



The Accountant's Guide to the FranPlan™

When working with our clients in establishing a FranPlan™™ as a part of a capitalization strategy, it is not uncommon for the client's local accountant, attorney or other professional advisor to ask for additional information about how a FranPlan™ works. Local professional advisors often times have not heard of the FranPlan™ strategy. They may not be experienced in retirement plan design or familiar with the provisions of the Internal Revenue Code (IRC) and Employee Retirement Income Security Act (ERISA) that support the FranPlan™. The following information is a useful guide.

WHAT IS A FRANPLAN™?

The FranPlan™ is a "qualified" defined contribution retirement plan. It is virtually identical to the tens of thousands of 401(k) Profit Sharing plans that have been established by US corporations. In order to be a "qualified" plan, both the form of the plan and its operations must conform to the requirements of Section 401(a) of the IRC. Simply speaking, when a qualified FranPlan™ is established by a new corporation, the following sequence of events occurs:

- The Individual Manager/Shareholder/FranFund Client becomes an employee of the corporation and is, therefore, eligible to participate in the new retirement plan.
- As an employee/participant, the individual is entitled to "roll over" or transfer directly to his or her new retirement plan monies held in a qualified retirement vehicle or IRA.
- Once the rolled over funds are held by the trustee (the individual acts as trustee) of the new plan, they are invested (not "distributed" or "paid out") by the trustee in common stock of the new corporation, which is the plan sponsor.
- The new corporation uses the proceeds from its initial stock offering to undertake business operations.
- The new plan operates in accordance with its intended primary purpose as a qualified retirement vehicle.

ISN'T THE PURCHASE OF STOCK BY THE RETIREMENT PLAN ESTABLISHED BY THE CORPORATION A "PROHIBITED TRANSACTION"?

The purchase of common stock of a "Plan Sponsor" by the Plan Sponsor's retirement plan is exempt from the prohibited transaction rules under Section 4975(d)(13) of the IRC and Section 408(e) of ERISA if:

- (1) the purchase is for adequate consideration,
 - (2) no commission is charged, and
 - (3) the purchasing plan is an eligible individual account plan as defined in section 407(d)(3) of ERISA. (*The FranPlan™ Document includes language qualifying it as an "eligible individual account plan."*)
- (2) Concerning the Prohibited Transaction rules of The Code and ERISA, a FranPlan™ transaction relies on the same exemption applicable to an "ESOP," a very popular "employee ownership" device.

HOW DO I KNOW THAT MY CLIENT'S PLAN WILL BE "QUALIFIED"?

FranFund has received a favorable determination letter from the IRS which indicates that in their opinion the terms of the FranPlan™ conform to the requirements of IRC section 401(a). A favorable determination letter expresses the IRS' opinion regarding the form of the plan document. In addition, the FranPlan™ Basic document is pre-approved by the IRS under the so-called "Volume Submitter" Program. If requested, FranFund will file each client's FranPlan™ with the Internal Revenue Service (IRS) for a favorable "Individual Determination Letter".

As noted above, a qualified plan must meet both form and operational requirements. The IRS will not give an advance ruling on operational issues. FranFund offers continuing operational advice for a FranPlan™ in its role as a "Third Party Administrator". This role includes maintaining (or amending) the plan documents in compliance with new tax law or directives issued periodically by the IRS or DOL (Department of Labor); reviewing and advising our clients with regard to the operations of the plan for both the employer and the employees; and preparation of any required annual filings for the retirement plan, including the Form 5500 Series.