



FASA
THE FRANCHISE ASSOCIATION
OF SOUTH AFRICA

FRANCHISE ASSOCIATION OF SOUTH AFRICA
CODE OF ETHICS AND BUSINESS PRACTICES

1. PREAMBLE

- 1.1 FASA is an independent body constituted and supported by its Members.
- 1.2 FASA's aims are to ensure that its Members practice the highest standard of ethics and fair business practices in franchising and to develop and expand the business environment for franchising in South Africa.
- 1.3 FASA's criteria for Membership conform to local and international practices and are acknowledged by the public as such.
- 1.4 FASA is a full Member of the World Franchise Council.
- 1.5 This Code reflects the collective beliefs of all FASA Members with respect to the manner in which franchise relationships must be established, structured and implemented.
- 1.6 The purpose of this Code is to ensure a system of self-regulation and compliance with applicable laws in the public interest and that of the Members of FASA.

2. INTERPRETATION AND ADMINISTRATION

- 2.1 The interpretation and administration of this Code vests in the Exco and the Council.
- 2.2 Unless the context indicates otherwise, this Code shall apply to and bind each and every Member and each and every Member shall be bound by this Code.
- 2.3 This Code is subject to FASA's Memorandum of Incorporation and all applicable laws.

- 2.4 The headings to the paragraphs of this Code are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

3. DEFINITIONS

In this Code and the Appendix hereto, unless the context otherwise indicates: -

- 3.1 Paragraph headings are for convenience and shall not be used in its interpretation;
- 3.2 Unless the context clearly indicates a contrary intention:
- 3.2.1 an expression which denotes:
- 3.2.1.1 any gender includes the other genders;
- 3.2.1.2 a natural person includes an artificial person and vice versa;
- 3.2.1.3 the singular includes the plural and vice versa;
- 3.2.2 the following terms shall have the meanings assigned to them below:
- 3.2.2.1 "**Approved Supplier**" means any person from whom a Franchisor Member requires any of its Franchisees to acquire or purchase any products or services;
- 3.2.2.2 "**BEE Compliant**" means compliant with the Codes of Good Practice published by the Minister of Trade and Industry of South Africa in terms of the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended, to the extent that such codes are applicable;
- 3.2.2.3 "**Committee**" means any committee established by Exco from time to time;
- 3.2.2.4 "**this/the Code**" means the Code of Ethics and Business Practices comprised by this document, including any amendments or additions thereto from time to time;
- 3.2.2.5 "**Council**" means the Council of FASA from time to time, as elected at FASA's Annual General Meeting, together with any co-opted members;
- 3.2.2.6 "**CPA**" means the Consumer Protection Act, 68 of 2008, as amended;
- 3.2.2.7 "**Days**" means calendar days;

- 3.2.2.8 **"Disclosure Document"** means a disclosure document complying with this Code and the Appendix hereto and with any applicable law that prescribes the form or the content of a disclosure document to be given to a prospective franchisee;
- 3.2.2.9 **"Exco"** means the Executive Committee of FASA, as appointed by the Council from time to time;
- 3.2.2.10 **"FASA"** means the Franchise Association of South Africa a company duly incorporated in terms of section 21 of the Companies Act, 61 of 1973, as amended, read with item 2 of Schedule 5 to the Companies Act, 71 of 2008, as amended, and having registration number 1991/05946/08;
- 3.2.2.11 **"Franchise Agreement"** means an agreement, including any annexure or attachment thereto, between a Franchisor Member and any other party:
- 3.2.2.11.1 in which, for consideration paid, or to be paid, by such other party to the Franchisor Member, the Franchisor Member grants such other party the right to carry on business under a system or marketing plan substantially determined or controlled by the Franchisor Member or an associate of the Franchisor Member;
- 3.2.2.11.2 under which the operation of the business of such other party will be substantially or materially associated with advertising schemes or programmes or one or more trade marks, commercial symbols or logos or any similar marketing, branding, labelling or devices, or any combination of such schemes, programmes or devices, that are conducted, owned, used or licensed by the Franchisor Member or an associate of the Franchisor Member; and
- 3.2.2.11.3 that governs the business relationship between the Franchisor Member and such other party, including the relationship between them with respect to the goods or services to be supplied to such other party by or at the direction of the Franchisor Member or an associate of the Franchisor Member;
- 3.2.2.12 **"Franchisee Member"** means any Member who is registered as a Franchisee Member of FASA from time to time in terms of the MOI and any franchisee of a Franchisor Member;
- 3.2.2.13 **"Franchisor Member"** means any Member who is registered as a Franchisor Member of FASA from time to time in terms of the MOI;

- 3.2.2.14 **"Incentive"** means any rebate, commission, payment or discount any Franchisor Member might receive as a result of any or all of its Franchisees' acquiring any goods or services from a specific supplier;
- 3.2.2.15 **"Marketing Fund"** means any fund created for the purpose of marketing, advertising or any other related purpose;
- 3.2.2.16 **"Member"** means any person who is a Member of FASA by virtue of the MOI;
- 3.2.2.17 **"MOI"** means the Memorandum of Incorporation of FASA, as amended from time to time;
- 3.2.2.18 **"Service Provider Member"** means any Member who is registered as a service provider Member of FASA from time to time in terms of the MOI.
- 3.2.2.19 **"Trade Mark"** means any name or trade mark, whether registered or unregistered, owned or used by FASA including, but not limited to, the, "FRANCHISE ASSOCIATION OF SOUTH AFRICA", "FASA" and "FASA logo" trade marks.

4. **CONTRAVENTIONS OF THE CODE AND DISPUTE RESOLUTION**

- 4.1 Exco may at its discretion and option appoint a sub-committee with specific powers to determine any allegation by any person of non-compliance by any Member with the provisions of this Code. The powers of the sub-committee, in determining any such dispute or complaint shall include:
- 4.1.1 to determine whether any contravention of this Code has taken place;
- 4.1.2 to impose on any Member whom it determine has contravened this Code such fine as it may deem fit, not exceeding the sum of R10 000.00 (ten thousand rand);
- 4.1.3 to order any Member to take any action, refrain from any course of action or pay any amount of money that may be necessary to remedy any contravention of the Code which that Member has committed, provided that any amount that a Member may be required to pay shall not exceed the amount of the actual financial loss occasioned as a result of such contravention; and
- 4.1.4 to summarily terminate the Membership of FASA on any member whom it has found to have contravened the Code.

- 4.2 In determining whether any contravention of this Code has taken place, and determining the appropriate sanction or penalty in terms of Paragraph 4.1, the sub-committee shall have the sole discretion to determine the procedure to be followed by it, provided that, before making any decision in regard to any alleged contravention, or imposing any sanction or penalty, it shall be obliged to afford any Member who is alleged to have contravened this Code a reasonable opportunity of:
- 4.2.1 being represented by attorneys and or Counsel at any hearing;
 - 4.2.2 obtaining copies of any relevant documents; and
 - 4.2.3 presenting relevant evidence and cross-examining witnesses.
- 4.3 In determining the appropriate sanction or penalty to be imposed on any Member found to have contravened the Code, the sub-committee shall have regard to all relevant factors including, but not limited to:
- 4.3.1 the nature of the contravention;
 - 4.3.2 the period of time for which the contravention has continued; and
 - 4.3.3 whether the Member concerned has previously contravened the Code
- 4.4 All Members of FASA will be bound by the decisions of such sub-committee in respect of any matters that fall within its powers as determined.
- 4.5 Members shall make every effort to resolve complaints, grievances and disputes between them in good faith and through direct communication and negotiation. Failing such amicable resolution, all complaints, grievances and or disputes may be referred to FASA for mediation, subject to paragraph 4.7 below.
- 4.6 In the event that notice of any complaint, grievance or dispute is referred by FASA to any Franchisor or Franchisee Member for a response, such Member is obliged to furnish FASA with a response within 7 (seven) days of receipt of notice thereof from FASA.
- 4.7 FASA shall have no jurisdiction to determine any dispute between Members, or between any Member and a non-Member, in the absence of an express agreement between the parties to such dispute. However this shall not prevent FASA from taking immediate disciplinary action or any other appropriate action against its Members for noncompliance with this Code and/or FASA's Memo and Articles.

5. **AMENDMENTS TO CODE**

FASA shall be entitled to amend this Code either by deleting or amending existing provisions or by addition of provisions. Any such amendment shall become binding on FASA Members upon notification by e-mail to each Member at the e-mail address most recently provided in writing by such Member to FASA and publication of the amendment on FASA's website.

6. **MEMBERS' GENERAL OBLIGATIONS**

- 6.1 Every Member shall at all times comply with all and any applicable legislation and/or regulations that may affect its business, including, but not limited to the CPA.
- 6.2 No Member shall offer, sell or promote any franchise, business, product or service by means of any express or implied representation which is likely to deceive or mislead prospective franchisees or purchasers of any such franchise, business, product or service.
- 6.3 No Member shall use any trademark, trade name, slogan, or other mark of identification that is deceptively similar to any trademark, trade name, slogan or other mark of identification of another business or which is likely to mislead and/or deceive any member of the public as to the ownership, affiliation or nature of such Member's business or the nature or quality of any product or service offered by such Member.
- 6.4 No Member shall engage in any form of pyramid or chain distribution of whatsoever nature.
- 6.5 No Member shall, in the management or organization of its business, discriminate on the basis of race, colour, religion, age, gender or disability, save to the extent that such discrimination may be necessary for the purposes of giving effect to national legislation of general application enacted for the purpose of protecting or advancing persons, or categories of persons, previously disadvantaged by unfair discrimination.
- 6.6 No Member shall conduct itself in such a way as, in the reasonable discretion of Exco, is likely to bring FASA into disrepute.
- 6.7 On or before 30 September of each year, every Franchisor Member shall furnish FASA with a rating certificate issued by an accredited agency, or in the

absence of any accredited agency, recommended by the South African National Accreditation System ("SANAS") for the purpose of certifying the extent to which commercial enterprises in the Republic of South Africa are BEE Compliant. In the event that the Member is not BEE Compliant at the end of any financial year, such Member shall submit its strategy, setting out the time period within and the manner in which it proposes to become BEE Compliant.

7. DISCLOSURE DOCUMENTS

- 7.1 Every Franchisor Member shall, at least 14 (fourteen) days prior to signature of any Franchise Agreement and acceptance of any money in connection therewith, provide the prospective Franchisee with a draft of the proposed Franchise Agreement/s and a written Disclosure Document.
- 7.2 Every Franchisor Member shall, at least 3 (three) months before the renewal of any existing Franchise Agreement, provide the Franchisee with a Disclosure Document.
- 7.3 Every Franchisor Member must provide a Disclosure Document, to FASA by no earlier than 1 September, and no later than 30 September of each year.
- 7.4 Every Franchisor Member shall ensure that the information contained in every Disclosure Document provided by it shall contain as a minimum the information set out in Appendix 1 hereto and that all such information is true and correct on the date it is given to any prospective franchisee, or FASA, as the case may be.

8. FRANCHISOR - FRANCHISEE RELATIONS

- 8.1 All matters material to and governing the relationship between the Franchisor and Franchisee shall be set out in one or more written agreements, which must clearly set out the terms and conditions of such relationship and each party's respective obligations and rights, and must comply with all applicable laws and regulations.
- 8.2 No franchise agreement shall be entered into prior to the fifteenth (15th) day after receipt of the Disclosure Document and the franchise agreement by the prospective franchisee.

- 8.3 All franchise agreements must contain a clause referring to the Disclosure Document and record that *"the information contained in such Disclosure Document is to the best of the Franchisor's knowledge and belief, true and accurate and that no material information has been withheld"*.
- 8.4 The provisions of paragraph 8.2 shall not preclude a Franchisor Member from requiring a prospective franchisee to sign an undertaking to preserve the confidentiality of any information of a confidential nature belonging to the Franchisor Member, before furnishing the prospective franchisee with a Disclosure Document. Should any prospective franchisee refuse to sign such agreement, the Franchisor may refuse access to any information, whether or not it is obliged in terms of any other provision of this Code to provide it.
- 8.5 A Franchisor Member is not obliged to deliver its operations manual or any other document containing information relating to the methods, know-how or other trade secrets of the Franchisor Member prior to the signature of a franchise agreement; however such documents must be shown to the prospective franchisee.
- 8.6 A Franchisor Member is entitled at its discretion to select and accept as franchisees such persons as upon reasonable investigation possess such basic skills, education, personal qualities and financial resources as in the reasonable discretion of the Franchisor Member are required to fulfill the obligations of the franchisee in terms of any Franchise Agreement that is to be concluded between the Franchisor and the prospective franchisee and the needs and requirement of the business that will be carried on it terms thereof. However, the Franchisor Member shall not discriminate in the selection process on the basis of race, colour, religion, age, gender or physical disability of the prospective franchisee, provided that a Franchisor Member may grant franchises to certain persons on more favorable terms than those on which similar franchises may be granted to other persons as part of a program to make franchises available to persons, or categories of persons, previously disadvantaged by unfair discrimination.
- 8.7 Every Franchisor Member shall encourage and provide training designed to assist its franchisees in improving their abilities to conduct their franchised businesses, and shall provide reasonable guidance and supervision to its franchisees in regard to the conduct of their franchised businesses.
- 8.8 Every Franchisee Member shall encourage and provide training to its employees to improve their skills and abilities to conduct the franchised business in which they are employed.

- 8.9 All Franchisor Members and franchisee Members should be conveniently accessible and responsive to communications from their respective franchisees and franchisors for the purpose of improving mutual understanding and reaffirming mutuality of interest.
- 8.10 Every Franchisor Member that obtains the benefit of any Incentive is obliged to advise its franchisees in writing of the fact of such Incentive and of how such Incentive will be applied.
- 8.11 A Franchisor Member may not, in terms of or as a condition of entering into a Franchise Agreement, require any or all of its franchisees to purchase any goods or services from the Franchisee Member itself or an Approved Supplier unless:
- 8.11.1 the convenience to such franchisee of purchasing such goods or services from the Franchisor Member or Approved Supplier outweighs the limitation of the franchisee's right to choose; or
 - 8.11.2 there is an economic benefit to the franchisee in purchasing the goods or services concerned from the Franchisor Member or Approved Supplier; or
 - 8.11.3 the goods or services concerned are reasonably related to the goods or services that are the subject of the Franchise Agreement entered to be entered into between the Franchisor Member and the franchisee concerned.
- 8.12 Every Franchisor Member shall ensure that all moneys which such Franchisor Member may receive from any prospective Franchisee in contemplation of the conclusion of a Franchise Agreement are deposited in an attorney's trust account or a separate bank account maintained by the Franchisor Member for that purpose. In the latter case, the Franchisor Member shall advise the prospective Franchisee in writing that the moneys deposited therein do not constitute trust moneys and shall not be protected against claims by the Franchisor Member's creditors in the event of its insolvency.
- 8.13 Where a Franchisor Member receives any moneys from any prospective franchisee in contemplation of the conclusion of a Franchise Agreement, as referred to in paragraph 8.12, and, whether at the instance of the Franchisor Member or the prospective franchisee, negotiations in connection with such contemplated agreement are terminated without an agreement being concluded:

- 8.13.1 The Franchisor Member shall refund the amount it has received forthwith, and not later than 30 (thirty) days after having received a written request from the prospective franchisee;
- 8.13.2 The Franchisor Member may not retain any part of the amount it has received, save to cover reasonable out-of pocket expenses that it has incurred in contemplation of the conclusion of a Franchise Agreement. The Franchisor Member shall provide the prospective franchisee on demand with documentary proof of all such expenses.

9. **MARKETING AND ADVERTISING**

- 9.1 If a Franchisor Member requires any or all of its franchisees to contribute to a Marketing Fund:
- 9.1.1 The Franchise Agreement between the Franchisor Member and any such franchisee must stipulate the amount of any contribution that the franchisee is required to make to the Marketing Fund, or the method of calculation of such contribution and the date/s on which such contribution/s must be paid;
- 9.1.2 The Franchisor Member must provide to each franchisee of that Franchisor Member that is required to contribute to a Marketing Fund:
- 9.1.2.1 not later than 6 months after the end of each financial year of the Franchisor Member, a copy of a financial statement which reflects the receipts and expenses of the Marketing Fund on an annual basis: and
- 9.1.2.2 in respect of each period of 3 consecutive calendar months, financial management accounts relating to the Marketing Fund;
- 9.1.3 Contributions made to the Marketing Fund by franchisee may not be used to provide any benefit to the Franchisor Member which is not also available to all of the franchisees of that Franchisor Member;
- 9.1.4 Any advertisement published by any Member must comply with all applicable rules, regulation, directives, guidelines and laws promulgated by any governmental body or agency having jurisdiction as amended from time to time and with the Advertising Standard Authority of South Africa's Code of Advertising Practice, as amended from time to time.

- 9.2 Any advertisement referring to the financial requirements for the acquisition or establishment of a franchised business must contain sufficient detail so as not to mislead any prospective franchisee or the public at large in any respect whatsoever. Without limiting the generality of the foregoing, the advertisement must state whether any amount/s mentioned therein is /are part of, or the full, cost of the acquisition or establishment of the franchised business, what items such amount/s cover/s, whether any financing costs are included and other related information.
- 9.3 All Members acknowledge that the Trade Marks including the "Franchise Association of South Africa", "FASA" and FASA's logo trade mark are owned by FASA. Only Members in good standing, whose Membership fees have been paid in full, are entitled to use these Trade Marks in any documents, subject to FASA's guidelines, specifications and requirements from time to time. Further no Member may use any Trade Mark in such a way as to state, suggest or imply that FASA endorses its products, services or franchise.
- 9.4 Notwithstanding the provisions of paragraph 9.3 above, Members are prohibited from using Trade Marks in any form whatsoever in the offering, or sale or promotion of the sale of a franchised business if such use has not been approved in writing by FASA in advance.

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For more information please contact www.fasa.co.za or fasa@fasa.co.za or
+27116150359