

CODE OF ETHICS AND GUIDELINES FOR BUSINESS PRACTICES

The Indian Franchise Association (IFA) is dedicated to encouraging and promoting excellence franchising with utmost CARE in India. Each member of the Association, by becoming a member and upon renewing its membership from time to time, agrees to abide by this Code of Ethics and to further the Associations goals in encouraging and promoting ethical franchising in India. Each member of the Association agrees to comply with the spirit of this Code of Ethics in its general course of conduct and in carrying out its general policies, standards, practices.

Ensuring Best Practices in Franchising



1. PREAMBLE

- ✓ IFA is a non profit, non political, independent body constituted and supported by its Members formed to create awareness & promote franchise business.
- ✓ IFA works on the principle of creating utmost CARE (Caution Advice, Research Evolve) in the franchise fraternity.
- ✓ IFA'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 India.
- ✓ This Code reflects the collective beliefs of all IFA Members with respect to the manner in which franchise relationships must be established, structured and implemented.
- ✓ The purpose of this Code is to ensure a system of self-regulation in the public interest and that of the Members of IFA.

2. DEFINITIONS

- ✓ **FRANCHISING** : Arrangement where one party (the franchiser) grants another party (the franchisee) the right to use its trademark or trade-name as well as certain business systems and processes, to produce and market a good or service according to certain specifications. The franchisee usually pays a one-time franchise fee plus a percentage of sales revenue as royalty, and gains (1) immediate name recognition, (2) tried and tested products, (3) standard building design and décor, (4) detailed techniques in running and promoting the business, (5) training of employees, and (6) ongoing help in promoting and upgrading of the products. The franchiser gains rapid expansion of business and earnings at minimum capital outlay.
- ✓ **Angel Investor**: An angel investor is an individual who provides capital for a business start-up, usually in exchange for convertible debt or ownership equity. Angel investors invest their own personal funds, unlike venture capital firms, who manage the pooled money of others in a managed fund. In some cases if a family



member or a friend were to lend you money to start a business they also would be referred to as an angel investor.

- ✓ **Designated Supplier** : Franchise designated supplier definition. A supplier designated by the franchisor as a source for purchasing approved products. The use of a designated supplier guarantees the franchisor that each franchisee is offering the same products to its clients or customers.
- ✓ **Discovery Day** : discovery day is an event set up by the franchise company for potential franchisees. This gives the interested buyer of the franchise the chance to meet face to face with the franchisor. This event usually takes place at the franchisor's main headquarters or in some cases, at an actual franchised location that is usually in the same town/city of the franchisor's main office. Some discovery days are very structured and will have up to 20 candidates in attendance while others will be on a one to one basis.
- ✓ **Earnings Claims**: Earnings claims are claims made by the franchisor in regards to financial performance of past franchisees or the potential financial performance of franchisees.
- ✓ **Franchise Agreement**: The franchise agreement is a legally binding agreement which outlines the franchisor's terms and conditions for the franchisee. The franchise agreement also clearly outlines the obligations of the franchisor and the obligations of the franchisee. The franchise agreement is signed at the time an individual has made the final decision to buy the franchise. It is strongly suggested that anyone who is considering buying a franchise should consult with a professional franchise attorney.
- ✓ **Franchise Broker** : A franchise broker (also known as a franchise consultant) is an individual who acts as an intermediary between the franchisor and an individual interested in buying a franchise. In most cases a franchise broker is not directly employed by the franchisor and represents many different franchises. There is no fee incurred by the individual interested in buying a franchise. The franchise brokers are paid a commission by the franchisor.
- ✓ **Franchise Disclosure Document** : This document is intended to provide prospective franchisees with enough information to help them make an educated decision about buying the franchise.
- ✓ **Franchise Fee**: The franchise fee is an up-front (one-time) cost that a new franchisee pays to the franchisor. In most cases the franchise fee will cover the costs for training, support and site selection.
- ✓ **Franchisee**: A franchisee is an individual who purchases the rights to use a company's trademarked name and business model to do business. The franchisee purchases a franchise from the franchisor. The franchisee must follow certain rules and guidelines already established by the franchisor, and in most cases the franchisee must pay an ongoing franchise royalty fee to the franchisor.
- ✓ **Franchisor**: The franchisor owns the overall rights and trademarks of the company and allows its franchisees to use these rights and trademarks to do business. The franchisor usually charges the franchisee an upfront franchise fee for the rights to do business under the franchise name. In addition, the franchisor usually collects an ongoing franchise royalty fee from the franchisee.
- ✓ **Gross Sales** : The overall sales of a franchise not including operating expenses, cost of goods sold, payment of taxes or any other expenses.
- ✓ **Master Franchise** : Master Franchising allows people or corporations to purchase the rights to sub-franchise within a certain territory. This allows the master franchisee the opportunity to grow a decent business in a fairly short timeframe. Not every franchisor offers master franchising opportunities. Franchisors that do use this system of usually grow very rapidly



- ✓ **Multi-Unit Franchise:** Multi-unit franchising creates the opportunity for a franchisee to open more than one unit. In this case, multiple units are sometimes sold at a reduced rate per unit. In this type of operation, the franchisee partakes less in the day-to-day operations of the unit. Instead, the multi-unit franchisee manages all the locations at a higher level. Usually the franchisee will hire managers and staff for each location to perform the daily operations. This type of franchising is not typically limited to a particular area. Therefore, the franchisee may have several units located in different parts of a town, or even in other countries.
- ✓ **Royalty Fee :** A royalty fee is an ongoing fee that the franchisee pays to the franchisor. This fee is usually paid monthly or quarterly and is typically calculated as a percentage of gross sales.
- ✓ **Single Unit Franchise :** Buying a single unit franchise is the most likely place a brand new entrepreneur would begin. In this type of franchise, the franchisee would only be responsible for running one unit. However he or she would be extremely involved with all of the daily operations of the business. The franchisee typically has a particular territory that is covered by the unit. Usually the franchisor assigns a number of miles to be covered by each unit in operation. If the business is home-based, there may be four or five zip codes included. With a single unit franchise, the investment costs are less than opening up multiple units. Although most single unit franchises yield a nice income, there is more earnings potential with multi-unit franchises.
- ✓ **Copyright:** The exclusive right of a person to use, and to license others to use, an intellectual property such as a book, pamphlet, or other published material.
- ✓ **Franchise Contract :** The legal agreement between the parties which sets out the terms under which the Franchisee will operate the business.
- ✓ **Trade Secret:** Knowledge in the possession of the franchisor that is revealed to the franchisee by the franchise transaction. Trade secrets may take the form of construction or operating procedures, a formula for the mixing of ingredients to prepare food or the classical customer list.
- ✓ **Trademark:** A trademark is a type of intellectual property, and typically a name, word, phrase, logo, image, symbol, design, or a combination of these elements, which distinguish services or goods of one person or enterprise from those of another. A trademark is a distinctive sign or indicator used by an individual, business organization, or other legal entity to identify that the services or products to consumers with which the trademark appears originate from a unique source, and to distinguish its products or services from those of other entities.

3. Guiding Principles

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.

1. Franchisor Obligations:

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 tradename, 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. Individual Franchisee Obligations :

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;

3. 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;
- ✓ 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.
- ✓ 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.
- ✓ 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.
- ✓ 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.
- ✓ 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.
- ✓ 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.
- ✓ 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 IFA for mediation/ arbitration,
- ✓ In the event that notice of any complaint, grievance or dispute received by IFA is referred to any Franchisor or Franchisee Member for a response, such Member is obliged to furnish IFA with a response within 7 (seven) days of receipt thereof.
- ✓ 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.
- ✓ 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.

- ✓ 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.
- ✓ Every Franchisor Member shall ensure that 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 deposited in an attorneys trust account or a separate bank account maintained by the Franchisor Member for that purpose. In the latter event, 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.
- ✓ 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 9.14 above, 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: -
 - 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;
 - 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.
 - The Franchisor Member shall provide the prospective Franchisee with documentary proof of all such expenses.

MEMBERS' GENERAL OBLIGATIONS

- ✓ Every Member shall at all times comply with all and any applicable legislation and/or regulations that may affect their businesses.
- ✓ 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.
- ✓ 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.
- ✓ No Member shall engage in any form of pyramid or chain distribution of whatsoever nature.
- ✓ 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.

4. DISCLOSURE DOCUMENTS

Every Franchisor Member shall, at least 10 (ten) 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. This disclosure document is intended to provide prospective franchisees with enough information to help them make an educated decision about buying the franchise.

Regardless of industry, size, or any other factor, the FDD follows the same format, which contains the following categories:

- ✓ The Franchisor and Any Predecessors
- ✓ Litigation History
- ✓ Bankruptcy (i.e., any franchisees who may have filed)
- ✓ Listing of the Initial Franchise Fee and Other Initial Payments
- ✓ Other Fees and Expenses
- ✓ Statement of Franchisee's Initial Investment
- ✓ Obligations of Franchisee to Purchase or Lease from Designated Sources
- ✓ Obligations of Franchisee to Purchase or Lease in Accordance with Specifications or from Authorized Suppliers
- ✓ Financing Arrangements
- ✓ Obligations of the Franchisor; Other Supervision, Assistance or Services
- ✓ Exclusive/Designated Area of Territory
- ✓ Trademarks, Service Marks, Trade Names, Logotypes and Commercial Symbols
- ✓ Patents and Copyrights
- ✓ Obligations of the Franchisee to Participate in the Actual Operation of the Franchise Business
- ✓ Restrictions on Goods and Services Offered by Franchisee
- ✓ Renewal, Termination, Repurchase, Modification and Assignment of the Franchise Agreement and Related Information
- ✓ Arrangements with Public Figures
- ✓ Actual, Average, Projected or Forecasted Franchise Sales, Profits or Earnings
- ✓ Information Regarding Franchises of the Franchisor
- ✓ Financial Statements
- ✓ Contracts
- ✓ Acknowledgment of Receipt by Respective Franchisee

5. ADVERTISING

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 set of guidelines framed by The **Advertising Standards Council of India (ASCI)**.

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.

6. PENDING DISPUTES

IFA 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 IFA from taking immediate disciplinary action or any other appropriate action against its Members for noncompliance with this Code.

7. The Franchise Agreement

The Franchise agreement should comply with the Contract law of India and this Code of Ethics. The Franchise agreement shall set forth without ambiguity, the respective obligations and responsibilities of the parties and all other material terms of the relationship. 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 preemption rights in this respect;
- ✓ provisions relevant to the use by the individual Franchisee of the Franchisor's distinctive signs, trade name, trade mark, 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.

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Secretariat
Indian Franchise Association