advisory Council provides a mechanism to meet the need to be heard. It provides franchisees with potentially the ability to have input on matters that are important to their businesses and the franchise system as a whole.

In most franchise systems, many of the most dynamic improvements to products and services, or the way in which the franchise system operates, are usually inspired into inception by franchisees.

The activities of a mature and confident franchisor can ensure that an Advisory Council can promote this kind of creative dialogue among franchisees and bring fresh ideas and innovations more quickly to the attention of the executives.

Advisory Councils also help to make franchise organisations more nimble. One of the inherent challenges with any franchise system (regardless of the contractual provisions in the franchise agreement) is to get franchisees to accept the periodic changes necessary to keep the franchise system competitive. Through an Advisory Council, a franchisor can effectively communicate the need to implement changes to adjust to competitive circumstances in the market place.

By having discussions with an Advisory Council about important issues that are facing the franchise system, a franchisor may be able to obtain the endorsement of the direction in which it wants to lead the system. This legitimises those decisions and makes them easier to implement: it fosters an environment in which recalcitrant franchisees go along with programme changes as a result of peer pressure, rather than a heavy hand of an exasperated franchisor who feels it has no other alternative but to fall back on its legal rights and enforce its contracts.

Author: D Allen

Also, bear in mind that franchisees are the most effective franchise sales persons. Fostering harmonious franchise relations in many different ways, including effective two-way communications, enhances a franchisor's ability to expand. More now than ever before, prospective franchisees are investigating franchise systems before investing in them. A prospective franchisee will quickly become aware of any significant discord, and its presence may raise serious doubts about the desirability of joining that system.

The old adage, "You can't please everyone all of the time," is true of franchising as well. By having franchisees communicate their concerns through their representatives, this mechanism provides a "filter" for concerns that are not commonly shared. Criticism can then be channeled into more constructive efforts to improve the system as a whole.

The Intent

A Franchise Advisory Council (FAC) is probably one of the most important tools a franchisor and franchisee have in the way of being able to communicate with one another.

The idea behind the council is not only to solve disputes but is also used proactively to resolve any potential issues before they arise and to help strengthen the relationship between franchise owners and the franchising company.

FAC's will typically hold meetings to discuss possible bumps in the road before things get too rocky. This could be to address complaints by the franchisees or concerns that the franchisor might have.

Potentially this could cover everything from Policy changes by the franchisor to possible quality assurance issues and all points in between.

The council will listen to these and create mandates to address issues. A lot of FAC's are made up of a representative body of franchisees. They have the specific mandate to:

- Maintain the company image / Brand
- Coordination of marketing and advertising strategies
- Convey a franchisee's input on any such marketing and promotional strategies
- Maintain the same quality in all franchisee's territories
- Maintain and promote an open line of communication between the franchisor and franchisee

Typically as part of a franchise license it requires agreement to use the council as a first step in arbitration and as a contact point with the franchisor. The council is set up specifically for the two parties to use as a two-way line of communication with the end result being business prosperity for all. In the case of large franchises, this might also be the quickest way for the franchisee to be heard as an individual operator.

A FAC is not just established for the sake of dispute negotiation. New initiatives proposed by both parties can and should be presented to the council as well. A FAC has limited and very specific functions, however their overall objective is all encompassing.

While it is important to remember that a FAC can be a key element to success for all parties, it is not a legal body.

Whilst in most cases a condition of franchising is adherence to the rulings of the Council; both franchisor and franchisee have the option to seek out further resolution to a dispute. These could be a third party arbitrator or

through legal channels as per the license agreement.

A FAC is also much more than a club, but not quite the High Court either. They are however a very powerful tool for the franchisor and franchisee. By enabling a two way dialogue to take place and stay productive, a FAC can help grow business and promote prosperity as well and aid in streamlining and improving practices.

Another benefit is that of assured consistency and quality. Part of being a franchise owner and what sells people on buying a franchise is the prospect of having the same experience from city to city, country to country. A good FAC facilitates this so that the brand will maintain maximum value and the highest quality perception with its subsequent clients.

Format

Council or association?

The FAC may operate under different names or formats, but is typically organised by the franchisor.

A slight variation is a Franchisee Association. The Franchisee Association is formed by the franchisees and is independent of the franchisor. They may function similar to a FAC, but the franchisees set their own structure, policies and agenda. They typically are formed when there is a system wide crisis, major change or event and franchisees feel they are not being listened to. In some franchise systems there may even be a FAC and Franchisee Association both functioning at the same time.

Effectiveness

In order for the FAC to be effective all participants, both franchisees and franchisor, are required to have an open-minded attitude, actively listen and have a respect for different perspectives.

The agenda must be focused on the interests of the overall system. There needs to be focus on finding solutions, setting action plans and getting results. The FAC will establish policies, by-laws and have meeting agenda's in place so as to keep the discussions on track and reinforce this culture. Without this focus the FAC can evolve into a session of complaints and gripes with no clear resolutions.

Council structure

The number of franchisees sitting on the FAC will vary depending upon the overall size of the franchise system.

There is usually an effort made to ensure that different geographical regions and different sized operations are represented on the FAC.

The term will vary from one to three years with a staggering of the council members so as to have a balance between experienced and new members sitting on the council at any one time. Franchisors will often limit how many terms a franchisee may sit on the FAC so as to give more franchisees the opportunity to participate.

Each franchise system would normally decide for itself whether franchisor executives should be formally included or excluded from the Advisory Council. However based on the history and personalities within a franchisor, a FAC will be unlikely to succeed unless there are executives representing the franchisor appointed to the FAC.

Likewise the selection of the council members and the process of engagement must be overtly fair and equitable if it is to achieve its goals.

Election methods

A balance will need to be struck between adequate representation of all franchised owners and forming a representative group that is not so large as to be unmanageable. An appropriate size is also a function of the scope of the group's purpose and the extent to which committees are used to dealing with specific areas. There are two typical ways of determining Advisory Council membership:

- Franchisees members are appointed by the franchisor; or
- Most often, franchisees members are elected by their peers

Although it is not the norm to have franchisee members of the Advisory Council appointed by the franchisor, such an appointment mechanism is sometimes found at the inception of the formation of a Council. The Council is then frequently transformed to an elective body once the Council becomes functional. However, so long as the franchisor appoints members, the franchisor should seek broad representation. Franchisors who select franchisees as members should seek participation of both experienced and new franchisees, as well as a regional mix and a mix of single-unit and multiunit owners.

For an Advisory Council that is elected, one of the politically difficult issues often faced, particularly with a system with multi-territory franchisees, is whether each franchisee gets one vote or gets one vote for each territory.

One can easily see how one structure can lead to a disproportionate representation of single-unit franchisees and the other can result in domination by large multi-unit franchisees.

The franchisor will typically set some requirements for involvement, such as the franchisee must be in good standing under the terms of the franchise agreement, meet performance standards and have been in the system a minimum of one or two years.

Ideally the franchisees sitting on the FAC are positive, successful and respected by other franchisees.

All parties including the executive must have the ability to set aside their own personal agendas and look at what is best for the system as a whole. There is also a real commitment of time. Not all franchisees can take the time required away from their business to participate in the council.

Meetings and costs

The FAC should meet formally two to four times a year with informal phone calls and discussions between these meetings. Sometimes the FAC meeting takes place around the annual conference. Travel, meeting room costs and other business expenses are often covered by the franchisor, although in some systems such costs are paid entirely by the franchisees through the payment of FAC dues. It is customary for the FAC participants not to be compensated financially for their time.

Most successful franchise systems today have a FAC. A typical issue for a new emerging franchisor is at what stage or size does the system need to be before an FAC is formed? There are no hard and fast rules, but the sooner an FAC is put in place the better. With a smaller system the FAC may be more informal but still plays an integral part in forming the direction and policies of the franchise organisation.

Pros and cons

Before setting up a FAC, in order to maximise its impact, it is important to understand what you want to achieve from it and the benefits that can be derived from it. One of the major risks is the danger of letting this type of structure deteriorate into "management by committee." Unless properly organised and run with a focused purpose, the franchise system may lose a sense of direction; without the firm, but respectful, hand of the franchisor in reserving the right to make ultimate decisions, the organisation may suffer from a certain paralysis.

Advantages

- Improved communication throughout the network
- Having franchisees feel more empowered
- Franchisees feeling a greater sense of loyalty to and 'ownership' of the brand
- Councils help with change management: they can be used to communicate proposed changes to the system and as a sounding board/focus group
- Many dynamic improvements come from franchisees and Councils help to foster these.
- They can avoid franchisees setting up independent franchise associations to the exclusion of the franchisor

Most franchisors find that the benefits of FAC's outweigh the disadvantages to having them, but it is important to understand some of the negative effects so they can be managed.

Disadvantages

- Election of franchisees to the Council can become over-political and a distraction for the network
- Disorganised Councils can become 'talking shops' and lack direction and purpose
- Unelected franchisees may feel disillusioned
- Some elected franchisees may not be prepared to work with the franchisor
- Elected franchisees may suffer in the event they receive criticism from the rest of the network for not achieving results

Organising councils

As previously noted, the organisation of Franchise Advisory Councils can be as light-touch or structured as you wish, to suit the network.

I would always recommend that a franchisor puts in place written rules to clearly set out the guidelines under which the Council operates. How detailed these are will often depend on the maturity, size and nature of the network.

Below are some of the important issues that you may wish to cover off within the rules you wish to apply.

Council rules

Successful Advisory Councils provide a specific purpose or objective in their bylaws. Typically, the purpose focuses on "improved communication" between franchisees and franchisor. Similar council objectives might be "to discuss matters of mutual interest," "to disseminate information," and "to evaluate franchisor programs and policies." Such "communication" purposes are by no means the only possible objectives for an Advisory Council. However, whatever the scope of the issues to be covered by the Advisory Council, it is important for the bylaws to explicitly state that the Council's deliberations are advisory in nature and that the Council is not conferred

decision-making authority, unless of course it is otherwise intended.

Ultimately, the franchisees and franchisor executives who form a council will determine the group's exact purpose.

The key is to state objectives clearly so that everyone involved in the council has similar realistic expectations.

- **Purpose:** You must decide the purpose or objectives of the Council.
 - These can be very general (e.g. to further communication with the franchisor, resolve concerns of general interest) or be limited to specific issues within the network (e.g. only operational or marketing issues)
- **Members:** Who is entitled to sit on the Council? Franchisees only or can staff of franchisees, or even external advisors sit on the Council?
- **Size/geographical spread:** How large do you want the Council to be? How do you ensure that as far as possible the whole network is represented?
- **Term:** How long should each Council member serve before needing to be re-elected?
- **Elections:** How often are elections held? Does each franchisee get a vote or is there weighted voting for multi-site franchisees?
- **Meetings:** How often are meetings to be held and where?
- **Expenses:** Will the franchisor pay the franchisees' expenses?

This list is by no means exhaustive but rather to give you a flavour of some of the issues you should consider when planning setting up a Council.

Communication is key

As a general rule, so long as careful consideration is given as to how they should operate, Councils can be a real asset for franchisors to communicate with franchisees and in unifying the network.

However, the caveat here is that the slightest sense that this is not an open, unbiased and genuine structure - then it will fail.

Time and energy in setting up a forum for franchisees to use as a vehicle to tell you what you are doing wrong as a franchisor is counterintuitive. However, at least you are involved and are best placed to deal with franchisee gripes: the alternative of franchisees having their own independent franchise association is surely much more unpalatable.

Remember, Councils are only one tool in the armoury of franchisors to achieve effective communication with their franchisees.

When laying the groundwork for a FAC franchisees and franchisor should include provisions for informing all franchisees of Council activities. This builds support for the Council and gives the franchisor a means of showing how it is following up on suggestions made at the council meeting.

The means of conveying council information can vary greatly, depending on individual preference, budgetary and time restrictions and other factors. Methods currently in use include website postings, emails, letters, copies or summaries of the minutes, or a special newsletter. How it is accomplished is not important, but it is essential to keep the entire franchisee network informed of the group's activities.

Officers and their duties

It would be wise to have a Chair, Vice Chair second Vice Chair and Secretary in terms of heirachical structure.

For smaller Franchise operations, it also makes sense to combine the role of a FAC with that of a committee role. It is unlikely that there are enough members to create separate committees, therefore the council should combine leadership with functional focus i.e

- Operations
- Quality
- Technology
- Services
- Marketing; and
- Finance

They can examine a particular problem, issue or initiative, arrive at possible solutions, and prioritise. Whilst you do not want the council to be bogged down with detail one council member could subnsequently spearhead related activities with non-council members and report back at the next FAC meeting

Advisory Council agendas typically include:

- Operations – facilities, training, operating manuals, assistance with franchisees' in-house training programs, communications and customer satisfaction
- Marketing – advertising, promotion, sales training, long and short-range market forecasting, competitive information and current market position
- Technology – electronic recording, communications and reporting systems
- Finance and Management – financial operations and general franchisee management, standard accounting systems, capitalisation, equipment financing, franchisee facilities and personnel, franchisees business continuity and product liability; and
- Products and Services – product and service improvements and applications and new product and service development

Legal

There are potential legal implications involved in forming a council and holding meetings. Initially, rules should be reviewed by the franchisor legal counsel, as well as a determination made whether the formation and the functioning of the FAC will need to be disclosed.

Topics or areas which may require such consideration include but are not limited to:

- pricing and possibly price advertising / setting
- recommendations and discussions on who would be getting a franchise
- allocation of territories, or encroachment matters
- excluding anyone from membership on the council without cause

The above just needs to be signed off by the relevant party prior to being initiated to ensure no nasty surprises.

Do's and Don'ts

- **Don't** consider the rules unchangeable. Times change, so include a provision for making amendments.
- **Do** set down some broad goals and objectives when forming your council. They will serve to delineate the direction of the organisation.
- **Don't** limit attendance at council meetings strictly to franchisees or top executives. Be sure to invite other key people in connection with discussions concerning their particular area.
- **Do** have someone responsible for taking minutes at each meeting and for distributing them to council members.
- **Don't** let your FAC get bogged down in a flood of tasks which can more appropriately be handled after the meeting.
- **Do** set an agenda for every meeting – then stick to it. It is the only sure way to avoid "gripe" sessions.
- **Don't** waste the experience of your council's past presidents. Draw on their experience at appropriate times.
- **Do** have the franchisor's top management personnel at the meetings.
- **Don't** invite hassles regarding who pays for what meeting expenses. Determine in advance which items of council expense franchisees will cover and which items franchisor will pay.
- **Do** have a follow-up mechanism which keeps both council members and franchisees generally informed of activities. It builds the council's reputation as an effective organisation.
- **Don't** create legal problems. Be aware of the legal implications of forming a council and of running meetings.

There is no “one size fits all” approach to council organisation.

The following pages are suggestions for the creation of articles / rules for the operation of the FAC as well as a sample introductory letter

Articles of Engagement - Suggestions

Suggested Bylaws

Name

The Council shall be known as the XXX Advisory Council.

Objective

The Council will consist of a representative group of franchisees who will meet periodically with the management of XXX to review plans and discuss other matters of common interest.

The purpose of the Council is to promote constructive, open and two-way communications between all of the franchisees and the management of XXX. In addition, it is the desire of XXX to make the franchise owner an integral part of our planning as we grow and develop our franchise system. Finally, it is recognised that a group of this type can be instrumental in addressing and resolving concerns of general interest before they develop into major issues.

It is understood that the Council serves in an advisory capacity and does not have authority to establish or modify the policies of XXX. However, XXX management will take into consideration the input of the Council in formulating plans, programs and policies which affect franchisees.

Membership

Section 1 - Eligibility

Any franchise owner in good standing is eligible for election or appointment to the XXX Advisory Council.

Section 2 - Representation

The members of the XXX Advisory Council will represent various geographical areas of the country. Initially the country will be divided into 2 areas based on geography as well as the number outlets open and operational in a given area. Initially the 2 areas will be defined as follows: North Island and South Island.

As our franchise system grows and expands, the XXX Advisory Council will have the authority to alter geographical boundaries and expand the representation. However, for the sake of efficiency in communication, the XXX Advisory Council membership will be limited to no more than 4 franchisee members and no more than 2 franchisor executives.

Section 3 - Term of office

Each member will be elected for a two-year term of office. No member may serve two consecutive terms. Elections will be staggered so as to provide continuity from year to year.

Any member of the XXX Advisory Council shall be automatically terminated should his or her respective franchisor terminate the licensee contract, or place that licensee in Breach of said agreement.

Any officer may be removed from office, for neglect, refusal to perform his or her duties, or misconduct, by a majority vote of the XXX Advisory Council membership, provided that notice shall be given to the accused at least thirty days prior to such special meeting.

Section 4 - Elections procedures

Elections will be held in the start of each year, either in conjunction with a national conference, or regional one. If this cannot be easily facilitated, elections may be held via e-mail. A list of candidates will be presented and each franchise owner in good standing will have an opportunity to vote for the representative of his or her preference. Each franchise will be eligible to cast one vote *[alternative: one vote for each territory owned]*. Nominations of candidates for membership on the XXX Advisory Council may be made by any franchise owner in good standing prior to the published deadline.

Officers

Section 1: Election of officers

The officers of the XXX Advisory Council shall be as follows: Chairperson; Vice Chairperson; and Secretary. These officers shall be appointed annually by the XXX Advisory Council at the first regularly scheduled meeting following the general election. The Officers shall be elected for a one-year term with the Vice Chairperson ascending to the office of Chairperson. This will provide continuity in conducting the business of the Council.

Section 2: Duties of the officers

- **Chairperson**
The Chairperson shall preside at all meetings of the XXX Advisory Council. He or she will perform the duties of the office, including the appointment of any sub committees.
- **Vice Chairperson**
In the absence of the Chairperson, the Vice Chairperson will preside. He or she will specifically be responsible for coordinating the annual election of Council members and coordinating the election or appointment of new members as vacancies occur.
- **Secretary**
The minutes of each meeting will be recorded by the Secretary and distributed to all franchisees in the system.
- **Committees**
At the discretion of the NXXX Advisory Council, sub-committees may be formed to address such topics as advertising and operations.

Meetings

It is anticipated that the XXX Advisory Council will meet twice each year. Where possible these meetings will be conducted in conjunction with the national conference. Other meetings will be held at the XXX headquarters in Albany. A notice of the date and place of the meeting, as well as the agenda and supporting materials will be sent out in advance. Whilst these meetings are primarily designed for an exchange of information, parliamentary procedures will be followed wherever possible.

Expenses

XXX will cover the expense associated with the two scheduled Advisory Council meetings. Travel expenses will be covered for each member who attends the Council meeting.

Communication

One of the major purposes for forming a Council of this type is to provide better communication to the franchisee. Hence, each member of the Advisory Council will be asked to report to the other franchisees in their respective areas. This will be also be facilitated by a XXX Advisory Council newsletter which will be

published after each meeting. In addition, members of the Advisory Council may be asked to give a report to franchisees attending the national and regional conferences and other meetings of this type.

Amendments

Amendments to these rules may be proposed and adopted at any regularly scheduled meeting of the XXX Advisory Council. In these situations, a majority of the members must be present to constitute a quorum, and the vote of a majority of those present will prevail.

Alternatively these rules may be altered, amended, or repealed by the express vote of 75 percent of the Franchisees, who are present at the annual conference. Franchisees must be given written notice 30 days before proposed alterations

These Bylaws may be altered, amended, or repealed by the express vote of 75 percent of the Franchisees with open stores, who are present at the annual conference. Franchisees must be given written notice 30 days before proposed alterations amendments or repeal are voted upon.

Sample Letter

SUBJECT: Formation of the XXX Advisory Council

Dear Franchise Owner:

The success of any business relationship is dependent on frank, honest, on-going communications between all parties. This is especially true in the XXX franchise system. If we are going to continue to grow and meet the needs of our franchise network, it is important that we have an ongoing dialogue between the executive management of XXX and our franchisee partners. Today this is accomplished in many ways, including conferences, periodic visits, phone calls, newsletters, etc. However, these methods in themselves provide sufficient feedback; they do not provide the most effective way to allow our franchisees to participate in formulating the plans and programmes which affect the entire business.

Based on input that we have received from several owners, we feel we would benefit from the establishment of an Advisory Council. This council will be made up of elected franchisees and XXX executives.

The XXX Advisory Council will meet twice a year. At these meetings XXX will review its plans and programmes and request input from the Advisory Council. In addition, the Advisory Council will bring to the attention of XXX issues which are of concern to the wider franchisee network. All franchisees are encouraged to provide their representatives with input for the Advisory meeting. The minutes of the meeting will be published and distributed to all franchisees so that they may be kept informed of what took place at the meeting.

Attached is a nomination form which you are encouraged to complete and following the receipt of such nominations a meeting agenda will be set for the inaugural voting in and establishment of the first council meeting.

I have included a draft version of the XXX Advisory Council 'bylaws' that will form the basis of this Council.

I hope that each of you will take advantage of this vital communication vehicle.

Sincerely,

Sample Nomination Form

Candidate qualifications

Participation is voluntary, but a number of qualifications must be met to ensure that Council members are fully qualified to serve.

To be eligible to serve on the XXX Advisory Council a franchisee must:

- Be present at the annual conference;
- Have operated a territory for more than 6 months, or have had at least three years prior experience in franchise management;
- Have completed the questionnaire below and returned it to XXX by the due date.

All questionnaire responses will be published verbatim by XXX, so that all franchisees will have the opportunity to review them and vote accordingly.

1. Your name / Territory
2. How many territories do you operate
3. When did you first start with XXX as a franchisee
4. How many full-time employees are involved in your operation?
5. How many part-time employees are involved in your operation?
6. Are you actively involved in the management of your territory
7. Briefly describe those areas in which you do NOT participate
8. What other business experience do you have
9. In what ways will your experience benefit the XXX Advisory Council
10. How do you perceive the role of the XXX AC?
11. Why do you want to serve on the XXX AC?
12. What do you see as the most important issue facing XXX today?
13. If you are elected, how would you proceed to solve the problem in question 12_

Please send your completed questionnaire to: - Kirk Hardy

End of document