

Application of the Consumer Protection Act

The Consumer Protection Act affects a wide range of consumers and transactions. The Act applies to all transactions occurring within South Africa – this means that the Act will provide protection to a consumer where a product is purchased in South Africa, even if it is manufactured outside of South Africa.

The definition of a “consumer” includes not only the person (either a natural or juristic person) to whom goods or services are promoted or supplied, but also the actual user of the goods or the recipients or beneficiary of the services. In other words, a consumer may be a person other than the person who entered into an agreement with a supplier and paid for the goods or services. In practice this would mean that if you are given a spa treatment as a birthday present, you will be entitled to the consumer protection measures set out in the Act, even though you never entered into an agreement with the spa.

With regard to juristic persons, the Act will only provide protection to small businesses (in other words, where the consumer is a juristic person with an asset value or annual turnover below a threshold to be determined by the Minister). This approach is in line with the approach in the National Credit Act. In terms of the National Credit Act the threshold is set at R1000 000. However, we’ll have to wait and see exactly what the threshold will be for purposes of the Consumer Protection Act.

In terms of section 5 of the Act, certain transactions will be excluded from the application of the Act. Exempted transactions include those where:

- goods or services are supplied to the State (transactions where the State will be the consumer); or
- where the transaction constitutes a credit agreement under the National Credit Act (the goods or services that are the subject of the credit agreement are not excluded from the ambit of the Act); or
- a transaction pertaining to services under an employment contract; or
- a transaction which gives effect to a collective bargaining agreement within the meaning of section 23 of the Constitution and the Labour Relations Act.

The Act further provides for a mechanism in terms of which a regulatory authority may apply to the Minister of Trade and Industry (the Minister) for an industry wide exemption from certain provisions of the Act. The application for such an exemption must be based on the fact that there is an overlap between the provisions of the Act and the regulatory scheme administered by the relevant regulatory authority. The Minister may only grant an exemption if the applicable regulatory scheme provides better, or at least similar, consumer protection than the protection provided for in the Act.

The provisions in the Act regarding safety monitoring and recall (section 60), and liability for damages caused by goods (section 61) apply to ALL transactions, even those transactions exempted from the application of the Act. Thus, in our example above, the distributor will be entitled to protection where she suffered damage as a result of defective goods – even where the transaction was exempted.

The Act will not apply to services which constitute advice or an intermediary service that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002 (FAIS), or services in terms of the Long-term Insurance Act, 1998 or the Short-term Insurance Act, 1998. However, it should be noted that the Act prescribes that the Long-term Insurance Act and the Short-term Insurance Act must be aligned with the consumer protection measures in this Act within 18 months from the commencement of

this Act. If this is not done, the provisions of this Act will apply to all services rendered in terms of the two insurance Acts.

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