

Self-assessment checklist for a Franchise Agreement

Franchise:

Document compiled / reviewed by:

Date:

| Requirement | Prescribed under | | | Covered | | Abbrev: 1 CPA Regulations; 2 FASA Code Comments by reviewer |
|---|--------------------|---------|------------|---------|----|--|
| | Reference document | Page no | Clause no | Yes | No | |
| Prescribed text of section 7(2) of the CPA (second cooling-off period) | 1 | 6 | 2(2)(a) | | | |
| No unreasonable/unnecessary fees charged and/or conduct demanded | 1 | 6 | 2(2)(b) | | | |
| Clause preventing franchisor from receiving undisclosed benefits from suppliers | 1 | 6 | 2(2)(c) | | | |
| Name and description of the type of goods/services the franchise deals in | 1 | 7 | 3(a) | | | |
| Full details of the obligations of the franchisor | 1 | 7 | 3(b) | | | |
| Full details of the obligations of the franchisee | 1 | 7 | 3(c) | | | |
| Detailed description of the business system | 1 | 7 | 3(d) | | | |
| Details of direct or indirect payments to be made by the franchisee to the franchisor | 1 | 7 | 3(e) | | | |
| Territorial rights stated in detail | 1 | 7 | 3(f) | | | |
| Clear description of the site from where business is to be conducted | 1 | 7 | 3(g) | | | |
| Conditions for the transfer or assignment of rights under the franchise agreement | 1 | 7 | 3(h) | | | |
| Description of trademark(s) and conditions for its/their use by the franchisee | 1 | 7 | 3(i) | | | |
| If master franchise, full details of the master franchisor | 1 | 7 | 3(j) | | | |
| Details of initial and ongoing training and assistance to be provided | 1 | 7 | 3(k) | | | |
| Duration of the agreement and terms for its renewal | 1 | 7 | 3(l) | | | |
| If marketing fund exists, amounts payable or method of calculation, plus: | 1 | 7 | 3(m)(i) | | | |
| Supply income/expenditure details within 6 months after franchisor's year-end | 1 | 8 | 3(m)(ii) | | | |
| Supply financial management accounts at the end of every 3-months period | 1 | 8 | 3(m)(iii) | | | |
| Statement that moneys may not be spent on advertising the franchise etc. | 1 | 8 | 3(m)(iv) | | | |
| If audit was performed, include prescribed wording confirming compliance | 1 | 8 | 3(m)(v) | | | |
| Franchisee's entitlement to receive copies of the above promptly on request | 1 | 8 | 3(m)(vi) | | | |
| Monies deposited in separate banking account, used for prescribed purpose only | 1 | 8 | 3(m)(vii) | | | |
| Company outlets' contribution to the fund, if any, must be stated | 1 | 8 | 3(m)(viii) | | | |
| Clear statement that company-owned outlets do not benefit unfairly from fund | 1 | 8 | 3(m)(ix) | | | |
| Effect of the termination or expiry of the franchise agreement | 1 | 8 | 3(n) | | | |

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| Details of extension or renewal terms, or state if renewal is not provided for | 1 | 8 | 3(o) | | | |
| Statement that on written request franchisor will provide full explanation of clauses | 1 | 8 | 3(p) | | | |
| The franchisors legal name, trading name, full address and contact details | 1 | 8 | 3(q) | | | |
| Name, ID number, town of residence, job title, qualifications of directors/equivalent | 1 | 9 | 3(r) | | | |
| Unless listed company, details of shareholders etc. if different from 3(r) | 1 | 9 | 3(s) | | | |
| Details of restrictions imposed on the franchisee (if any) | 1 | 9 | 3(t) | | | |
| Extent of franchisor's involvement in site selection / approval | 1 | 9 | 3(u) | | | |
| Terms and conditions relating to termination, renewal, goodwill, assignment | 1 | 9 | 3(v) | | | |
| Main obligations of the franchisor in terms of initial and ongoing training | 1 | 9 | 3(w) | | | |
| Statement that deposits will be placed into separate bank account, processing | 1 | 9 | 3(x) | | | |
| Franchisee's financial obligations, including | 1 | 9 | 3(y) | | | |
| Initial fee, breakdown of how it will be applied | 1 | 9 | 3(y)(i) | | | |
| Details of complete set-up costs including staff training, legal costs and stock | 1 | 9 | 3(y)(ii) | | | |
| Details of initial working capital and how it was calculated | 1 | 9 | 3(y)(iii) | | | |
| The total investment required | 1 | 9 | 3(y)(iv) | | | |
| Statement whether expenses are included/not included, example interest payments | 1 | 9 | 3(y)(v) | | | |
| Funding available from the franchisor and conditions applicable thereto | 1 | 9 | 3(y)(vi) | | | |
| Minimum amount of franchisee's own contribution before funding | 1 | 9 | 3(y)(vii) | | | |
| Details of ongoing amounts payable by the franchisee including | 1 | 9 | 3(y)(viii) | | | |
| Fixed or variable? | 1 | 9 | (aa) | | | |
| Fees included in the price of goods purchased from prescribed suppliers? | 1 | 10 | (bb) | | | |
| Due dates for ongoing payments? | 1 | 10 | (cc) | | | |
| If management services fees payable, details of services provided | 1 | 10 | (dd) | | | |
| Exact statement as prescribed by the FASA code | 2 | 7 | 8.3 | | | |
| Statement pertaining to franchisor insolvency as prescribed in the FASA Code | 2 | 9 | 8.12 | | | |

Please note:

For best results, this assessment should be interpreted while making reference to the CPA and its Regulations – click here <https://www.fasa.co.za/pdf/002B%20Extract%20from%20Regulations.pdf>

Disclaimer:

The Franchise Association of South Africa's core mandate does not include the review of disclosure documents and franchise agreements for compliance in-house. This checklist is supplied by Kurt Illetschko, franchise@intekom.co.za, a franchise specialist who is not a qualified legal franchise practitioner. The checklist serves as a guide to franchise companies to identify possible issues of non-compliance in their franchise agreement and/or disclosure document. Neither the Franchise Association of South Africa (including its Exco, Council, employees and members) nor the franchise practitioner concerned will accept any responsibility or liability for the legal soundness of the checklist. It is recommended that franchisors obtain legal advice from experienced franchise attorneys or consult further with franchise consultants – refer to this link for the relevant contact details <https://www.fasa.co.za/directory-supplier/>