# The Rules of Membership

# Contents


| | | |
|---|---|---|
| **1.** | **Introduction** | **3** |
| **2.** | **Definitions** | **3** |
| **3.** | **Fees** | **4** |
| **4.** | **Eligibility for Membership** | **4** |
| **5.** | **Events, Training and Education** | **4** |
| **6.** | **Franchisor Membership** | **5** |
| **7.** | **Piloting** | **5** |
| **8.** | **Categories Of Franchisor Membership** | **5** |
| 8.1. | Emerging Franchisor Membership | 5 |
| 8.2. | Expanding Franchisor Membership | 6 |
| 8.3. | Established Membership | 6 |
| 8.4. | Period of time at each grade of Franchisor Membership | 7 |
| 8.5. | Franchisor Additional Brands and Additional Brand Discount | 7 |
| 8.6. | Advisor Membership | 8 |
| 8.7. | Consultants | 8 |
| 8.8. | Legal and Finance | 9 |
| 8.9. | Franchisors who offer a service that is eligible for Advisor Membership | 9 |
| 8.10. | Reaccreditation of Advisors | 9 |
| 8.11. | Supplier Membership | 9 |
| 8.12. | Franchisee Membership | 10 |
| 8.13. | International Membership | 10 |
| 8.14. | Master & Regional Structures | 10 |
| **9.** | **Standards of Conduct** | **11** |
| **10.** | **Members' Disclosures to the BFA** | **16** |
| **11.** | **Member Review** | **16** |
| **12.** | **Suspension of Membership** | **17** |
| **13.** | **Termination of Membership** | **17** |
| **14.** | **Disciplinary Procedures** | **18** |
| **15.** | **Dispute Resolution** | **20** |
| **16.** | **Governance of the BFA** | **21** |

## 1. Introduction

1.1 These Rules of Membership ("Rules") are binding upon the Members and are intended to assist in the operation of the British Franchise Association ("BFA").

1.2 Members are required to comply with these Rules (insofar as they apply to the Member's category of membership), as well as with the European Code of Ethics for Franchising, the BFA's Extension and Interpretation thereof (as each of these may be amended from time to time), all undertakings given by them on their application for membership, and all such other standards, guidelines or requirements governing the behaviour of Members that may be specified by the BFA from time to time.

1.3 The Rules may be varied, amended, added to or deleted by the Board from time to time. The BFA will publish the Rules and ensure that each applicant for membership has access to them in electronic or hard copy format as appropriate.

## 2. Definitions

2.1 In these Rules, unless the context requires otherwise, the following expressions shall have the following meanings:

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| **Advisor or Advisor Member** | a Member accredited by the BFA in one of the following categories: Finance, Legal, or Consultant (each as further described in these Rules) |
| **Board** | the Board of Directors of the BFA |
| **Chief Executive Officer or CEO** | such person who holds the title of chief executive officer of the BFA or such other title in the capacity of which that person is responsible for the management of the BFA from time to time or such other person who holds the sole position of executive director of the BFA |
| **Franchisor or Franchisor Member** | a Member accredited by the BFA as an Emerging Franchisor, Expanding Franchisor, Established Franchisor Member, in each case as set out in these Rules, or in such other membership category(ies) as the BFA may create for franchisor Members from time to time |
| **Insolvency** | the entering into liquidation (other than voluntarily for the purpose of amalgamation or reconstruction); being unable to pay debts within the meaning of Section 123 of the Insolvency Act 1986 (or any statutory modification or re-enactment of it); the suffering of a distress of execution levied on, or a receiver appointed over any property; the entering into administration, provisional liquidation or any composition or arrangement with creditors (other than in relation to a solvent restructuring); the obtaining of a moratorium; being wound up (whether voluntarily or by order of the court, |

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| | unless for the purpose of a solvent restructuring); having a receiver appointed to any assets; or ceasing to carry on business |
| **Master Franchisee or UK Master Franchisee** | as described in clause 10.13 |
| **Member** | a subscribing member accredited by the BFA as set out in these Rules |
| **Nominated Individual** | as defined in clause 8.8.b |
| **Regional Franchisee or Regional Master Franchisee** | as described in clause 10.13 |
| **QFP** | the BFA's qualified franchise professional qualification, or such other qualification as the BFA may develop from time to time |
| **Standards of Conduct** | the standards of conduct set out or referred to in these Rules |
| **Writing** | a communication "in writing" shall include post, hand-delivery or email, in each case to such address or number as the recipient shall have provided to the BFA |

2.2 Members are required to comply with these Rules, as well as with the European Code of Ethics for Franchising, and the BFA's Extension and Interpretation thereof.

## 3. Fees

3.1 Membership fees applicable to each category of Member are payable on an annual basis and are determined by the BFA from time to time.

## 4. Eligibility for Membership

4.1 The assessment of applications for membership and the accreditation of Members, are conducted by the BFA in accordance with the Rules. Applicants are expected to demonstrate to the BFA's satisfaction how they meet the standards set out in these Rules and to provide such evidence as the BFA may require.

4.2 When considering applications for membership, the BFA will look at the future development plans for the applicant, as well as the historic performance not only of the applicant entity but also that of its directors, shareholders and senior management.

## 5. Events, Training & Education

5.1 In order to get the most out of membership, Members are welcomed and encouraged to take part in events organised by the BFA on a regular basis.

5.2 All Members are encouraged to participate in training and education programmes offered by the BFA from time to time, and in particular for their management to work towards obtaining the QFP qualification.

## 6. Franchisor Membership

6.1 In order to be considered for membership, a franchisor must, in the view of the BFA, be:

**a. Viable:** The franchise concept must have a proven track-record of success and the business must have potential longevity. The franchisees' businesses (or the expected franchisees' businesses) must be capable of achieving levels of profit that will sustain them.

**b. Transferable:** The franchisor must have the benefit of know-how that can be successfully transferred, along with a system of initial and ongoing training and support to a franchisee on an arm's length basis.

**c. Ethical:** The business to be franchised must be structured and operated in accordance with the ethical principles set out in the Code of Ethics. The applicant's franchise agreement is assessed formally.

**d. Disclosed:** The business to be franchised must disclose to prospective franchisees without ambiguity - all information on the business that is material to the franchise proposition and contract.

## 7. Piloting

7.1 Before Franchisor membership can be granted, the business model that is to be franchised must have been piloted within the UK for a minimum period of one year. This pilot operation ("Pilot") may be company owned and operated at arm's length, or it may be a franchised outlet.

7.2 Either way:

a. The period and mode of piloting must be sufficient to demonstrate that the business model is viable.

b. In respect of international piloting, it is the brand owner or Master that must take responsibility for ensuring prior piloting in the new territory, not the unit franchisee, during which period the brand owner can test the product and market, but not sell franchises.

7.3 Note also the requirements applicable in the case of Master and Regional Structures, as set out below.

## 8. Categories of Franchisor Membership

### 8.1 Emerging Franchisor Membership

This category is available to businesses that comply with the following:

a. They must have a successful trading record of at least one year.

b. They must be ready to develop or be in the process of developing a franchised business - most often with a Pilot, whether franchised or corporate.

c. Their franchisee recruitment materials must be clear, fair, and without ambiguity or misleading statements.

d. Direct or indirect references in franchisee recruitment materials to future possible

operational or financial performance must be objective and based on actual trading experience.

e. Their franchise agreement must meet the Code of Ethics and these Rules.
f. Their business must have been developed professionally in accordance with the standards of good practice represented by the BFA.
g. Their application must be endorsed by a Consultant Member, Accountancy Member or a Legal Advisor Member, or another suitable party who, at the discretion of the BFA, has suitable experience of franchising, and in each case such person must confirm that the applicant company is taking appropriate professional advice on the structure of the business and legal agreement for its franchise proposition.
h. They must have supplied a positive bank reference.

Emerging Franchisors must further commit to work towards achievement of the standards for Expanding Franchisor membership within 2 years.

## 8.2 Expanding Franchisor Membership

a. This category is available to businesses which comply with the criteria for Emerging Franchisor membership, save that:
   - They must have been trading successfully for ***at least 2 years***.
   - They must have at least one franchisee who has been trading successfully as such for at least one year.
   - Where they are already a Member in another category, they must be in full compliance with these Rules and there must be no ongoing disciplinary action outstanding against them.
b. Applicants are required to provide supporting evidence which would typically include, amongst other things:
   - Two years' trading accounts from the franchisor.
   - One year's accounts from at least one franchisee.
   - An explanation of the franchise business model together with evidence and trading experience upon which the model is based.
   - A record of current and past franchisees, showing openings, withdrawals and failures, as well as their trading and financial performance.
   - Copies of franchisee recruitment materials including financial illustrations.
   - Evidence demonstrating franchisee performance measured against the business model.
c. Before moving from Emerging Franchisor membership to Expanding Franchisor membership, the Franchisor Member must have co-operated with the BFA in the completion of a franchisee survey, as the BFA shall determine from time to time.

## 8.3 Established Membership

a. This category is available to established franchised businesses that meet the requirements for Emerging and Expanding Franchisor membership, including the provision of information as required, and which comply with the following additional requirements:
   - They must be able to demonstrate to the BFA's satisfaction a proven trading and franchising record over a sufficiently sustained period.
   - They must have demonstrated critical mass, in that their ongoing management fee income from their franchisees sufficiently covers the costs of running their operation.

b. Whether or not these requirements are met in each case will be determined by the BFA at its discretion, and it should be noted that what constitutes "a sufficiently sustained period" may vary from one sector to another.
c. Before moving from Expanding Franchisor membership to Established Franchisor membership, the Franchisor Member must have co-operated with the BFA in the completion of a franchisee survey, as the BFA shall determine from time to time.

8.4 **Period of time at each grade of Franchisor Membership**

**a.** **Emerging Franchisors** - Typically, the BFA would expect Emerging Members to apply to move up to Expanding membership within **2 years**. If they do not do so, or if they do not meet the criteria for Expanding membership at the end of 2 years, membership of an Emerging Member would normally be terminated, unless the BFA otherwise agreed an extension of time on a case-by-case basis.
**b.** **Expanding Franchisors** - Typically, the BFA would expect that Expanding Members would apply to move up to Established membership within **3 to 5 years**. If they do not do so, or if they do not meet the criteria for Established membership, at the end of 5 years, membership of an Expanding Member would normally be terminated, unless the BFA otherwise agreed an extension of time on a case-by-case basis.
**c.** **Established Franchisors** - As a condition of membership, **Established Members** are required to submit themselves for periodic re-accreditation as and when requested by the BFA.
d. Intervals between periodic re-accreditations are at the sole discretion of the BFA and are likely to average once every three years across the membership. Where periodic re-accreditation reveals that an Established Member no longer meets the standards required for Established membership:
- The Member will be given the opportunity to take the necessary remedial action before Reassessment.
- Ordinarily, failure to take the necessary remedial action will result in membership being terminated, unless the BFA otherwise agreed on a case-by-case basis.

8.5 **Franchisor Additional Brands and Additional Brand Discount**

a. Franchisor Membership is granted in respect of the Franchisor's brand, but the rights, responsibilities and participation in membership are vested in the legal entity that owns the brand.
b. If other franchised brands owned by the relevant legal entity utilise what is effectively the same franchise agreement (other than in respect of brand name and minor contextual changes in respect of the particular product or service), the same management team, and the same franchisee support structure is in place for additional brands, then it may be eligible to be dealt with as an 'additional brand' under an additional accreditation that is simplified by virtue of the commonalities in the branded systems, and may thus be eligible for a brand discount.
c. Brand discounts may also be available at the discretion of the BFA in the case of Members who own multiple brands.
d. Brand discounts as set out in this clause 8.5 shall be as determined by the BFA from time to time at their discretion.

## 8.6 Advisor Membership

a. Advisor membership is available to organisations or individuals offering professional advice to the franchising community. The Advisor must be able, by applying their knowledge of good franchising practice through the service that they provide, to influence the course of good franchising, and must be capable of promoting ethical franchising through the delivery of their services.
b. An applicant for Advisor membership must, in the view of the BFA, be suitably qualified in their professional discipline and have in-depth knowledge and experience of providing advice or services relating to franchising within that discipline.
c. The applicant (or their Nominated Individual) must have gained a QFP qualification or be committed to working towards it.
d. The Applicant must provide evidence of their qualifications and experience, and positive references, in each case as the BFA shall specify.
e. The specific criteria and levels of evidence required to gain and retain BFA membership, applicable to each category of Advisor, vary from sector to sector and may change over time, as determined by the BFA at its discretion.
f. The following categories of Advisor may apply for membership:
   - Consultants
   - Legal
   - Finance

## 8.7 Consultants

a. Consultants providing one or more of the following services may be eligible for membership:
   - Franchise Development - the Consultant supports the initial set up and ongoing development of a franchise brand. This could include helping a potential franchisor franchise their business from scratch, or could be the development of a corporate operation.
   - Marketing and Digital - the Consultant assists in the development of marketing messaging, materials, collateral and supports franchisors with their overall presence in the marketplace.
   - Public Relations - the Consultant assists in the development of PR messaging and promotion of a franchisor brand.
   - Franchise Recruitment - the Consultant supports franchisors with their initial and ongoing recruitment activities including the identification of an appropriate franchisee profile and processes to on-board.
   - Mentoring and Support – the Consultant offers general support to franchisors once they are up and running in the marketplace.
   - Staff recruitment – the Consultant supports the franchise sector with individual staff recruitment and identification of appropriate candidates.
   - International Development – the Consultant supports franchisors with expansion of their brands internationally and/or will assist brands looking to come into the UK market.
   - Resales – the Consultant supports the franchise sector with the planning, facilitation and valuation of franchisee and/or franchisor resales.
b. The categories of services described above may be added to or amended by the BFA from

time to time as it shall see fit.

c. Membership for a Consultant is granted by the BFA to the individual applicant personally. When it comes to the BFA's listing of Consultants (online or elsewhere) this will be done by reference to the Consultant's "Brand" – ie their firm. The Consultant's name (together with the names of any other Consultant Members from the same Brand) will appear in the firm's listing. Notwithstanding this, the membership of each Consultant is personal and individual.
d. Discounts in fees are available to additional Consultant Members from the same firm.

### 8.8 Legal and Finance

a. The **Legal Advisor** category is restricted to barristers or solicitors. Advisors in Finance must be either a bank or an accountancy firm.
b. In each case, membership will be granted to the applicant's firm, and the firm must appoint a **"Nominated Individual"** who will be responsible for maintaining standards as set out in the Code and in these Rules.
c. The "Nominated Individual", and any other senior member of the firm who is substantially involved in franchising in the course of their work, may use the appropriate BFA logo on business cards as directed by the BFA, but the logo must not be used on business cards of any other individuals within the firm.
d. Firms which have a mix of accredited and non-accredited advisors may use the logo in a generic context (websites, letterheads, advertising, exhibition stands etc). The Nominated Individual will take responsibility for the quality and standards of all franchising output of such non-accredited individuals.

### 8.9 Franchisors who offer a service that is eligible for Advisor Membership

If an advisor or supplier wants to be a franchisor, they must apply separately for BFA membership as a franchisor, and they must have some level of franchisor membership, otherwise they would lose their advisor/supplier membership. Reductions as BFA shall determine.

### 8.10 Reaccreditation of Advisors

a. Advisor Members must be reaccredited at such intervals as the BFA shall determine from time to time. At the discretion of the BFA, this would normally be every two to three years. This may be on a self-certification basis. Alternatively, the BFA may at its discretion require the Advisor to undergo a full reaccreditation, involving the submission (or resubmission) of such information and evidence of the Advisor's skills and experience, as the BFA may request.
b. Where an Advisor Member fails to complete their reaccreditation within the time specified by the BFA, they will be given the opportunity to rectify their omission. Failure then to complete their reaccreditation will ordinarily result in termination of membership.

### 8.11 Supplier Membership

Supplier membership is available to entities that provide products or services to the franchising community.

## 8.12 Franchisee Membership

a. The BFA aims to support the whole franchising industry. The BFA encourages and welcomes franchisees as Members.
b. To apply for Franchisee membership, a franchisee must be in a network of an Emerging, Expanding or Established Franchisor Member, and the Franchisor Member must arrange for the selection of one Franchisee Member as a Franchisee Representative. The Franchisee Representative will be able to vote on decisions of Members as set out in the BFA's Articles of Association.

## 8.13 International Membership

a. International membership is available for Franchisors overseas who do not currently have a franchise presence in the UK, but are planning to have one. When considering accreditation, the BFA will consider the applicant's existing overseas model and their historic performance as a franchisor.
b. Typically, the BFA would expect that International Members apply to move to another category of Franchisor membership within 2 years. If they do not do so, or if they do not meet the criteria for another category of Franchisor membership at the end of 2 years, membership of an International Member would normally be terminated, unless the BFA otherwise agreed an extension of time on a case-by-case basis.

## 8.14 Master & Regional Structure

a. For convenience in dealing with the variations to be found within regional structures, the BFA works with these informal definitions for membership purposes:
   - "UK Master": This is a UK-based entity that has contractual rights, granted by a company normally abroad, to develop a franchise network throughout the entire UK. Being the supreme entity in the UK for that brand, the BFA treats a UK Master as if it were a normal franchisor, regardless of whether or not it rolls out its franchise in the UK via a regional structure. If it chooses to expand through a regional structure, then these rules apply, including the 'all in or all out' rule.
   - 'Regional Franchisee': This is an entity that has a contractual agreement with an entity above it (such as a UK Master, an International Member, or a Master Franchisor based overseas) that grants the Regional Franchisee rights for a specific territory or region within the UK. The Regional Franchisee develops a franchise network within its region and, critically, itself enters into franchise agreements with its Unit Franchisees. In other words, the Regional Franchisee signs a contract with the entity above it, and also with the entities below itself.
   - Regional Support Franchisee: Regional operators that provide support services on behalf of the Franchisor, and/or help identify prospective new franchisees, but critically do not enter into franchise agreements with unit franchisees, are not eligible to join the BFA. The BFA regards them merely as an alternative vehicle by which the Franchisor can provide field support and development services to unit franchisees.

**b. Extent of due diligence undertaken by the BFA:**

- Where Regional or Master structures are involved, the BFA conducts its due diligence on all (or a selection of all) entities that potentially qualify for membership - i.e. that enter into franchise agreements with a level below themselves. UK franchisors and

UK-based Master Franchisees of overseas networks are all treated in the same way as individual 'stand alone' applicants for BFA membership.

- In the case of Regional Franchisees, the BFA conducts its due diligence on either all or a selected representative sample of the Regional Franchisees. The decision whether to assess all or only a selection (and if so, the size of the selection) is a decision made solely at the discretion of the BFA, as are any special arrangements that might be agreed with individual networks in respect of level of discount related to the number of Regional Franchisees.
- Regional Franchisees must have sufficient resources and experience to perform the Franchisor's obligations under the franchise agreement and must be fully trained in their duties particularly with regards to pre-contract disclosure.

**c.** **Membership** - Where a UK Master operates on a regional model, both the UK Master and its Regional Franchisees must all apply. (See the 'all in or all out' Rule.) Entities within a brand/network will always be accredited at the same grade of BFA membership, which will ordinarily be that of the lowest qualifier.

**d.** **Subscriptions** - The highest entity in the UK - e.g. UK Master Franchisor - will pay the full membership subscription applicable to the membership grade awarded. The other entities (the Regional Franchisees) may pay a reduced membership fee. It will be necessary for the BFA to send invoice(s) for membership subscriptions to one central point in respect of the whole regional structure, for the UK Master to distribute and arrange payment.

**e.** **Participation** - Within a regional structure, where all operate under one common brand, participation in BFA governance is restricted to the lead entity – i.e. the UK Master Franchisee or equivalent. A representative of this company may stand for office and may exercise one vote in BFA elections or general meetings.

**f.** **The 'all in or all out' Rule** - As it would be unacceptably confusing and unclear for prospective unit franchisees if some members of a regional structure were BFA-accredited whilst others were not, every entity which is potentially entitled to International membership, or Franchisor membership as a UK Master or Regional Franchisee, within a regional structure must have been accepted for membership and have paid their membership subscription, for the brand/network to remain in membership. If one leaves (for whatever reason other than closure or administration or similar) or chooses not to join, or fails to pay, then the membership of the entire network will be terminated or suspended pending rectification.

**g.** **Piloting Requirements** - In the case of a regional structure, the Pilot will normally (but not necessarily) have been under the control of the company at the highest UK level. The Pilot must have operated at the unit franchisee level, not at the regional franchisee level.

## 9. Standards of Conduct

### 9.1 All members

a. Members are required to comply with these Rules, as well as with the European Code of Ethics for Franchising, the BFA's Extension and Interpretation thereof (as each of these may be amended from time to time), all undertakings given by them on their application for membership, and all such other standards, guidelines or requirements governing the behaviour of Members that may be specified by the BFA from time to time.

b. Members will use their best efforts to adopt (in the case of franchisor members) or support (in the case of Advisors) best practice in franchising as determined by the BFA from time to time.

c. All members are required to comply with the law and with all regulations which are applicable to them or to their particular industry sector. This includes, amongst other things, complying (where applicable) with the Advertising Standards Authority's Code of Advertising Practice.
d. A Member may not engage in misleading or deceiving practices.
e. No Member may forbid any individual, whether by way of a 'gagging clause' in their franchise agreement or by some other means or document, from communicating freely with their legal advisors, or communicating freely with the BFA in relation to matters of dispute, complaint, ethical behaviour, or these Rules.
f. No Member may appoint or continue to engage a director or a senior manager in their business who has a conviction for fraud or other offence concerning the operation of a business.
g. No Member may do anything that might bring the BFA or the reputation of franchising in general into disrepute.
h. Members will not call into question in the public domain the franchising or general business conduct of any other Member without first referring the matter for investigation and adjudication either to the BFA within a reasonable period of time, or where the matter clearly falls within the published standards of another recognised professional or regulatory body, to that professional or regulatory body. Members will support the conclusions of the BFA or other professional or regulatory body, other than when there is unreasonable delay in making a determination or where there is evidence of negligence in the determination concerned.
i. For the purpose of this rule, conduct which calls into question the franchising or general business conduct of a Member in front of that Member's franchisees, employee(s), customer(s), supplier(s), financier(s) or other individual(s) or organisation(s) on whose goodwill the Member depends, will be regarded as being "in the public domain.
j. Members may not approach directly, or through an agent, the contracted franchisee(s) of another Member, other than with prior notice in writing to that Member of their intention so to do, and with details of the form and the approach to be made.
k. Members may not approach directly or indirectly any individual contracted franchisee or employee of another Member other than with that Member's prior written agreement.
l. register any trade mark or internet domain name that would have an evidently more appropriate utility for another Member.
m. Copy or otherwise utilise in their business, in whole or in part, another Member's contractual forms, operating manuals, trade marks, names or styles other than with the prior written consent of that Member.
n. If the underlying ownership of a Member changes hands, or there are changes in the financing of the business, or significant changes to the management team, the BFA may require the Member to re-apply for membership and undergo the standard accreditation process.
o. Members are, throughout the term of their membership, licensed by the BFA to use such of its trade marks, and in such manner, as the BFA shall specify from time to time. Members must at all times follow the BFA's guidance on use of trade marks, and must cease all such use immediately on termination of their membership.

## 9.2 Additional Rules for Franchisor Members

a. Franchisor Members must keep an up to date list of their franchisees, including names, contact details and territories, showing openings, withdrawals and failures, and make this available to the BFA on request.
b. Franchisors will provide the BFA with copies of their franchise agreements, together with such other information relating to their franchise operations, as the BFA shall request from time to time, and will provide the BFA with a copy of their template franchise agreement whenever the Member makes any changes thereto.
c. Franchisor Members must make the BFA Code of Ethics available to all prospective franchisees.
d. Franchisors offering guaranteed levels of turnover (or earnings or other similar expressions) are required to display in all advertisements and material which present such a guarantee, in an easily readable format and in reasonable proximity to the guarantee, the statement 'Guaranteed turnover is not a guarantee of profitability'. (If a word other than turnover is used in the literature, then that word must be substituted.)

## 9.3 Additional Rules for all Advisors

a. Advisors will advise their clients about the BFA's Code of Ethics and will bring to the attention of all clients who are franchisors (or potential franchisors) in the UK the benefits of BFA membership.
b. Advisors will promote and recommend taking advice and guidance from other BFA Advisors in preference to using non-BFA members.
c. Advisors will not act in any way which compromises a client's interests in favour of their own interests.
d. Advisors will declare in writing to their clients any commissions receivable from introductions to other Advisors, whilst making it clear that such commissions do not affect their judgement on whom to recommend.
e. Advisors will comply with all standards of conduct as laid down by their own professional bodies, and subject to the rules of such bodies they will report instances of bad franchising practice to the BFA.
f. They will report instances of bad franchising practice to the BFA, subject to the rules of their professional bodies.
g. Advisors must ensure that they, or their Nominated Individual, obtain QFP accreditation within 2 years of the start of the Advisor's membership and that such accreditation is retained thereafter through ongoing training and education.
h. In addition, the BFA has devised standards of conduct that apply specifically to certain categories of Advisor, as follows:

## 9.4 Additional Rules for Legal Advisors

a. They will uphold and support the Code of Ethics and BFA membership rules, insofar as these are not at variance with clients' express instructions, in which case they will so advise clients.
b. Where appropriate, they will recommend in writing to all clients who are franchisors (or potential franchisors) in the UK to apply for, and support their application for, BFA membership. They will support such clients' applications for membership and will advise

them in writing about the BFA Code of Ethics.

c. They will recommend to clients that they take appropriate advice on the feasibility of franchising for their business before a franchise agreement is drafted.

### 9.5 Additional Rules for Consultants

a. As membership is granted to individuals, not to the consultant firm, the BFA's trademarks must not be used on a Consultant's website unless all consultants within the firm are Consultant Members.

b. Where the firm at which the Consultant works appoints any additional consultant, that additional consultant must become a Consultant Member within one year, failing which existing Consultant Members at that firm will lose their membership.

c. Franchise Consultants will first advise all potential franchisor clients whether or not their business is likely to operate successfully as a franchise by preparing or reviewing a Franchising Feasibility Study or Franchisor Business Plan (which includes a typical Franchisee Business Plan); if the outcome is negative they will not proceed with further work for that client.

d. They will recommend in writing to all clients who are franchisors (or potential franchisors) in the UK to apply for, and support their application for, BFA membership. They will support such clients' applications for membership and will advise them in writing about the BFA Code of Ethics.

e. They will not act in any way which compromises a client's interests in favour of their own interests and they will observe the highest standards of competence and integrity.

f. They will respect the confidentiality of all information received concerning a client's business and not disclose or permit to disclose (to the consultant's own advantage) any such information without the client's written permission.

g. They will at all times be transparent in their dealings with third parties as regards the payment of fees. Where a consultant is involved in a transaction, such as a franchise resale, recruitment of franchisees or recruitment of staff, the consultant must make it clear in each case to all parties (i) for which party they are acting; and (ii) which party is paying their fees.

h. They will disclose in writing to clients or prospective clients any directorship or significant interests in any business that competes with the client; and any financial interest in goods or services recommended by the consultant for use by the client; any personal relationship with any individual in the client's employment; the existence (but not the name) of any other current client of the consultants whose business may compete with the client's; and will not advise any franchisee or potential franchisee in relation to the scheme or opportunity offered by a franchisor for whom the consultant had acted or whose business may compete with that of a client of the consultant.

### 9.6 Franchise Agreements and other technical requirements

a. Each franchise agreement used by a Franchisor Member must comply with such requirements as the BFA shall determine from time to time.

b. A franchisor need not itself own the trademark, provided it has the legal right to use it and to license its franchisees to use it. As well as stating this fact in the franchise agreement, the franchisor will provide such evidence as the BFA shall require to support the statement. The franchisor's rights must be for a term, including renewal rights, that covers the terms

and renewal rights thereof, of the franchise agreements it lets.

c. Members would ordinarily be expected to adopt the laws of England and Wales, Scotland or Northern Ireland (as the case may be). Whilst it may be acceptable (exceptionally) for a foreign franchisor to expressly adopt the laws of another country in the franchise agreement, this must not deprive a franchisee of the right to bring any legal proceedings against the franchisor in the country in which the franchisee's place of business is situated. Ideally the governing law should coincide with the jurisdiction clause but in all cases franchisees must be able to enforce the franchise agreement and/or bring legal proceedings and/or pursue other forms of dispute resolution against the franchisor in the UK.

d. Franchise agreements may not contain a blanket 'time is of the essence' clause.

e. The agreement offered at the time of renewal must be on the then current terms and in the form as offered on the market and may not introduce unattractive commercial terms as a mechanism to discourage renewal.

f. Franchise agreements must not contain a 'gagging clause' explicitly or implicitly restricting or forbidding a franchisee from communicating freely with the BFA in relation to matters of dispute, complaint, ethical behaviour, or BFA membership rules.

g. Franchise agreements must contain the right for franchisees to realise the value of their investments and the ongoing concern premiums that their efforts have built into those businesses.

h. The one-off upfront Franchise Fee ("Initial Fee") charged by a franchisor is expected to be adequate to cover all reasonable costs of recruitment, but not so large as to constitute a significant profit source in its own right. Members or applicants for membership may be called upon to justify initial fees that appear excessive.

i. Renewal Fees should not, unless the BFA otherwise determines, exceed the franchisor's reasonable costs (primarily legal costs) in renewing a franchisee's agreement for a further term. Renewal fees that are clearly in excess of this may need to be justified. An inability to do so may result in them being deemed to be unreasonable.

j. Minimum Performance Clauses must be reasonably achievable. The franchisor must be able to drive performance forward, but not at the expense of the fundamental principle of reasonableness. The franchise agreement must not be used to blur sales targets (which are aspirational) or business plans (which are realistic) with minimum performance clauses (which can be punitive).

k. A minimum performance clause which requires the franchisee to achieve 70 per cent of the current average turnover achieved by other franchisees in the network who have been trading for more than 2 years will normally be considered reasonable.

l. As regards the sale of products or services by franchisors to franchisees: where any profit element is retained by the franchisor which does not relate to the real and direct costs for the franchisor, the arrangement should be transparent to franchisees. This applies equally where the provision of the product or service is facilitated by an entity connected with the franchisor. Advisors offering any secret payments would be encouraging franchisors to behave unethically, and the BFA would regard this as unethical behaviour on the part of the Advisor.

m. A Member may not employ celebrity endorsement to promote in any way the franchise opportunity or the benefits of being a franchisee, unless the celebrity is a current (or very recent) active franchisee of the franchisor, and/or has a material financial stake in either a franchisee operation, or the franchisor.

## 10. Members' Disclosures to the BFA

10.1 The BFA has the right to call for a Member (or applicant for membership) to provide whatever information or evidence is within the Member's control and which the BFA considers is reasonably necessary:

a. to support an application for membership
b. for an upgrade in membership or re-accreditation
c. in connection with a Member Review, or
d. to clarify the situation relating to an alleged or suspected breach of these Rules.

10.2 What information is required will be determined by the nature of the circumstances. It may not always be possible for the BFA to be specific as to the source of an allegation or the specific nature of a suspected breach or action, as this information could hamper the ability to arrive at a fair and honest outcome, as well as possibly breaching confidentiality.

10.3 Where the BFA has good reason to question the information itself - or where it has good reason to believe that such information is likely to be challenged in the public domain - the BFA is entitled to audit the information or evidence provided.

## 11. Member Review

11.1 The decision to initiate a Member Review can be taken by the Chief Executive, or such other person or committee as the Chief Executive may nominate from time to time. For the purposes of these Rules, such person or committee so nominated shall be referred to as "the Decision Maker".

11.2 A Member Review can be initiated, at the BFA's option, in response to a complaint, or when there is no complainant, or while a complaint is being handled by the BFA in accordance with the Disciplinary Procedures, below).

11.3 Typically, a Member Review would be initiated where there is evidence pointing to systemic failure, or where allegations have been received from more than one source, but the Decision Maker shall be entitled to initiate a Member Review in any circumstances they consider appropriate.

11.4 A decision to initiate a Member Review must be conveyed in writing to the Member concerned at the outset. The BFA is not required to give a reason. The Member Review shall follow such format as the Decision Maker considers appropriate in the circumstances. The Member concerned will be given an opportunity to comment on and answer any issues raised, either face to face or in person. The Decision Maker will notify the Member of the outcome of a Member Review as soon as reasonably practical after concluding the Review. The outcome may be:

a. that no further action will be taken, or
b. that the Member shall be required to take remedial action as directed by the BFA to resolve any issues identified ("Remedial Action"), or
c. the BFA may take action as provided in "Disciplinary Procedures" below.

11.5 The BFA can require a Member to provide whatever information or evidence is reasonably necessary in the sole opinion of the BFA for the Member Review to take place.

## 12. Suspension of Membership

12.1 A decision to suspend a Member shall be taken by the Decision Maker:

a. if, in their judgement, they have grounds to suspect that the Member may be in breach of these Rules
b. if, in their judgement, they have grounds to believe that the Member may be subject to Insolvency
c. pursuant to the Disciplinary Procedures set out below
d. if the Member fails to co-operate with a Member Review
e. if the Member fails to carry out or complete Remedial Action to the satisfaction of the BFA following a Member Review
f. if the Member fails to co-operate with requests for disclosure of information (see **Members' Disclosures to the BFA**), or
g. if the Member goes into Administration.

12.2 Suspension of membership temporarily removes all rights of membership (other than those of appeal), including presentation on the BFA's website, appearance at sponsored exhibitions and/or any other form of public representation carrying the BFA's endorsement, and the right to use the BFA's branding or logos on any Member materials.

12.3 The BFA will not normally allow a suspension to continue for longer than 60 days, but it may continue for longer, or any initial period of suspension may be extended, if the Decision Maker concludes, in their sole judgement, that this is necessary:

a. in order to complete a Member Review
b. for Remedial Action to be taken by the Member in question
c. for the purposes of completing a disciplinary process or investigation, or
d. in order to await the outcome of any insolvency proceedings.

12.4 At the end of the period(s) of suspension, the BFA may either:

a. re-instate the member, whereupon their benefits of membership shall resume
b. take action pursuant to the "Disciplinary Procedures" set out below, or
c. if the suspension results from the Member's Administration, and the Member re-emerges in a changed form - e.g. under different ownership or different management or different funding arrangements – the BFA may require the Member applies for a new accreditation.

12.5 In the event of a Member's suspension, the BFA will determine its response to enquiries from the public about the suspended Member as it considers appropriate. The BFA will endeavor to agree a suitable statement with the Member provided that the Member also agrees a statement that would properly protect the reputation of the BFA.

## 13. Termination of Membership

13.1 Notwithstanding the provisions of clause 12.3, unless it otherwise determines, the BFA will terminate the membership of a Member where that Member is subject to Insolvency.

13.2 The BFA may terminate the membership of a Member pursuant to the Disciplinary Procedures below.

13.3 Additionally, a membership will cease:

a. on the expiration of notice where the Member in question has notified the BFA that they are resigning from membership, or
b. where the Member in question ceases to be eligible for membership under the BFA's rules for eligibility, including for periodic re-accreditation.

13.4 Notwithstanding the above, and notwithstanding the Disciplinary Procedures set out below, the Board may at any time, in its unfettered discretion and without cause, by notice in writing, require a Member to withdraw from the BFA. The Member so required to withdraw, will cease to be a Member. In this case, the Member in question will be entitled to a repayment of a proportionate part of the subscription paid by them in respect of the year in which they cease to be a Member.

## 14. Disciplinary Procedures

### 14.1 Breaches of the Rules

a. The BFA has the right to determine in any circumstances and at any time (whether pursuant to a complaint or otherwise) whether the conduct of the Member merits Disciplinary Action as set out below. If the BFA so decides, the Member will be informed in writing.
b. An allegation of misconduct will be considered by the BFA after consideration of relevant evidence. All such evidence will be provided to the Member subject to the consent of the originator and the Member will be given an opportunity to respond either in writing or in person.

### 14.2 Disciplinary Action

Disciplinary Action will be initiated by the Decision Maker against any Member who in the Decision Maker's view is, or may be, guilty of misconduct (Misconduct). Examples of Misconduct are where the Member:

a. fails to disclose material information, or makes any misrepresentation, on accreditation or re-accreditation or in the courses of a member review
b. fails to comply with the terms of a franchise agreement
c. forbids a franchisee or franchisees, whether by way of a 'gagging clause' in their franchise agreement or by some other means or document, from communicating freely with the BFA in relation to matters of dispute, complaint, ethical behaviour, or these Rules
d. fails to disclose material information to prospective franchisees or makes any material misrepresentation to franchisees or prospective franchisees
e. fails to comply with any laws or regulations applicable to them or with the rules or requirements of their relevant professional industry body
f. fails to comply within reasonable time and on reasonable notice with a BFA request for information, or reasonable access to confidential information
g. commits a breach of any Standards of Conduct
h. is guilty of illegal business conduct or of unfair business conduct which, in the opinion of the BFA or of the Board, is improper or unfair

i. is guilty of conduct likely in the BFA's reasonable view to bring franchising and/or the BFA into disrepute
j. by its actions, damages the commercial interests or reputation of another Member without due cause or justification
k. is more than three months in arrears in paying membership fees or any other sums due to the BFA, or any part thereof, or
l. fails to comply with these Rules in any other respect.

14.3 **Consequences of Misconduct**

If the BFA finds that there has been Misconduct, the BFA will notify the Member in question and will have the right but not the obligation to:
a. suspend the Member as set out under Suspension above, and/or
b. require the Member to take remedial action as directed by the BFA to resolve any Misconduct (**"Remedial Action"**).

14.4 **Serious Misconduct**

a. If the BFA determines that the Misconduct amounts to Serious Misconduct, the BFA shall have the right, but not the obligation, to terminate membership immediately. The BFA may publish the fact of termination and, at its discretion, with reasons, in the franchise and/or other media.
b. The BFA will decide, in its sole discretion, in each case individually whether or not the Misconduct should be regarded as Serious Misconduct. The following list of possible examples of Serious Misconduct is non-exclusive and is intended for guidance:
   - The Member fails to implement or complete a Remedial Plan pursuant to a Member Review or under these Disciplinary Procedures
   - The Member makes any misrepresentation to a prospective franchisee or client or to the BFA which amounts to a fraudulent misrepresentation (in other words, the Member makes the representation either knowing it to be untrue, or recklessly as to whether it is true or not)
   - The Member, or any director or senior manager or shareholder of the Member, is found guilty of fraud or dishonesty, or any offence involving violence or assault, or any imprisonable offence, whether in connection with their franchise business or otherwise
   - The Member is found guilty of any type of Misconduct on more than one occasion in any period of 12 months
   - The Member receives notice in writing from the BFA requiring them to take action to rectify any Misconduct within such period of time as the BFA considers reasonable, and the Member fails to do so
   - The BFA concludes in its sole judgement that Misconduct of any kind amounts to a serious or systemic breach of these Rules
   - The Member forbids a franchisee, whether by way of a 'gagging clause' in their franchise agreement or by some other means or document, from communicating freely with the franchisee's legal advisors, or communicating freely with the BFA in relation to matters of dispute, complaint, ethical behaviour, or these Rules
   - The Member appoints or continues to engage a director or a senior manager in their business who has a conviction for fraud or other offence concerning the operation of a business.

### 14.5 Right of Appeal

a. A Member shall have the right to appeal against:
   - any decision that a Member is guilty of Misconduct
   - any decision to terminate their membership
   - any decision to suspend that Member.

b. Any such appeal must be made in writing, within no more than 10 days after the Member is notified of the decision. The appeal shall be heard by the Chief Executive, where the Chief Executive was not the Decision Maker in the original decision; or otherwise by such or such other person or committee as the Chief Executive may nominate, being a person (or, in the case of a committee, a committee made up of persons) who has/have no prior involvement in the matter.

c. The decision on appeal shall be final and no further right of appeal shall be allowed.

### 14.6 General

a. The BFA has the right but not the obligation to publish notices giving details of the disciplinary action and any decisions of the Board or of the BFA.

b. A Member will not have a right of action for damages against the BFA if the BFA has conducted disciplinary action or Member Review in accordance with these Rules.

## 15. Dispute Resolution

### 15.1 Informal Conciliation

a. The BFA will consider complaints against a Member through Informal Conciliation. Complaints must be made in writing by the complainant itself or its appointed representative.

b. In Informal Conciliation, the BFA does not make any comment or judgement in respect of either party's actions in a dispute. However the BFA reserves the right to act independently to address issues of underlying ethical principles with its Members and, wherever it considers it appropriate will investigate any apparent breaches of the Rules that may arise in the course of handling a dispute, or issues of alleged bad practice or unethical behaviour.

c. The steps for Informal Conciliation are as follows:
   - The Complainant will put their complaint in writing and send it to the BFA.
   - The Complainant will be asked to confirm in writing their consent for their written complaint, which will also carry their name, to be forwarded to the Member who is the subject of the complaint. If such written consent is either refused or not received within 28 days, the Complainant will be informed that the BFA cannot pursue the complaint.
   - If the Complainant gives their written consent, the BFA will forward the written complaint to the Member concerned, requiring the Member to respond to the BFA in writing.
   - When it receives the response from the Member, the BFA will write to the Complainant, and ordinarily would include a copy of the response received from the member.

### 15.2 Mediation

The BFA operates a mediation scheme. Details are available on the BFA's website.

15.3 **Arbitration**
The BFA operates an arbitration scheme. Details are available on the BFA's website.

## 16. Governance of the BFA

16.1 The rules and conditions governing the Board, eligibility to serve on the Board, and the appointment and removal of Board Members, are as set down in the Articles of Association.

16.2 Additional appointments to committees, such as the Advisor and Supplier Forum, shall be as determined by the BFA from time to time.

16.3 The Advisor and Supplier Forum shall meet twice per year. A Chair will be elected from the advisor membership (other than legal) on an annual basis.

16.4 The Chair of the Legal Committee shall be appointed by the Board from time to time. The members of the Legal Committee shall be appointed from time to time by the Chair of the Legal Committee and approved by the Chief Executive. It shall comprise a maximum of 6 Legal Advisor Members including the Chair, each of whom may not be the Legal Advisor member of the Board. The Legal Committee shall meet periodically, as they shall determine from time to time.

16.5 Regional and sector ambassadors will be selected by the CEO from time to time.

# The Rules of Membership of The British Franchise Association