

Guide Notes for completing FANZ Disclosure Document Template

These explanatory notes have been prepared to assist Franchisors in completing the disclosure document template, and to ensure the disclosure document meets the requirements of the Code of Practice for the Franchise Association of New Zealand Inc.

Please refer to the Code of Practice which sets out the requirements for FANZ membership.

These explanatory notes are numbered to correspond with the relevant sections of Appendix A of the FANZ Code of Practice.

It is recommended, for simplicity and ease of reference, that your Disclosure Document follows the same order as the Code of Practice, although additional material can be added.

INTRODUCTION

The purposes of a Disclosure Document are:

- a) To give to a prospective Franchisee, or a Franchisee proposing to enter into, renew or extend a franchise agreement, information from the Franchisor to help the Franchisee to make a reasonably informed decision about the franchise.
- b) And to give a Franchisee current information about the Franchisor that is material to the operation of the franchised business.

FRONT PAGE OF DISCLOSURE DOCUMENT

Enter – System’s legal name, address and contact details as outlined in the template. Also include the date on which the Disclosure Document is prepared.

Section in the box – This relates to the information required under Section 14 of the FANZ Code of Practice. This information must not be altered.

Sign and date the Disclosure Document.

This relates to Section 14 of the Code of Practice – Signatories should be the same persons as are required to execute any Franchise Agreement for the Franchisor. That person’s name should be legible underneath their signatures and include their office (e.g. “Director” or “Proprietor”).

PAGE ONE OF THE DISCLOSURE TEMPLATE

1 FRANCHISOR DETAILS:

Name: Of the Franchisor

Registered Office:

Note Registered Office is the address registered at the company’s office if the Franchisor is a limited liability company.

Physical Business Address; (Optional under the Code of Practice)

But recommended to provide clarity if the registered office is somewhere else.

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Name under which the Franchisor carries on business in New Zealand relevant to the Franchise:
(Optional under the Code of Practice)

But adds to clarity if brand or trading name more recognised than the legal entity.

Other relevant Trade or Industry Associations of which the Franchisor is a member:

2 Names, job descriptions, qualifications (if any) of the Franchisor's directors/executive officers/principals/proprietors:

3 Resume of the business experience of the Franchisor (and any related entities) and its directors / executive officers / principals including:

3(a) Length of experience in the type of business offered in the Franchise. For example, if, prior to becoming a franchised business, the business was already operating, please state for how long the business was in existence for.

3(b) Length of experience in operating or offering the Franchise. Please state how long the business has been in operation as a franchised business, and how long Franchises have been offered for sale.

3(c) Length of experience in operating or offering other Franchises and a description of those Franchises. If the Director of the Franchisor, or its proprietor or the Franchisor itself (and related entities) have previously been involved in operating another franchise and offering franchises for sale in that franchise, please provide a description and brief history of those other franchises.

4 FRANCHISOR FINANCIAL INFORMATION

Please refer to Appendix "B" of this document for details.

5 Details of any bankruptcies, receiverships, liquidations, or materially relevant debt recovery, criminal, civil or administrative proceedings which are current or have occurred, or for which judgement has been entered against the Franchisor (and any related entities) or any of its directors / executive officers / principals within the last five (5) years:

Please ensure you include any details of judgments entered against the franchisor or related entities.

These should include judgments entered after a hearing, rather than merely default judgments.

6 SUMMARY OF THE MAIN PARTICULARS / FEATURES OF THE FRANCHISE INCLUDING:

6(a) Nature and period of existence of the Franchise system and how it has developed.

6(b) Details and examples of any Trade Mark, logo, symbol, etc used to market the Franchisor's goods / services and steps taken to protect these and details of any threatened or pending litigation in relation to these.

6(c) Details of payments to be made by the Franchisee to the Franchisor (including the method of calculation if applicable, and the amount to be refunded by the Franchisor if the Franchisee terminates the Franchise Agreement within the cooling off period).

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- 6(d) Outline the particulars of any restrictions imposed on the Franchisee (e.g. territorial, restraint of trade, or the offer of competing franchises. This should include post termination restrictions).
- 6(e) Summarise the terms and conditions for the purchase of services/goods, fixtures, property, etc from the Franchisor, necessary in order to operate the franchise. Summarise the situation which will apply in the event that the source of the goods/products supplied by the Franchisor fails. Provide relevant comments/conditions which apply with respect to rebates etc from suppliers. This should include details about what rebates if any are collected by or paid to a Franchisor.
- 6(f) Outline the basis of Franchisor's involvement/approval for site selection.
- 6(g) Summarise the terms and conditions relating to termination, renewal, goodwill and assignment of the Franchise.
- 6(h) Summarise the main obligations of the Franchisor (including initial and ongoing training to be provided and including all compulsory ongoing advice and assistance).

7 COMPONENTS THAT MAKE UP THE FRANCHISE PURCHASE

Provide in table format a list of the components, with (estimated) individual costs, totalled to reflect the full outlay expected to be incurred by a prospective Franchisee, in purchasing a franchise.

Summarise those items which could be leased and (estimated) costs involved.

8 FINANCIAL REQUIREMENTS BY THE FRANCHISOR OF THE FRANCHISEE

For example, detail the rules and policy regarding non-borrowed capital in the purchase price.

9 FRANCHISES, FRANCHISEES AND OUTLETS:

- 9(a) List current outlets, including Franchisor owned outlets
A list of existing Franchisees (including address and phone number of each and year commenced business) should be available for reference purposes.

If a full list is impractical then a list of all existing Franchisees in each city or town or region (as appropriate to the circumstances) should be provided.

- 9(b) The number of Franchises terminated, abandoned, surrendered or not renewed over the past year:

- 9(c) Details of current unresolved litigation with existing or former Franchisees:

Please also include any situation where arbitration has commenced and is unresolved.

10 FINANCIAL PROJECTIONS – (Optional under the Code of Practice)

Where earnings information for the Franchise is given it must be based on reasonable grounds and the basis or assumptions upon which the representations are made, shall be provided.

Include a clear statement as to whether depreciation and any salary/wages for the Franchisee and the cost of servicing loans are included.

Each page of the projections should be qualified with respect to its basis/assumptions. Place as a footer on each page.

Examples:

These figures represent ACTUAL performance by either the Franchisor or a Franchisee. There is no guarantee that you will achieve these figures and nor is it intended that you should rely on them as a guarantee.

OR

These figures indicate the gross profit margins and revenue expenses at stated turnover levels which have been experienced by (the Franchisor in its own operations) or (the Franchisees on average in the last profit and loss accounts which have been supplied to the Franchisor). There is no guarantee that you will achieve the same results, nor is it intended that you should rely on them as a guarantee.

Be aware that the issue of these warnings does not, by itself, provide protection from legal claims.

11 PREVIOUS HISTORY OF THE TERRITORY OR SITE TO BE FRANCHISED:

Where the site or territory is agreed upon, state whether the territory or site to be franchised has been subject to any trading activity, particularly a previous franchise in the same franchise system within the previous 5 years, and if so, the history and details including the circumstance of any cessation of the Franchise.

If the site/territory is still to be agreed, state that these details will be provided.

APPENDIX B

FRANCHISOR FINANCIAL INFORMATION

Franchisor Financial Information

(1) The Franchisor must provide:

- (a) A Viability statement in accordance with (a) and (b) of Appendix "B" of the Code of Practice (the Viability statement). (Where the Franchisor has been established for less than two years then one year's data only need be provided); or
- (b) A current signed and dated solvency certificate in the form set out in item c) of Appendix B;

(2) In completing the Viability statement, a Franchisor does not need to provide the information set out in paragraph (a) of Appendix B if the statement provided in paragraph (b) of Appendix B is supported by an independent audit within the preceding 12 months and a copy of the auditor's report is provided.

(3) Note that none of the information required to be provided in Appendix B needs to be provided where:

- (a) The Franchisor or its parent company has obtained from the New Zealand Securities Commission an exemption for the provision of separate accounts for subsidiary companies; and

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(b) The Franchisor provides, in place of the information and statements set out in Appendix B, the audited annual report of the parent company containing consolidated financial statements including those of the Franchisor.