

SOUTH AFRICA

Provisions applicable to franchising are to be found in the South African *Consumer Protection Act*.¹ The definitions in Section 1 include a definition of “franchise agreement” which states that it “means an agreement between two parties, being the franchisor and franchisee, respectively – (a) in which, for consideration paid, or to be paid, by the franchisee to the franchisor, the franchisor grants the franchisee the right to carry on business within all or a specific part of the Republic under a system or marketing plan substantially determined or controlled by the franchisor or an associate of the franchisor; (b) under which the operation of the business of the franchisee will be substantially or materially associated with advertising schemes or programmes or one or more trade marks, commercial symbols or logos or any similar marketing , branding, labelling or devices, or any combination of such schemes, programmes or devices, that are conducted, owned, used or licensed by the franchisor or an associate of the franchisor; and (c) that governs the business relationship between the franchisor and the franchisee, including the relationship between them with respect to the goods or services to be supplied to the franchisee by or at the direction of the franchisor or an associate of the franchisor”.

The provisions that deal directly with franchising are few. Section 7 deals specifically with the “[r]equirements of franchise agreements”, which include that a franchise agreement must be in writing and signed by or on behalf of the franchisee,² and must include any prescribed information, or address any prescribed categories of information,³ and comply with the requirements of Section 22.⁴ Section 22 deals with the right to information in plain and understandable language. Section 7(2) specifies that a franchisee may cancel a franchise agreement without cost or penalty within ten business days after signing such agreement, by giving written notice to the franchisor, and Section 7(3) states that the Minister may prescribe information to be set out in franchise agreements generally, or within specific categories or industries, where the Minister is the member of the Cabinet responsible for consumer protection matters. To date, no regulations specifying disclosure requirements have been adopted.

Section 13 deals with the consumer’s right to select suppliers. Section 13(2) specifically concerns franchising, and states that “[e]xcept to the extent that any other law provides otherwise, in any transaction between a franchisee and franchisor in terms of their franchise agreement, it is a defence to an allegation that the franchisor, as supplier to the franchisee, had contravened this section if any goods or services that the franchisee was required to purchase from or at the direction of the franchisor are reasonably related to the branded products or services that are the subject of the franchise agreement”.⁵

General provisions that clearly apply to franchising are Section 41, which prohibits false, misleading or deceptive representations on the part of the supplier, and Section 51 that relates to prohibited transactions, agreements, terms or conditions. These include that “(1) A

¹ Act No. 68 of 2008.

² Section 7(1)(a).

³ Section 7(1)(b).

⁴ Section 7(1)(c).

⁵ Section 13(2)

supplier must not make a transaction or agreement subject to any term or condition if [...] (b) it directly or indirectly purports to – (i) waive or deprive a consumer of a right in terms of this Act;⁶ and that “(2) A supplier may not – (a) directly or indirectly require or induce a consumer to enter into a supplementary agreement, or sign any document, that contains a provision contemplated in subsection (1)”,

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⁶ Section 51(1).