



The Consumer Protection Act

Guide to Printers - Part 1

The Consumer Protection Act or CPA as it is called came into effect on the 31 March 2011. It is broad in its coverage and designed to protect the consumer, improve consumer awareness, and promote fair business practices. The following article in no way covers the complete act and its requirements but only draws your attention as a supplier of a printed or graphic product to the establishment of your customers' status and the need to review your agreements.

All Acts, Regulations and Government Notices referred to in this article and subsequent articles can be obtained from the Government Printer or on the South African Government Online website (<http://www.gov.za/>)

1 Establish your customer's status in terms of the Act¹

The Act applies to every transaction occurring within the Republic unless exempted. It applies to the promotion of any goods or services, the supplier of such services unless exempted. It also covers goods and services provided to members by a club, trade union, association, society or other collective association.

Exemptions are in brief, goods or services promoted or supplied to the state; industry wide exemptions made by the Minister; credit agreement under the National Credit Act – transaction only not the supplied goods or services; services supplied under an employment contract; certain transaction relating to collective bargaining agreements in terms of the Labour Relations Act.

The R2 million Asset/Turnover Threshold

The other exemption that is of great importance to suppliers is the threshold exemption for juristic persons with an asset value or annual turnover which at the time of the transaction equals or exceeds R 2 000 000.00. The threshold determination must be calculated in line with the notice issued in Government Gazette 34181 on the 1 April 2011 covering the Financial Reporting Standards applicable, the Valuation of Assets, Calculation of Turnover and the Form of Financial Statements.

Sections 60 and 61 of the act apply to juristic persons over the threshold as well as "consumers". These sections deal with safety monitoring and recall and the structures that should be in place to deal with unsafe goods or products and the liability for damage caused by goods.

The Consumer

Excluding all those transactions that are exempt the consumer is defined in the Act as a person "to whom particular goods or services are marketed in the ordinary course of the supplier's business" including "a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services" and a franchisee in terms of a franchise agreement. As you can see the definition extends the application to persons not party to the actual transaction.

All consumers have certain rights in terms of the Act and the supplier must cognisant of the potential impact on his business and how he operates.

¹ Consumer Protection Act 68 of 2008, Section 5, Application



Printing Industries Federation of South Africa

The eight fundamental consumer rights are Equality in Consumer Market; Right to Privacy; Right to Choose; Disclosure and Information; Fair and Responsible Marketing; Fair and Honest Dealing; Fair, Just and Reasonable Terms and Conditions; Fair Value, Good Quality and Safety.

2 Your Agreement with your Customer

Now that you have established who the majority of your clients are, you must look at your agreement. Do you want to have a different agreement for transactions with a defined “consumer” to the one you have with juristic persons over the threshold? Remember to check that any clauses in your agreements are not deemed to be unfair or unreasonable in terms of section 45 of the Regulations, published in Government Gazette 34180 dated 1 April 2011. Be aware that you must bring the consumer’s attention to any clauses that deal with liability and warranty that are not in his favour. The Act states that an agreement is considered unfair or unfavourable if it is excessively one-sided in favour of any person other than the consumer, or if the consumer was not notified of certain terms and conditions such as the limit of liability; assumption of risk; or obligations to indemnify the supplier among others. Take care and read Part G, Sections 48 to 52 of the Act and acquaint yourself with right to fair just and reasonable terms and conditions.

Bear in mind that Part D, Section 22 of the Act also deals with the right to information in plain and understandable language and that your terms and conditions and agreements can be considered “information”

Brokers

Remember that transactions with your brokers could fall into either the “consumer” or “juristic person over threshold” category. If your broker can be deemed a “consumer” all fundamental consumer rights must be taken into consideration. If not then only Sections 60 and 61 will apply to transactions between you and such broker. Also note that if the broker’s client is a defined “consumer” then you will be part of the supply chain and your product or service subject to all the relevant sections of the Act.

In following articles we will deal with Consumer Rights, and Sections 60 and 61 of the Act applicable to all transactions including those with juristic persons over the threshold.

Prepared by Louise Moralee, Commercial and Technical, Printing Industries Federation of South Africa, 29 July 2011

References

Consumer Protection Act 68/2008, Government Gazette 32186, 29 April 2009

Notice to defer the effective date of the Consumer Protection Act 2008, Notice 917, Government Gazette 33581, 23 September 2010 (Department of Trade and Industry)

The Consumer Protection Act 2008, Regulations, Notice 293, Government Gazette 34180, 1 April 2011 (Department of Trade and Industry)

Determination of Threshold in terms of the Consumer Protection Act, Notice 294, Government Gazette 34181, 1 April 2011 (Department of Trade and Industry)