



Ethical Franchising

The AFA has decided to broadly adopt the Code of Ethics for Franchising from the European Franchise Federation and undertakes not to change or adapt it in any manner.

EUROPEAN CODE OF ETHICS FOR FRANCHISING

This European Code of Ethics is the up-to-date version of the Code first elaborated in 1972 by the European Franchise Federation (EFF).

Each National Association or Federation member of the EFF has participated in its writing and will ensure its promotions, interpretation and adaptation in its own country. Proposed adaptations by Member Associations may come as complements to the basic Code, without altering it, and must be approved by the EFF's governing bodies before being implemented.

This Code of Ethics is meant to be a practical ensemble of essential provisions of fair behaviour for Franchise practitioners in Europe.

1. DEFINITION OF FRANCHISING

Franchising is a system of marketing goods and/or services and/or technology, which is based upon a close and ongoing collaboration between legally and financially separate and independent undertakings, the Franchisor and its individual Franchisees, whereby the Franchisor grants its individual Franchisee the right, and imposes the obligation, to conduct a business in accordance with the Franchisor's concept.

The right entitles and compels the individual Franchisee, in exchange for a direct or indirect financial consideration, to use the Franchisor's trade name, and/or trade mark and /or service mark, know-how, business and technical methods, procedural system, and other industrial and /or intellectual property rights, supported by continuing provision of commercial and technical assistance, within the framework and for the term of a written franchise agreement, concluded between parties for this purpose.

“Know-how” means a body of non-patented practical information, resulting from experience and testing by the Franchisor, which is secret, substantial and identified; “secret” means that the know-how, as a body or in the precise configuration and assembly of its components, is not generally known or easily accessible; it is not limited in the narrow sense that each individual component of the know-how should be totally unknown or unobtainable outside the Franchisor's business;

“substantial” means that the know-how includes information which is indispensable to the franchisee for the use, sale or resale of the contract goods or services , in particular for the presentation of goods for sale, the processing of goods in connection with the provision of services, methods of dealing with customers, and administration and financial management; the know-how must be useful for the Franchisee by being capable, at the date of conclusion of the agreement, of improving the competitive position of the Franchisee, in particular by improving the Franchisee's performance or helping it to enter a new market.

“identified” means that the know-how must be described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and

substantiality; the description of the know-how can either be set out in the franchise agreement or in a separate document or recorded in any other appropriate form.”

2. GUIDING PRINCIPLES

2.1 The Franchisor is the initiator of a franchise network, composed of itself and its individual Franchisees, of which the Franchisor is the long-term guardian.

2.2 The obligations of the Franchisor: The Franchisor shall have operated a business concept with success, for a reasonable time and in at least one pilot unit before starting its franchise network, be the owner, or have legal rights to the use, of its network’s trade name, trade mark or other distinguishing identification, provide the Individual Franchisee with initial training and continuing commercial and /or technical assistance during the entire life of the agreement.

2.3 The obligations of the Individual Franchisee:

The Individual Franchisee shall

– devote its best endeavours to the growth of the franchise business and to the maintenance of the common identity and reputation of the franchise network, supply the Franchisor with verifiable operating data to facilitate the determination of performance and the financial statements necessary for effective management guidance, and allow the Franchisor, and /or its agents, to have access to the individual Franchisee’s premises and records at the Franchisor’s request and at reasonable times, not disclose to third parties the know-how provided by the Franchisor, neither during nor after termination of the agreement.

2.4 The ongoing obligations of both parties

Parties shall exercise fairness in their dealings with each other. The Franchisor shall give written notice to its Individual Franchisees of any contractual breach and, where appropriate, grant reasonable time to remedy default;

Parties should resolve complaints, grievances and disputes with good faith and goodwill through fair and reasonable direct communication and negotiation.

3. RECRUITMENT, ADVERTISING AND DISCLOSURE

3.1 Advertising for the recruitment of Individual Franchisees shall be free- of ambiguity and misleading statements;

3.2 Any recruitment, advertising and publicity material, containing direct or indirect references to future possible results, figures or earnings to be expected by Individual Franchisees, shall be objective and shall not be misleading.

3.3 In order to allow prospective Individual Franchisees to enter into any binding document with full knowledge, they shall be given a copy of the present Code of Ethics as well as full

and accurate written disclosure of all information material to the franchise relationship, within a reasonable time prior to the execution of these binding documents

3.4 If a Franchisor imposes a Pre-contract on a candidate Individual Franchisee, the following principles should be respected: prior to the signing of any pre-contract, the candidate Individual Franchisee should be given written information on its purpose and on any consideration he may be required to pay to the Franchisor to cover the latter's actual expenses, incurred during and with respect to the pre-contract phase ; if the agreement is executed, the said consideration should be reimbursed by the Franchisor or set off against a possible entry fee to be paid by the Individual Franchisee; the Pre-contract shall define its term and include a termination clause; the Franchisor can impose non-competition and/or secrecy clauses to protect its know-how and identity.

4. SELECTION OF INDIVIDUAL FRANCHISEES

A Franchisor should select and accept as Individual Franchisees only those who, upon reasonable investigation, appear to possess the basic skills, education, personal qualities and financial resources sufficient to carry on the franchised business.

5. THE FRANCHISE AGREEMENT

5.1 The Franchise agreement shall comply with the National law, European community law and this code of Ethics and any national Extensions thereto.

5.2 The agreement shall reflect the interests of the members of the franchised network in protecting the Franchisor's industrial and intellectual property rights and in maintaining the common identity and reputation of the franchised network. All agreements and all contractual arrangements in connection with the franchise relationship shall be written in or translated by a sworn translator into the official language of the country the Individual Franchisee is established in, and signed agreements shall be given immediately to the Individual Franchisee.

5.3 The Franchise agreement shall set forth without ambiguity, the respective obligations and responsibilities of the parties and all other material terms of the relationship.

5.4 The essential minimum terms of the agreement shall be the following the rights granted to the Franchisor the rights granted to the Individual Franchisee the goods and/or services to be provided to the Individual Franchisee the obligations of the Franchisor the obligations of the Individual Franchisee the terms of payment by the Individual Franchisee the duration of the agreement which should be long enough to allow Individual Franchisees to amortize their initial investments specific to the franchise the basis for any renewal of the agreement the terms upon which the Individual Franchisee may sell or transfer the franchised business and the Franchisor's possible pre-emption rights in this respect provisions relevant to the use by the Individual Franchisee of the Franchisor's distinctive signs, trade name, trademark, service mark, store sign, logo or other distinguishing identification the Franchisor's right to adapt the franchise system to new or changed methods provisions for termination of the agreement provisions for surrendering promptly upon termination of the franchise agreement any tangible and intangible property belonging to the Franchisor or other owner thereof.

6. THE CODE OF ETHICS AND THE MASTER-FRANCHISE SYSTEM

This Code of Ethics shall apply to the relationship between the Franchisor and its Individual Franchisees and equally between the Master Franchisee and its Individual Franchisees. It shall not apply to the relationship between the Franchisor and Master Franchisee.