

Fasa concerned with legal franchise disputes despite franchising thriving in SA

Although franchising is a proven business model, contributing 15% to South Africa's GDP through its over 700 franchise systems and around 68,000 franchisees, two recent court cases involving well-known franchise brands Romans Pizza and Cash Crusaders have put the spotlight on difficulties that can arise in the business and legal relationships that exist between franchisor and franchisee.



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The franchisee litigant from Romans Pizza stated in a media release in December 2023 that 'franchisees receive minimal protection in such instances from industry bodies like the Franchise Association ostensibly designed to represent the interests of both parties, often skewed in favour of franchisors.'

Franchise Association of South Africa (Fasa) is concerned by this statement and wishes to correct certain misapprehensions that it may have created.

Fasa is a voluntary association, governed by a Code of Ethics and Business Practices, to which all members are obliged to comply. Membership is open to anyone connected with the franchise industry, including franchisors, franchisees and service providers and suppliers to the industry. Franchisees of franchisor members have access to the Association's structures and services, even if they have not joined the Association in their own right.

Any franchisee of a franchisor member may approach Fasa if they believe the franchisor has contravened Fasa's Code of Ethics. Fasa will obtain representations from both parties before making a decision on the complaint. All decisions are based entirely on the merits of the matter and Fasa does not favour any party. Fasa has on several occasions found franchisors to have contravened the Code and directed them to take remedial action, and even expelled recalcitrant franchisor members.

Fasa also offers its members a mediation service, designed to assist them to resolve disputes. Both franchisees and franchisors may approach Fasa to convene mediation. However, mediation is, by definition, a voluntary process, so neither party can be compelled to participate against its will.

"In the matters of both Romans Pizza and Cash Crusaders, no complaint or request for mediation was received by Fasa so the assertion that Fasa "often skews in favour of franchisors" is a misrepresentation. Fasa's track record proves otherwise as it regularly mediates at the instance of franchisees."



Johannesburg High Court prevents closure of 4 Romans Pizza stores

21 Dec 2023



Upholding ethical standards

Since its formation 45 years ago, Fasa, which is a long standing member of the World Franchise Council and as such complies with the global Code of Ethics, has fought to have the industry regulated to manage disputes between franchisors and franchisees.

Certain provisions of Fasa's Code of Ethics have formed part of the Consumer Protection Act in relation to the franchisor/franchise business relationship. Whilst all Fasa members have subjected their business models to review by Fasa and voluntarily commit to ethical business practices, operational disputes, such as those related to the Romans Pizza and Cash Crusaders cases, are also governed by the legally-binding terms of their respective franchise agreements.

"Until such time as government acts on enforcing the requirements of the CPA's Regulations and sets down an industry code and appoints an industry ombudsman, the association is limited in its involvement in legal disputes between Fasa's franchisor and franchisee members." says Fred Makgato, Fasa's CEO.

"Complainants in some instances approach the association for help once their dispute has been handed over to legal counsel. It is to be noted that in this instance, the association has no basis on which it could add value or get involved or play a role; however, should a member company be found by a court of law to have acted unethically or outside of the law, the association would immediately reconsider the accreditation status of such a member."

The association is working with the National Consumer Commission's office and the Department of Trade, Industry and Competition (DtiC) to have the draft Franchise Industry Code accepted as an industry code for the franchise sector. The proposed code makes provision for the establishment of an industry ombud but although it was published in a government gazette in January 2016 for public comment, it is yet to be promulgated by the minister.

Fasa's Franchise Survey points to a thriving and very satisfied sector

As Fasa continues to work in the interests of both franchisors and franchisees in growing the franchise sector, it has conducted eight in-depth surveys over the years on the health of the sector and more importantly on the satisfaction levels

of the franchisees that invest in the many franchise concepts that span over fourteen business sectors.

Fasa's release of its Franchisor Survey and its Franchisee Satisfaction Survey in October 2023, paints a very positive picture of a sector that weathered the past four years with resilience and determination – posting an estimated turnover of R999bn equivalent to 15,0% of the total South African GDP of R6.660bn in 2022. This was through its 727 franchise systems, its over 68 463 outlets and employing close to 500,000 people.

With more upward than downward trends, the franchise survey results are a testament to the power of the 'ubuntu' collective that is the cornerstone of franchise success, as franchisors and franchisees work together to analyse challenges, find solutions that will not only benefit themselves but their staff, dependents and the consumers they serve.

Some of the key findings include:

- Optimism about the success of their businesses continues to strengthen among franchisors (81% in 2018; 89% in 2019 and 98% in 2023). Most franchisees were buoyant about the future of their businesses, with 88% [78%] expecting to see growth in the coming year.
- Time in business, namely the time that the franchise system has been operating since first signing their first agreement, showed that three in four franchisors fell into the more experienced range of 10+ years, with the average age of the business being 21 years – proving the resilience and stability of the franchise sector in South Africa to provide long-term investment opportunities.

Whilst 53% of franchisees have been in business for more than 10 years and 91% for more than five years. The average number of years in business was 12 years - despite the upheavals from 2020 to 2022 and the expectation that turnover will grow in the next financial year is almost unanimous.

- The degree to which the relationship with the franchisor was rated as excellent has dropped since 2019 (58% to 48%), while the number of those rating their relationship with the franchisor as 4 out of 5 has increased (25% to 39%). The overall result is that the relationship with the franchisor has improved somewhat since 2019 (83% to 87% T2B scores).
- Most franchisees are very positive about belonging to their franchise with T2B scores being higher than 80%. The two aspects that could be improved upon as far as a relatively small number of franchisees were concerned were having regular access to senior executives in the group and more opportunities to connect with other franchisees in the group.

As a long-established franchise association that has held the torch for franchising growth in South Africa and continues to press for stricter ethical standards, it is concerned with any disputes that are sometimes inevitable within the structures of this business format - hence its tireless quest to government to adopt the draft franchise industry code and to speed up the appointment of an ombudsman that can offer a fair and equitable dispute mechanism.

The draft franchise industry code comprises a robust mediation mechanism, as well as standards of conduct for franchisors and franchisees.

"This has become an urgent matter," says Makgato, "both in light of giving both franchisors and franchisees recourse and in our push to get government to recognise franchising as the proven business model, that, through innovative initiatives like social, tandem and micro franchising, can address the issues of education, training and job creation and in assisting in growing the economy."

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