



FRANCHISE ASSOCIATION OF SOUTHERN AFRICA

PRELIMINARY MEMBERSHIP APPLICATION FORM FOR FRANCHISORS

Contact details			
Registered name of firm:			
Name to be used for member listing and membership certificate:			
State contact name(s) at your company, cell phone and e-mail addresses:			
	Name:	Cell:	Email:
1			
2			
3			
VAT Number:			
Business references			
Bankers			
Contact person:			
Telephone:		Branch:	
Attorneys			
Contact person:		Telephone:	

Trade references	
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1.	
2.	
3.	
4.	
5.	

Business history	
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Year you commenced to conduct a business of the type you franchise/intend to franchise:	
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Year you commenced to grant franchises for this business:	
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Is your company associated or affiliated to any other trade or industry body, e.g. Chamber of Commerce? Yes No If Yes, please provide details

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Black Economic Empowerment	
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Does the franchise company have a BEE rating verification certificate? Yes No If affirmative, please submit a copy of the certificate with this application.

Development of franchise	
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Number of company owned outlets:	Number of franchised outlets:
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1 year ago:		1 year ago:	
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Currently:		Currently:	
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Planned 1 year from now:		Planned 1 year from now:	
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List provinces of South Africa / countries abroad within which you operate at present:	
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I, the undersigned acknowledge that the Franchise Association of Southern Africa (FASA) or any of it's agents, financial institution or credit buro may conduct a credit check and exchange of such information on the applicant company for purposes of assessing the company as a potential member of FASA.

CODE OF ETHICS AND BUSINESS PRACTICES PRINCIPLES

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 international practices and are acknowledged by government and the public.
- 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 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, Secretariat, the Council and any Committee.
- 2.2 Unless the context indicates otherwise, this Code shall apply to 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 and Articles of Association.
- 2.4 The head notes to the paragraphs to 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 Clause 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**" the Council of FASA from time to time, as elected at FASA's Annual General Meeting ;
- 3.2.2.6 "**Days**" means calendar days;
- 3.2.2.7 "**Disclosure Document**" means a disclosure document complying with this Code and Appendix 1 hereto;
- 3.2.2.8 "**Exco**" means the Executive Committee of FASA, as appointed by the Council from time to time;
- 3.2.2.9 "**FASA**" means the Franchise Association of Southern Africa a company duly incorporated in terms of section 21 of the Companies Act, 61 of 1973, as amended and having registration number 91/05946/08
- 3.2.2.10 "**Franchisee Member**" means any Member who is a Franchisee of any Franchisor Member from time to time;
- 3.2.2.11 "**Franchisor Member**" means any Member who is registered as a Franchisor Member by FASA from time to time;
- 3.2.2.12 "**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;
- 3.2.2.13 "**Member Group**" means the group of Members comprising either of all Franchisor Members, all Franchisee Members or all Service Provider Members, as the case may be;
- 3.2.2.14 "**Member**" means any person who is a Member of FASA by virtue of the Memo and Articles;
- 3.2.2.15 "**Memo and Articles**" means the memorandum and articles of FASA, as amended from time to time;
- 3.2.2.16 "**Secretariat**" means the Secretariat of FASA, as appointed by Exco from time to time;
- 3.2.2.17 "**Service Provider Member**" means any Member who is registered as a service provider Member by FASA from time to time.
- 3.2.2.18 "**Trade Mark**" means any trade mark, whether registered or unregistered, owned by FASA including, but not limited to, the, "FRANCHISE ASSOCIATION OF SOUTHERN AFRICA", "FASA" and "FASA logo" trade marks.

4. OMBUDSMAN

4.1 Exco may at its discretion and option appoint a Franchise Ombudsman with specific powers to determine issues that arise or may arise with FASA Members.

4.2 In the event that a Franchise Ombudsman is appointed, all Members of FASA will be bound by the decisions of such Franchise Ombudsman in respect of any matters that fall within his/her powers as determined.

5. SUPPLEMENTARY CODES

This Code may, with FASA's written consent, be supplemented at the option of any Member Group by a supplementary code applicable to the Members of that Member Group. In the event of any conflict between any such individual code and this Code, the provisions of this Code shall prevail.

6. AMENDMENT 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 publication of the updated Code on FASA's website.

7. MEMBERS' GENERAL OBLIGATIONS

- 7.1 Every Member shall at all times comply with all and any applicable legislation and/or regulations that may affect their businesses.
- 7.2 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.
- 7.3 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.
- 7.4 No Member shall engage in any form of pyramid or chain distribution of whatsoever nature.
- 7.5 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.
- 7.6 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 BEE strategy, setting out the time period within and the manner in which it intends to become BEE compliant.

8. DISCLOSURE DOCUMENTS

- 8.1 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.
- 8.2 Every Franchisor Member shall, at least 3 (three) months before the renewal of any existing franchise agreement, provide the Franchisee with a Disclosure Document.
- 8.3 Every Franchisor Member must update its Disclosure Document within 30 (thirty) days of any change in any information contained therein, reflecting such change
- 8.4 Every Franchisor Member must provide a copy of its Disclosure Document, as most recently updated, to the FASA Secretariat by no later than 30th September of each year.

9. FRANCHISOR -FRANCHISEE RELATIONS

- 9.1 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.
- 9.2 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. 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*".
- 9.3 The provisions of paragraph 9.2 above shall not preclude a Franchisor Member from requiring a 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.

9.4 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.

9.5 A Franchisor Member shall at its discretion select and accept those Franchisees that upon reasonable investigation possess the basic skills, education, personal qualities and financial resources adequate to perform and fulfill the needs and requirement of the franchise business. The Franchisor shall not discriminate in the selection process on the basis of race, colour, religion, age, gender or disability of the Franchisee. Notwithstanding the foregoing contents of this paragraph, a Franchisor may grant franchises to certain persons on more favorable terms than those on which similar franchises may be granted to other Franchisees as part of a program to make franchises available to persons, or categories of persons, previously disadvantaged by unfair discrimination.

9.6 Every Franchisor Member shall encourage and provide training designed to assist the Franchisees in improving their abilities to conduct their franchised businesses. Similarly, 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.

9.7 Every Franchisor Member shall provide reasonable guidance and supervision to its Franchisees in regard to the business activities relating to the conduct of the franchise business. Similarly, every Franchisee Member shall do the same in respect of its employees.

9.8 To the extent that is reasonably appropriate, every Franchisor Member shall give notice to any of its Franchisees who is in breach of the relevant franchise agreement, granting the Franchisee a reasonable time within which to remedy such breach.

9.9 All Franchisor Members and the Franchisees of such Members should be conveniently accessible and responsive to communications between them for the purpose of improving mutual understanding and reaffirming mutuality of interest.

9.10 Franchisor and Franchisee 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 11 below. In the event that notice of any complaint, grievance or dispute received by FASA is referred 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 thereof.

9.11 Every Franchisor Member is obliged to advise its Franchisees in the event that it obtains the benefit of any Incentives, and is encouraged, but shall not be obliged, to advise them of the amounts of any Incentives or the conditions attaching thereto.

9.12 In all cases where a Franchisor Member requires any or all of its Franchisees to acquire or purchase any products or services from an Approved Supplier, the Franchisor shall use its best endeavours to ensure that the price at which such products or services are supplied to such Franchisee is not greater than a market-related price, having regard to the nature, quality and quantity of the specific products and/or services concerned.

9.13 No Franchisor Member shall be obliged to consent to any of its Franchisee's acquiring or purchasing any products or services from a supplier other than an Approved Supplier, unless the Franchisee concerned is able to prove, to the reasonable satisfaction of the Franchisor Member, that such products or services offered by such other supplier are of the same specifications, and of no less quality, than the equivalent products or services offered by the Approved Supplier.

9.14 Every Franchisor Member shall ensure that it maintains a separate bank account, into which all moneys which such Franchisor Member may receive from any other person ("the prospective Franchisee") in contemplation of the conclusion of a franchise agreement are to be deposited, and, on request by FASA, shall provide FASA with a reconciliation of the moneys held in such account, setting out:

9.14.1 the name of each prospective Franchisee,;

9.14.2 the amount of the deposit paid by him;

9.14.3 any amount refunded to such prospective franchisee;

9.14.4 any amount disbursed from the said account that has not been refunded to a prospective franchisee,; and

9.14.5 the amount held in such bank account.

9.15 Where a Franchisor Member receives any payment from any prospective Franchisee in contemplation of the conclusion of a franchise agreement, 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:

9.15.1 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;

9.15.2 The Franchisor 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.

9.15.3 The Franchisor Member shall provide the prospective Franchisee with documentary proof of all such expenses.

10. ADVERTISING

10.1 Any and all advertisements 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. All such advertisements must also comply with the Advertising Standard Authority of South Africa's Code of Advertising Practice as amended from time to time.

10.2 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.

10.2.1 All Members acknowledge that the Trade Marks including the "Franchise Association of Southern 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.

10.3 Notwithstanding the provisions of paragraph 10.2.1 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.

11. PENDING DISPUTES

FASA will take no action in respect of any dispute that is the subject of pending litigation or other dispute resolution procedure between such Member and a third party. However this shall not prevent FASA from taking immediate disciplinary action or any other appropriate action against its Members for non-compliance with this Code and/or FASA's Memo and Articles.

General

1. FASA would not pay interest on any membership fees received during the approval period irrespective of the length of the approval period.
2. Should the applicant decide to withdraw the membership application for any reason whatsoever, after evaluation and assessment of the application documents by FASA, FASA reserves the right to deduct the legal fees plus VAT and an administration fee of R2500.00 from the membership fees paid by the applicant.
3. A grace period of 60 days will be granted to every applicant for the submission of additional or missing or amended documents as requested by FASA after receipt of the application. If the required documents are not submitted to FASA within 60 days, the application together with all the supporting documents will be returned to the applicant and the application will be deemed as unsuccessful. FASA reserves the right to deduct the legal fees including VAT and an administration fee of R2500.00 from the membership fees paid by the applicant.
4. I agree to place the FASA logo on the homepage of the company's official website with a link to the FASA website. Yes No
5. Please note before you submit your membership application documents, we urge you to visit the FASA website and down the 12 page Franchising Notice which was issued by the Competition Commissioner. Please ensure that your franchise agreement is not in contravention of any of the clauses mentioned in the notice document. It might be advisable for you to contact an experienced franchise attorney to review your documentation to ensure that they are compliant. Kindly refer to www.fasa.co.za and go to members for a list of the franchise attorneys who are members of FASA. Remember if you contract the services of a FASA member attorney, the legal fees payable upon application are waived.
6. Membership of the Preliminary category is specifically for new or developing franchise companies. FASA's membership evaluation committee will carry out an evaluation of the application documents only and not the viability of the franchised concept. However, once membership has been granted, companies may only remain members of the Preliminary category for a maximum of 24 months where after they would be required to migrate to full membership status. At this stage a copy of the latest financial statements of the franchise company would be required by FASA for evaluation of the viability of the franchised concept.

DECLARATION BY APPLICANT

Prior to signing this application please read this declaration carefully!

In accordance with the "Conditions For Membership of FASA" and the "Code of Ethics and Business Practices of FASA" I/we hereby state the following: "I/we will at all times subscribe to the "Code of Ethics and Business Practices", copy of which I/we have received and declare myself/ourselves familiar with. I/we will further abide by the "Conditions of Membership" of FASA and I/we declare that the franchise system we offer is based on sound business principles provides a viable and ethical business opportunity for a prospective franchisee and satisfies a genuine need for the consumer. I/we further declare that my/our business is financially sound and that the information given by me/us in this application is, to the best of my knowledge and belief, correct and complete."

Please note before you submit your membership application documents, we urge you to visit the FASA website and down the 12 page Franchising Notice which was issued by the Competition Commissioner. Please ensure that your franchise agreement is not in contravention of any of the clauses mentioned in the notice document. It might be advisable for you to contact an experienced franchise attorney to review your documentation to ensure that they are compliant. Kindly refer to www.fasa.co.za and go to members for a list of the franchise attorneys who are members of FASA. Remember if you contract the services of a FASA member attorney, the legal fees payable upon application are waived.

Authorised company representative's name and position held:

Name:		Position held:	
Date:		Signature:	