

 **FRANCHISOR NEWS****MARKETING FUNDS**

The Franchising Code of Conduct regulates the conduct of participants within the franchising industry in Australia. One element of that regulation relates to “Marketing Funds”. Under the Code:

1. The Franchisor is required to prepare an annual financial statement detailing all of the Marketing Fund’s receipts and expenses for the previous financial year;
2. This financial statement must be prepared within 4 months after the end of the last financial year; and
3. The financial statement must be given to each Franchisee within 30 days of the statement being prepared.

So for say the 2012/2013 financial year, the financial statement must be prepared by no later than 31/10/13.

If, hypothetically, you prepared the financial statement on say 31/10/13 then you have another 30 days to actually give it to the Franchisees, being, for example, 30/11/13.

In addition, the financial statement must be audited by a registered company auditor within 4 months after the end of the financial year to which it relates.

However, again if, hypothetically the audit report was prepared on say 31/10/13 then you would have another 30 days to actually give it to the Franchisees, being, for example, 30/11/13.

In terms of the auditing requirement, the Code does allow the Franchisor the ability to avoid this auditing obligation if:

- (a) 75% of Franchisees in Australia, who contribute to the Marketing Fund, have voted to agree that the Franchisor does not have to comply; and
- (b) these 75% of Franchisees agree to this within 3 months after the end of the financial year.

If 75% of the Franchisees were to agree, that agreement does not last indefinitely. In fact, such agreement only survives for 3 years. At the end of the 3 years, a further vote must then be carried out.

It is important that Franchisors ensure they comply with their obligations in relation to Marketing Funds or risk breaching the Code.

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