



# The Code of Ethics for Franchising

The British Franchise Association's Guide to Best Practice in Ethical Franchising based on the European Code of Ethics for Franchising.



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**Our core aim is to promote high quality ethical business format Franchising**

# Introduction

The European Code of Ethics for Franchising (“the Code”) has been developed by the European Franchise Federation (“the EFF”). In adopting the Code, the EFF recognised that national requirements may necessitate certain other clauses or provisions and delegated responsibility for the presentation and implementation of the Code in their own country to individual member National Franchise Associations.

The Extension and Interpretation which follows the Code has been adopted by the British Franchise Association (“the BFA”), and agreed by the EFF, for the application of the Code for the BFA and its members within the United Kingdom.

## Preamble

1. This preamble sets out the purpose of the European Code of Ethics for Franchising and the principles under which Member Associations of the EFF will apply the Code in their countries.
2. The Code is a practical ensemble of essential provisions for the governance of the relations between a Franchisor and each of its Franchisees, operating together in the framework of the Franchise network. The overarching principles of ethics that underline this set of provisions are good faith and fair dealings, which translate as Franchisor-Franchisee relations based on fairness, transparency and loyalty each of which contribute to founding confidence in the relationship.
3. The principles of the Code are applicable at all stages of the Franchise relationship; pre-contractual, contractual and post-contractual stages.
4. The Code constitutes the Franchising industry’s self-regulatory code and is there for all stakeholders in the Franchise industry in Europe to look to for guidance on Franchising generally.
5. The Code’s clear and unambiguous principles are not in contradiction with national laws and fundamental rights in the EU with the continuing objective of setting up a more efficient framework for Franchising.

6. In particular, the Code is the foundation stone of the action of the EFF’s National Franchise Association members. Their respective membership rules, accreditation as well as disciplinary schemes must comply with the standards set in the Code. The Code, in its entirety, is binding for all EFF members as well as their respective memberships. The Code is endorsed by all EFF Member Franchise Associations each of which is committed to its promotion, interpretation and implementation in their own country. Each association is responsible for ensuring that the Code is publicly available, in particular to all those entering the Franchise industry.
7. National Franchise Associations which are members of the EFF have the opportunity to add to the Code a National Extension and/or Interpretation provided that it does not derogate from or misinterpret the Code.
8. The EFF represents the Franchise industry as a whole which, in a multi-stakeholder approach, means the interests of the Franchise networks, inclusive of Franchisors and Franchisees towards public authorities, civil society, and consumers.
9. The Code was originally written in 1972 by major industry actors in Europe, members of the EFF’s founding associations. It directly reflects the experience of good behaviour of Franchisors and Franchisees in Europe. It was reviewed in 1992 to reflect the evolution of Franchising on the market as well as to meet the development of the EU’s regulatory frame.
10. The Code has been updated in 2016 in order to further integrate provisions which reflect the continued Franchisor-Franchisee experience on the market in the countries of its Member Associations, as well as to meet the recommendations of the European Commission on matters of self-regulation. The Code is a living plan of action. Its updates are ongoing and iterative so as to remain relevant to an ever-evolving industry.
11. The EFF believes, and this is attested by its 40-year experience as the single voice for Franchising in Europe, that robust self-regulation is the best adapted and most flexible mode of regulation for the European Franchise industry. It is on this foundation that Franchising has contributed significantly to the promotion of independent entrepreneurship, in particular the development of SME’s and modernised commerce, as well as related employment on the European markets.
12. The EFF is a not-for-profit international association constituted in 1972. It is registered in Brussels, Belgium where it has a permanent Secretariat. The Federation’s members are the single accredited National Franchise Associations from countries that fall under the geo/institutional conditions expressed in the EFF’s Statutes.
13. The most important of the EFF’s roles is to promote the adoption of the Code so as to secure the development in the EU of proper and ethical Franchising.

# The European Code of Ethics for Franchising

## 1. Definition of Franchising

Franchising is a system of marketing goods and/or services and/or technology, which is based upon a close and ongoing collaboration between legally and financially separate and independent undertakings, the Franchisor and its individual Franchisees, whereby the Franchisor grants its individual Franchisee the right, and imposes the obligation, to conduct a business in accordance with the Franchisor's concept.

The right entitles and compels the individual Franchisee, in exchange for a direct or indirect financial consideration, to use the Franchisor's trade name, and/or trade mark and/or service mark, know-how, business and technical methods, procedural system, and other industrial and/or intellectual property rights, supported by continuing provision of commercial and technical assistance, within the framework and for the term of a written Franchise agreement, concluded between parties for this purpose.

- "know-how" means a package of non-patented practical information, resulting from experience and testing by the Franchisor, which is secret, substantial and identified;

- "secret" means that the know-how is not generally known or easily accessible; it is not limited in the narrow sense that each individual component of the know-how should be totally unknown or unobtainable outside the Franchisor's business;

- "substantial" means that the know-how is significant and useful to the buyer for the use, sale or resale of the contract goods or services;

- "identified" means that the know-how must be described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality;

## 2. Guiding Principles

2.1 The Franchisor is the initiator and long-term guardian, in a market, of a Franchise network, composed of the Franchisor and its individual Franchisees.

## 2.2 The Commitments of the Franchisor:

### The Franchisor

- i. shall have operated a business concept with success in the relevant market, for at least one year and in at least one pilot unit before starting its Franchise network in that market;
- ii. shall be the owner, or have the legal rights to the use of its network's trade name, trade mark or other distinguishing identification;
- iii. shall recognise their Franchisees as independent entrepreneurs and shall not directly or indirectly subordinate them as employees;
- iv. shall provide the individual Franchisee with initial training and continuing commercial and/or technical assistance during the entire life of the agreement;
- v. shall grant the right to use the know-how transferred and/or made available to the Franchisee, which know-how it is the Franchisor's responsibility to maintain and develop;
- vi. shall transfer and/or make available the know-how to the Franchisee through adequate means of information and training and shall monitor and control the proper use of that know-how;
- vii. shall encourage feedback of information from Franchisees in order to maintain and develop the know-how transferred and/or made available to them;
- viii. shall, in the pre-contractual, contractual and post-contractual phases of their relationship with Franchisees, seek to prevent any wrongful usage of or, in particular, the transmission of know-how to competing networks so as to avoid prejudice to the interests of the network;
- ix. shall invest as appropriate the means, financial and human, to promote his brand and to engage in the research and innovation that will ensure the long-term development and continuity of his concept;
- x. shall inform prospective and individual Franchisees of his internet commercial and/or sales policy;
- xi. shall seek to safeguard the interests of the network in the development of its (the Franchisor's) on-line commercial and/or sales policy.

### 2.3 The Commitments of Each Franchisee:

#### The Franchisee

- i. shall accept the obligation to collaborate loyally with the Franchisor in ensuring the success of the network which the Franchisee has joined as an informed and fully independent entrepreneur;
- ii. 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;
- iii. shall be responsible for the human and financial means that it engages in its Franchise business and is responsible as an independent entrepreneur, with regard to third parties, for his acts within the framework of the Franchise;
- iv. shall act loyally with regard to each of the other Franchisees of the network as well as with regard to the network itself;
- v. shall supply the Franchisor with verifiable operating data to facilitate the determination of performance and the financial statements necessary for effective management guidance;
- vi. shall allow the Franchisor to ensure that the quality and image of the concept is properly maintained in the products and services provided by the Franchisee to the customer/consumer;
- vii. shall recognise his responsibilities as a fully independent entrepreneur with regard to the customer/consumer;
- viii. shall not disclose to third parties the know-how and other information material to the operation of the Franchise provided by the Franchisor, neither during nor after termination of the Franchise agreement.

### 2.4 The Ongoing Commitments of Both Parties:

#### The Parties

- i. shall seek to safeguard the image and reputation of the network in the running of their respective businesses;
- ii. shall exercise good faith and fairness in their dealings with each other. The parties shall give written notice of any contractual breach and, unless inappropriate, grant reasonable time to the other party to remedy default;

- iii. shall respect the confidentiality of information material to the Franchise concept provided by the one to the other;
- iv. shall resolve complaints, grievances and disputes with good faith and goodwill through fair and reasonable direct communication and negotiation;
- v. shall where appropriate and where parties have failed to resolve a dispute through direct negotiation, seek in good faith mediation before litigation and/or arbitration organised or approved by an EFF National Association Member;

### 3. Recruitment, Advertising and Disclosure

- 3.1 Advertising for the recruitment of individual Franchisees shall be free of ambiguity and misleading statements.
- 3.2 Any recruitment, advertising and publicity material, containing direct or indirect references to future possible results, figures or earnings to be expected by Individual Franchisees, shall be objective and shall not be misleading.
- 3.3 In order to allow prospective Individual Franchisees to enter into any binding document with full knowledge, they shall be given a copy of the present Code of Ethics, or a public access to it, as well as full and accurate written disclosure of all information material to the Franchise relationship, within a reasonable time prior to the execution of these binding documents.
- 3.4 The prospective Franchisee is responsible for carefully analysing the information material to the Franchise relationship, including choosing to take appropriate professional advice, before signing the Franchise agreement.
- 3.5 The prospective Franchisee must be truthful and transparent in the information about his experience, his financial capacities, his training, background and any other information material to the Franchise relationship he provides for the purpose of his selection by the Franchisor.
- 3.6 If a Franchisor imposes a pre-contract on a candidate individual Franchisee, the following principles should be respected:
  - i. prior to the signing of any pre-contract, the candidate Individual Franchisee should be given written information on its purpose and on any consideration he may be required to pay to the Franchisor to cover the latter's actual expenses, incurred during and with respect to the pre-contract phase; if the Franchise agreement is executed, the said consideration should be reimbursed by the Franchisor or set off against a possible entry fee to be paid by the Individual Franchisee;

- ii. the pre-contract shall define its term and include a termination clause;
- iii. the Franchisor can impose non-competition and/or confidentiality clauses to protect its know-how and identity.

#### 4. Selection of Individual Franchisees

A Franchisor should select and accept as Individual Franchisees only those who, upon reasonable investigation, appear to possess the basic skills, education, personal qualities and financial resources sufficient to carry on the Franchised business.

#### 5. The Franchise Agreement

- 5.1 The Franchise Agreement shall comply with the national law, European community law and this Code of Ethics and any National Extensions thereto.
- 5.2 The agreement shall protect the Franchisor's industrial and intellectual property rights so as to secure the common identity, reputation and interests of the Franchise network.
- 5.3 Franchisors shall offer to Franchisees all agreements and all contractual arrangements in connection with the Franchise relationship, in writing, in the official language of the country the Individual Franchisee is established in or in a language in which the Franchisee formally declares itself competent. Signed agreements shall be given immediately to the Individual Franchisee.
- 5.4 The Franchise agreement shall set forth without ambiguity, the respective rights and obligations of the parties and all other material terms of the relationship.
- 5.5 The essential minimum terms of the agreement shall include at least the following:
  - i. the rights granted to the Franchisor;
  - ii. the rights granted to the Individual Franchisee;
  - iii. the Franchisor's intellectual property rights on the brands, signs, etc. which should be established for a term at least as long as the term of the Franchise agreement;
  - iv. the goods and/or services to be provided to the Individual Franchisee;
  - v. the obligations of the Franchisor;
  - vi. the obligations of the Individual Franchisee;

- vii. the terms of payment by the Individual Franchisee;
- viii. the duration of the agreement which should be long enough to allow Individual Franchisees to amortize their initial and subsequent investments specific to the Franchise;
- ix. the basis, including the notice which both parties must give, for any renewal of the agreement;
- x. the terms upon which the Individual Franchisee has the right to sell or transfer the Franchised business as a going concern and the Franchisor's possible pre-emption rights in this respect;
- xi. provisions relevant to the use by the Individual Franchisee of the Franchisor's distinctive signs, trade name, trademark, service mark, store sign, logo or other distinguishing identification;
- xii. the Franchisor's right to adapt the Franchise system to new or changed methods;
- xiii. provisions for termination of the agreement;
- xiv. provisions for surrendering promptly upon termination of the Franchise Agreement any tangible and intangible property belonging to the Franchisor or other owner thereof.

#### 6. The Code of Ethics and Master Franchise Systems

This Code of Ethics shall apply to the relationship between the Franchisor and its Individual Franchisees and equally between the Master Franchisee and its Individual Franchisees. It shall not apply to the relationship between the Franchisor and its Master Franchisees.

**End of the European Code of Ethics for Franchising. Latest revision: final 6 Dec. 2016**

# The BFA Extension and Interpretation of the Code

This Extension and Interpretation forms an integral part of the Code adopted by the BFA and to which its members adhere.

The term “Article” as used in this Extension and Interpretation, and the Guide that follows, refers to the relevant article of the Code.

## 1. Application

The Code, the Extension and Interpretation and the Guide, as well as the BFA’s Rules of Membership and the BFA’s Technical Bulletins, form part of the membership agreement between the BFA and its members. It does not form part of the contractual agreement between Franchisor and Franchisee, unless the Franchisor specifically states otherwise.

## 2. Independence

The Code states in Article 2.2(iii) that the Franchisor must ensure that it recognises its Franchisees as independent entrepreneurs and not as employees. This is important. Whilst Franchisees must operate their businesses in line with the system as developed by their Franchisor, Franchisors must treat Franchisees as independent business operators, running their businesses at their own discretion and their own risk. Whereas the relationship between an employer and an employee or worker is governed by employment law, the Franchise relationship is not. The Franchise relationship is governed by the Franchise agreement, and Franchisees are independent contractors.

## 3. Disclosure

The objectivity of recruitment literature (Article 3.2) refers to all recruitment, advertising and publicity material. But note that the requirement to be objective and not misleading applies to all Franchisor communications with their Franchisees.

## 4. Confidentiality

For the generality of the Code, ‘know-how’ is taken as being as defined under European law. However, for the purposes of Article 3.6 it is accepted that Franchisors may impose non-competition and secrecy clauses to protect other information and systems where they may be reasonably regarded as material to the operation of the Franchise.

## 5. Contract Term

Article 5.5 of the Code provides that the minimum term for a Franchise contract should be long enough for a Franchisee to amortise their investment over the length of the term. However, it is recognised:

- a. that for a minority of the largest Franchise opportunities amortising initial investments may not be a primary objective for the Franchisee. In such cases the objective should be to adopt a contract period which reasonably balances the interests of the parties to the contract.
- b. that this section could be subject to national laws concerning the restraint of trade.

## 6. Master Franchisees

Article 5.5 (iii) of the Code states that the Franchisor’s ownership of intellectual property rights in their brand and system should be for a term at least as long as the term of the Franchise agreement. With regard to Master Franchisees, in interpreting this Article, the BFA takes into account the Master Franchisee’s renewal rights, thus ensuring that a Master Franchisee has a potentially long enough term left on its master Franchise agreement to grant unit Franchises. However in the spirit of the Code the BFA also makes the assumption that if the Master Franchisee’s contract were to cease, in order to ensure that the grant of the intellectual property rights under the Franchise agreement are not prejudiced, the responsibility for the continuing trading of the unit Franchisees should be preserved by transfer to the Franchisor or its nominee.

## 7. Contract Renewal

The basis for contract renewal should take into account the length of the original term, the extent to which the contract empowers the Franchisor to require investments from the Franchisee for refurbishment or renovation, and the extent to which the Franchisor may vary the terms of a contract on renewal. The overriding objective is to ensure that the Franchisee has the opportunity to recover their Franchise investment.

## 8. Adoption

This Extension and Interpretation and the Guide were adopted by the BFA, replacing the previous version, in 2020.

