

# Far-reaching legal changes for franchises

By [Luphert Chilwane](#)

22 Jun 2009

Owners of franchise businesses who fail to comply with the Consumer Protection Act could end up facing fines of up to R1-million when the act becomes active in October next year, Simone Monty, a director of Routledge Modise in association with Eversheds, said in Johannesburg last week.

Monty was giving a legal opinion on the act and its effect on franchising during a Standard Bank franchise networking function on Thursday, 18 June 2009.

She said the relationship between franchisor and franchisee would soon become an arena governed by the new act and no longer by the Competition Act.

“This is the first piece of legislation that will regulate the franchising industry. For the purpose of this act, the franchisee will be entitled to all the consumer rights and become a supplier,” she said.

The primary purpose of the new act, which was signed into law in April by the Department of Trade and Industry, was to prevent exploitation or harm to consumers, to recognise and consolidate consumer rights, and to establish effective mechanisms for enforcement of those rights.

The act would also prohibit certain conduct and place specific obligations on suppliers of goods and services.

Monty said many legal requirements were contained in the act, with the franchisor being required to be more transparent and take full responsibility for the quality of products, thereby becoming part of the supply chain.

The act would put obligations and prohibitions on suppliers and would have a significant effect on the way business was conducted in the country.

She said it was important to properly define the relationship in written, plain and understandable language.

Failure to comply could mean that the agreement was void and the penalty for that was about R1m, or 10% of annual turnover, Monty said.

She urged both parties, the franchisor and the franchisee, to revisit their agreements because “a franchise arrangement must be regarded as a transaction between a supplier and consumer within the meaning of the act”.

Esmari Jonker, of the legal firm Groenewald Van Dyk Incorporation, said the franchise agreement was a legal and lawful commercial agreement that required a practical use of terms necessary during business operations.

“It is important to identify the intellectual property aspects, understand the red-light terms and recognise words that are in line with the business practices,” she said.

According to the Standard Bank Franchise Factor 2008 Survey, franchise business in SA is doing well. The survey showed a 37% increase (R256,46bn) in turnover.

The sector contributed 12.57% to the country's gross domestic product and had created 67,000 jobs.

*Source: Business Day*

*Published courtesy of*



For more, visit: <https://www.bizcommunity.com>