

FRANCHISOR MARKETING FUND CHEATSHEET

Many franchisors rely on a marketing fund to promote their franchise network. Franchisees contribute a set dollar amount or a percentage of their revenue to a joint fund used to market and promote the franchise network.

The Franchising Code of Conduct (Code) imposes limitations and obligations on specific purpose fund operations, reporting, and use of funds. Non-compliance risks ACCC proceedings and severe penalties. This document outlines franchisors' legal marketing fund obligations.

THE DISCLOSURE DOCUMENT



- Franchisors must disclose specific marketing fund details, including its contributors, controllers, and what types of expenses that may be covered.
- Include a copy of the previous financial year's Annual Financial Statement with the Disclosure Document.

CORPORATE OUTLET OPERATION



- If a franchisor operates a corporate outlet, it must contribute to the fund in the same quantum as other franchisees.
- The marketing fund must benefit the entire franchise network and prioritise the franchisee's interests.
- Marketing fund expenditure may benefit some franchisees more than others.

ANNUAL FINANCIAL STATEMENT



- Prepare a clear, easily understood Annual Financial Statement showing the fund's income and expenses.
- The AFS must be audited by 31 October unless 75% of contributors vote to exempt it by 30 September.
- Contributors must receive the AFS and any required audit within 30 days of preparation.
- These deadlines may differ if your financial year does not end on 30 June.

PAYING INTERNAL TEAM MEMBERS



- Franchisors may pay internal salaries from the marketing fund only if the work qualifies or franchisees approve it.
- Franchisors must use fund to pay for reasonable legal and accounting costs of administering and auditing.
- Payments to staff and consultants must be at arm's length and properly apportioned for mixed marketing and non-marketing responsibilities.

APPLYING THE FUND



- Fund contributions must be kept in a separate bank account and not mixed with other fees.
- Franchisors may only use the fund for disclosed, legitimate marketing expenses or those approved by most franchisees.
- Franchisors should keep concurrent and thorough records of all expenditures and voting approvals.

NON-COMPLIANCE PENALTIES AND RAMIFICATIONS



- The Code imposes potential penalties of 600 penalty units or \$133,200 per breach.
- The ACCC may investigate and prosecute suspected breaches of obligations concerning marketing funds.
- Franchisees may bring a claim against franchisors for failure to administer and apply the fund properly.