

ASHLEY SLAMAT

— ATTORNEYS AT LAW —

Success. Understood.

CONSUMER PROTECTION ACT 68 OF 2008

The purpose of the Act is to, inter alia:

- Promote a fair, accessible and sustainable marketplace for consumer products and services,
- To establish national norms and standards relating to consumer protection,
- To provide for improved standards of consumer information
- To prohibit certain unfair marketing and business practices,
- To promote responsible consumer behavior,
- To promote a consistent legislative and enforcement framework relating to consumer transactions and agreements,
- To establish the National Consumer Commission.

The Act was signed into law on 24 April 2009. Chapters 1,5 and section 120 became into operation on 24 April 2010. The Act came into operation on 31 March 2011 and consists of seven chapters and 122 sections.

In essence and fundamentally, the Act seeks to promote a safer market place for consumers in regard to the buying and selling of consumer goods and services. A thorough understanding of the Act requires legal expertise to safeguard the rights of consumers and the benefits intended to be bestowed upon consumers.

The Act contains numerous and various defined terms. The Act must be interpreted in a manner that gives effect to the purposes prescribed in section 3. The Act expressly permits a consumer to sign or initial a document by means of an electronic signature or an advanced electronic signature as legislated in terms of the Electronic Communications and Transactions Act of 2002. Furthermore, no provision of the Act precludes a consumer from exercising any rights afforded in terms of the common law.

The Act is applicable to every transaction occurring in the Republic, unless the transaction is exempted by the Act. The Act is also applicable to the promotion of any goods or services or of the supply of any goods or services within the Republic.

Notably, the Act does not apply to any transaction:

1. in terms of which goods or services are promoted or supplied to the State;
2. in terms of which the consumer is a juristic person whose asset value or annual turnover at the time of the transaction, equals or exceeds the threshold value determined by the Minister (currently R2million);
3. if the transaction falls within an exemption granted by the Minister;
4. that constitutes a credit agreement under the National Credit Act;
5. pertaining to services to be supplied under an employment contract;
6. giving effect to a collective bargaining agreement in terms of the Labour Relations Act;
7. giving effect to a collective agreement in terms of the Labour Relations Act.

Municipalities, Banks, Pension Funds, Collective Investment Schemes and Security Services are exempted from the application of the Act.

The Act prescribes the requirements with which franchise agreements must comply. Furthermore, that a franchisee may cancel a franchise agreement without cost or penalty within 10 business days after signing such agreement, by giving written notice to the franchisor. In addition, the Minister may prescribe information to be set out in franchise agreements generally or within specific categories or industries.

The Act is applicable to transactions or agreements concluded before the coming into operation of the Act in terms of the general effective date and the early effective date.