

**FRANCHISE ASSOCIATION OF SOUTH AFRICA**  
**DISCLOSURE DOCUMENT REQUIREMENTS**  
**APPENDIX 1**

Every Disclosure Document issued by a Franchisor Member pursuant to the Code shall comply with the following requirements: -

1. The Disclosure Document and all supporting documentation are to be in English and a written explanation must be given by the Franchisor Member of any terms or sections not fully understood by the prospective Franchisee upon the prospective Franchisee's written request.
2. The following statement must appear in the Disclosure Document:-

This Disclosure Document should assist you in assessing the franchise. While it includes some information about your contract (franchise agreement) do not rely on it alone to understand your contract; read your entire contract carefully. Buying a franchise is a serious undertaking; take your time to decide. It is recommended that you have the contract explained to you by an attorney and you should seek accounting and financial advice on the franchise proposition. For the calendar year \_\_\_\_\_ (insert current year), \_\_\_\_\_(name of Franchisor) is a Full / Preliminary [delete whichever is inapplicable] Member in good standing of the Franchise Association of Southern Africa, if required, further information on this Membership can be obtained from:

The Executive Director,  
Franchise Association of Southern Africa  
Postnet Suite # 256  
Private Bag X4  
Bedfordview  
2008

3. The Disclosure Document shall contain at least the following information in regard to the Franchisor Member:
  - 3.1 Its legal name, trading name, registered office and franchise business office, street address, postal address, e-mail address, telephone number and fax number.
  - 3.2 A statement to the effect that it is a member of FASA and whether it is a Full or Preliminary Franchisor Member.
  - 3.3 The name, identity number, cellular telephone number, e-mail address, town of residence, job titles and qualifications of its executive officers;
  - 3.4 Save where the Franchisor Member is a company listed on any stock exchange, details of any proprietor/s, member/s and/or shareholders if they are different from the persons referred to in paragraph 3.3 above.
  - 3.5 A resume of the its business experience and that of each of its executive officers, listed in terms of paragraph 3.3 above, including:-
    - 3.5.1 Details of any other franchise operation conducted, whether alone or with others, by the Franchisor Member and/or any of its executive officers in the past 5 (five) years and, if such operation has been discontinued, the reason for such discontinuation;
    - 3.5.2 The period of time that the Franchisor Member, or its predecessors in title, have carried on any business of the type that it is contemplated will be carried on by the prospective franchisee pursuant to the conclusion of a Franchise Agreement between the Franchisor Member and himself ("a Franchised Business"); and
    - 3.5.3 The period of time that the Franchisor Member has been engaged in franchising Franchised Businesses;
  - 3.6 In the event that the Franchisor Member is a subsidiary or a member of a group of companies, or the holder of a master franchise or license: -
    - 3.6.1 Details of the ultimate parent or holding company, or master franchisor/licensee, as the case may be, including its name and country of incorporation;
    - 3.6.2 Details of all subsidiary companies of the Franchisor Member and its holding or parent company, including their names, countries of incorporation and the

- percentage of the share capital held by the Franchisor Member or its holding or parent company;
- 3.7 Details of any material debt, criminal, civil or administrative proceedings in which the Franchisor Member was cited as the defendant, respondent or accused during the period of five years preceding date upon which the Disclosure Document must be provided;
  4. The Disclosure Document shall include a summary of the main particulars and features of a Franchised Business and how they were developed.
  5. Copies of the certificates of registration of the Franchisor's Member trademark/s, alternatively the applications for the registration of any trademark/s filed by or on behalf of the Franchisor Member must be annexed to the Disclosure Document, and details of any threatened or pending litigation in relation to any of them must be supplied. In the event that the Franchisor Member's trademarks are registered in the name of another person or entity ("the registered owner"), then the Franchisor Member must provide details of the registered owner and must further provide a copy of the agreement between the Franchisor Member and the registered owner, in terms of which the Franchisor Member is entitled to use the said trademarks.
  6. The names and contact details of all persons or entities, if any, that ceased to be Franchisees of the Franchisor Member during the 3 (three) previous financial years of the Franchisor Member, or the period for which the Franchisor Member has been conducting franchised business (whichever period is the shorter), must be provided, together with an indication of the reasons for which such persons or entities have ceased to be Franchisees.
  7. The Disclosure Document must contain a summary of the material terms of the franchise agreement, containing at least the following information: -
    - 7.1 a statutory notice in terms of section 7 (2)(a) of the Consumer Protection Act stating:

"A franchisee may cancel a franchise agreement without cost or penalty within 10 business days after signing such agreement, by giving written notice to the franchisor."
    - 7.2 particulars of any restrictions (e.g. territorial restrictions) to be imposed on the prospective Franchisee;

- 7.3 the nature and extent of the Franchisor's involvement or approval in the process of site selection;
  - 7.4 a summary of the terms and conditions relating to termination, renewal, and assignment of the Franchise Agreement and to the goodwill of the Franchised Business that it is contemplated will be carried on by the prospective franchisee concerned ("the Outlet");
  - 7.5 a summary of the main obligations of the Franchisor (including initial and ongoing training to be provided);
  - 7.6 a statement as to whether the territory or site at which the Outlet is to be conducted has been subject to any previous trading activity, particularly by a Franchised Business, and whether such business was franchised by the Franchisor Member or by a third party;
  - 7.7 a statement that the Franchise Agreement and its implementation are subject to all applicable laws from time to time in force in the Republic of South Africa and any other territory in which the prospective franchisee may carry on business.
8. A codicil may be annexed to the Disclosure Document containing additional information specific to the Outlet, including, without limitation specific rental provisions, Franchisor head-lease and master license information related to such outlet.
  9. Should the Franchise Agreement contain any provision obliging the franchisee to enter into any other agreement/s whatsoever, the Disclosure Document must contain a statement to the effect that the prospective franchisee can request copies of any such agreements.
  10. The Disclosure Document must contain full particulars of the financial obligations of the Franchisee in terms of the Franchise Agreement or otherwise related to the Outlet including:
    - 10.1 the initial fee payable to the Franchisor on the signing of the Franchise Agreement, including the purpose for which it is to be applied, e.g.: access to intellectual property, cost of training, legal and financial charges or profit for the Franchisor.
    - 10.2 the funds required to establish the Outlet including, purchase or lease of property, site conversion costs, décor and signage, equipment, furniture, hiring

and training of staff, opening stock, legal and financial charges, as may be applicable;

- 10.3 the initial working capital setting out the basis on which it is calculated;
- 10.4 the total investment required including at least, the upfront fee, establishment costs, initial working capital and any other funding;
- 10.5 a clear statement as to whether or not any expenses, any salary/wages of employees of the franchised business and the costs of servicing loans are included in the purchase price.
- 10.6 the amount of funding that is available from the Franchisor Member, if any, and the applicable conditions;
- 10.7 the total amount that the Franchisee must contribute towards the necessary funding before borrowing;
- 10.8 ongoing amounts payable to the Franchisor Member, with details as to:-
  - 10.8.1 whether the amounts are fixed or variable;
  - 10.8.2 whether all or part of the amounts are built into the cost of goods or services that must be purchased from the Franchisor Member or other preferred suppliers;
  - 10.8.3 the dates, or intervals, at which the amounts fall due (e.g. three months after trading by the Franchisee commences);
  - 10.8.4 if any fee is payable in respect of management services provided by the Franchisor Member, details of such services;
  - 10.8.5 if any contribution is payable to a fund for the purpose of advertising and marketing, it should be indicated ;
  - 10.8.6 what types of advertising and marketing services can be expected;
  - 10.8.7 whether the costs of advertising and marketing specific to the Outlet, or to particular region/s, are paid from this fund;
  - 10.8.8 whether franchisees are entitled to participate in the decision making on advertising and marketing matters.
11. The basis of calculation of any funds collected by the Franchisor Member from the Franchisee Members for the purpose of marketing, advertising or any other

related purpose expressed either as an amount or a percentage must be disclosed in the Disclosure Document.

12. The Disclosure Document must include a viability statement given by the Franchisor Member's directors or principals, containing key financial information regarding the turnover and net profit of the Franchisor Member, and the number of individual outlets franchised by it. The statement must further include a description of the growth of the Franchisor Member's turnover, net profit and the number of individual outlets, if any, franchised by it during the period of twelve months prior to date on which the prospective franchisee receives a copy of the Disclosure Document.
13. The following statement must be included in the Disclosure Document and must be dated and signed by an authorized officer of the Franchisor Member: -

*"We certify that there have been no significant or material changes in the company's/Franchisor's financial position since the date of the accounting officer or auditors certificate and the company /Franchisor has reasonable grounds to believe that it will be able to pay its debts as and when they fall due".*
14. The Disclosure Document must include a formula /calculation that the Franchisee may utilize to calculate the maximum selling price of the franchised business, should the Franchisee wish to sell its business in the future. The Disclosure Document must set out the factors/assumptions on which the formula /calculation is based.
15. The Disclosure Document must include a statement to the effect that any deposits paid by the prospective franchisee will be deposited into a separate bank account and dealt with as provided for in the Code.
16. The Franchisor Member must provide written projections in respect of levels of potential sales, income, gross or net profits or other financial projections for the Outlet or Franchised Businesses of a similar nature to the Outlet, with particulars of the assumptions upon which these projections are made.
17. Each page of the projections should be qualified in respect of such assumptions and should carry a statement to the effect that such projections in no way represent any form of guarantee or undertaking by the Franchisor to the prospective franchisee or any third party that any figures set out therein will be achieved.

18. Every Disclosure Document must be accompanied by a certificate on an official letterhead from a person eligible in South African law to be registered as the accounting officer of a close corporation, or the auditor of a company, as the case may be, certifying that:-
  - 18.1 the business of the Franchisor Member is a going concern; and
  - 18.2 to the best of his/her knowledge, the assets of the Franchisor Member's business exceed its liabilities;
  - 18.3 to the best of his/ her knowledge the Franchisor Member is able to meet its current and contingent liabilities.
  - 18.4 the Franchisor Member is capable of meeting all of its financial commitments in the ordinary course of business as they fall due; and
  - 18.5 the Franchisor Member's audited annual financial statements for the most recently expired financial year have been drawn up :
    - 18.5.1 in accordance with sound accounting principles generally accepted in South Africa; and
    - 18.5.2 except to the extent stated therein, on the basis of accounting policies consistent with prior years, and
    - 18.5.3 in accordance with the provisions of the Companies Act (No. 61 of 1973) as amended, and all other applicable laws, and
    - 18.5.4 fairly reflect the financial position, affairs, operations and results of the Franchisor Member as at that date and for the period to which they relate.
18. Every Disclosure Document must be accompanied by a list of current franchisees, if any, and of outlets owned by the Franchisor Member, stating, in respect of any franchisee:
  - 19.1 the name under which it carries on business;
  - 19.2 the name of its representative;
  - 19.3 its BEE status,
  - 19.4 physical address, and
  - 19.5 its e-mail and cellular telephone number

together with a clear statement that the prospective franchisee is entitled to contact any of the franchisees listed, or alternatively to visit any outlets operated by a current franchisee to assess the information disclosed by the Franchisor Member and the franchise opportunity offered by it.

20. The Disclosure Document must be accompanied by an organogram depicting the support system in place for franchisees.
21. The Disclosure Document must be accompanied by a copy of the most recent BEE rating certificate of the Franchisor Member, issued by an accredited agency, or, in the event that no such agency has been accredited, recommended by the South African National Accreditation System (SANAS). In the event that the Franchisor Member is certified as being BEE non-compliant, the Franchisor must disclose its BEE strategy, setting out the time period within and the manner in which it intends to achieve BEE compliance.
22. The Disclosure Document must be accompanied by copy of the Code and shall contain a statement advising the prospective franchisee of FASA's publication "How to Evaluate a Franchise" and that it may assist the potential Franchisee in evaluating the franchised business.