



FRANCAST

Clarifying the South African law

FranCast

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There has been some confusion about the scope of South Africa's Consumer Protection Act (whether the whole Act or only parts of the Act would apply to franchising), and the timing of its effectiveness (whether April 24, 2010, October 24, 2010, or some other dates).

To clarify, provisions under the Act that apply to franchise agreements came into effect on April 24, 2010. The Act's disclosure requirements that apply to franchise agreements theoretically came into effect on April 24, 2010 as well, but the government has not yet issued any regulation to implement the disclosure requirements.

There are no draft regulations in place. It is difficult to predict when the government will issue these regulations, and, when they are issued, whether the disclosure requirements will become effective immediately, or whether a phase-in period will be provided.

Much has been written about the Act's inclusion of franchise transactions as "consumer transactions." It is important to keep in mind that the Act, while imposing some consumer protection-type requirements in franchise transactions in some places (*e.g.*, the right to be treated equally), specifically *excludes* franchise transactions from other provisions that apply to consumer transactions (*e.g.*, the right with respect to the goods or services supplied).

Franchisors should carefully examine the Act and consult with counsel to determine which provisions are applicable to a franchise transaction.

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