code of good practice for franchise market

**PREAMBLE**

Given the role that franchise plays in the modern economy and bearing in mind that:

* Franchise is a way of running a business, in essence by the franchisor granting to the franchisee the right to use a developed and market-proven way of doing business, often referred to as the system, in exchange for an appropriate fee and always with the proviso that the franchisee’s business is operated under the franchisor’s brand but for the franchisee’s own account and at its risk, acting as an independent stand-alone entrepreneur;
* FRANCHISE BUSINESS model works on assumption that the franchisees, operating under the franchisor’s brand and within the framework of the franchise system, work for the reputation of the franchisor and derive a tangible benefit from such reputation in the form of customers who trust the brand;
* FrANChisors are aware that under franchise agreement they entrust the reputation of the brand they have developed to others, which creates new challenges and necessitates close and reliable cooperation with the franchisees whose actions directly affect the franchisor’s brand;
* ***FRANCHISORS ARE AWARE*** that their actions and way the perform the franchise agreement significantly impact the perception of the brand by customers, and thus affect not only their own business but also the businesses of other franchisees and that of the franchisor;
* mutual cooperation BETWEEN franchisor and franchisees requires a reliable approach to the performance of duties by both parties, ongoing dialogue between them, as well as trust and faith in joint success and, in addition to being a good business idea, provides the foundations of a successful franchise;

Agreeing on a set of good practices for cooperation within the franchise is in the best interests of the entire franchise community, both franchisors and franchisees, regardless of the differences in the specific franchise models implemented. Compilation of a list of good franchising practices and adherence to them will enable further effective development of this business model, which is a source of satisfaction with the business operated for both parties to the franchise agreement.

NOW, THEREFORE, participants of the franchise market, representatives of Franchisees and Franchisors,

**hereby adopt this Code of Good Practices for Franchise Market.**

# objectives and nature of Code

*This Code has been developed as part of a joint project of representatives of Franchisees and Franchisors.*

## article 1 [CODE purpose]

The purpose of the Code is to set forth good practices, principles, and standards to be followed by Franchisees and Franchisors as part of their cooperation under the franchise agreement, prior to the conclusion of the franchise agreement, and immediately after its termination.

## artICLE 2 [NATURE OF CODE REGULATION]

1. The provisions of the Code do not supplement the provisions of the franchise agreement nor do they constitute a source of generally applicable law.
2. Acceding to the Code and undertaking to comply with it is voluntary.
3. The provisions of the Code are binding on the Signatories of the Code who have acceded to the Code under the procedure of Article 26 of the Code.
4. Acceding the Code means an automatic commitment to abide by it and to actively promote the standards set out in it.
5. Each Signatory of the Code has the right to invoke its accession to the Code, including without limitation to publicly disclose information regarding compliance with its provisions.

## artICLE 3 [SCOPE OF CODE]

The Code specifies issues relating in particular to:

a. establishing cooperation between the Franchisor and a prospective Franchisee,

b. terms of mutual cooperation between the Franchisee and the Franchisor,

c. terms of acceding to the Code and its potential termination,

d. terms of amending the Code,

e. resolution of disputes over the application of the Code.

# GOOD PRACTICES PRIOR TO COOPERATION

*The essence of a franchise is the uniformity of the franchise system, operating under a common brand, building its reputation, and benefiting from the tangible benefit of this reputation, i.e. the trust of customers.*

*The relations between the Franchisor and the Franchisee, as independent undertakings, are structured within the framework of the freedom of economic activity, as laid down under the Entrepreneur Law (Business Constitution). The parties to the franchise agreement are not associated business entities but separate business entities operating under a common brand name.*

*Both the Franchisor and the Franchisee (prospective Franchisee) are independent entrepreneurs that are free to choose their business partners. A prospective Franchisee and the Franchisor may use any lawful criteria to make a decision to cooperate as part of a franchise.*

*The principle of freedom of contract underlies the franchise model, as well as being one of the foundations of the social market economy. An important component of that freedom is the freedom to decide whether and who to cooperate with.*

*The above principles should be applied without being abused.*

## artICLE 4 [no misleading]

It is forbidden to knowingly mislead the other party by providing false information. This prohibition applies uniformly to the Franchisors, Franchisees, and prospective Franchisees.

## article 5 [confidentiality]

1. All information about a prospective Franchisee shall be kept confidential. The Franchisor shall not disclose it to any third party or use it for any purpose other than the process of establishing cooperation. The Franchisor may impose an obligation on a prospective Franchisee to keep confidential information relating to the franchise system for which the cooperation is being established.
2. The Franchisor may make confidential specific information relating to its business, and the Franchisee shall keep confidential all the information obtained in connection with the process of establishing cooperation or during the term of the franchise agreement regarding:
   1. the franchise system,
   2. the Franchisor’s situation or plans,
   3. other Franchisees.

## article 6 [obLIGATION TO INFORM about MATERIAL aspects of cooperation]

Before establishing cooperation, the Franchisor shall inform prospective Franchisees about all the relevant aspects of the cooperation under the franchise agreement, including the terms of its establishment and termination, along with the applicable notice periods under the franchise agreement. This applies in particular to the process of establishing cooperation with prospective Franchisees that have no previous experience of running a business.

## artICLE 7 [basic principles of establishing cooperation]

1. The Franchisor:
   1. shall inform the prospective Franchisee about the process of establishing cooperation with the Franchisee prior to commencing the process;
   2. shall conduct the process of establishing cooperation with the Franchisee on terms and conditions applied uniformly to all the prospective Franchisees;
   3. shall inform the prospective Franchisee without undue delay about completion of the evaluation process, including its success or failure;
   4. can expect the prospective Franchisee to:
      * provide reliable information about its experience, education, financial standing, current professional or business involvement, and any potential litigation or administrative proceedings to which it is a party, to the extent necessary to carry out the process of establishing cooperation;
      * complete training (offered by the Franchisor) with full commitment, along with a thorough analysis of the rules and procedures effective in the franchise system.
2. Prior to establishing cooperation with the Franchisor, the prospective Franchisee shall be able to conduct its own reliable and conservative analysis of the profitability of the business it intends to run under the franchise. For that purpose, the prospective Franchisee shall carefully analyse all the information received from the Franchisor, and in case of any ambiguities request clarification from the Franchisor. In order to decide whether to start cooperation with the Franchisor, the prospective Franchisee may use the professional assistance of experts, including without limitation in law, finance, and accounting.
3. The process of establishing cooperation with the prospective Franchisee includes training in both theory and practical skills. Both these components shall be included in the assessment of the prospective Franchisee.

## artICLE 8 [informaTION ON FRANCHISE SYSTEM]

1. The Franchisor provides the prospective Franchisee with reliable information about the franchise system. The information shall allow the prospective Franchisee to make a reliable assessment as to whether the franchise system it is seeking to operate in is suitable for it.
2. In order to enable the prospective Franchisee to assess the attractiveness of the relevant franchise system as well as its aptitude to operate within the system, the Franchisor shall presents to the prospective Franchisee at a minimum:
   1. requirements for the prospective Franchisee in terms of experience, education, availability;
   2. operating rules and requirements, to the extent that enables identification of the nature of the business carried out within the franchise system and the required involvement of the Franchisee;
   3. requirements relating directly to the Franchisee (e.g. the requirement to conduct the business in person, potential restrictions on entering into partnerships or companies or engaging in any other businesses, including conducting a competitive business to that of the Franchisor, and the obligation to notify the Franchisor about potential conduct of such business);
   4. sources and system of supply and maintaining stock levels;
   5. model of mutual settlements between the parties to the franchise agreement employed as part of the franchise system;
   6. rules of training for the Franchisee and its staff and rules of determining training costs;
   7. principles of financing the business (acceptable percentage of equity and external funding, e.g. bank loan) and information on the required security, potential changes in equity or ownership structure;
   8. requirements for the Franchisee’s investment in the premises, equipment, new technologies, rebranding, or business expansion;
   9. the terms of renewal or extension of the franchise agreement;
   10. information on the term for which the franchise agreement may be concluded and the conditions for its termination, including the applicable notice periods.

## artICLE 9 [DISCLOSURE OBLIGATION AFTER ASSESSMENT OF PROSPECTIVE FRANCHISEE]

1. After the prospective Franchisee passes the assessment process, prior to concluding the franchise agreement, the Franchisor shall enable the prospective Franchisee to review:
   1. the franchise agreement, including the general terms and conditions, regulations, instructions, or guidelines, if part of the franchise agreement;
   2. the applicable operating standards and information on how compliance with them is enforced;
   3. sources of costs and revenues in the relevant business model, so that the prospective Franchisee is able to estimate the costs of future activity;
   4. all the franchise fees;
   5. all other required fees known to the Franchisor;
   6. all the standard costs foreseeable to the Franchisor relating to the launch of the business under the proposed franchise system (e.g. costs of construction or conversion, purchase of equipment, purchase of signage, purchase of stock);
   7. circumstances known to the Franchisor that, in its opinion, may affect revenues from the Franchisee’s business.
2. The information referred to in 1 above shall be submitted to the prospective Franchisee by the Franchisor sufficiently in advance to give it time to think over its decision.
3. If the information referred to in 1 above contains data of a variable nature (due to alternatives involved or individual application), they shall be clearly marked as such.
4. The information referred to in 1 above and the standard form franchise agreement shall be submitted by the Franchisor to the prospective Franchisee at least 14 days prior to signing the franchise agreement, so that the prospective Franchisee has time to review them.

## article 10 [information ON LOCATION PROVIDED BY PROSPECTIVE FRANCHISEE]

If, within the franchise system to which the cooperation process applies, the Franchisee provides the location of the franchise:

* 1. the Franchisor may expect the prospective Franchisee to provide the Franchisor with all the necessary reliable information about such location;
  2. the Franchisor shall not start independently a business at the location proposed by the prospective Franchisee or offer such location to other Franchisees if the location was previously unknown to the Franchisor. The Franchisor shall keep confidential information on the location provided by the prospective Franchisee if the prospective Franchisee designated it as confidential.

# REQUIREMENTS FOR FRANCHISE AGREEMENT

*The franchise agreement sets out the terms of cooperation between the Franchisor and the Franchisee. The provisions of the franchise agreement shall be worded reasonably clearly, unambiguously and easy to understand.*

## article 11 [BASIC REQUIREMENTS FOR FRANCHISE AGREEMENT]

1. The franchise agreement shall be concluded in written or documentary form.
2. The franchise agreement concluded with a Franchisee operating as an entity registered in Poland shall be subject to Polish law and jurisdiction of Polish common courts of law or Polish arbitration courts.
3. If the franchise agreement (concluded with a Franchisee operating as an entity registered in Poland) is drawn up in several language versions, the Polish language version shall prevail.
4. The substance of the franchise agreement shall comply with the provisions of the generally applicable law.

## artICLE 12 [SCOPE OF FRANCHISE AGREEMENT]

The franchise agreement shall include at a minimum:

* 1. a description of the franchise system;
  2. a precise definition of the rights and obligations of the parties, including operational and investment requirements for the Franchisee; it is possible to refer here to the standards of the franchise system known to the Franchisee;
  3. if the Franchisee is required to incur expenditures at its own expense, the scope and value of such expenditures, or the procedure for establishing them, if they cannot be established at the time of concluding the franchise agreement;
  4. the rules for introducing manuals or guidelines or for amending such manuals or guidelines, if they are part of the franchise agreement, including the conditions on which they become binding upon the parties to the franchise agreement;
  5. a clear indication of whether or not the Franchisee may engage in any other business;
  6. an unequivocal determination whether or not the Franchisee is entitled to exclusivity, whether as regards time or territory;
  7. the requirements for the Franchisee’s involvement in marketing activities;
  8. an indication of the requirements for the Franchisee to improve its own skills and the skills of its personnel;
  9. a clear mechanisms for the allocation of liability for the goods between the parties to the franchise agreement, clear information regarding the extent to which the Franchisee is able to affect the range of products and prices, and transparent rules of liability for breach of the franchise agreement;
  10. the rules and extent to which the Franchisor is authorised to monitor performance of the franchise agreement, including with regard to the Franchisee’s compliance with operating standards or the obligation to conduct accurate settlements; these rules may be specified as part of the franchise system procedures set forth directly in the franchise agreement (to be made available to the Franchisee along with the draft franchise agreement);
  11. an indication of the amount of franchise fees or fee rates and the method of their calculation, and in the case of fees charged at a percentage of the Franchisee’s revenues, a clear indication of the basis for calculating such fees;
  12. an indication of other fees charged by the Franchisor or incurred on behalf of third parties in connection with the performance of the franchise agreement (e.g. rent for the premises, real property tax, license fee);
  13. a determination of the term of the franchise agreement and the conditions for its extension and early termination;
  14. a determination of the conditions for a potential sale or transfer of the franchise to a third party, including to the Franchisee’s next of kin in the event of his or her death;
  15. information on confidentiality of information about the franchise system that would make it possible to copy or imitate the solutions adopted in it, as well as information the disclosure of which could adversely affect the market position of the Franchisor or the Franchisees;
  16. the right to terminate the franchise agreement with a reasonable and proportionate notice period by each party to the franchise agreement, providing that the termination of the cooperation subject to the agreed notice period shall not provide grounds for imposing liquidated damages;
  17. the manner and procedure of mutual settlements between the parties to the franchise agreement and the rules for their modification, providing that any changes made in contravention of these rules are invalid;
  18. formulation of non-competition clauses in a clear, reasonable, and proportionate manner, providing that they shall not last longer than strictly necessary.

## artICLE 13 [LIQUIDATED DAMAGES SET FORTH IN FRANCHISE AGREEMENT]

Contractual damages provided for under the franchise agreement shall be set in an amount that is commensurate with the seriousness of the violations for which they are to be charged.

## artICLE 14 [TERM and NOTICE Periods for termination of franchise agreement]

1. The franchise agreement may be concluded for a definite or indefinite term, providing that in the case of agreements concluded for a definite term, such term shall be long enough for the franchisee and franchisor to recover their initial and subsequent investments under the relevant franchise.
2. Termination of the franchise agreement shall be possible subject to a reasonable and proportionate notice period, providing that:
   1. the notice period is proportionate to:
      * the term of the agreement, i.e. the term for which the agreement was concluded or the time since the execution of the agreement, or
      * the scale and nature of the expenditures incurred by each party to the agreement in connection with establishing the cooperation, including any financial obligations contracted in connection with establishing the cooperation,
   2. the notice period set forth in the franchise agreement shall correspond to the legitimate interests of each party.
3. The franchise agreement concluded for a definite term shall provide for the right of termination for good cause by each party to the agreement, and the termination of the agreement for good cause subject to the agreed notice period shall not provide grounds for imposing liquidated damages.
4. The franchise agreement shall specify clearly the terms and conditions for termination of cooperation between the Franchisor and the Franchisee as well as the rules of mutual settlements after such termination.

# GOOD COOPERATION BETWEEN PARTIES TO FRANCHISE AGREEMENT

*Taking good care of the reputation of the brand is in the common best interests of the Franchisees and the Franchisor. Therefore, each party to the franchise agreement shall, in the course of cooperation, take good care of the brand’s reputation and abstain from any acts that may harm the brand or the other party to the agreement.*

*Franchisees and Franchisors shall be guided by good faith, honesty, and friendly manner, as well as the principle of loyalty in their cooperation by timely and reliable performance of their obligations adopted under the franchise agreement.*

## article 15 [communication channels]

1. The Franchisor shall set up effective channels of communication with the Franchisees and provide the Franchisees with the opportunity of ongoing consultations on operational matters and marketing issues. Information about any changes to the franchise system shall be provided to the Franchisees sufficiently in advance to enable it to implement the required changes.
2. The Franchisor shall set up, in the form that is most appropriate for the franchise system, a platform for cooperation with the Franchisees, to enable the parties to the franchise agreement to share insights and views, including without limitation to pull together ideas and opinions from the Franchisees, which the Franchisor may take into account when making decisions as to the further development of the franchise system.

## artICLE 16 [obligation to provide operatiONAL expertise]

The Franchisor shall hold cyclical training for the Franchisees or shall otherwise provide the Franchisees with the necessary operational expertise, including expertise in:

* 1. products, goods, or services offered;
  2. operating standards;
  3. customer service standards;
  4. form of accounting settlements.

## artICLE 17 [GOOD PRACTICES for inspection]

1. The Franchisor shall set up an inspection system for the operational efficiency of the Franchisees, under which it checks the level of training of the Franchisee and its staff.
2. The evaluation criteria shall be unambiguous and the Franchisee under inspection shall be aware of them.
3. The inspections shall be carried out regularly, either announced or unannounced, and the results of the inspections shall be promptly presented to the inspected Franchisee. If necessary, the parties shall agree a recovery programme.
4. Given the reputation of the brand, inspections may in particular focus on the Franchisee’s compliance with the generally applicable laws, including provisions on employment and working conditions.

## artICLE 18 [NOTIFYING MATERIAL CHANGES]

The Franchisor shall notify the Franchisees sufficiently in advance of any proposed material changes in the business profile of the franchise model.

## artICLE 19 [OBLIGATIONS OF FRANCHISEES]

Under the franchise agreement, the Franchisor may require the Franchisee to:

* 1. comply with the operating procedures and standards effective in the franchise system as well as the established principles of brand marketing;
  2. comply with legal requirements, including without limitation with regard to employment and occupational safety;
  3. ensure the adequate level of staff training;
  4. adjust its operations immediately to any changes in the requirements of the franchise system;
  5. provide the Franchisor with all the information necessary to verify satisfactory performance of the franchise agreement, including allowing access to the premises or operational data, if necessary for such purpose;
  6. conduct financial reporting in accordance with applicable laws and principles set forth under the franchise agreement and carry out ongoing assessment of the profitability of its business;
  7. fulfil its obligations towards suppliers and personnel in a timely manner.

## artICLE 20 [non-competition clause]

The Franchisor may require the Franchisee not to:

* 1. conclude any articles of association or any other agreement allowing third parties to operate within its business conducted under the franchise agreement;
  2. accede to a franchise network directly or indirectly competitive with the Franchisor’s network or imitate the franchise system with which it terminated its cooperation as part of its business, during the term of the franchise agreement and after its termination, for a period set forth in the franchise agreement (but not longer than one year).

## artICLE 21 [RESTRICTION ON IMPOSING LIQUIDATED DAMAGES]

The Franchisor shall not abuse its right to impose liquidated damages and other lump-sum charges on the Franchisees.

## artICLE 22 [franchisor’s liability for recommendations]

In the event any of the following are filed against the Franchisee:

* 1. any claims on the grounds of use by the Franchisee, as recommended by the Franchisor, of any intellectual property rights, industrial property rights, or know-how transferred to it by the Franchisor; or
  2. any claims or allegations arising from strict compliance by the Franchisee with the operating standards and procedures (designated by the Franchisor) effective in the relevant franchise system,

- the Franchisor shall indemnify the Franchisee against any such claims, accede to the dispute, or reimburse the Franchisee for the costs of reasonable legal assistance incurred by it.

## artICLE 23 [whistleblowing policy]

1. The Franchisor shall implement organisational measures enabling the Franchisees to report irregularities relating to the performance of the franchise agreements concluded, in a manner ensuring adequate confidentiality and safety of information provided and that the reports received are processed within a reasonable timeframe.
2. The Franchisor shall provide the Franchisees with information on the principles and procedure for reporting irregularities referred to in 1 above.
3. Prior to disclosing information on irregularities relating to the performance of the franchise agreement otherwise, unless the obligation to disclose such information arises under generally applicable law, the Franchisee shall avail itself of the channels for reporting irregularities made available by the Franchisor.
4. Upon receipt of the report on irregularities, the Franchisor shall notify the Franchisee at a minimum of accepting the report for processing and completion and the results of any subsequent stages of the process.

## artICLE 24 [disputes between parties to franchise agreement]

Any disputes between the parties to the franchise agreement shall be resolved first by negotiations and mediation.

## artICLE 25 [settlement date after termination of cooperation]

Upon termination of the cooperation with the Franchisee, the Franchisor shall settle the cooperation within a reasonable timeframe, provided that the Franchisee has provided all the documents necessary to do so.

# ACCESSION, TERMINATION, AND AMENDMENTs TO CODE

## artICLE 26 [accession to code]

1. The Signatories of the Code may include both Franchisors and Franchisee organisations. Accession to the Code by a Franchisee organisation means that the Code becomes binding on members of such organisation only.
2. The obligation to comply with the Code binds only its Signatories.
3. Entities other than as listed in 1 above may apply the provisions of the Code as a set of standards whose voluntary application contributes to improving the cooperation standards for parties of the franchise agreement.
4. As a result of accession to the Code by a party to the franchise agreement, the other party to the franchise agreement may invoke the provisions of the Code, to the extent of the obligations adopted by the Signatory upon accession to the Code.
5. Accession to the Code is effected by completing a statement, the form of which is attached to the Code as Annex 1.

## artICLE 27 [termination of code]

A Signatory may terminate the Code at any time.

## artICLE 28 [amendments to code]

1. Each Signatory of the Code may submit a proposal for amendments to the Code.
2. Each amendment to the Code requires the consent of all the Code Signatories.
3. When expressing its consent to an amendment to the Code, the Signatory may reserve the right not be bound by such amendment to the Code (opt-out). The list of opt-outs is published with the consolidated wording of the Code.

## artICLE 29 [REALIGNMENT WITH CODE]

Within 6 months from the date of accession to the Code, each Signatory of the Code shall realign its business with the standards and principles set forth under the Code.

ANNEX 1

# statement on accession to code of good practice for franchise market

*Sharing the values and objectives underlying the adoption of this Code of Good Practice for Franchise Market (“Code”), undertaking to comply with the standards and principles set forth hereunder within my business and to cooperate in furtherance of the development and promotion of franchising among the Signatories of the Code, in accordance with the provisions of Article 26 of the Code, I hereby make a statement on accession hereto.*

## naME OF ENTITY

…………………………………………………………………………………………………………………………………………………………………………….

[business name or name of organisation]

## type of entity

…………………………………………………………………………………………………………………………………………………………………………….

[Franchisor/Franchisee Organisation]

## details of entity

Registered with: …………………………………………………………………………………………………………….……… [name of register]

NIP Tax Number …………………………………………………………………………………………………….……………………………………………

represented by …………………………………………….……………………………………………………………………………………………………..

[full name of persons authorised to represent the Signatory of the Code]

## place, date, signature

…………………………………………………………………………………..

[place]

…………………………………………………………………………………..

[date]

…………………………………………………………………………………..

[signature]