

The following is an extract from the Regulations to the Consumer Protection Act. We have created it to simplify access to the most important clauses affecting franchise operations but recommend that prior to acting on this information you read the full Act and the relevant Regulations.

Annexure H - Regulation 39

Annexure I - Regulation 40(1)

Annexure J – Regulation 40(2)

Annexure K – Section 88

Annexure L- Regulation 42

Annexure M – Regulation 43

Short title and definitions

- 1 (1) These regulations are the Consumer Protection Act Regulations.
- (2) In these regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act has the same meaning, and -
- “Act” means the Consumer Protection Act, 2008 (Act No. 68 of 2008);
- “Department” means the Department of Trade and Industry;
- “in writing” includes any electronic means recognised by the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); and
- “public officer” means that person defined in Chapter III (General Provisions) of Part V of the Income Tax Act, 1962 (Act 58 of 1962).

Franchise agreements

- 2 (1) This regulation must be read together with sections 7 and 120(1)(e)(ii) of the Act.
- (2) (a) Every franchise agreement must contain the exact text of section 7(2) of the Act at the top of the first page of the franchise agreement, together with a reference of the section and the Act.
- (b) A franchise agreement must contain provisions which prevent -
- (i) unreasonable or overvaluation of fees, prices or other direct or indirect consideration;
 - (ii) conduct which is unnecessary or unreasonable in relation to the risks to be incurred by one party; and
 - (iii) conduct that is not reasonably necessary for the protection of the legitimate business interests of the franchisor, franchisee or franchise system.
- (c) A franchise agreement must contain a clause informing a franchisor that he, she or it is not entitled to any undisclosed direct or indirect benefit or compensation from suppliers to its franchisees or the franchise system, unless

the fact thereof is disclosed in writing with an explanation of how it will be applied.

- (d) Paragraph 2 of item 3 of Schedule 2 of the Act applies to any pre-existing franchise agreement.
 - (e) Any provision in a franchise agreement to which these regulations apply which is in conflict with this regulation is void to the extent of such a conflict.
- (3) A franchise agreement must as a minimum contain the following specific information –
- (a) the name and description of the types of goods or services which the franchisee is entitled to provide, produce, render or sell;
 - (b) the obligations of the franchisor;
 - (c) the obligations of the franchisee;
 - (d) a description of the applicable franchise business system;
 - (e) the direct or indirect consideration payable by the franchisee to the franchisor;
 - (f) the territorial rights, if any, granted to the franchisee in detail;
 - (g) a description of the site or premises and location from which the franchisee is to conduct the franchise;
 - (h) the conditions under which the franchisee or his, her or its estate may transfer or assign the rights and obligations under the franchise;
 - (i) a description of the trade mark or any other intellectual property owned by the franchisor, or otherwise licensed to the franchisor which is, or will be used in the franchise, and the conditions under which they may so be used;
 - (j) if the agreement is related to a master franchise, the master franchisor's identity;
 - (k) particulars of the initial training and assistance provided by the franchisor and, where the franchisor provides ongoing training for the duration of the franchise agreement, a statement that the particulars of such training and assistance will be provided to the franchisee as and when necessary;
 - (l) the duration and the terms of the renewal of the franchise agreement, provided that such terms and conditions are not inconsistent with the purpose and policy of the Act;
 - (m) if the franchise agreement provides that a franchisee must directly or indirectly contribute to an advertising, marketing or other similar fund, the franchise agreement must contain clauses informing the franchisee –
 - (i) of the amount, or if expressed as a percentage, the method of calculation of such contribution;

- (ii) that within six months after the end of the last financial year, the franchisor will provide a franchisee with a copy of a financial statement, prepared in accordance with applicable legislation, which fairly reflects the fund's receipts and expenses for the last financial year, including amounts spent, and the method of spending on advertising and/or marketing of franchisees and the franchise system's goods and services,
- (iii) that, in addition to subparagraph (ii), the franchisor must for every three months period make financial management accounts relating to the funds available to franchisees;
- (iv) that moneys in the fund may not be spent on advertising and marketing of the franchisor's franchises for sale;
- (v) that to the extent that an audit is carried out, a certificate of a registered auditor or accounting officer, as the case may be, confirming that the fund's account has been audited and that the statements, to the best of his or her knowledge, provide a true reflection of the matters stated in this subregulation (m) and where no audit is carried out, a certificate by the accountant that management accounts have been prepared and are correct to the best of the directors' knowledge;
- (vi) that a franchisee can request a copy of the statement and certificate issued in terms of subregulation (v), and that the franchisor must within a reasonable period of such request provide such copies;
- (vii) of any contribution to such a fund will be deposited in a separate bank account and used only for purposes of the fund;
- (viii) of the franchisor's contribution to such fund, if any; and
- (ix) of the fact that the franchisor and or franchisor associated franchised businesses do not enjoy any direct or indirect benefit not afforded to independent franchisees;
- (n) the effect of the termination or expiration of the franchise;
- (o) extension or renewal terms, or whether there is no option to renew or extend the agreement;
- (p) a written explanation of any terms or sections not fully understood by the prospective franchisee upon the prospective franchisee's written request;
- (q) the franchisor's legal name, trading name, registered office and franchise business office, street address, postal address, e-mail address, telephone number and fax number;

- (r) the name, identity number, town of residence, job titles and qualifications of the franchisor's directors or equivalent officers;
- (s) except where the franchisor is a company listed on a stock exchange, details of any proprietor, member or shareholder if they are different from the persons referred to in paragraph (r);
- (t) particulars of any restrictions imposed on the franchisee;
- (u) the nature and extent of the franchisor's involvement or approval in the process of site selection;
- (v) the terms and conditions relating to termination, renewal, goodwill and assignment of the franchise;
- (w) the main obligations of the franchisor in respect of initial and ongoing training to be provided;
- (x) confirmation that any deposits paid by the prospective franchisee will be deposited into a separate bank account and a description of how these deposits will be dealt with;
- (y) full particulars of the financial obligations of the franchisee in terms of the franchise agreement or otherwise related to the franchised business including -
 - (i) the initial fee payable to the franchisor on the signing of the franchise agreement, including the purpose for which it is to be applied;
 - (ii) the funds required to establish the franchised business including, purchase or lease of property, site conversion costs, décor and signage, equipment, furniture, hiring and training of staff, opening stock, legal and financial charges, as may be applicable;
 - (iii) the initial working capital, where possible, and the basis on which it is calculated;
 - (iv) the total investment required;
 - (v) a clear statement as to whether or not any expenses, any salary/wages of employees of the franchised business and the costs of servicing loans are included in the purchase price.
 - (vi) the amount of funding that is available from the franchisor, if any, and the applicable conditions;
 - (vii) the total amount that the franchisee must contribute towards the necessary funding before borrowing; and
 - (viii) ongoing amounts payable to the franchisor, with details as to -
 - (aa) whether the amounts are fixed or variable;

- (bb) whether all or part of the amounts are included in the price of goods or services that must be purchased from the franchisor or other preferred suppliers;
 - (cc) the dates, or intervals, at which the amounts fall due; and
 - (dd) if any fee is payable in respect of management services provided by the franchisor, details of such services.
- (4) A franchise agreement which is renewed after the general effective date is a new franchise agreement for the purposes of subregulations (2) and (3).

Disclosure document for prospective franchisee

- 3 (1) Every franchisor must provide a prospective franchisee with a disclosure document, dated and signed by an authorised officer of the franchisor, at least 14 days prior to the signing of a franchise agreement, which as a minimum must contain -
- (a) the number of individual outlets franchised by the franchisor;
 - (b) the growth of the franchisor's turnover, net profit and the number of individual outlets, if any, franchised by the franchisor for the financial year prior to the date on which the prospective franchisee receives a copy of the disclosure document;
 - (c) a statement confirming that there have been no significant or material changes in the company's or franchisor's financial position since the date of the last accounting officer, or auditor's certificate or certificate by a similar reviewer of the company or franchisor, that the company or franchisor has reasonable grounds to believe that it will be able to pay its debts as and when they fall due;
 - (d) written projections in respect of levels of potential sales, income, gross or net profits or other financial projections for the franchised business or franchises of a similar nature with particulars of the assumptions upon which these representations are made.
- (2) Each page of the disclosure document contemplated in subregulation (1) above must be qualified in respect of the assumptions contained therein.
- (3) The disclosure document contemplated in subregulation (1) above must be accompanied by a certificate on an official letterhead from a person eligible in law to be registered as the accounting officer of a close corporation, or the auditor of a company, as the case may be, certifying that -
- (a) the business of the franchisor is a going concern;

- (b) to the best of his or her knowledge the franchisor is able to meet its current and contingent liabilities;
 - (c) the franchisor is capable of meeting all of its financial commitments in the ordinary course of business as they fall due; and
 - (d) the franchisor's audited annual financial statements for the most recently expired financial year have been drawn up -
 - (i) in accordance with South African generally accepted accounting standards;
 - (ii) except to the extent stated therein, on the basis of accounting policies consistent with prior years;
 - (iii) in accordance with the provisions of the Companies Act (No. 61 of 1973 or any legislation which replaces this Act), and all other applicable laws; and
 - (iv) fairly reflecting the financial position, affairs, operations and results of the franchisor as at that date and for the period to which they relate.
- (4) The disclosure document contemplated in subregulation (1) above must be accompanied by -
- (a) a list of current franchisees, if any, and of outlets owned by the franchisor, stating, in respect of any franchisee -
 - (i) the name under which it carries on business;
 - (ii) the name of its representative;
 - (iii) its physical address; and
 - (iv) its e-mail and office telephone number, together with a clear statement that the prospective franchisee is entitled to contact any of the franchisees listed, or alternatively to visit any outlets operated by a current franchisee to assess the information disclosed by the franchisor and the franchise opportunity offered by it;
 - (b) an organogram depicting the support system in place for franchisees.

Mechanisms to block direct marketing communication

- 4 (1) For purposes of section 11(1) and 11(2) of the Act, if a consumer has -
- (a) informed the direct marketer; or
 - (b) placed any communication or sign on a postal box, post office box or other container for mail,